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FEDERAL REGISTER

Vol. 87 Thursday

No. 173 September 8, 2022

Pages 54857–55240

OFFICE OF THE FEDERAL REGISTER

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Presidential Documents

Title 3—

The President

Proclamation 10439 of September 2, 2022

Labor Day, 2022

By the President of the United States of America

A Proclamation

American workers have built our communities, laid the foundation for our democracy, and powered the engine of our prosperity. From the factory hands who forged an Arsenal of Democracy and helped beat back fascism during World War II, to the immigrants who assembled the transcontinental railroad that connected America's coasts, to the health care professionals and first responders who mobilized selflessly during the pandemic to save countless lives, American workers have guided us through our most difficult moments and delivered some of our Nation's greatest triumphs.

Unions have been the voice of American workers, guiding their path to power as a major force in our society. Unions fought for higher wages and family-supporting benefits, established vital health and safety standards, secured an 8-hour work day, eradicated child labor, guarded against discrimination and harassment, and bargained for every worker's fair share of economic prosperity. They give workers a say in critical decisions affecting their lives and livelihoods and play a transformative role in shaping the future of our democracy. The middle class built America, and unions built the middle class. When organized labor wins, families win. We all win.

I said from the start that I would be the most pro-worker and pro-union President in American history, and I am keeping that promise. When I took office, I put money in the pockets of hardworking Americans with the American Rescue Plan, offering families much-needed breathing room. I have now enacted a bold, long-term economic agenda that will lead to historic investments in our Nation and our workers: the Bipartisan Infrastructure Law, the CHIPS and Science Act, and the Inflation Reduction Act. My economic agenda is a once-in-a-generation blueprint to rebuild America, outcompete every other economy in the world, and create thousands of good-paying and clean-manufacturing jobs. We are putting plumbers, pipefitters, electrical workers, steel workers, and so many others to work on a range of projects—from rebuilding our infrastructure to manufacturing semiconductors, electric vehicles, wind turbines, and solar panels. Many of these jobs will be union jobs.

This is just the beginning. To give workers more power and raise wages, I signed an Executive Order calling for a ban on unfair non-compete agreements that hinder people from building on their experience to take new jobs in their industries. I created a White House Task Force on Worker Organizing and Empowerment with the aim of identifying new ways the executive branch can facilitate the organizing of workers. I also appointed a former union president and card-carrying union member to serve this country as the Secretary of Labor.

Still, there is more we can do. I believe every worker should have a free and fair choice to organize and bargain collectively with their employer without coercion or intimidation. That is why I called on the Congress to finally pass the Richard L. Trumka Protecting the Right to Organize Act and the Public Service Freedom to Negotiate Act, which will make it easier for private-sector, State, and local government workers to join a union and bargain collectively.

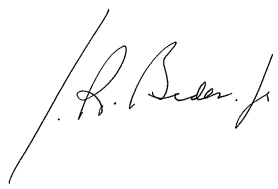
As our economy recovers and rebuilds, we must build it from the bottom up and the middle out—not the top down—so everyone benefits. Our Nation continues to fall short of its promise to deliver equal opportunity to workers of color and women, among others, and we can do more to ensure that good-paying jobs are accessible to everyone. Only when all workers have a strong voice in their wages, benefits, and job treatment can we start to change how we value their labor. Only then can we begin to reward work and not just wealth.

I have had the honor of meeting workers of every stripe. I have visited longshore workers in California, firefighters in Colorado, transit workers in New Jersey, welders in Wisconsin, and teachers in Virginia, among many others. I also welcomed frontline worker-organizers into the Oval Office. Whenever I meet members of America's labor community—dedicated women and men who derive purpose from their work—I am reminded of something my father used to tell me: ''A job is about more than a paycheck—it is about dignity and respect.''

This Labor Day, let us honor those trailblazers who have fought for the rights of working people. Let us stand in solidarity with all workers and strengthen their ability to organize and bargain with employers. Let us give thanks to all of America's workers who build this Nation and pave our future.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim September 5, 2022, as Labor Day. I call upon all public officials and people of the United States to observe this day with appropriate programs, ceremonies, and activities that honor the energy and innovation of working Americans.

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



[FR Doc. 2022–19531
Filed 9–7–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Presidential Determination No. 2022–22 of September 2, 2022

Continuation of the Exercise of Certain Authorities Under the Trading With the Enemy Act

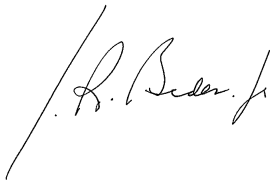
Memorandum for the Secretary of State [and] the Secretary of the Treasury

Under section 101(b) of Public Law 95–223 (91 Stat. 1625; 50 U.S.C. 4305 note), and a previous determination on September 7, 2021 (86 *FR* 50831, September 10, 2021), the exercise of certain authorities under the Trading With the Enemy Act is scheduled to expire on September 14, 2022.

I hereby determine that the continuation of the exercise of those authorities with respect to Cuba for 1 year is in the national interest of the United States.

Therefore, consistent with the authority vested in me by section 101(b) of Public Law 95–223, I continue for 1 year, until September 14, 2023, the exercise of those authorities with respect to Cuba, as implemented by the Cuban Assets Control Regulations, 31 CFR part 515.

The Secretary of the Treasury is authorized and directed to publish this determination in the *Federal Register*.



THE WHITE HOUSE,
Washington, September 2, 2022

[FR Doc. 2022–19532
Filed 9–7–22; 8:45 am]
Billing code 4811–33–P

Rules and Regulations

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

[NRC–2022–0155]

Insider Mitigation Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing Revision 1 to Regulatory Guide (RG) 5.77, ''Insider Mitigation Program,'' to provide licensees and applicants with agency approved guidance for complying with NRC regulations. RG 5.77 applies to nuclear power reactors that contain protected or vital areas. Licensees should use defense-in-depth methodologies to minimize the potential for an insider to adversely affect, either directly or indirectly, the licensee's capability to prevent significant core damage or spent fuel sabotage.

DATES: Revision 1 of RG 5.77 is available on September 8, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0155 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0155. 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 individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's Public Document Room (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 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

Revision 1 of RG 5.77 and the regulatory analysis may be found in ADAMS under Accession Nos. ML16342B024 and ML14002A294, respectively.

Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

FOR FURTHER INFORMATION CONTACT: Mark Resner, telephone: 301–287–3680, email: *Mark.Resner@nrc.gov* or Brad Baxter, telephone: 301–287–3615, email: *Brad.Baxter@nrc.gov,* both are staff of the Office of Nuclear Security and Incident Response; and Mekonen Bayssie, Office of Nuclear Regulatory Research, telephone: 301–415–1699, email: *Mekonen.Bayssie@nrc.gov.* All are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

I. Discussion

The NRC is issuing a revision to an existing guide in the NRC's ''Regulatory Guide'' series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the NRC staff uses in evaluating specific issues or postulated events, and data that the NRC staff needs in its review of applications for permits and licenses.

The proposed Revision 1 of RG 5.77 was issued with a temporary identification number of draft Regulatory Guide (DG) 5044. On January 4, 2016, the NRC sent an email (ML16007A565) transmitting the DG for comment to cleared stakeholders who demonstrated a need-to-know and possessed the required access clearance. The stakeholders' comment period closed on March 4, 2016. Stakeholders' comments on DG–5044 and the staff responses to the public comments are available under ADAMS Accession No. ML22152A224.

II. Additional Information

The NRC did not announce the availability of the draft RG for public comment because the guide was originally marked as containing information designated as ''Official Use Only-Security Related Information.'' The Commission directed the NRC staff to edit the document for consistency, accuracy, formatting, and a determination regarding which content should be marked ''Unclassified'' and ''Official Use Only—Security Related Information'' in accordance with Staff Requirement Memorandum (SRM)—SECY–17–0095—Review and Approval of Proposed Revision to RG 5.77, ''Insider Mitigation Program,'' dated July 14, 2021 (ADAMS Accession No. ML21195A356). The staff critically examined the designation of the document and determined it should not be designated as ''Official Use Only—Security Related Information.'' In consideration of the stakeholders' comments and the SRM, the staff revised the document and is issuing this notice to inform the public of the issuance of the final RG.

III. Congressional Review Act

This RG is a rule as defined in the Congressional Review Act (5 U.S.C. 801–808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

IV. Backfitting, Forward Fitting, and Issue Finality

Revision 1 of RG 5.77 describes methods acceptable to the NRC staff for complying with the NRC's regulations to meet the regulatory requirements in paragraphs 73.55(b)(9) and 73.55(b)(9)(ii) of title 10 of the *Code of Federal Regulations* (10 CFR), such that a licensee shall establish, maintain, and implement an Insider Mitigation Program (IMP) and shall describe the

program in the Physical Security Plan. The IMP must contain elements from the following licensee programs: access authorization, fitness-for-duty, cyber security, and physical protection. Issuance of this RG, would not constitute backfitting as defined in 10 CFR 50.109, ''Backfitting,'' and as described in NRC Management Directive (MD) 8.4, ''Management of Backfitting, Forward Fitting, Issue Finality, and Information Requests,'' constitute forward fitting as that term is defined and described in MD 8.4; or affect the issue finality of any approval issued under 10 CFR part 52, ''Licenses, certifications, and approvals for nuclear power plants.'' As explained in RG 5.77, applicants and licensees would not be required to comply with the positions set forth in RG 5.77.

V. Submitting Suggestions for Improvement of Regulatory Guides

A member of the public may, at any time, submit suggestions to the NRC for improvement of existing RGs or for the development of new RGs. Suggestions can be submitted on the NRC's public website at *https://www.nrc.gov/reading-rm/doc-collections/reg-guides/contactus.html.* Suggestions will be considered in future updates and enhancements to the ''Regulatory Guide'' series.

Dated: August 30, 2022.

For the Nuclear Regulatory Commission.

Meraj Rahimi,

Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2022–19320 Filed 9–7–22; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 110 and 116

[Notice 2022–17]

Repayment of Candidate Loans

AGENCY: Federal Election Commission.

ACTION: Interim final rule.

SUMMARY: The Federal Election Commission (''Commission'') is removing regulatory restrictions on authorized committees' repayment of candidate personal loans. The Commission is taking this action in light of the Supreme Court's recent decision in *Federal Election Commission* v. *Ted Cruz for Senate,* which held that the statutory provision implemented by those regulations is unconstitutional. The Commission is accepting comments on these revisions to its regulations.

DATES: The effective date is November 30, 2022. Comments must be received on or before October 11, 2022.

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at *https://sers.fec.gov/fosers/,* reference REG 2022–01. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Mr. Robert M. Knop, Assistant General Counsel, 1050 First Street NE, Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Joseph P. Wenzinger, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

Background

On May 16, 2022, the Supreme Court of the United States ruled in *Federal Election Commission* v. *Ted Cruz for Senate* that section 304 of the Bipartisan Campaign Reform Act of 2002 (''BCRA'') violates the Free Speech Clause of the First Amendment of the United States Constitution. 142 S.Ct. 1638 (2022). The Supreme Court's ruling affirmed the same holding of the U.S. District Court for the District of Columbia. *Ted Cruz for Senate* v. *Federal Election Commission,* 542 F. Supp. 3d 1 (D.D.C. 2021). The Commission is now removing the regulations implementing this unconstitutional statute.

The Commission is taking this action without advance notice and comment because it falls under the ''good cause'' exception of the Administrative Procedure Act (''APA''), 5 U.S.C. 553(b)(B). The revisions set forth herein are necessary to conform the Commission's regulations to the Supreme Court's holding that the statutory restrictions on authorized committees' repayment of candidate personal loans are unconstitutional. *Ted Cruz for Senate,* 142 S.Ct. at 1656. Because this action does not involve any Commission discretion or policy judgments, notice and comment are unnecessary. 5 U.S.C. 553(b)(B), (d)(3). A pre-publication notice and comment period would also be contrary to the public interest because the 2022 election campaigns for Federal office are ongoing, and so the delay that would result in such a notice and comment period might cause confusion among Federal candidates and the public as to the enforceability of the regulations addressed below. *Id.*

Moreover, because this interim final rule is exempt from the APA's notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(a), 604(a).

Transmission of Final Rules to Congress

Before final promulgation of any rules or regulations to carry out the provisions of the Federal Election Campaign Act (''the Act''), the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period. 52 U.S.C. 30111(d). The effective date of this final rule is November 30, 2022.

Explanation and Justification

The Act provides two methods for the funding of Federal campaigns. First, funding may come from individual contributions to the campaign, which are subject to a per-election limits. *See* 52 U.S.C. 30116(a)(1)(A) (placing limits on contributions from individuals to candidates and their authorized political committees). Second, candidates may self-finance their campaigns, with no limits on the amount a candidate may contribute to his or her campaign committee. 11 CFR 110.10; *see also Buckley* v. *Valeo,* 424 U.S. 1, 51–54 (1976) (holding that restriction on candidate's personal expenditures is unconstitutional).

At the same time, however, section 304 of BCRA places limits on candidates' ability to finance their campaigns through personal loans. Under that statutory provision, a candidate's authorized committee may repay all of a candidate's personal loans with contributions made before or on the date of the election, but may repay only up to $250,000 of a candidate's pre-election loans with post-election

contributions. 52 U.S.C. 30116(j). Under the Commission's implementing regulations, for personal loan amounts that in the aggregate exceed $250,000, a campaign ''[m]ay repay the entire amount of the personal loans using contributions'' made before or on the date of the election, 11 CFR 116.1(b)(2), but ''it must do so within 20 days of the election,'' 11 CFR 116.11(b)(1); (c)(1). If using post-election contributions, a campaign may repay only up to $250,000 of the personal loans. 11 CFR 116.11(b)(2); 11 CFR 116.12.

On May 16, 2022, the Supreme Court of the United States ruled that section 304 of BCRA violates the Free Speech Clause of the First Amendment of the United States Constitution. The Supreme Court's ruling affirmed the same holding of the U.S. District Court for the District of Columbia. *Ted Cruz for Senate* v. *Federal Election Commission,* 542 F. Supp. 3d 1 (D.D.C. 2021). Accordingly, the Commission is removing the regulations implementing this unconstitutional statutory provision.

I. Deletion of 11 CFR 110.1(b)(3)(ii)(C)—Contributions by Persons Other Than Multicandidate Political Committees (52 U.S.C. 30116(a)(1))

Section 110.1(b)(3)(i) provides that contributions to a campaign for a particular election after the election has taken place may be made only to the extent that the contribution does not exceed a committee's net debts outstanding from such election. 11 CFR 110.1(b)(3)(i). The following paragraph (ii) further provides how net debts outstanding shall be determined, and it states that an authorized committee must reduce its calculated net debts by any outstanding candidate personal loan amounts more than $250,000. 11 CFR 110.1(b)(3)(ii)(C). The regulation that reduces the calculation of net debts based on candidate personal loans exceeding $250,000 was issued as a conforming edit to the regulations, 11 CFR 116.11 and 116.12 (*see* below), that implemented the statutory limitation on an authorized committee's repayment of candidate personal loans exceeding that amount. Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates, 68 FR 3970, 3973 (Jan. 27, 2003). The Commission is removing 11 CFR 110.1(b)(3)(ii)(C) and making technical edits to 11 CFR 110.1(b)(3)(ii)(A) and (B).

II. Deletion of 11 CFR 116.11—Restriction on an Authorized Committee's Repayment of Personal Loans Exceeding $250,000 Made by the Candidate to the Authorized Committee

Section 116.11 implements section 304 of BCRA and provides for relevant limitations on the repayment of candidate personal loans aggregating in excess of $250,000 by an authorized committee. 11 CFR 116.11. The Commission is removing § 116.11 in its entirety.

III. Deletion of 11 CFR 116.12—Repayment of Candidate Loans of $250,000 or Less

Section 116.12 provides that a campaign committee is authorized to repay a candidate's personal loans less than $250,000 with contributions made before, on, or after the date of the election. 11 CFR 116.2. The Commission is removing § 116.12 in its entirety.

List of Subjects

11 CFR Part 110

Contribution and expenditure limitations and prohibitions.

11 CFR Part 116

Debts owed by candidates and political committees.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 1. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2) and (g), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, 36 U.S.C. 510.

§ 110.1 [Amended]

■ 2. Amend § 110.1:

■ a. In paragraph (b)(3)(ii)(A), by adding ''and'' after the semicolon at the end of the paragraph;

■ b. In paragraph (b)(3)(ii)(B), by removing ''; and'' and adding a period in its place; and

■ c. By removing paragraph (b)(3)(ii)(C).

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

■ 3. The authority citation for part 116 continues to read as follows:

Authority: 52 U.S.C. 30103(d), 30104(b)(8), 30111(a)(8), 30116, 30118, 30141.

§§ 116.11 and 116.12 [Removed]

■ 4. Remove §§ 116.11 and 116.12.

Dated: August 31, 2022.

On behalf of the Commission

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–19344 Filed 9–7–22; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0675; Project Identifier MCAI–2021–01406–T; Amendment 39–22156; AD 2022–18–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A318, A319, A320, and A321 series airplanes. This AD was prompted by unclear and incomplete placard instructions for the doghouse door lock. This AD requires installing improved handling instruction placards on affected doghouses and re-identifying the doghouses, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected doghouses under certain conditions. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 13, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this IBR material on the EASA website at *ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0675.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–0675; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3229; email *Vladimir.Ulyanov@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0279, dated December 15, 2021 (EASA AD 2021–0279) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model Airbus A318–111, A318–112, A318–121, A318–122, A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, A319–171N, A320–211, A320–212, A320–214, A320–215, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, A320–273N, A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes. Model A320–215 airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A318, A319, A320, and A321 series airplanes. The NPRM published in the **Federal Register** on June 13, 2022 (87 FR 35684). The NPRM was prompted by unclear and incomplete placard instructions for the doghouse door lock. The NPRM proposed to require installing improved handling instruction placards on affected doghouses and re-identifying the doghouses, as specified in EASA AD 2021–0279. The NPRM also proposed to prohibit the installation of affected doghouses under certain conditions.

The FAA is issuing this AD to address the possible failure of the doghouse door lock latch, which could result in locking the door in the closed position and preventing access to the emergency equipment in the doghouse, possibly resulting in injury to occupants. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0279 specifies procedures for installing improved handling instruction placards on affected doghouses and re-identifying the doghouses, and prohibits installation of affected doghouses under certain conditions. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD would affect 1,825 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
1 work-hour × $85 per hour = $85	$*	$85	$155,125

* The FAA has received no definitive data on which to base the cost estimates for the replacement placards specified in this AD.

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected individuals. The FAA does not control warranty coverage for affected individuals. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

(3) Will not have a significant economic impact, positive or negative,

on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–18–05 Airbus SAS: Amendment 39–22156; Docket No. FAA–2022–0675; Project Identifier MCAI–2021–01406–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Airbus SAS airplanes identified in paragraphs (c)(1) through (4) of this AD, certificated in any category.

(1) All Model A318–111, A318–112, A318–121, and A318–122 airplanes.

(2) All Model A319–111, A319–112, A319–113, A319–114, A319–115, A319–131, A319–132, A319–133, A319–151N, A319–153N, and A319–171N airplanes.

(3) All Model A320–211, A320–212, A320–214, A320–216, A320–231, A320–232, A320–233, A320–251N, A320–252N, A320–253N, A320–271N, A320–272N, and A320–273N airplanes.

(4) All Model A321–111, A321–112, A321–131, A321–211, A321–212, A321–213, A321–231, A321–232, A321–251N, A321–251NX, A321–252N, A321–252NX, A321–253N, A321–253NX, A321–271N, A321–271NX, A321–272N, and A321–272NX airplanes.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by unclear and incomplete placard instructions for the doghouse door lock, which could lead to incorrect operation of the doghouse door lock. The FAA is issuing this AD to address the possible failure of the doghouse door lock latch, which could result in locking the door in the closed position and preventing access to the emergency equipment in the doghouse, possibly resulting in injury to occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0279, dated December 15, 2021 (EASA AD 2021–0279).

(h) Exceptions to EASA AD 2021–0279

(1) Where EASA AD 2021–0279 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2021–0279 does not apply to this AD.

(3) Where paragraph (1) of EASA AD 2021–0279 refers to affected airplanes, replace the text ''For Group 1 aeroplanes'' with ''Group 1 airplanes except for airplanes identified in paragraph (2) of EASA AD 2021–0279.''

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (j) 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, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

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

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0279, dated December 15, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0279, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on August 17, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–19279 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0680; Project Identifier MCAI–2021–01415–T; Amendment 39–22146; AD 2022–17–08]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2020–22–03, which applied to all Airbus SAS Model A330–200, –200 Freighter, and

–300 series airplanes. AD 2020–22–03 required revising the existing airplane flight manual (AFM) to incorporate procedures to be applied if an engine bleed over-temperature occurs when the associated engine bleed valve is jammed open, and provided for the optional embodiment of updated flight warning computer (FWC) software, which terminated the AFM revision. This AD was prompted by the development of new maintenance actions and software related to over-temperature failure conditions. This AD continues to require the actions specified in AD 2020–22–03, requires accomplishing the new maintenance tasks and corrective actions, and mandates embodiment of the updated FWC software for certain airplanes, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected FWC software. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 13, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *www.regulations.gov* under Docket No. FAA–2022–0680.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* under Docket No. FAA–2022–0680; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th St., Des Moines, WA 98198; telephone and fax: 206–231–3229; email: *vladimir.ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2021–0281, dated December 17, 2021 (EASA AD 2021–0281) (also referred to as the MCAI), to correct an unsafe condition for Airbus SAS Model A330–201, –202, –203, –223, –223F, –243, and –243F airplanes, Model A330–301, –302, –303, –321, –322, –323, –341, –342, –343, and –743L airplanes. Model A330–743L airplanes are not certificated by the FAA and are not included on the U.S. type certificate data sheet; this AD therefore does not include those airplanes in the applicability.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to supersede AD 2020–22–03, Amendment 39–21299 (85 FR 66873, October 21, 2020) (AD 2020–22–03). AD 2020–22–03 applied to all Airbus SAS Model A330–200, –200 Freighter, and –300 series airplanes. The NPRM published in the **Federal Register** on June 16, 2022 (87 FR 36266). The NPRM was prompted by the development of new maintenance actions and software related to over-temperature failure conditions. The NPRM proposed to continue to require the actions specified in AD 2020–22–03, to require accomplishing the new maintenance tasks and corrective actions, and to mandate embodiment of the updated FWC software for certain airplanes, as specified in EASA AD 2021–0281. The NPRM also proposed to prohibit the installation of affected FWC software.

The FAA is issuing this AD to address the possibility of a jammed engine bleed valve, which could lead to damage of the bleed manifold and the ducts downstream of the engine bleed system, exposure of the surrounding structure to heat stress, and possible reduced structural integrity of the airplane. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comment

The FAA received a comment from the Air Line Pilots Association, International (ALPA) who supported the NPRM without change.

Conclusion

The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2021–0281 specifies procedures for amending the applicable AFM to incorporate procedures to be applied if an engine bleed over-temperature occurs when the associated engine bleed valve is jammed open. EASA AD 2020–0281 also specifies that embodiment of updated FWC software standard T9 eliminates the need for the AFM amendment. EASA AD 2021–0281 also describes maintenance tasks for failures related to over-temperature conditions and corrective actions (repair). EASA AD 2021–0281 also specifies procedures for the embodiment of updated FWC software standard T9–3, and, for certain airplanes concurrent embodiment of system data acquisition concentrator (SDAC) software standard C13 or FWC software standard K3–2 and SDAC software standard C3–0A. Finally, EASA AD 2021–0281 prohibits the installation of affected FWC software (FWC software standard T9–2 or earlier). This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 115 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
AFM Revision: 1 work-hour × $85 per hour = $85	$0	$85	$9,775.
Software Update: 3 work-hours × 85 per hour = $255	0	$255	Up to $29,325.
Maintenance Tasks: 7 work-hours × $85 per hour = $595	720	$595	$151,225.
Concurrent Actions: Up to 4 work-hours × $85 per hour = Up to $340	0	Up to $340	Up to $39,100.

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Labor cost	Parts cost	Cost per product
2 work-hours × $85 per hour = $170	$0	$170

The FAA has received no definitive data that enables the agency to provide cost estimates for the on-condition actions specified in this AD.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2020–22–03, Amendment 39–21299 (85 FR 66873, October 21, 2020); and

■ b. Adding the following new airworthiness directive:

2022–17–08 Airbus SAS: Amendment 39–22146; Docket No. FAA–2022–0680; Project Identifier MCAI–2021–01415–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 13, 2022.

(b) Affected ADs

This AD replaces AD 2020–22–03, Amendment 39–21299 (85 FR 66873, October 21, 2020) (AD 2020–22–03).

(c) Applicability

This AD applies to all Airbus SAS Model airplanes, certificated in any category, as identified in paragraphs (c)(1) though (3) of this AD.

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

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

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

(d) Subject

Air Transport Association (ATA) of America Code 75, Air; Code 36, Pnuematic.

(e) Unsafe Condition

This AD was prompted by a report that during a certification exercise, it was identified that there was a risk of an engine bleed system over-temperature, without the engine bleed valve closing; the associated engine bleed valve should automatically close. This AD was also prompted by the development of new maintenance actions and software related to over-temperature failure conditions. The FAA is issuing this AD to address the possibility of a jammed engine bleed valve, which could lead to damage of the bleed manifold and the ducts downstream of the engine bleed system, exposure of the surrounding structure to heat stress, and possible reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0281, dated December 17, 2021 (EASA AD 2021–0281).

(h) Exceptions to EASA AD 2021–0281

(1) Where EASA AD 2021–0281 refers to October 1, 2020 (the effective date of EASA AD 2020–0205), this AD requires using November 5, 2020 (the effective date of AD 2020–22–03).

(2) Where EASA AD 2021–0281 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraph (1) of EASA AD 2021–0281 specifies to ''inform all flight crews, and, thereafter, operate the aeroplane accordingly,'' this AD does not require those actions as those actions are already required by existing FAA operating regulations.

(4) Where paragraphs (6) and (7) of EASA AD 2021–0281 specifies actions if ''any discrepancies are detected,'' for this AD discrepancies include failures related to an over-temperature situation, hidden failures in equipment for a ''not isolated over-temperature'' failure condition, cracking on the exchanger outlet temperature sensor, or dual drift in the exchanger outlet temperature sensor.

(5) Where paragraph (11) of EASA AD 2021–0281 specifies that an airplane with certain modifications is compliant with ''the requirements of paragraph (2) of EASA AD 2020–0077,'' for this AD use ''for the corresponding requirements of paragraph (2) of EASA AD 2020–0077 that are required by paragraph (g) of AD 2020–17–16, Amendment 39–21221 (85 FR 54900, September 3, 2020).''

(6) The ''Remarks'' section of EASA AD 2021–0281 does not apply to this AD.

(i) No Reporting Requirements

Although the service information referenced in EASA AD 2021–0281 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Additional FAA AD Provisions

The following provisions also apply to this AD:

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

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information referenced in EASA AD 2021–0281 contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(k) Additional Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2021–0281, dated December 17, 2021.

(ii) [Reserved]

(3) For EASA AD 2021–0281, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on August 10, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–19280 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0686; Project Identifier MCAI–2022–00088–T; Amendment 39–22145; AD 2022–17–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A350–941 airplanes. This AD was prompted by a report indicating that the inflatable free aisle restrictor (IFAR) on certain single lane slide-rafts demonstrated inconsistent release behavior in aft wind conditions. This AD requires replacing an affected part with a serviceable part, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also prohibits the installation of affected parts. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 13, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of October 13, 2022.

ADDRESSES: For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this IBR material on the EASA website at *https://ad.easa.europa.eu.* You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *www.regulations.gov* under Docket No. FAA–2022–0686.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* under Docket No. FAA–2022–0686; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0013, dated January 25, 2022 (EASA AD 2022–0013) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A350–941 airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR

part 39 by adding an AD that would apply to all Airbus SAS Model A350–941 airplanes. The NPRM published in the **Federal Register** on June 17, 2022 (87 FR 36418). The NPRM was prompted by a report indicating that following the introduction of the IFAR system on single lane slide-rafts, the IFAR demonstrated inconsistent release behavior due to interference or entanglement of the upper part of the IFAR with the slide-raft cover or door structure in aft wind conditions. These affected slide-rafts are installed at passenger door 3, left-hand and right-hand sides. The NPRM proposed to require replacing an affected part with a serviceable part, as specified in EASA AD 2022–0013. The NPRM also proposed to prohibit the installation of affected parts.

The FAA is issuing this AD to address inconsistent release of single lane slide-rafts having the IFAR system, which if not corrected, could result in a slide-raft being unusable during an emergency and impair the safe evacuation of occupants. See the MCAI for additional background information.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator. Accordingly, the FAA is issuing this AD to address the unsafe condition on these products.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0013 specifies procedures for replacing escape slide-rafts having certain part numbers (affected parts) with serviceable parts (which includes parts that have been modified and re-identified). EASA AD 2022–0013 also prohibits the installation of affected parts on any airplane. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 30 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Up to 11 work-hours × $85 per hour = Up to $935	$400	Up to $1,335	Up to $40,050

According to the manufacturer, some or all of the costs of this AD may be covered under warranty, thereby reducing the cost impact on affected operators. The FAA does not control warranty coverage for affected operators. As a result, the FAA has included all known costs in the cost estimate.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–17–07 Airbus SAS: Amendment 39–22145; Docket No. FAA–2022–0686; Project Identifier MCAI–2022–00088–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus SAS Model A350–941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 25, Equipment/furnishings.

(e) Unsafe Condition

This AD was prompted by a report indicating that the inflatable free aisle restrictor (IFAR) on certain single lane slide-rafts installed at passenger door 3, left-hand and right-hand sides, demonstrated inconsistent release behavior in aft wind

conditions. The FAA is issuing this AD to address inconsistent release of single lane slide-rafts having the IFAR system, which if not corrected, could result in a slide-raft being unusable during an emergency and impair the safe evacuation of occupants.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0013, dated January 25, 2022 (EASA AD 2022–0013).

(h) Exceptions to EASA AD 2022–0013

(1) Where EASA AD 2022–0013 refers to its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0013 does not apply to this AD.

(i) Additional 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) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, Large Aircraft Section, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (i)(2) of this AD, if any service information contains procedures or tests that are identified as RC, those procedures and tests must be done to comply with this AD; any procedures or tests that are not identified as RC are recommended. Those procedures and tests that are not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the procedures and tests identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to procedures or tests identified as RC require approval of an AMOC.

(j) Related Information

For more information about this AD, contact Dan Rodina, Aerospace Engineer, Large Aircraft Section, International Validation Branch, FAA, 2200 South 216th Street, Des Moines, WA 98198, telephone and fax 206–231–3225; email *dan.rodina@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0013, dated January 25, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0013, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find this EASA AD on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

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

Issued on August 10, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–19278 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1069; Project Identifier MCAI–2022–01175–T; Amendment 39–22174; AD 2022–19–05]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Emergency Airworthiness Directive (AD) 2022–18–51, which applied to all Airbus SAS Model A330–841 and –941 airplanes. Emergency AD 2022–18–51 required revising the existing airplane flight manual (AFM) to incorporate additional limitations prohibiting takeoff for certain airplane configurations; specified airplane dispatch restrictions using certain provisions of the A330 master minimum equipment list (MMEL) or amending the existing FAA-approved operator's minimum equipment list (MEL); and required obtaining and accomplishing instructions following certain maintenance messages. Since the FAA issued Emergency AD 2022–18–51, additional instructions and maintenance procedures have been developed to address failures of the high pressure valve (HPV). This AD continues to require the actions specified in Emergency AD 2022–18–51, and also requires maintenance actions, including an HPV seal integrity test, repetitive replacement of the HPV clips, revision of the existing AFM, and implementation of updates to the FAA-approved operator's MEL, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective September 15, 2022.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of September 15, 2022.

The FAA must receive comments on this AD by October 24, 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 *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.

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2022–1069; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this AD, the mandatory continuing airworthiness information (MCAI), any comments received, and

other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

• For material incorporated by reference (IBR) in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.* It is also available at *regulations.gov* under Docket No. FAA–2022–1069.

FOR FURTHER INFORMATION CONTACT: Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2022–1069; Project Identifier MCAI–2022–01175–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule 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 *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this final rule.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this AD contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this AD, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this AD. Submissions containing CBI should be sent to Vladimir Ulyanov, Aerospace Engineer, Large Aircraft Section, FAA, International Validation Branch, 2200 South 216th St., Des Moines, WA 98198; telephone 206–231–3229; email *Vladimir.Ulyanov@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

On August 18, 2022, the FAA issued Emergency AD 2022–18–51 for all Airbus SAS Model A330–841 and –941 airplanes. Emergency AD 2022–18–51 was prompted by MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued EASA Emergency AD 2022–0170–E, dated August 17, 2022 (EASA Emergency AD 2022–0170–E), to correct an unsafe condition identified as leaking bleed system HPVs, likely due to HPV clip failure and sealing ring damage.

Emergency AD 2022–18–51 required revising the existing AFM to incorporate additional limitations prohibiting takeoff for certain airplane configurations; specified airplane dispatch restrictions using certain provisions of the A330 MMEL or amending the existing FAA-approved operator's MEL; and required obtaining and accomplishing instructions following certain maintenance messages. The FAA issued Emergency AD 2022–18–51 to address a leaking HPV, which may expose the pressure regulating valve (PRV), which is installed downstream from the HPV, to high pressure, possibly damaging the PRV itself and preventing its closure. The unsafe condition, if not addressed, could result in high pressure and temperatures in the duct downstream from the PRV, with possible duct burst, damage to several systems, and consequent loss of control of the airplane.

Actions Since Emergency AD 2022–18–51 Was Issued

Since the FAA issued Emergency AD 2022–18–51, EASA superseded its Emergency AD 2022–0170–E and issued EASA AD 2022–0181, dated August 29, 2022 (EASA AD 2022–0181) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS A330–841 and –941 airplanes. The MCAI states that Airbus has since published service information providing maintenance actions including repetitive replacement of the HPV clips and AFM and MMEL updates that provide additional instructions and maintenance procedures to address failures of the HPV.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1069.

Explanation of Retained Requirements

Although this AD does not explicitly restate the requirements of Emergency AD 2022–18–51, this AD retains all of the requirements of Emergency AD 2022–18–51. Those requirements are referenced in EASA AD 2022–0181, which, in turn, is referenced in paragraph (g) of this AD.

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0181 retains the following actions from EASA Emergency AD 2022–0170–E: revision of the existing AFM to incorporate limitations prohibiting takeoff for certain airplane configurations; airplane dispatch restrictions using certain provisions of the A330 MMEL or amendment of the existing FAA-approved operator's MEL; and actions following certain maintenance messages.

EASA AD 2022–0181 also specifies the following required actions:

• Revision of the Limitations section of the existing AFM to provide procedures to mitigate the risk of a non-isolated overpressure or overtemperature in the case of an excessive leak of the engine bleed HPV.

• Implementation of the instructions of the MMEL update on the basis of which the operator's MEL must be amended with new provisions and procedures for the following items: Air Conditioning Pack, Engine Bleed Air Supply System, Engine Bleed IP (Intermediate Pressure) Check Valve, and Engine Bleed HP Valve.

• A seal integrity test of each HPV, and corrective actions (including replacing the HPV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow).

EASA AD 2022–0181 also describes the following maintenance instructions to be accomplished following certain faults or failures:

• HPV troubleshooting procedure and additional maintenance actions after any Class 1 maintenance message associated to an HPV fault, and corrective actions (including replacing HPV or wing bellow).

• HPV seal integrity test and the additional maintenance actions after any Class 1 or Class 2 maintenance message associated to a PRV fault, and corrective actions (including replacing

the HPV and PRV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow).

- A visual (borescope) inspection of the engine bleed air system (EBAS) to detect signs of foreign object debris (FOD), including metallic debris in the butterfly valve and dents or damage of the flaps of the intermediate pressure check valve (IPCV), and dents and missing segments in the PRV, the header of the high pressure/intermediate pressure (HP/IP) duct, the y-duct, and the pylon ducts after any failure of an HPV clip and/or any of the HPV butterfly sealing rings, and corrective actions (including removing FOD and replacing the IPCV or PRV).
- A seal integrity test of each HPV after any take-off or go-around accomplished with ''packs OFF'' or ''APU bleed ON'' or ''engine bleed OFF,'' and corrective actions (including replacing the HPV, and a detailed inspection of the wing bellow on engine 1(2) and replacement of any damaged or deformed wing bellow).
- Contacting Airbus for instructions after any HPV troubleshooting procedure if any Class 1 maintenance message occurs associated with an HPV fault.
- Initial and repetitive replacement of each HPV clip with a new HPV clip.
- Reporting to Airbus of any failure detected during the accomplishment of any maintenance action, seal integrity test, or visual inspection specified in EASA AD 2022–0181.

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

FAA's Determination

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

Requirements of This AD

This AD requires accomplishing the actions specified in EASA AD 2022–0181 described previously, except for any differences identified as exceptions in the regulatory text of this AD, and except as discussed under ''Differences Between this AD and the MCAI.''

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, EASA AD 2022–0181 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2022–0181 through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2022–0181 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2022–0181. Service information required by EASA AD 2022–0181 for compliance will be available at *regulations.gov* under Docket No. FAA–2022–1069 after this AD is published.

Differences Between This AD and the MCAI

EASA AD 2022–0181 requires operators to inform all flightcrews of revisions to the existing AFM and MEL, and thereafter to operate the airplane accordingly. However, this AD does not specifically require those actions, as those actions are already required by FAA regulations. FAA regulations require operators to furnish to pilots any changes to the AFM (for example, 14 CFR 121.137), and to ensure the pilots are familiar with the AFM (for example, 14 CFR 91.505). As with any other flightcrew training requirement, training on the updated AFM content is tracked by the operators and recorded in each pilot's training record, which is available for the FAA to review. FAA regulations also require pilots to follow the procedures in the AFM including all updates. 14 CFR 91.9 requires that any person operating a civil aircraft must comply with the operating limitations specified in the AFM. Furthermore, FAA regulations (14 CFR 121.628(a)(2)) require operators to provide pilots with access to all of the information contained in the operator's MEL. Furthermore, 14 CFR 121.628(a)(5) requires airplanes to be operated under all applicable conditions and limitations contained in the operator's MEL. Therefore, including a requirement in this AD to operate the airplane according to the revised AFM and MEL would be redundant and unnecessary.

Paragraph (2) of EASA AD 2022–0181 prohibits the dispatch of an airplane under specified provisions of the A330 MMEL items. This AD alternatively allows revising the operator's existing FAA-approved MEL by removing the items specified in paragraph (2) of EASA AD 2022–0181.

Interim Action

The FAA considers that this AD is an interim action. The FAA anticipates that further AD action will follow.

FAA's Justification and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because a leaking HPV may expose the PRV to high pressure, possibly damaging the PRV itself and preventing its closure, which could lead to high pressure and temperatures in the duct downstream from the PRV, with possible duct burst, damage to several systems, and consequent loss of control of the airplane. The FAA considers a leaking HPV to be an urgent safety issue. The actions retained from the emergency AD must be performed before further flight; however, these actions on their own do not fully mitigate the unsafe condition. The new actions required by this AD will further mitigate the unsafe condition, and certain actions are required for compliance before further flight. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d)

for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

The FAA estimates that this AD affects 15 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained actions from Emergency AD 2022–18–51.	2 work-hours × $85 per hour = $170	$0	$170	$2,550.
New one-time actions	15 work-hours × $85 per hour = $1,275	0	1,275	$19,125.
HPV clip replacement	1 work-hour × $85 per hour = $85	28	113	$1,695, per replacement cycle.

The FAA estimates the following costs to do any necessary on-condition actions that would be required based on the results of any required or optional actions. The FAA has no way of determining the number of aircraft that might need these on-condition actions:

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Action	Labor cost	Parts cost	Cost per product
HPV replacement	4 work-hours × $85 per hour = $340	$96,885	$97,225
Wing bellow replacement	6 work-hours × $85 per hour = $510	9,950	10,460
HPV seal integrity test	1 work hour × $85 per hour = $85	0	85

The FAA has no definitive data on which to base the cost estimate for the maintenance actions or additional actions specified in this AD.

The FAA estimates that it would take about 1 work-hour per product to comply with the on-condition reporting requirement in this AD. The average labor rate is $85 per hour. Based on these figures, the FAA estimates the cost of reporting discrepancies on U.S. operators to be $85 per product, per incident.

Paperwork Reduction Act

A federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. The OMB Control Number for this information collection is 2120–0056. Public reporting for this collection of information is estimated to take approximately 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Collection Clearance Officer, Federal Aviation Administration, 10101 Hillwood Parkway, Fort Worth, TX 76177–1524.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–19–05 Airbus SAS: Amendment 39–22174; Docket No. FAA–2022–1069; Project Identifier MCAI–2022–01175–T.

(a) Effective Date

This airworthiness directive (AD) is effective September 15, 2022.

(b) Affected ADs

This AD replaces Emergency AD 2022–18–51, Project Identifier MCAI–2022–01125–T, dated August 18, 2022.

(c) Applicability

This AD applies to all Airbus SAS Model A330–841 and –941 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Codes 75, Air.

(e) Unsafe Condition

This AD was prompted by reports of leaking bleed system high pressure valves (HPVs), likely due to HPV clip failure and sealing ring damage, and by the development of additional instructions and maintenance procedures to address HPV failures. The FAA is issuing this AD to address a leaking HPV, which may expose the pressure regulating valve (PRV), which is installed downstream from the HPV, to high pressure, possibly damaging the PRV itself and preventing its closure. The unsafe condition, if not addressed, could result in high pressure and temperatures in the duct downstream from the PRV, with possible duct burst, damage to several systems, and consequent loss of control of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0181, dated August 29, 2022 (EASA AD 2022–0181).

(h) Exceptions to EASA AD 2022–0181

(1) Where EASA AD 2022–0181 refers to ''18 August 2022 [the effective date of EASA AD 2022–0170–E],'' this AD requires using ''August 19, 2022.''

(2) Where EASA AD 2022–0181 refers to its effective date, this AD requires using the effective date of this AD.

(3) Where paragraphs (1), (2), (4), and (7) of EASA AD 2022–0181 specify to inform all flightcrews of airplane flight manual (AFM) revisions and dispatch limitations, and thereafter to operate the airplane accordingly, this AD does not require those actions, as those actions are already required by existing FAA regulations.

(4) Where paragraph (2) of EASA AD 2022–0181 prohibits the dispatch of an airplane under specified provisions of the A330 master minimum equipment list (MMEL) items, this AD alternatively allows revising the operator's existing FAA-approved minimum equipment list (MEL) by removing the items specified in paragraph (2) of EASA AD 2022–0181, if accomplished before further flight as of August 19, 2022, as specified in FAA Emergency AD 2022–18–51.

(5) The ''Remarks'' section of EASA AD 2022–0181 does not apply to this AD.

(i) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the actions required by this AD may be accomplished, provided the requirements of paragraphs (1) and (2) of EASA AD 2022–0181 are first accomplished.

(j) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the International Validation Branch, send it to the attention of the person identified in paragraph (k) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.* 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, International Validation Branch, FAA; or EASA; or Airbus SAS's EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(3) *Required for Compliance (RC):* Except as required by paragraph (j)(2) of this AD, if any service information referenced in EASA AD 2022–0181 that contains paragraphs that are labeled as RC, the instructions in RC paragraphs, including subparagraphs under an RC paragraph, must be done to comply with this AD; any paragraphs, including subparagraphs under those paragraphs, that are not identified as RC are recommended. The instructions in paragraphs, including subparagraphs under those paragraphs, not identified as RC may be deviated from using accepted methods in accordance with the operator's maintenance or inspection program without obtaining approval of an AMOC, provided the instructions identified as RC can be done and the airplane can be put back in an airworthy condition. Any substitutions or changes to instructions identified as RC require approval of an AMOC.

(k) Additional Information

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

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2022–0181, dated August 29, 2022.

(ii) [Reserved]

(3) For EASA AD 2022–0181, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(4) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *regulations.gov* under Docket No. FAA–2022–1069.

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

Issued on September 1, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–19459 Filed 9–6–22; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0804; Project Identifier MCAI–2022–00081–R; Amendment 39–22158; AD 2022–18–07]

RIN 2120–AA64

Airworthiness Directives; Airbus Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. This AD was prompted by review of maintenance instructions that showed conflicting methods of

recording torque cycles for certain parts. This AD requires recalculating the torque cycles of certain parts and updating log cards; removing certain other parts from service; and applying an operational restriction on certain parts, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. This AD also requires incorporating the re-calculated life limits into existing maintenance records. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 13, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 13, 2022.

ADDRESSES: For EASA material that is incorporated by reference (IBR) in this final rule, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.* For Airbus Helicopters service information identified in this final rule, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* You may view this material at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. It is also available in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0804.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0804; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the EASA AD, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0012, dated January 24, 2022 (EASA AD 2022–0012), to correct an unsafe condition for Airbus Helicopters (AH), formerly Eurocopter, Eurocopter France, Aerospatiale, Model AS 332 C, AS 332 C1, AS 332 L, and AS 332 L1 helicopters.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters. The NPRM published in the **Federal Register** on June 29, 2022 (87 FR 38689). The NPRM was prompted by review of maintenance instructions that showed conflicting methods of recording torque cycles for certain parts. The NPRM proposed to require recalculating the torque cycles of certain parts and updating log cards; removing certain other parts from service; and applying an operational restriction on certain parts, as specified in EASA AD 2022–0012. The NPRM also proposed to require incorporating the re-calculated life limits into existing maintenance records.

The FAA is issuing this AD to address under-calculated torque cycle accumulations and prevent a part from remaining in service beyond its fatigue life. See EASA AD 2022–0012 for additional background information.

Discussion of Final Airworthiness Directive

Comments

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

Conclusion

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

Related Service Information Under 1 CFR Part 51

EASA AD 2022–0012 requires recalculating the torque cycles of certain affected parts, updating log cards, and replacing those parts before exceeding their recalculated service life limits. EASA AD 2022–0012 also requires removing certain other affected parts from service and prohibits installing those parts. Lastly, EASA AD 2022–0012 applies an operational restriction to certain affected parts.

The FAA reviewed Airbus Helicopters Alert Service Bulletin (ASB) No. AS332–01.00.76, Revision 1, dated March 8, 2022 (ASB AS332–01.00.76, Rev 1). This service information specifies procedures for determining the corrected accumulated torque cycles and updating the log cards for certain parts, new life limits expressed in torque cycles, and new procedures for counting torque cycles.

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

ADs Mandating Airworthiness Limitations

The FAA has previously mandated airworthiness limitations by mandating each airworthiness limitation task (*e.g.,* inspections and replacements (life limits)) as an AD requirement or issuing ADs that require revising the airworthiness limitations section (ALS) of the existing maintenance manual or instructions for continued airworthiness to incorporate new or revised inspections and life limits. This AD, however, requires operators to incorporate into maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your helicopter, the requirements (airworthiness limitations) specified in service information required by a civil aviation authority AD. The FAA does not intend this as a substantive change. For these ADs, the ALS requirements for operators are the same but are complied with differently. Requiring the incorporation of the new ALS requirements into the maintenance records, rather than requiring individual ALS tasks (*e.g.,* repetitive inspections and replacements), requires operators to record AD compliance once after updating the maintenance records, rather than after every time the ALS task is completed.

Differences Between This AD and the EASA AD

EASA AD 2022–0012 allows using Airbus Helicopters ASB No. AS332–

01.00.76, Revision 0, dated December 16, 2021, for corrective actions; whereas this AD does not and instead requires using ASB AS332–01.00.76, Rev 1. EASA AD 2022–0012 requires replacing each affected part before exceeding its re-calculated life limit; whereas this AD requires, within 30 days after the effective date of the AD, incorporating the re-calculated life limits into maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your helicopter.

Costs of Compliance

The FAA estimates that this AD affects 7 helicopters of U.S. Registry. Labor rates are estimated at $85 per work-hour. Based on these numbers, the FAA estimates the following costs to comply with this AD.

Recalculating the torque cycles and updating maintenance records takes about 4 work-hours for an estimated cost of about $340 per helicopter and $2,380 for the U.S. fleet. Incorporating actions and associated thresholds and intervals, including life limits and maintenance tasks, into maintenance records, takes about 2 work-hours for an estimated cost of $170 per helicopter and $1,190 for the U.S. fleet. Replacing a main rotor shaft takes about 40 work-hours and parts cost about $175,684 for an estimated cost of $179,084. Replacing a main gearbox flexible mounting plate support takes about 80 work-hours and parts cost about $57,457 for an estimated cost of $64,257.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–18–07 Airbus Helicopters: Amendment 39–22158; Docket No. FAA–2022–0804; Project Identifier MCAI–2022–00081–R.

(a) Effective Date

This airworthiness directive (AD) is effective October 13, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all Airbus Helicopters Model AS332C, AS332C1, AS332L, and AS332L1 helicopters, certificated in any category.

(d) Subject

Joint Aircraft Service Component (JASC) Code: 1400, Miscellaneous Hardware.

(e) Unsafe Condition

This AD was prompted by review of maintenance instructions that showed conflicting methods of recording torque cycles for certain parts. The FAA is issuing this AD to address under-calculated torque cycle accumulations and prevent a part from remaining in service beyond its fatigue life. The unsafe condition, if not addressed, could result in failure of a part and subsequent loss of control of the helicopter.

(f) Compliance

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

(g) Requirements

Except as specified in paragraphs (h) and (i) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2022–0012, dated January 24, 2022 (EASA AD 2022–0012).

(h) Exceptions to EASA AD 2022–0012

(1) Where EASA AD 2022–0012 defines ''the ASB'' as ''AH Alert Service Bulletin (ASB) AS332–01.00.76,'' for this AD replace that definition with ''Airbus Helicopters Alert Service Bulletin No. AS332–01.00.76, Revision 1, dated March 8, 2022.''

(2) Where EASA AD 2022–0012 references flight hours (FH) and the service information referenced in EASA AD 2022–0012 specifies life limit thresholds in terms of FH, this AD requires using total hours time-in-service.

(3) Where EASA AD 2022–0012 refers to its effective date, this AD requires using the effective date of this AD.

(4) This AD does not mandate paragraph (3) of EASA AD 2022–0012; instead, for this AD, within 30 days after the effective date of this AD, incorporate into maintenance records required by 14 CFR 91.417(a)(2) or 135.439(a)(2), as applicable for your helicopter, the actions and associated thresholds and intervals, including life limits and maintenance tasks, specified in the Appendix, section 4., of Airbus Helicopters Alert Service Bulletin No. AS332–01.00.76, Revision 1, dated March 8, 2022. After the action required by this paragraph has been done, no alternative actions and associated thresholds and intervals, including life limits, may be used unless the actions or intervals are approved as an alternative method of compliance (AMOC) in accordance with the procedures specified in paragraph (k)(1) of this AD.

(5) This AD does not mandate compliance with the ''Remarks'' section of EASA AD 2022–0012.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0012 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Special Flight Permit

Special flight permits are prohibited.

(k) Alternative Methods of Compliance (AMOCs)

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

Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov.*

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

(l) Related Information

For more information about this AD, contact Kristi Bradley, Program Manager, COS Program Management Section, Operational Safety Branch, Compliance & Airworthiness Division, FAA, 10101 Hillwood Pkwy., Fort Worth, TX 76177; telephone (817) 222–5110; email *kristin.bradley@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) Airbus Helicopters Alert Service Bulletin No. AS332–01.00.76, Revision 1, dated March 8, 2022.

(ii) European Union Aviation Safety Agency (EASA) AD 2022–0012, dated January 24, 2022.

(3) For Airbus Helicopters service information identified in this AD, contact Airbus Helicopters, 2701 North Forum Drive, Grand Prairie, TX 75052; telephone (972) 641–0000 or (800) 232–0323; fax (972) 641–3775; or at *https://www.airbus.com/helicopters/services/technical-support.html.* For EASA AD 2022–0012, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* internet *www.easa.europa.eu.* You may find the EASA material on the EASA website at *https://ad.easa.europa.eu.*

(4) You may view this service information at the FAA, Office of the Regional Counsel, Southwest Region, 10101 Hillwood Pkwy., Room 6N–321, Fort Worth, TX 76177. For information on the availability of this material at the FAA, call (817) 222–5110. This material may be found in the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0804.

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

Issued on August 19, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–19257 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–1022; Amendment No. 71–54]

RIN 2120–AA66

Airspace Designations; Incorporation by Reference

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends 14 CFR part 71 relating to airspace designations to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order JO 7400.11G, Airspace Designations and Reporting Points. This action also explains the procedures the FAA will use to amend the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points incorporated by reference.

DATES: These regulations are effective September 15, 2022, through September 15, 2023. The incorporation by reference of FAA Order JO 7400.11G is approved by the Director of the Federal Register as of September 15, 2022, through September 15, 2023.

ADDRESSES: FAA Order 7400.11G, Airspace Designations and Reporting Points, and subsequent amendments can be viewed on line 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: Sarah A. Combs, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

FAA Order JO 7400.11F, Airspace Designations and Reporting Points, effective September 15, 2021, listed Class A, B, C, D and E airspace areas; air traffic service routes; and reporting points. Due to the length of these descriptions, the FAA requested approval from the Office of the Federal Register to incorporate the material by reference in the Federal Aviation Regulations § 71.1, effective September 15, 2021, through September 15, 2022. During the incorporation by reference period, the FAA processed all proposed changes of the airspace listings in FAA Order JO 7400.11F in full text as proposed rule documents in the **Federal Register**, unless there was good cause to forego notice and comment. Likewise, all amendments of these listings were published in full text as final rules in the **Federal Register**. This rule reflects the periodic integration of these final rule amendments into a revised edition of FAA Order JO 7400.11G, Airspace Designations and Reporting Points. The Director of the Federal Register has approved the incorporation by reference of FAA Order JO 7400.11G in section 71.1, as of September 15, 2022, through September 15, 2023. This rule also explains the procedures the FAA will use to amend the airspace designations incorporated by reference in part 71. This rule also updates sections 71.5, 71.15, 71.31, 71.33, 71.41, 71.51, 71.61, 71.71, and 71.901 to reflect the incorporation by reference of FAA Order JO 7400.11G.

Availability and Summary of Documents for Incorporation by Reference

This document incorporates by reference FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022, and effective September 15, 2022, in section 71.1. FAA Order JO 7400.11G is publicly available as listed in the **ADDRESSES** section of this final rule. FAA Order JO 7400.11G 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 to reflect the approval by the Director of the Federal Register of the incorporation by reference of FAA Order JO 7400.11G, effective September 15, 2022, through September 15, 2023. During the incorporation by reference period, the FAA will continue to process all proposed changes of the airspace listings in FAA Order JO 7400.11G in full text as proposed rule documents in the **Federal Register**, unless there is good cause to forego notice and comment. Likewise, all amendments of these listings will be published in full text as final rules in the **Federal Register**. The FAA will periodically integrate all final rule amendments into a revised edition of FAA Order JO 7400.11, and submit the revised edition to the Director of the Federal Register for approval for incorporation by reference in section 71.1.

FAA Order 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 action: (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. This action neither places any new restrictions or requirements on the public, nor changes the dimensions or operation requirements of the airspace listings incorporated by reference in part 71.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

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

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

■ 1. The authority citation for 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.

■ 2. Section 71.1 is revised to read as follows:

§ 71.1 Applicability.

A listing for Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points can be found in FAA Order JO 7400.11G, Airspace Designations and Reporting Points, dated August 19, 2022. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552 (a) and 1 CFR part 51. The approval to incorporate by reference FAA Order JO 7400.11G is effective September 15, 2022, through September 15, 2023. During the incorporation by reference period, proposed changes to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as proposed rule documents in the **Federal Register**, unless there is good cause to forego notice and comment. Amendments to the listings of Class A, B, C, D, and E airspace areas; air traffic service routes; and reporting points will be published in full text as final rules in the **Federal Register**. Periodically, the final rule amendments will be integrated into a revised edition of FAA Order JO 7400.11 and submitted to the Director of the Federal Register for approval for incorporation by reference in this section. Copies of FAA Order JO 7400.11G may be obtained from Rules and Regulations Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591, (202) 267–8783. An electronic version of FAA Order JO 7400.11G is available on the FAA website at *www.faa.gov/air_traffic/publications.* Copies of FAA Order JO 7400.11G may be inspected in Docket No. FAA–2022–1022; Amendment No. 71–54, on *www.regulations.gov.* A copy of FAA Order JO 7400.11G may be inspected at the National Archives and Records Administration (NARA). For information on the availability of FAA Order JO 7400.11G at NARA, email: *fr.inspection@nara.gov* or go to *www.archives.gov/federal-register/cfr/ibr-locations.html.*

§ 71.5 [Amended]

■ 3. Section 71.5 is amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

§ 71.15 [Amended]

■ 4. Section 71.15 is amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

§ 71.31 [Amended]

■ 5. Section 71.31 is amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

§ 71.33 [Amended]

■ 6. Paragraph (c) of section 71.33 is amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

§ 71.41 [Amended]

■ 7. Section 71.41 is amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

§ 71.51 [Amended]

■ 8. Section 71.51 is amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

§ 71.61 [Amended]

■ 9. Section 71.61 is amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

§ 71.71 [Amended]

■ 10. Paragraphs (b), (c), (d), (e), and (f) of section 71.71 are amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

§ 71.901 [Amended]

■ 11. Paragraph (a) of section 71.901 is amended by removing the words ''FAA Order 7400.11F'' and adding, in their place, the words ''FAA Order JO 7400.11G.''

Issued in Washington, DC, on September 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–19291 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0646; Airspace Docket No. 21–AEA–17]

RIN 2120–AA66

Amendment and Removal of VOR Federal Airways in the Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends 4 VHF Omnidirectional Range (VOR) Federal Airways, (V–7, V–9, V–106, and V–214); and removes 5 VOR Federal Airways, (V–58, V–130, V–149, V–445, V–451) in support of the FAA's VOR Minimum Operation Network (MON) project.

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 JO Order 7400.11 and publication of conforming amendments.

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

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0646 in the **Federal Register** (87 FR 32376; May 31, 2022), amending four and removing seven VOR Federal airways. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Domestic VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document will be subsequently published in and removed from FAA Order JO 7400.11.

Differences From the NPRM

The route description of V–7 in the NPRM inadvertently failed to include the amendments to the route as published in an earlier action (86 FR 67377; November 26, 2021) which became effective on January 10, 2022. The amended V–7 consists of two parts: From Dolphin, FL, to Muscle Shoals, AL; and From Pocket City, IN, to the intersection of the Chicago Heights, IL 358° and the Badger, WI 117° radials. This version of the description is modified in the text below.

The NPRM proposed to remove Sidon, MS, from airway V–9. The FAA has decided to retain this point as part of the route.

The NPRM proposed to remove V–379 and V–479. The FAA has decided to retain V–379 and V–479 in effect until a later date.

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 4 VOR Federal Airways, (V–7, V–9, V–106, and V–214), and removing 5 VOR Federal Airways, (V–58, V–130, V–149, V–445, and V–451). The changes are described below.

V–7: V–7 consists of two parts: From Dolphin, FL, to Muscle Shoals, AL; and, From Pocket City, IN, to the intersection of the Chicago Heights, IL 358° and Badger, WI, 117° radials. This rule amends the first part of the route by removing Muscle Shoals, AL, from the route. As amended, the first part of V–7 extends from Dolphin, FL, to Vulcan, AL. The second part of the route remains unchanged as stated above.

V–9: V–9 currently extends from Leeville, LA to Pontiac, IL; and from Janesville, WI, to Houghton, MI. This action removes Gilmore, AR; and Malden, MO, from the route. As amended, V–9 consists of three parts: From Leeville, LA, to Marvell, AR; From Farmington, MO, to Pontiac, IL; and From Janesville, WI, to Houghton, MI.

V–58: V–58 currently consists of two parts: from Philipsburg, PA, to Williamsport, PA; and from the intersection of the Sparta, NJ, 018° and the Kingston NY, 270° radials to Nantucket, MA. This action removes the entire route. Air Navigation (RNAV) route T–216 replaces V–58.

V–106: V–106 currently extends between Johnstown, PA, and the intersection of the Wilkes-Barre, PA, 037°, and the Sparta, NJ, 300° radials. This action removes the segments from Selinsgrove, PA, to the intersection of the above Wilkes-Barre and Sparta radials. As amended, V–106 extends from Johnstown, PA, to the intersection of the Johnstown 068° and the Selinsgrove 259° radials. RNAV route T–212 replaces the segments of V–106 being removed.

V–130: V–130 currently extends from Norwich, CT, to Marthas Vineyard, MA. The FAA is removing the entire route. RNAV route T–255 replaces V–130.

V–149: V–149 currently extends from Allentown, PA, to Binghamton, NY. This action removes the entire route. RNAV route T–221 replaces V–149.

V–214: V–214 currently consists of three parts: From Kokomo, IN, to Muncie, IN; From the intersection of the Appleton, OH, 236° and the Zanesville, OH, 274° radials to Bellaire, OH; and From Martinsburg, WV, to Teterboro, NJ. This action removes the segments from Martinsburg, WV, to Teterboro, NJ. As amended, V–214 extends from Kokomo, IN, to Muncie, IN; and From the intersection of the above Appleton and Zanesville radials to Bellaire, OH. RNAV route T–356 replaces V–214.

V–445: V–445 currently extends from the intersection of the Washington, DC, 065° and the Baltimore, MD, 197° radials, to LaGuardia, NY. This action removes the entire route. RNAV route T–356 replaces portions of this route.

V–451: V–451 currently extends from LaGuardia, NY, to Groton, CT. This route is not being used, therefore, the FAA is removing the entire route. New T-routes have been designed to mirror current routings to and from the New York Metropolitan area.

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 action of amending four VOR Federal Airways, and removing six VOR Federal Airways, in support of the FAA's VOR MON project, qualifies for categorical exclusion under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its implementing regulations at 40 CFR part 1500, and in accordance with FAA Order 1050.1F, Environmental Impacts: Policies and

Procedures, paragraph 5–6.5a, which categorically excludes from further environmental impact review rulemaking actions that designate or modify classes of airspace areas, airways, routes, and reporting points (see 14 CFR part 71, Designation of Class A, B, C, D, and E Airspace Areas; Air Traffic Service Routes; and Reporting Points). As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Amendment

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

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

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

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

§ 71.1 [Amended]

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

Paragraph 6010(a) Domestic VOR Federal Airways.

* * * * *

V–7 [Amended]

From Dolphin, FL; INT Dolphin 299° and Lee County, FL, 120° radials; Lee County; Lakeland, FL; Cross City, FL; Seminole, FL; Wiregrass, AL; INT Wiregrass 333° and Montgomery, AL, 129° radials; Montgomery; to Vulcan, AL. From Pocket City, IN; INT Pocket City 016° and Terre Haute, IN, 191° radials; Terre Haute; Boiler, IN; Chicago Heights, IL; to INT Chicago Heights 358° and Badger, WI, 117° radials.

* * * * *

V–9 [Amended]

From Leeville, LA; McComb, MS; INT McComb 004° and Magnolia, MS 194° radials; Magnolia; Sidon, MS; to Marvell, AR. From Farmington, MO; St. Louis, MO; Spinner, IL; to Pontiac, IL. From Janesville, WI; Madison, WI; Oshkosh, WI; Green Bay, WI; Iron Mountain, MI; to Houghton, MI.

* * * * *

V–58 [Removed]

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V–106 [Amended] From Johnstown, PA; to INT Johnstown 068° and Selinsgrove, PA, 259° radials.

* * * * *

V–130 [Removed]

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V–149 [Removed]

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V–214 [Amended] From Kokomo, IN, Marion, IN; to Muncie, IN. From INT Appleton, OH, 236° and Zanesville, OH, 274° radials; Zanesville; to Bellaire, OH.

* * * * *

V–445 [Removed]

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V–451 [Removed]

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Issued in Washington, DC, on August 31, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–19288 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0827; Airspace Docket No. 21–AEA–12]

RIN 2120–AA66

Amendment and Revocation of Air Traffic Service (ATS) Routes; Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends four jet routes and removes eight jet routes in the eastern United States. This action is associated with the Northeast Corridor Atlantic Coast Route Project and supports the VHF Omnidirectional Range (VOR) Minimum Operational Network (MON) to improve the efficiency of the National Airspace System (NAS) and reduce dependency on ground-based navigational systems.

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: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the NAS.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0827 in the **Federal Register** (87 FR 41633; July 13, 2022), amending 4 jet routes and removing 8 jet routes in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Jet routes are published in paragraph 2004 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 jet routes listed in this document will be subsequently published in and removed from FAA Order JO 7400.11.

Difference From the NPRM

The NPRM did not address an error in the description of jet route J–68 as published in FAA Order JO 7400.11F that misidentified the state for the Gopher VORTAC as MI instead of MN. The description of J–68 in the NPRM and this rule is correct.

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 4 jet routes and removing 8 jet routes in the eastern United States. This action is associated with the Northeast Corridor Atlantic Coast Route Project, and supports the VOR MON Program. Additionally, the jet route changes reduce aeronautical chart clutter by removing unneeded route segments.

The route changes are as follows:

J–14: J–14 extends from Panhandle, TX to Vulcan, AL; and From Greensboro, NC to Patuxent, MD. This action removes the segments from Greensboro, NC, to Patuxent, MD. This supports the decommissioning of the Patuxent VHF Omnidirectional Range and Tactical Air Navigational System (VORTAC). Existing Area Navigation (RNAV) Q routes, Q–22 and Q–60, partially overlay this segment.

J–24: J–24 extends from Myton, UT, to Hayden, CO; and From Hugo, CO, to Harcum, VA. This removes the segment from Flat Rock, VA, to Harcum, VA. This segment of the route is no longer used by air traffic control (ATC). Other Performance Based Navigation (PBN) route structure is being implemented to reflect current traffic flows in the area. As amended, J–24 extends from Myton, UT, to Hayden, CO; and From Hugo, CO, to Montebello, VA.

J–52: J–52 extends from Vancouver, BC, Canada, to Vulcan, AL; and From the intersection of the Columbia, SC, 042°, and the Flat Rock, VA, 212° radials to Richmond, VA. The FAA is removing the segments between Bigbee, MS, and Vulcan, AL; and the segments between the intersection of Columbia, SC, and Flat Rock, VA, radials and Richmond, VA. RNAV routes Q–87, Q–99, and Q–122 will be extended to replace the segments of J–52. As amended, J–52 extends from Vancouver, BC, Canada, to Sidon, MS.

J–68: J–68 extends from Gopher, MN, to Flint, MI; and From Hancock, NY, to Nantucket, MA. This action removes the segments from Hancock, NY to Nantucket, MA. These segments are no longer used by ATC. Other PBN route structure will be implemented to reflect current air traffic flows in the area. As amended, J–68 extends from Gopher, MN, to Flint, MI.

J–165: J–165 extends from the intersection of the Charleston, SC 025° and the Florence, SC 085° radials to Richmond, VA. The route is cancelled in its entirety. RNAV route Q–99 will be extended as a partial overlay and replacement of J–165.

J–207: J–207 extends from Florence, SC, to Franklin, VA. This action removes J–207 in its entirety. RNAV route Q–87 will be extended as a substitute for J–207.

J–506: J–506 extends from Millinocket, ME to the intersection of the St John, NB, 267° radial and the United States/Canadian border. The FAA is removing J–506 in its entirety. This route is no longer used by ATC. Currently, RNAV routes Q–947 and Q–806 exist in this area.

J–561: J–561 extends from Presque Isle, ME, to Mont Joli, PQ, Canada. This route is no longer used by ATC. The FAA is removing the route in its entirety.

J–563: J–563 extends from Albany, NY, to Sherbrooke, PQ, Canada. This route is no longer used by ATC. The Sherbrooke VHF Omnidirectional Range (VOR) has been decommissioned by NavCanada. This action removes the route in its entirety.

J–573: J–573 extends from Kennebunk, ME, to St John, NB, Canada. The route is no longer used by ATC. The FAA is removing J–573 in its entirety.

J–582: J–582 extends from Presque Isle, ME to Sept Isle, PQ, Canada. The route is no longer used by ATC. This action removes the route in its entirety.

J–585: J–585 extends from Nantucket, MA, to Yarmouth, NS, Canada. This route is no longer used by ATC. This action removes the route in its entirety.

FAA Order 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 action of amending four jet routes, and removing eight jet routes, in the eastern United States 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 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 2004 Jet Routes.

* * * * *

J–14 [Amended]

From: Panhandle, TX via Will Rogers, OK; Little Rock, AR; to Vulcan, AL.

* * * * *

J–24 [Amended]

From Myton, UT, to Hayden, CO. From Hugo, CO, Hays, KS; via Salina, KS; Kansas City, MO; St. Louis, MO; Brickyard, IN; Falmouth, KY; Charleston, WV; to Montebello, VA.

* * * * *

J–52 [Amended]

From Vancouver, BC, Canada; via Spokane, WA; Salmon, ID; Dubois, ID; Rock Springs, WY; Falcon, CO; Hugo, CO; Lamar, CO; Liberal, KS; INT Liberal 137° and Ardmore, OK, 309° radials; Ardmore; Texarkana, AR; to Sidon, MS.

* * * * *

J–68 [Amended]

From Gopher, MN, INT Gopher 109° and Dells, WI, 310° radials; Dells; Badger, WI; INT Badger 086° and Flint, MI, 278° radials; to Flint.

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J–165 [Removed]

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J–207 [Removed]

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J–506 [Removed]

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J–561 [Removed]

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J–563 [Removed]

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J–573 [Removed]

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J–582 [Removed]

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J–585 [Removed]

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Issued in Washington, DC, on September 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–19287 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0823; Airspace Docket No. 21–AEA–23]

RIN 2120–AA66

Removal of VOR Federal Airways in the Eastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action removes VHF Omnidirectional Range (VOR) Federal Airways V–31, V–447, and V–475 in support of the FAA's VOR Minimum Operation Network (MON) Program.

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: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would modify the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System (NAS).

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0823 in the **Federal Register** (87 FR 41635; July 13, 2022), removing four VOR Federal airways in the eastern United States. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Domestic VOR Federal airways are published in paragraph 6010(a) 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 VOR Federal airways listed in this document will be removed subsequently from FAA Order JO 7400.11.

Difference From the NPRM

The NPRM also proposed to remove VOR Federal airway V–146. Subsequently, it was decided to retain airway V–146 to conduct additional coordination. Further action on airway V–146 is delayed to a later date.

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 removing VOR Federal Airways V–31, V–447, and V–475. The routes are removed in conjunction with VORs being decommissioned under the VOR MON Program. This program aims to improve the efficiency of the NAS by transitioning from ground based navigation systems to satellite based navigation. The FAA is removing each of these routes as described below.

V–31: V–31 extends from Patuxent River, MD, to the intersection of the Rochester, NY, 279° and the Buffalo, NY 023° radials. The FAA is removing the route in its entirety. A planned Area

Navigation (RNAV) route, T–445, will overlay segments of airway V–31.

V–447: V–447 extends from Cambridge, NY, to Sherbrooke, PQ, Canada. NavCanada has previously decommissioned the Sherbrook, PQ, VOR which was the end point of the route. The FAA is removing the route in its entirety.

V–475: V–475 extends from LaGuardia, NY, to Providence, RI. This route is no longer being utilized. Therefore, no RNAV overlay is planned and the FAA is removing the route in its entirety.

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 action of removing three VOR Federal airways in the eastern United States 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 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined 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 6010(a) Domestic VOR Federal Airways.

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V–31 [Removed]

* * * * *

V–447 [Removed]

* * * * *

V–475 [Removed]

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Issued in Washington, DC, on September 1, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–19289 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0026; Airspace Docket No. 21–AAL–68]

RIN 2120–AA66

Amendment of United States Area Navigation (RNAV) Route T–232; Fairbanks, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects a final rule published by the FAA in the **Federal Register** on August 29, 2022, that amends United States Area Navigation (RNAV) route T–232 in the vicinity of Fairbanks, AK, in support of a large and comprehensive T-route modernization project for the state of Alaska. The final rule identified the IMARE, AK, route point as a waypoint (WP), in error. This action makes an editorial correction to the references of the IMARE, AK, WP to change it to be reflected as a Fix and match the FAA's aeronautical database information.

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 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 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:

History

The FAA published a final rule in the **Federal Register** (87 FR 52676; August 29, 2022), amending T–232 in support of a large and comprehensive T-route modernization project for the state of Alaska. Subsequent to publication, the FAA determined that the IMARE, AK, route point was inadvertently identified as a WP, in error. This rule corrects that error by changing the references of the

IMARE, AK, WP to the IMARE, AK, Fix. This is an editorial change only to match the FAA's aeronautical database information and does not alter the alignment of the affected T–232 route.

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 T-route listed in this document will be published subsequently in FAA Order JO 7400.11.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, references to the IMARE, AK, WP that are reflected in Docket No. FAA–2022–0026, as published in the **Federal Register** of August 29, 2022 (87 FR 52676), FR Doc. 2022–18426, are corrected as follows:

1. In FR Doc. 2022–18426, appearing on page 52676, in the third column, at line 20, correct ''IMARE, AK, WP'' to read ''IMARE, AK, Fix''.

2. In FR Doc. 2022–18426, appearing on page 52677, in the third column, at line 25, correct ''IMARE, AK WP (Lat. 64°33′29.60″ N, long. 147°17′20.31″ W)'' to read ''IMARE, AK FIX (Lat. 64°33′29.60″ N, long. 147°17′20.31″ W)''.

Issued in Washington, DC, on August 31, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–19286 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2022–0824; Airspace Docket No. 21–ASO–33]

RIN 2120–AA66

Amendment and Revocation of Area Navigation (RNAV) Routes; Southeastern and Northeastern United States

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Area Navigation (RNAV) route Q–81 to realign a portion of the route to improve traffic flows, and to remove Canadian RNAV route Q–947 at the request of NavCanada. These changes support the Northeast Corridor Atlantic Coast Route Project.

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: Paul Gallant, Rules and Regulations Group, Office of Policy, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it modifies the route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2022–0824, in the **Federal Register** (87 FR 41632; July 13, 2022), amending RNAV route Q–81 and removing Q–947. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

United States Area Navigation routes are published in paragraph 2006 of FAA Order JO 7400.11F dated August 10, 2021, and effective September 15, 2021, which is incorporated by reference in 14 CFR 71.1. The RNAV routes listed in this document will be subsequently published in and removed from FAA Order JO 7400.11.

Difference From the NPRM

In the regulatory text for Q–81, the ZEILR point was identified as a ''waypoint (WP).'' This is corrected to reflect ZEILR as a ''Fix.''

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 Q–81 in the southeastern United States, and removing Canadian route Q–947 in the northeastern United States.

Q–81: Q–81 extends from the TUNSL, FL, WP, to the HONID, GA, WP. This action amends the current route segments between the FIPES, OG, WP and the FARLU, FL, WP by removing the THMPR, FL, WP and the LEEHI, FL, WP and inserting the ZEILR, FL, Fix, and the PIKKR, OG, WP. The effect of this change realigns the track of Q–81 by between 1 nautical mile (NM) and 10.5 NM to the west of its current path. This change assists with traffic flow, conflict avoidance, and prevents excessive coordination for air traffic controllers. In addition, the FAA is removing the following WPs from the legal description of Q–81: MGNTY, FL; BITNY, OG; SNAPY, FL; and IPOKE, GA. Because they do not denote a route turn point, these WPs are not required to be included in the Q–81 legal description. However, these points will continue to be depicted on the IFR En Route charts because they are used for air traffic control purposes. The full description of Q–81 is listed in the amendments to part 71 set forth below.

Q–947: Q–947 is a Canadian RNAV route that is being removed at the request of NavCanada.

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 action of amending RNAV route Q–81 and removing Q–947 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 5–6.5b, which categorically excludes from further environmental impact review ''Actions regarding establishment of jet routes and Federal airways (see 14 CFR 71.15, *Designation of jet routes and VOR Federal airways*) . . .''. 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 14 CFR part 71 continues to read as follows:

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

§ 71.1 [Amended]

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

Paragraph 2006 United States Area Navigation Routes.

* * * * *

Q–81 TUNSL, FL TO HONID, GA [AMENDED]

TUNSL, FL	WP	(Lat. 24°54′02.43″ N, long. 081°31′02.80″ W)
KARTR, FL	FIX	(Lat. 25°29′45.76″ N, long. 081°30′46.24″ W)
FIPES, OG	WP	(Lat. 25°41′30.15″ N, long. 081°37′13.79″ W)
ZEILR, FL	FIX	(Lat. 26°38′13.17″ N, long. 082°22′27.71″ W)
PIKKR, OG	WP	(Lat. 26°56′24.43″ N, long. 082°41′25.28″ W)
FARLU, FL	WP	(Lat. 27°45′32.56″ N, long. 082°50′43.77″ W)
ENDEW, FL	WP	(Lat. 28°18′01.73″ N, long. 082°55′56.70″ W)
NICKI, FL	WP	(Lat. 29°15′20.19″ N, long. 083°20′31.80″ W)
BULZI, FL	WP	(Lat. 30°22′24.93″ N, long. 084°04′34.47″ W)
HONID, GA	WP	(Lat. 31°38′50.31″ N, long. 084°23′42.60″ W)

* * * * *

Paragraph 2007 Canadian Area Navigation Routes.

* * * * *

Q–947 [Removed]

* * * * *

Issued in Washington, DC, on August 31, 2022.

Scott M. Rosenbloom,

Manager, Airspace Rules and Regulations.

[FR Doc. 2022–19290 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Bureau of Economic Analysis

15 CFR Part 801

[Docket No. 220901–0181]

RIN 0691–AA91

International Services Surveys: Renewal of and Changes to BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property With Foreign Persons, and Clarifying When BE–140 and BE–180 Benchmark Surveys Are Conducted

AGENCY: Bureau of Economic Analysis, Commerce.

ACTION: Final rule.

SUMMARY: This final rule amends regulations of the Department of Commerce's Bureau of Economic Analysis (BEA) to renew reporting requirements for the BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons. This final rule also amends the regulations for BEA's two other international services benchmark surveys, the BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons and the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, to clarify when the surveys will be conducted.

DATES: This final rule is effective October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Stein, Chief, Services Surveys Branch (BE–50), Balance of Payments Division, Bureau of Economic Analysis, U.S. Department of Commerce, 4600 Silver Hill Rd., Washington, DC 20233; email *christopher.stein@bea.gov* or phone (301) 278–9189.

SUPPLEMENTARY INFORMATION: On June 15, 2022, BEA published a notice of proposed rulemaking that set forth the

revised reporting criteria for the BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons and that clarified when BEA's two other international services benchmark surveys, the BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons and the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, will be conducted (87 FR 36091). No public comments were received. This final rule amends 15 CFR part 801 to set forth the reporting requirements for the BE–120 benchmark survey and clarify when the BE–140 and BE–180 benchmark surveys will be conducted.

The BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons is a mandatory survey and is conducted once every five years by BEA under the authority of the International Investment and Trade in Services Survey Act (22 U.S.C. 3101–3108). The data reported to BEA through this survey are confidential and may be used only for analytical and statistical purposes. A response is required from persons subject to the reporting requirements of the BE–120, whether or not they are contacted by BEA.

The BE–120 benchmark survey covers the universe of selected services and intellectual property transactions of U.S. companies with foreign persons and is BEA's most comprehensive survey of such transactions. The data collected through the BE–120 are needed to monitor U.S. trade in services and intellectual property, to analyze the impact of U.S. trade in these services on the U.S. economy and on foreign economies, to compile and improve the U.S. economic accounts, to support U.S. commercial policy on trade in services, to conduct trade promotion activities, and to improve the ability of U.S. businesses to identify and evaluate market opportunities. The benchmark data will be used, in conjunction with data collected from a sample of respondents on the companion BE–125 Quarterly Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, to produce quarterly estimates of selected services and intellectual property components for BEA's international transactions accounts, national income and product accounts, and industry accounts.

Description of Changes

This final rule amends the regulation at 15 CFR part 801 by modifying § 801.3 and 801.11 through 801.13 and removing § 801.9 to clarify the timing of the three international services benchmark surveys: the BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, the BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, and the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons. The next BE–120 survey will apply to the 2022 fiscal reporting year, and will be conducted once every five years, for reporting years ending in 2 and 7, thereafter. Additionally, the next BE–140 survey and BE–180 survey will be collected for the 2023 and 2024 reporting years, respectively, and will continue to be conducted every five years thereafter. The BE–140 will be collected for reporting years ending in 3 and 8, and the BE–140 will be collected for reporting years ending in 4 and 9. See the most recent versions of the BE–120, BE–140, and BE–180 benchmark surveys at *www.bea.gov* for a more detailed description of covered transactions and definitions.

Each time a benchmark survey is to be conducted, BEA will describe any proposed changes to the information collected through the survey (including the addition, deletion, and/or modification of existing questions and definitions) in a public notice and will solicit comments as part of the requirements of the Paperwork Reduction Act (PRA). Any changes to reporting requirements or significant expansions in scope of the surveys will be conducted by rulemaking.

This final rule amends the regulation at 15 CFR part 801.11 to set forth the reporting requirements for the BE–120 benchmark survey, and amends the survey form for the BE–120 benchmark in response to suggestions from data users and to allow BEA to more closely align its statistics with international guidelines and publish more information on U.S. trade in services. The amendments include several changes in data items collected and the design of the survey form relative to the 2017 benchmark survey.

BEA adds the following to the BE–120 benchmark survey form:

(1) *Questions to collect information on the largest U.S. states (up to three) for sales (exports) and purchases (imports) of services.* Respondents that meet the thresholds ($2 million in combined sales, and/or $1 million in combined purchases) for filing on the mandatory schedules will be required to report information for up to three U.S. states that accounted for the largest shares of their sales and purchases activity. Reporters will be instructed to consider all of their cross-border sales and purchases of services (in aggregate for all transaction types and affiliation categories) and report the U.S. states that represented the largest share of their sales and (separately) their purchases. After identifying the states, reporters will provide an estimate of the percentage of their sales and purchases that were transacted from each state.

(2) *Questions to collect information on digital intermediation platforms.* BEA will ask if the reporters operated a digital intermediation platform, and if so, the value of their digital intermediation sales and associated transaction categories. All BE–120 respondents that meet the thresholds for filing on the mandatory schedules will be required to respond to these questions. Survey instructions and definitions will be modified to ensure fees and commissions for sales and purchases made through digital intermediation platforms are reported in the correct transaction categories.

(3) *Question on employment size class.* BEA will add a question asking for the employment size class of the consolidated U.S. company. The question will ask all respondents to check a box indicating their employment size class: 0—(*e.g.,* Sole Proprietorship), 1–19, 20–49, 50–99, 100–249, 250–499, 500–999, 1,000–9,999, greater than 10,000. BEA has modified the size categories that were in the proposed rule to enhance the utility of the data collected.

Additionally, BEA will modify the remote services schedules (Schedules D and E) to better capture trade in digitally delivered services. Survey instructions will direct reporters to provide an estimate of the percentage of services that were provided remotely from the U.S. Reporter's domestic offices to foreign persons and to the U.S. Reporter's domestic offices from foreign persons via information and communications technology networks (via the internet, mobile device, extranet, telephone, fax, video conference, or other comparable online system). Services provided via in-person meetings, or postal or private delivery will be excluded. The percentage reported should reflect all interactions with the customer, not just the delivery of the final product.

BEA will delete the following two items from the BE–120 benchmark survey:

(1) *Transaction categories for ''Other intellectual property'' will be*

eliminated. Rights to use other intellectual property (code 8.1), rights to reproduce and/or distribute other intellectual property (code 8.2), and outright sales or purchases of proprietary rights related to other intellectual property (code 8.3) will no longer be collected. Reporters will be instructed to reclassify transactions in these categories to research and development (R&D) services (transaction code 29.1, the provision of customized and non-customized R&D services; and, transaction code 29.2, other R&D services, including testing) and to other selected services (transaction code 42).

(2) *Questions on ''Contract manufacturing services'' will be eliminated.* Details regarding the material inputs, as well as the output product of the contract manufacturing services activity, for both sales and purchases activities will no longer be collected.

BEA will also redesign the format and wording of the survey. The new survey design will incorporate improvements that have been made to other BEA surveys. BE–120 benchmark survey instructions and data item descriptions will be changed to improve clarity and ensure that the survey form is consistent with other BEA surveys.

Change to the Survey Additions From the Proposed Rule

BEA made a change to the proposed question on employment size class (addition 3 above) to adjust the check box ranges to enhance the usefulness of the data collected. The modifications from the initial proposal do not impact the reporter's burden associated with the question; reporters will still only be required to check a single box when responding.

Additionally, BEA made a minor modification to the originally proposed ''exclusions'' in defining which digitally delivered services are to be reported on Schedules D and E. The original text in the proposed rule indicated that services provided by manually-typed email, telephone, or fax would be excluded. In this final rule, BEA has removed these exclusions to better align BEA statistics with new developments in international guidelines. Specifically, subsequent to publication of the proposed rule, an expert group organized by the *Organisation for Economic Co-operation and Development (OECD)* adopted a final definition of digital trade for the forthcoming *Handbook on Measuring Digital Trade* that only excludes services provided via in-person meetings, or postal or private delivery.

Executive Order 12866

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

Executive Order 13132

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

Paperwork Reduction Act

The collection-of-information in this final rule was submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501–3520 (PRA). OMB approved the reinstatement, with change, of the information collection under OMB control number 0608–0058.

Notwithstanding any other provisions of 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 displays a currently valid OMB control number.

The BE–120 survey is expected to result in the filing of reports from approximately 15,000 respondents. Approximately 11,000 respondents will complete the survey, and approximately 4,000 will file exemption claims. The respondent burden for this collection of information will vary from one respondent to another, but is estimated to average (1) 24 hours for the 5,000 respondents that report data by transaction type, country, and affiliation; (2) 4 hours for the 6,000 respondents that report data by transaction type only; and (3) 1 hour for the 4,000 that file an exemption claim. These burden-hour estimates consider time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Thus, the total respondent burden for this survey is estimated at 148,000 hours, or approximately 10 hours per response (148,000 hours/15,000 respondents), compared to 145,000 hours, or about 9.5 hours per response (145,000 hours/15,500 respondents) for the 2017 BE–120 benchmark survey. The increase in burden hours is due to estimated changes in the expected quantity of survey responses, the composition of the respondent universe (those filing full schedule detail vs. totals by transaction type only) from 2017 to 2022, as well as modifications to the content of the survey for those filing schedule detail.

Written comments regarding the burden-hour estimates or other aspects of the collection-of-information requirements contained in the final rule should be sent to both BEA via email at *christopher.stein@bea.gov,* and OMB, OIRA, Paperwork Reduction Project 0608–0058, Attention PRA Desk Officer for BEA, via email at *OIRA_Submission@omb.eop.gov.*

Regulatory Flexibility Act

The Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy, Small Business Administration, at the proposed rule stage that this action will not have a significant impact on a substantial number of small entities. No comments were received on that certification or on the economic impacts of this rule more generally. Therefore, no regulatory flexibility analysis is required and none has been prepared.

List of Subjects in 15 CFR Part 801

Economic statistics, Foreign trade, International transactions, Penalties, Reporting and recordkeeping requirements.

Dated: September 2, 2022.

Paul W. Farello,

Associate Director of International Economics, Bureau of Economic Analysis.

For reasons set forth in the preamble, BEA amends 15 CFR part 801 as follows:

PART 801—SURVEY OF INTERNATIONAL TRADE IN SERVICES BETWEEN U.S. AND FOREIGN PERSONS AND SURVEYS OF DIRECT INVESTMENT

■ 1. The authority citation for 15 CFR part 801 continues to read as follows:

Authority: 5 U.S.C. 301; 15 U.S.C. 4908; 22 U.S.C. 3101–3108; E.O. 11961 (3 CFR, 1977 Comp., p. 86), as amended by E.O. 12318 (3 CFR, 1981 Comp. p. 173); and E.O. 12518 (3 CFR, 1985 Comp. p. 348).

■ 2. Amend § 801.3 by revising the introductory text to read as follows:

§ 801.3 Reporting requirements.

Except for surveys subject to rulemaking in §§ 801.7, 801.8, 801.10, 801.11, 801.12, and 801.13, reporting requirements for all other surveys conducted by the Bureau of Economic Analysis shall be as follows:

* * * * *

§ 801.9 [Removed and Reserved]

■ 3. Section 801.9 is removed and reserved.

■ 4. Section 801.11 is revised to read as follows:

§ 801.11 Rules and regulations for the BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons.

The BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons will be conducted once every five years and covers years ending in 2 and 7. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520).

All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–120 survey are given in this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required, every fifth year, from persons subject to the reporting requirements of the BE–120 Benchmark Survey of Transactions in Selected Services and Intellectual Property with Foreign Persons, contained in this section, whether or not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting on this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE–120 by the due date of the survey; or

(2) If exempt, by completing the determination of reporting status section of the BE–120 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE–120 report is required of each U.S. person that had transactions with foreign persons in the categories covered by the survey during the fiscal year covered by the survey.

(c) *What must be reported.* (1) A U.S. person that had combined sales to foreign persons that exceeded $2 million, and/or combined purchases from foreign persons that exceeded $1 million in the services and intellectual property categories covered by the survey during its fiscal year, on an accrual basis, is required to provide data on total sales and/or purchases of each of the covered types of transactions and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). The $2 million threshold for sales and the $1 million threshold for purchases should be applied to the covered transactions categories with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $2 million and $1 million thresholds apply separately to sales and purchases, the mandatory reporting requirement may apply to sales only, to purchases only, or to both. The determination of whether a U.S. services provider is subject to this reporting requirement can be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. person that had combined sales to foreign persons that were $2 million or less, and combined purchases from foreign persons that were $1 million or less in the transaction categories covered by the survey during its fiscal year, on an accrual basis, is required to provide the total sales and/or purchases for each type of transaction in which they engaged. The $2 million threshold for sales and the $1 million threshold for purchases should be applied to the covered transactions categories with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $2 million and $1 million thresholds apply separately to sales and purchases, the mandatory reporting requirement may apply to sales only, to purchases only, or to both.

(i) *Voluntary reporting of transactions.* If, during the reporter's fiscal year, combined sales were $2 million or less, and combined purchases were $1 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report sales at a country and affiliation level of detail on the applicable mandatory schedule(s). The estimates can be judgmental, that is, based on recall, without conducting a detailed records search.

(ii) [Reserved]

(3) Exemption claims: Any U.S. person that receives the BE–120 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE–120 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Covered types of services and intellectual property.* Services transactions covered by this survey consist of: Advertising and related services; Architectural, engineering, scientific, and other technical services; Computer services; Construction; Financial services (for reporters who are not a financial services providers); Franchises and trademarks licensing fees; Information services; Legal, accounting, management consulting, and public relations services; Licenses for the use of outcomes of research and development; Licenses to reproduce and/or distribute computer software; Licenses to reproduce and/or distribute audiovisual products; Maintenance and repair services; Manufacturing services; Operating leasing services; Other business services; Personal, cultural, and recreational services; Research and development services; Primary insurance premiums and losses (for reporters who are not a U.S. insurance company); Space transport services; Telecommunications services; Trade-related services; Waste treatment and de-pollution, agricultural, and mining services.

(e) *Types of transactions excluded from the scope of this survey.* (1) Financial services transactions conducted by a U.S. financial services provider, all insurance services conducted by a U.S. insurance company, and all travel and transport activities that are not space transport services.

(2) Sales and purchases of goods. Trade in goods involves products that have a physical form, and includes payments or receipts for electricity.

(3) Sales and purchases of financial instruments, including stocks, bonds, financial derivatives, loans, mutual fund shares, and negotiable CDs. (However, securities brokerage is a service).

(4) Income on financial instruments (interest, dividends, capital gain distributions, etc.).

(5) Compensation paid to, or received by, employees.

(6) Penalties and fines and gifts or grants in the form of goods and cash (sometimes called ''transfers'').

(f) *Due date.* A fully completed and certified BE–120 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA by July 31 of the year after the year covered by the survey.

■ 5. Section § 801.12 is revised to read as follows:

§ 801.12 Rules and regulations for the BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons.

The BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons will be conducted once every five calendar years and covers years ending in 3 and 8. BEA will describe the proposed information collection in a

public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–140 survey are given in this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from U.S. insurance companies subject to the reporting requirements of the BE–140 Benchmark Survey of Insurance Transactions by U.S. Insurance Companies with Foreign Persons, contained in this section, whether or not they are contacted by BEA. Also, a U.S. insurance company, or its agent, that is contacted by BEA about reporting on this survey, either by transmission of a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE–140 by the due date of the survey; or

(2) If exempt, by completing the determination of reporting status section of the BE–140 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE–140 report is required of each U.S. insurance company that had insurance transactions with foreign persons in the categories covered by the survey during the calendar year covered by the survey.

(c) *What must be reported.* (1) A U.S. insurance company that had transactions with foreign persons that exceeded $2 million in the insurance categories covered by the survey during its calendar year, on an accrual basis, is required to provide data on the total transactions of each of the covered types of insurance transactions and must disaggregate the totals by country and by relationship to the foreign counterparty (foreign affiliate, foreign parent group, or unaffiliated). The $2 million threshold should be applied to insurance services transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. The determination of whether a U.S. insurance company is subject to this reporting requirement may be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. insurance company that had transactions with foreign persons that were $2 million or less in the insurance categories covered by the survey during its calendar year, on an accrual basis, is required to provide the total for each type of transaction in which they engaged.

(i) *Voluntary reporting of insurance transactions.* If, during the calendar year covered by the survey, total transactions were $2 million or less in the insurance categories covered by the survey, on an accrual basis, the U.S. insurance company may, in addition to providing the required total for each type of transaction, voluntarily report transactions at a country and affiliation level of detail on the applicable mandatory schedule(s).

(ii) [Reserved]

(3) Exemption claims: Any U.S. person that receives the BE–140 survey form from BEA but is not subject to the reporting requirements must file an exemption claim by completing the determination of reporting status section of the BE–140 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(d) *Covered types of insurance services.* Insurance services covered by the BE–140 survey consist of transactions between U.S. insurance companies and foreign persons for premiums and losses on primary insurance, premiums on reinsurance assumed and ceded, losses on reinsurance assumed and ceded, as well as receipts and payments for auxiliary insurance services.

(e) *Types of transactions excluded from the scope of this survey.* Premiums paid to, or losses received from, foreign insurance companies on direct insurance.

(f) *Due date.* A fully completed and certified BE–140 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA by July 31 of the year after the year covered by the survey.

■ 6. Section 801.13 is revised to read as follows:

§ 801.13 Rules and regulations for the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons.

The BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons will be conducted every five years and covers fiscal years ending in 4 and 9. BEA will describe the proposed information collection in a public notice and will solicit comments according to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501–3520). All legal authorities, provisions, definitions, and requirements contained in §§ 801.1 through 801.2 and 801.4 through 801.6 are applicable to this survey. Specific additional rules and regulations for the BE–180 survey are given in this section. More detailed instructions are given on the report form and in instructions accompanying the report form.

(a) *Response required.* A response is required from persons subject to the reporting requirements of the BE–180 Benchmark Survey of Financial Services Transactions between U.S. Financial Services Providers and Foreign Persons, contained in this section, whether or not they are contacted by BEA. Also, a person, or its agent, that is contacted by BEA about reporting on this survey, either by sending a report form or by written inquiry, must respond in writing pursuant to this section. This may be accomplished by:

(1) Completing and returning the BE–180 by the due date of the survey; or

(2) If exempt, completing the determination of reporting status section of the BE–180 survey and returning it to BEA by the due date of the survey.

(b) *Who must report.* A BE–180 report is required of each U.S. person that is a financial services provider or intermediary, or whose consolidated U.S. enterprise includes a separately organized subsidiary, or part, that is a financial services provider or intermediary, and that had financial services transactions with foreign persons in the categories covered by the survey during the fiscal year covered by the survey.

(c) *BE–180 definition of financial services provider.* The definition of financial services provider used for this survey is identical to the definition of the term as used in the North American Industry Classification System, United States, Sector 52-Finance and Insurance, and holding companies that own or influence, and are principally engaged in making management decisions for, these firms (part of Sector 55—Management of Companies and Enterprises). For example, companies and/or subsidiaries and other separable parts of companies in the following industries are defined as financial services providers: Depository credit intermediation and related activities (including commercial banking, savings institutions, credit unions, and other depository credit intermediation); non-depository credit intermediation (including credit card issuing, sales

financing, and other non-depository credit intermediation); activities related to credit intermediation (including mortgage and nonmortgage loan brokers, financial transactions processing, reserve, and clearinghouse activities, and other activities related to credit intermediation); securities and commodity contracts intermediation and brokerage (including investment banking and securities dealing, securities brokerage, commodity contracts and dealing, and commodity contracts brokerage); securities and commodity exchanges; other financial investment activities (including miscellaneous intermediation, portfolio management, investment advice, and all other financial investment activities); insurance carriers; insurance agencies, brokerages, and other insurance related activities; insurance and employee benefit funds (including pension funds, health and welfare funds, and other insurance funds); other investment pools and funds (including open-end investment funds, trusts, estates, and agency accounts, real estate investment trusts, and other financial vehicles); and holding companies that own, or influence the management decisions of, firms principally engaged in the aforementioned activities.

(d) *What must be reported.* (1) A U.S. person that had combined sales to, or purchases from foreign persons that exceeded $3 million in the financial services categories covered by the survey during its fiscal year, on an accrual basis, is required to provide data on total sales and/or purchases of each of the covered types of financial services and must disaggregate the totals by country and by relationship to the foreign transactor (foreign affiliate, foreign parent group, or unaffiliated). The $3 million threshold for sales and purchases should be applied to financial services transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $3 million threshold applies separately to sales and purchases, the mandatory reporting requirement may apply to sales only, to purchases only, or to both. The determination of whether a U.S. financial services provider is subject to this reporting requirement can be based on the judgment of knowledgeable persons in a company who can identify reportable transactions on a recall basis, with a reasonable degree of certainty, without conducting a detailed manual records search.

(2) A U.S. person that had combined sales to, or purchases from foreign persons that were $3 million or less in the financial services categories covered by the survey during its fiscal year, on an accrual basis, is required to provide the total sales and/or purchases for each type of transaction in which they engaged. The $3 million threshold for sales and purchases should be applied to financial services transactions with foreign persons by all parts of the consolidated domestic U.S. Reporter. Because the $3 million threshold applies separately to sales and purchases, the mandatory reporting requirement may apply to sales only, to purchases only, or to both.

(e) *Voluntary reporting of financial services transactions.* If, during the fiscal year, combined sales and purchases were $3 million or less, on an accrual basis, the U.S. person may, in addition to providing the required total for each type of transaction, report sales at a country and affiliation level of detail on the applicable mandatory schedule(s). The estimates can be judgmental, that is, based on recall, without conducting a detailed records search.

(f) *Exemption claims.* Any U.S. person that receives the BE–180 survey form from BEA, but is not subject to the reporting requirements, must file an exemption claim by completing the determination of reporting status section of the BE–180 survey and returning it to BEA by the due date of the survey. This requirement is necessary to ensure compliance with reporting requirements and efficient administration of the Act by eliminating unnecessary follow-up contact.

(g) *Covered types of financial services.* Financial services covered by the BE–180 survey consist of transactions between U.S. financial services companies and foreign persons for brokerage, underwriting, financial management, credit-related, credit-cards, financial advisory, financial custody, securities lending, electronic funds transfers, and other financial services.

(h) *Due date.* A fully completed and certified BE–180 report, or qualifying exemption claim with the determination of reporting status section completed, is due to be filed with BEA by July 31 of the year after the year covered by the survey.

[FR Doc. 2022–19436 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–06–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 8, 8A, 8B, and 8C

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing four general licenses (GLs) issued in the Russian Harmful Foreign Activities Sanctions program: GLs 8, 8A, and 8B, which were previously issued on OFAC's website and are now expired, and GL 8C, which was also issued on OFAC's website and expires December 5, 2022.

DATES: GL 8C was issued on June 14, 2022. See **SUPPLEMENTARY INFORMATION** of this document for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

OFAC issued GL 8 on February 24, 2022 to authorize certain transactions otherwise prohibited by Executive Order (E.O.) 14024. At the time of issuance, OFAC made GL 8 available on its website (*www.treas.gov/ofac*). Subsequently, OFAC issued further iterations of GL 8, all of which were available on OFAC's website. GL 8A, which also authorized certain transactions otherwise prohibited by E.O. 14024, was issued on February 28, 2022. GL 8B, which authorized certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR), was issued on April 6, 2022. All three of these GLs had an expiration date of June 24, 2022. On June 14, 2022, OFAC issued GL 8C, which also authorizes certain transactions otherwise prohibited by the RuHSR and

has an expiration date of December 5, 2022. The text of GLs 8 through 8C is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 8

Authorizing Transactions Related to Energy

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following entities that are related to energy are authorized, through 12:01 a.m. eastern daylight time, June 24, 2022:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company; or

(6) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) For the purposes of this general license, the term ''related to energy'' means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

(c) This general license does not authorize:

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

(2) Any transactions involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Note to General License No. 8. This authorization is valid until June 24, 2022 unless renewed.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 24, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Executive Order 14024 of April 15, 2021

Blocking Property With Respect to Specified Harmful Foreign Activities of the Government of the Russian Federation

GENERAL LICENSE NO. 8A

Authorizing Transactions Related to Energy

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following entities that are related to energy are authorized, through 12:01 a.m. eastern daylight time, June 24, 2022:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company;

(6) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest; or

(7) the Central Bank of the Russian Federation.

(b) For the purposes of this general license, the term ''related to energy'' means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 1A under E.O. 14024, Prohibitions Related to Certain Sovereign Debt of the Russian Federation;

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

(3) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation; or

(4) Any transactions involving any person blocked pursuant to E.O. 14024 other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(d) Effective February 28, 2022, General License No. 8, dated February 24, 2022, is replaced and superseded in its entirety by this General License No. 8A.

Note to General License No. 8A. This authorization is valid until June 24, 2022 unless renewed.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: February 28, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 8B

Authorizing Transactions Related to Energy

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following entities that are related to energy are authorized, through 12:01 a.m. eastern daylight time, June 24, 2022:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company;

(6) Joint Stock Company Alfa-Bank;

(7) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest; or

(8) the Central Bank of the Russian Federation.

(b) For the purposes of this general license, the term ''related to energy'' means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 1A under E.O. 14024, *Prohibitions Related to Certain Sovereign Debt of the Russian Federation*;

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

(3) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation; or

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

(d) Effective April 6, 2022, General License No. 8A, dated February 28, 2022, is replaced and superseded in its entirety by this General License No. 8B.

Note to General License No. 8B. This authorization is valid until June 24, 2022 unless renewed.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: April 6, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 8C

Authorizing Transactions Related to Energy

(a) Except as provided in paragraph (c) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 involving one or more of the following entities that are related to energy are authorized, through 12:01 a.m. eastern standard time, December 5, 2022:

(1) State Corporation Bank for Development and Foreign Economic Affairs Vnesheconombank;

(2) Public Joint Stock Company Bank Financial Corporation Otkritie;

(3) Sovcombank Open Joint Stock Company;

(4) Public Joint Stock Company Sberbank of Russia;

(5) VTB Bank Public Joint Stock Company;

(6) Joint Stock Company Alfa-Bank;

(7) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest; or

(8) the Central Bank of the Russian Federation.

(b) For the purposes of this general license, the term ''related to energy'' means the extraction, production, refinement, liquefaction, gasification, regasification, conversion, enrichment, fabrication, transport, or purchase of petroleum, including crude oil, lease condensates, unfinished oils, natural gas liquids, petroleum products, natural gas, or other products capable of producing energy, such as coal, wood, or agricultural products used to manufacture biofuels, or uranium in any form, as well as the development, production, generation, transmission, or exchange of power, through any means, including nuclear, thermal, and renewable energy sources.

(c) This general license does not authorize:

(1) Any transactions prohibited by Directive 1A under E.O. 14024, *Prohibitions Related to Certain Sovereign Debt of the Russian Federation*;

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

(3) Any debit to an account on the books of a U.S. financial institution of the Central Bank of the Russian Federation; or

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

(d) Effective June 14, 2022, General License No. 8B, dated April 6, 2022, is replaced and superseded in its entirety by this General License No. 8C.

Note to General License No. 8C. This authorization is valid until December 5, 2022 unless renewed.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: June 14, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–19312 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 40B, 47A, and 48A

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of Web General Licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing three general licenses (GLs) issued in the Russian Harmful Foreign Activities Sanctions Regulations: GLs 40B, 47A, and 48A, each of which was previously made available on OFAC's website.

DATES: GLs 40B, 47A, and 48A were issued on August 3, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On August 2, 2022, OFAC issued GLs 40A, 47, and 48 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587. On August 3, 2022, OFAC issued GLs 40B, 47A, and 48A to clarify that the licenses apply to Joint Stock Company State Transportation Leasing Company.

GL 40B replaced and superseded GL 40A and contains no expiration date. GL 47A replaced and superseded GL 47 and expires at 12:01 a.m. eastern daylight time, September 1, 2022. GL 48A replaced and superseded GL 48 and contains two expiration dates: (i) 12:01 a.m. eastern daylight time, October 3, 2022, for the authorization in paragraphs (a)(1) and (b) of GL 48A, and (ii) 12:01 a.m. eastern daylight time, October 31, 2022, for the authorization in paragraph (a)(2) of GL 48. At the time of issuance, GLs 40B, 47A, and 48A were each made available on OFAC's website (*www.treas.gov/ofac*). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 40B

Civil Aviation Safety

(a) Except as provided in paragraph (b), all transactions ordinarily incident and necessary to the provision, exportation, or reexportation of goods, technology, or services to ensure the safety of civil aviation involving one or more of the blocked entities listed in the Annex to this general license and that are prohibited by Executive Order (E.O.) 14024 are authorized, provided that:

(1) The aircraft is registered in a jurisdiction solely outside of the Russian Federation; and

(2) The goods, technology, or services that are provided, exported, or reexported are for use on aircraft operated solely for civil aviation purposes.

(b) This general license does not authorize:

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

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

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

(c) Effective August 3, 2022, General License No. 40A, dated August 2, 2022, is replaced and superseded in its entirety by this General License No. 40B.

Note to General License 40B. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies, including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the Export Administration Regulations, 15 CFR parts 730 through 774.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 3, 2022.

Annex—Blocked Entities Described in Paragraph (a) of General License 40B

List of blocked entities described in paragraph (a) of General License 40B:

(a) Public Joint Stock Company United Aircraft Corporation;

(b) Irkut Corporation Joint Stock Company;

(c) Energotsentr Irkut;

(d) Irkut-Avtotrans;

(e) Irkut-Remstroi;

(f) Irkut-Stanko Service;

(g) Rapart Servisez;

(h) Sportivno-Ozdorovitelnyi Tsentr Irkut-Zenit;

(i) Tipografiya Irkut;

(j) Joint Stock Company Ilyushin Finance Company;

(k) Open Joint Stock Company Ilyushin Aviation Complex;

(l) Public Joint Stock Company Taganrog Aviation Scientific-Technical Complex N.A. G.M. Beriev;

(m) Joint Stock Company Flight Research Institute N.A. M.M. Gromov;

(n) Tupolev Public Joint Stock Company;

(o) Limited Liability Company Kapo-Avtotrans;

(p) Limited Liability Company Kapo-Zhilbitservis;

(q) Limited Liability Company Networking Company Irkut;

(r) Joint Stock Company State Transportation Leasing Company; or

(s) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 47A

Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on August 2, 2022

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of any transaction involving one or more of the following blocked persons that are prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern daylight time, September 1, 2022, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

(1) Skolkovo Foundation;

(2) Skolkovo Institute of Technology;

(3) Technopark Skolkovo Limited Liability Company;

(4) Federal State Institution of Higher Vocational Education Moscow Institute of Physics and Technology;

(5) Publichnoe Aktsionernoe Obschestvo Magnitogorskiy Metallurgicheskiy Kombinat;

(6) Joint Stock Company State Transportation Leasing Company; or

(7) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize:

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

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

(3) Any transactions otherwise prohibited by the RuHSR, including

transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

(c) Effective August 3, 2022, General License No. 47, dated August 2, 2022, is replaced and superseded in its entirety by this General License No. 47A.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 3, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations

31 CFR Part 587

GENERAL LICENSE NO. 48A

Divestment or Transfer of Debt or Equity of, and Wind Down of Derivative Contracts Involving, Certain Entities Blocked on August 2, 2022

(a)(1) Except as provided in paragraphs (c) and (d) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the divestment or transfer, or facilitation of the divestment or transfer, of debt or equity of one or more of the following entities purchased prior to August 2, 2022 (''covered debt or equity'') to a non-U.S. person are authorized through 12:01 a.m. eastern daylight time, October 3, 2022:

(i) Publichnoe Aktsionernoe Obschestvo Magnitogorskiy Metallurgicheskiy Kombinat;

(ii) Joint Stock Company State Transportation Leasing Company; or

(iii) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(2) Except as provided in paragraphs (c) and (d) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity are authorized through 12:01 a.m. eastern daylight time, October 31, 2022, provided that such trades were placed prior to 4:00 p.m. eastern daylight time, August 2, 2022.

(b) Except as provided in paragraph (d) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to August 2, 2022, that (i) include a blocked person described in paragraph (a) of this general license as a counterparty or (ii) are linked to covered debt or equity are authorized through 12:01 a.m. eastern daylight time, October 3, 2022, provided that any payments to a blocked person are made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(c) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, covered debt or equity, other than purchases of, or investments in, covered debt or equity that are ordinarily incident and necessary to the divestment or transfer of covered debt or equity, as described in paragraph (a) of this general license.

(d) This general license does not authorize:

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

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

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

(e) Effective August 3, 2022, General License No. 48, dated August 2, 2022, is replaced and superseded in its entirety by this General License No. 48A.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 3, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–19443 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 40A, 43A, 47, 48, and 49

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing five general licenses (GLs) issued pursuant to the Russian Harmful Foreign Activities Sanctions Regulations: GLs 40A, 43A, 47, 48, and 49, each of which was previously made available on OFAC's website.

DATES: GLs 40A, 43A, 47, 48, and 49 were issued on August 2, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

OFAC issued GLs 40 and 43 on June 28, 2022. GL 40 contained no expiration date but was replaced and superseded by GL 40A on August 2, 2022. GL 43 had an expiration date of 12:01 a.m. eastern daylight time, August 31, 2022, but was replaced and superseded by GL 43A on August 2, 2022. GL 43A expires at 12:01 a.m. eastern daylight time, August 31, 2022. On August 2, 2022, OFAC also issued GLs 47, 48, and 49. GL 47 expires at 12:01 a.m. eastern daylight time, September 1, 2022. GL 48 contains two expiration dates: (i) 12:01 a.m. eastern daylight time, October 3, 2022, for the authorization in paragraphs (a)(1) and (b) of GL 48, and (ii) 12:01 a.m. eastern daylight time, October 31, 2022, for the authorization in paragraph (a)(2) of GL 48. GL 49 expires at 12:01 a.m. eastern standard time, January 31, 2023. GLs 40A, 43A, 47, 48, and 49 each authorize certain transactions otherwise prohibited by the

Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587, and at the time of issuance, each was made available on OFAC's website (*www.treas.gov/ofac*). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 40A

Civil Aviation Safety

(a) Except as provided in paragraph (b), all transactions ordinarily incident and necessary to the provision, exportation, or reexportation of goods, technology, or services to ensure the safety of civil aviation involving one or more of the blocked entities listed in the Annex to this general license and that are prohibited by Executive Order (E.O.) 14024 are authorized, provided that:

(1) The aircraft is registered in a jurisdiction solely outside of the Russian Federation; and

(2) The goods, technology, or services that are provided, exported, or reexported are for use on aircraft operated solely for civil aviation purposes.

(b) This general license does not authorize:

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

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

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

(c) Effective August 2, 2022, General License No. 40, dated June 28, 2022, is replaced and superseded in its entirety by this General License No. 40A.

Note to General License 40A. Nothing in this general license relieves any person from compliance with any other Federal laws or requirements of other Federal agencies, including export, reexport, and transfer (in-country) licensing requirements maintained by the Department of Commerce's Bureau of Industry and Security under the Export Administration Regulations, 15 CFR parts 730–774.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 2, 2022.

Annex—Blocked Entities Described in Paragraph (a) of General License 40A

List of blocked entities described in paragraph (a) of General License 40A:

(a) Public Joint Stock Company United Aircraft Corporation;

(b) Irkut Corporation Joint Stock Company;

(c) Energotsentr Irkut;

(d) Irkut-Avtotrans;

(e) Irkut-Remstroi;

(f) Irkut-Stanko Service;

(g) Rapart Servisez;

(h) Sportivno-Ozdorovitelnyi Tsentr Irkut-Zenit;

(i) Tipografiya Irkut;

(j) Joint Stock Company Ilyushin Finance Company;

(k) Open Joint Stock Company Ilyushin Aviation Complex;

(l) Public Joint Stock Company Taganrog Aviation Scientific-Technical Complex N.A. G.M. Beriev;

(m) Joint Stock Company Flight Research Institute N.A. M.M. Gromov;

(n) Tupolev Public Joint Stock Company;

(o) Limited Liability Company Kapo-Avtotrans;

(p) Limited Liability Company Kapo-Zhilbitservis;

(q) Limited Liability Company Networking Company Irkut;

(r) Joint Stock Company Government Transport Company; or

(s) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 43A

Divestment or Transfer of Debt or Equity of, and Wind Down of Derivative Contracts Involving, Public Joint Stock Company Severstal or Nord Gold PLC

(a) Except as provided in paragraphs (d) and (e) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the divestment or transfer, or facilitation of the divestment or transfer, of debt or equity of Public Joint Stock Company Severstal (''Severstal'') or Nord Gold PLC (''Nord Gold''), or any entity in which Severstal or Nord Gold owns, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest, purchased prior to June 2, 2022 (''covered debt or equity'') to a non-U.S. person are authorized through 12:01 a.m. eastern daylight time, August 31, 2022.

(b) Except as provided in paragraph (e) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to June 2, 2022 that (i) include a blocked person described in paragraph (a) of this general license as a counterparty or (ii) are linked to covered debt or equity are authorized through 12:01 a.m. eastern daylight time, August 31, 2022, provided that any payments to a blocked person are made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(c) U.S. financial institutions are authorized to unblock covered debt or equity that was blocked on or after June 2, 2022 but before June 28, 2022, provided that the unblocked covered debt or equity is solely used to effect transactions authorized in paragraphs (a) or (b) of this general license.

Note to paragraph (c). U.S. financial institutions unblocking property pursuant to paragraph (c) of this general license are required to file an unblocking report pursuant to 31 CFR 501.603.

(d) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, covered debt or equity, other than purchases of or investments in covered debt or equity that are ordinarily incident and necessary to the divestment or transfer of covered debt or equity, as described in paragraph (a) of this general license.

(e) This general license does not authorize:

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

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

Wealth Fund of the Russian Federation, and the Ministry of Finance of the Russian Federation; or

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

(f) Effective August 2, 2022, General License No. 43, dated June 28, 2022, is replaced and superseded in its entirety by this General License No. 43A.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 2, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 47

Authorizing the Wind Down of Transactions Involving Certain Entities Blocked on August 2, 2022

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of any transaction involving one or more of the following blocked persons that are prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern daylight time, September 1, 2022, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR):

(1) Skolkovo Foundation;

(2) Skolkovo Institute of Technology;

(3) Technopark Skolkovo Limited Liability Company;

(4) Federal State Institution of Higher Vocational Education Moscow Institute of Physics and Technology;

(5) Publichnoe Aktsionernoe Obschestvo Magnitogorskiy Metallurgicheskiy Kombinat;

(6) Joint Stock Company Government Transport Company; or

(7) Any entity in which one or more of the above persons own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(b) This general license does not authorize:

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

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

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 2, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 48

Divestment or Transfer of Debt or Equity of, and Wind Down of Derivative Contracts Involving, Certain Entities Blocked on August 2, 2022

(a)(1) Except as provided in paragraphs (c) and (d) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to the divestment or transfer, or facilitation of the divestment or transfer, of debt or equity of one or more of the following entities purchased prior to August 2, 2022 (''covered debt or equity'') to a non-U.S. person are authorized through 12:01 a.m. eastern daylight time, October 3, 2022:

(i) Publichnoe Aktsionernoe Obschestvo Magnitogorskiy Metallurgicheskiy Kombinat;

(ii) Joint Stock Company Government Transport Company; or

(iii) Any entity in which one or more of the above entities own, directly or indirectly, individually or in the aggregate, a 50 percent or greater interest.

(2) Except as provided in paragraphs (c) and (d) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to facilitating, clearing, and settling trades of covered debt or equity are authorized through 12:01 a.m. eastern daylight time, October 31, 2022, provided that such trades were placed prior to 4:00 p.m. eastern daylight time, August 2, 2022.

(b) Except as provided in paragraph (d) of this general license, all transactions prohibited by E.O. 14024 that are ordinarily incident and necessary to the wind down of derivative contracts entered into prior to August 2, 2022, that (i) include a blocked person described in paragraph (a) of this general license as a counterparty or (ii) are linked to covered debt or equity are authorized through 12:01 a.m. eastern daylight time, October 3, 2022, provided that any payments to a blocked person are made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(c) Paragraph (a) of this general license does not authorize:

(1) U.S. persons to sell, or to facilitate the sale of, covered debt or equity to, directly or indirectly, any person whose property and interests in property are blocked; or

(2) U.S. persons to purchase or invest in, or to facilitate the purchase of or investment in, directly or indirectly, covered debt or equity, other than purchases of, or investments in, covered debt or equity that are ordinarily incident and necessary to the divestment or transfer of covered debt or equity, as described in paragraph (a) of this general license.

(d) This general license does not authorize:

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

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

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 2, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 49

Authorizing the Wind Down of Transactions Involving MMK Metalurji Sanayi Ticaret Ve Liman Isletmeciligi Anonim Sirketi

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the wind down of any transaction involving MMK Metalurji Sanayi Ticaret Ve Liman Isletmeciligi Anonim Sirketi (MMK Metalurji), or any entity in which MMK Metalurji owns, directly or indirectly, a 50 percent or greater interest, that are prohibited by Executive Order (E.O.) 14024 are authorized through 12:01 a.m. eastern standard time, January 31, 2023, provided that any payment to a blocked person must be made into a blocked account in accordance with the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587 (RuHSR).

(b) This general license does not authorize:

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

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

(3) Any transactions otherwise prohibited by the RuHSR, including transactions involving any person blocked pursuant to the RuHSR other than the blocked persons described in paragraph (a) of this general license, unless separately authorized.

Bradley T. Smith,

Deputy Director, Office of Foreign Assets Control.

Dated: August 2, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–19311 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 587

Publication of Russian Harmful Foreign Activities Sanctions Regulations Web General Licenses 38A and 50

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Publication of web general licenses.

SUMMARY: The Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing two general licenses (GLs) issued in the Russian Harmful Foreign Activities Sanctions Regulations: GLs 38A and 50, each of which was previously made available on OFAC's website.

DATES: GLs 38A and 50 were issued on August 19, 2022. See **SUPPLEMENTARY INFORMATION** for additional relevant dates.

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

SUPPLEMENTARY INFORMATION:

Electronic Availability

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

Background

On August 19, 2022, OFAC issued GLs 38A and 50 to authorize certain transactions otherwise prohibited by the Russian Harmful Foreign Activities Sanctions Regulations, 31 CFR part 587.

GL 38A replaced and superseded GL 38 and contains no expiration date. GL 50 contains no expiration date. At the time of issuance, GLs 38A and 50 were each made available on OFAC's website (*www.treas.gov/ofac*). The text of these GLs is provided below.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 38A

Authorizing Transactions Related to Pension Payments

(a) Except as provided in paragraph (b) of this general license, all transactions ordinarily incident and necessary to the processing of pension payments to (1) U.S. persons or (2) non-U.S. persons not located in the Russian Federation, that are prohibited by Executive Order (E.O.) 14024 are authorized, provided that the only involvement of blocked persons is the processing of funds by financial institutions blocked pursuant to E.O. 14024.

(b) This general license does not authorize:

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

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

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

(c) Effective August 19, 2022, General License No. 38, dated June 2, 2022, is replaced and superseded in its entirety by this General License No. 38A.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: August 19, 2022.

OFFICE OF FOREIGN ASSETS CONTROL

Russian Harmful Foreign Activities Sanctions Regulations 31 CFR Part 587

GENERAL LICENSE NO. 50

Authorizing the Closing of Individual Accounts at Financial Institutions Blocked Pursuant to Executive Order 14024

(a) Except as provided in paragraph (b) of this general license, all transactions prohibited by Executive Order (E.O.) 14024 that are ordinarily incident and necessary to (i) the closing of an account of an individual, wherever located, who is not a blocked person (''the account holder''), held at a financial institution blocked pursuant to E.O. 14024, and (ii) the unblocking and lump sum transfer of all remaining funds and other assets in the account to the account holder, including to an account of the account holder held at a

non-blocked financial institution, are authorized.

(b) This general license does not authorize:

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

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

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

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

Dated: August 19, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control.

[FR Doc. 2022–19313 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–AL–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R08–OAR–2022–0186; FRL–9930–02–R8]

Approval and Promulgation of Implementation Plans; State of Utah; Revisions to Utah Administrative Code: Environmental Quality; Title R307; Air Quality

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to the Utah Division of Administrative Rules (DAR) submitted by the State of Utah on May 21, 2020, May 28, 2020, November 3, 2020, and November 12, 2020. The EPA is taking this action pursuant to the Clean Air Act (CAA).

DATES: This rule is effective on October 11, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID No. EPA–R08–OAR–2022–0186. 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.

FOR FURTHER INFORMATION CONTACT: Amanda Brimmer, Air and Radiation Division, EPA, Region 8, Mailcode 8ARD–IO, 1595 Wynkoop Street, Denver, Colorado 80202–1129, (303) 312–6323, *brimmer.amanda@epa.gov.*

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

I. Background

The factual and legal background for this action is discussed in detail in our June 30, 2022, proposed approval (see 87 FR 39036). In that document we proposed to approve various revisions to the Utah SIP that were submitted to the EPA on May 21, 2020, May 28, 2020, November 3, 2020, and November 12, 2020. The proposal provides a detailed description of the revisions and the rationale for the EPA's proposed actions.

The revisions to the Utah Administrative Code address various State Implementation Plan (SIP) changes and updates. Specifically, we are approving clerical updates to the General Requirements, Permits, and Emissions Inventory rules, including updating the effective date of various code of federal regulations (CFR) referenced. Additionally, we are approving changes to several Permits rules including adding new definitions, clarifying testing methods, and specifying an emissions limit for particulate matter with an aerodynamic diameter less than or equal to a nominal 2.5 microns ($PM_{2.5}$) for emissions impact analysis. We are also approving the repeal and replacement of the Emissions Testing rule as well as approve a new rule related to abrasive blasting in particular matter with an aerodynamic diameter less than or equal to a nominal 10 microns (PM_{10}) nonattainment areas.

We received one anonymous comment on this proposal which expressed general opposition to activities in the state that emit pollution, such as land ports, railroads, fracking, abandoned wells, and development of the Salt Lake City Valley. The commentor expressed support for ''higher standards,'' but did not provide any specific comments related to the proposed approval. After reviewing the comment, EPA has determined that it is outside the scope of this action and therefore, the EPA is not altering its proposed rulemaking.

II. Final Action

We are approving submitted revisions to R307–101. General Requirements., R307–150. Emission Inventories., R307–165. Stack Testing., R307–306. PM_{10} Nonattainment and Maintenance Areas: Abrasive Blasting., R307–401. Permit: New and Modified Sources., R307–405. Permits: Major Sources in Attainment or Unclassified Areas (PSD)., and R307–410. Permits: Emissions Impact Analysis. from the State's May 21, 2020, May 28, 2020, November 3, 2020, and November 12, 2020, submittals as shown in Table 1. We are not acting on several submittals that were withdrawn by the State on June 13, 2022.[1]

TABLE 1—LIST OF UTAH REVISIONS TO R307 THAT THE EPA IS APPROVING IN THIS ACTION

Revised sections in May 21, 2020, May 28, 2020, November 3, 2020, and November 12, 2020, submittals for approval
May 21, 2020 Submittal:
R307–401–2, R307–401–10, R307–401–15.
May 28, 2020 Submittal:

[1] On June 13, 2022, the state of Utah withdrew submittals for R307–150–3, R307–150–9, R307–210–1, R307–214–1, R307–214–2, R307–401–16, R307–410–5, R307–501, R307–502, R307–503, R307–504, R307–505, R307–506, R307–507, R307–508, R307–509, R307–510, and R307–511. See letter from Governor Spencer Cox to KC Becker, Region 8 Administrator.

TABLE 1—LIST OF UTAH REVISIONS TO R307 THAT THE EPA IS APPROVING IN THIS ACTION—Continued

Revised sections in May 21, 2020, May 28, 2020, November 3, 2020, and November 12, 2020, submittals for approval
R307–150–1, R307–401–2, R307–401–4, R307–401–5, R307–401–6, R307–401–9, R307–401–10, R307–401–11, R307–401–14, R307–401–15, R307–401–16.
November 3, 2020 Submittal:
R307–101–3, R307–165–1, R307–165–2, R307–165–3, R307–165–4, R307–165–5, R307–165–6, R307–405–2, R307–410–3, R307–410–4.
November 12, 2020 Submittal:
R307–306–1, R307–306–2, R307–306–3, R307–306–4, R307–306–5, R307–306–6, R307–306–7.

III. Incorporation by Reference

In this document, the EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of Rule R307–101, R307–150, R307–165, R307–306, R307–401, R307–405, and R307–410 discussed in section I of this preamble and listed in the amendments to 40 CFR part 52 set forth below. The EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region 8 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 state implementation plan, have been incorporated by reference by the EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of the EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[2]

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 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 CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this 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, described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

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

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. 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 CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 7, 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, Greenhouse gases, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: August 30, 2022.

KC Becker,

Regional Administrator, Region 8.

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.*

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

Subpart TT—Utah

■ 2. In § 52.2320, in the table in paragraph (c):
■ a. Revise entries ''R307–101–3'' and ''R307–150–01''.
■ b. Remove the center heading ''R307–165. Emission Testing'' and entry ''R307–165''.
■ c. Add the center heading ''R307–165. Stack Testing'' and the entries ''R307–165–01'', ''R307–165–02'', ''R307–165–03'', ''R307–165–04'', ''R307–165–05'', and ''R307–165–06'' in numerical order.
■ d. Add the center heading ''R307–306. PM_{10} Nonattainment and Maintenance Areas: Abrasive Blasting'' and the entries ''R307–306–01'', ''R307–306–02'', ''R307–306–03'', ''R307–306–04'', ''R307–306–05'', ''R307–306–06'', and ''R307–306–07'' in numerical order.
■ e. Revise entries ''R307–401–02'', ''R307–401–04'', ''R307–401–05'', ''R307–401–06'', ''R307–401–09'', ''R307–401–10'', ''R307–401–11'', ''R307–401–14'', ''R307–401–15'', ''R307–401–16'', ''R307–405–02'', ''R307–410–03'', and ''R307–410–04''.

The revisions and additions read as follows:

§ 52.2320 Identification of plan.

* * * * *

(c) * * *

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
R307–101. General Requirements				
*	*	*	*	*
R307–101–3	Version of Code of Federal Regulations Incorporated by Reference.	6/4/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 7/10/20.
*	*	*	*	*
R307–150. Emission Inventories				
R307–150–01	Purpose and General Requirements.	3/5/2018	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approvals: 12/14/12; 4/25/22.
*	*	*	*	*
R307–165. Stack Testing				
R307–165–01	Purpose and Applicability	6/3/2020 8/10/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/14/06.
R307–165–02	Testing Frequency	6/3/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/14/06.
R307–165–03	Notification of DAQ	6/3/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/14/06.
R307–165–04	Test Conditions	6/3/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/14/06.
R307–165–05	Reporting	6/3/2020	[insert **Federal Register** citation], 9/8/2022.	
R307–165–06	Rejection of Test Results	6/3/2020	[insert **Federal Register** citation], 9/8/2022.	
*	*	*	*	*
R307–306. PM_{10} Nonattainment and Maintenance Areas: Abrasive Blasting				
R307–306–01	Purpose	9/2/2005	[insert **Federal Register** citation], 9/8/2022.	
R307–306–02	Definitions	9/2/2005	[insert **Federal Register** citation], 9/8/2022.	
R307–306–03	Applicability	9/2/2005	[insert **Federal Register** citation], 9/8/2022.	
R307–306–04	Visible Emission Standard	9/2/2005	[insert **Federal Register** citation], 9/8/2022.	
R307–306–05	Visible Emission Evaluation Techniques.	9/2/2005	[insert **Federal Register** citation], 9/8/2022.	
R307–306–06	Performance Standards	9/2/2005	[insert **Federal Register** citation], 9/8/2022.	
R307–306–07	Compliance Schedule	9/2/2005	[insert **Federal Register** citation], 9/8/2022.	
*	*	*	*	*
R307–401. Permit: New and Modified Sources				
*	*	*	*	*
R307–401–02	Definitions	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/6/14.

Rule No.	Rule title	State effective date	Final rule citation, date	Comments
*	* *	*	* *	* *
R307–401–04	General Requirements	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/6/14.
R307–401–05	Notice of Intent	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/6/14.
R307–401–06	Review Period	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/6/14.
*	* *	*	* *	* *
R307–401–09	Small Source Exemption	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/6/14.
R307–401–10	Source Category Exemptions	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 5/27/2021.
R307–401–11	Replacement-in-Kind Equipment ..	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/6/14.
*	* *	*	* *	* *
R307–401–14	Used Oil Fuel Burned for Energy Recovery.	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 5/13/14.
R307–401–15	Air Strippers and Soil Vapor Extraction Projects.	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 1/29/16.
R307–401–16	De minimis Emissions From Soil Aeration Projects.	3/5/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 5/13/14.
*	* *	*	* *	* *
R307–405. Permits: Major Sources in Attainment or Unclassified Areas (PSD)				
*	* *	*	* *	* *
R307–405–02	Applicability	6/4/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 7/10/20.
*	* *	*	* *	* *
R307–410. Permits: Emissions Impact Analysis				
*	* *	*	* *	* *
R307–410–03	Use of Dispersion Models	6/4/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 7/10/20.
R307–410–04	Modeling of Criteria Pollutant Impacts in Attainment Areas.	8/6/2020	[insert **Federal Register** citation], 9/8/2022.	Previous SIP approval: 2/6/14.
*	* *	*	* *	* *

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[FR Doc. 2022–19299 Filed 9–7–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 15

[ET Docket No. 20–36; FCC 20–156; FR ID 102319]

Unlicensed White Space Device Operations in the Television Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: The Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, the information collection associated with the Commission's *Amendment of the Commission's Rules for Unlicensed White Space Operations in the Television Bands,* Report and Order and Further Notice of Proposed Rulemaking. This document is consistent with the *Order,* which stated that the Commission would publish a document in the **Federal Register** announcing OMB approval and the effective date of the rules related to the information collection.

DATES: Amendatory instruction 4.f. for § 15.709(g)(1)(ii), published at 86 FR 2278, January 12, 2021, is effective September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, at (202) 418–7506, or email: *Hugh.VanTuyl@fcc.gov.*

For additional information concerning the Paperwork Reduction Act information collection requirements, contact Nicole Ongele at (202) 418–2991 or *nicole.ongele@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 the White Space Database rules contained in the Commission's *Amendment of Part 15 of the Commission's Rules for Unlicensed White Space Device Operations in the Television Bands,* Report and Order, FCC 20–156 (86 FR 2278, January 12, 2021). The OMB Control Number is 3060–1155. The Commission publishes this document as an announcement of the effective date of the information

collection requirements provided at instruction 4.f. for § 15.709(g)(1)(ii).

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the FCC is notifying the public that it received final OMB approval on July 25, 2022, for the information collection requirements contained in the Commission's rules in 47 CFR part 15.

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 3060–1155.

The foregoing notice 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: 3060–1155.

OMB Approval Date: July 25, 2022.

OMB Expiration Date: July 31, 2025.

Title: Sections 15.709, 15.713, 15.714, 15.715 and 15.717, 27.1320, TV White Space Broadcast Bands.

Form Number: N/A.

Respondents: Business or other for-profit.

Number of Respondents and Responses: 1,510 respondents; 3,500 responses.

Estimated Time per Response: 2–5 hours.

Frequency of Response: On occasion; recordkeeping and third-party disclosure requirements.

Obligation to Respond: Required to obtain or retain benefits. The statutory authority for this information collection is contained in sections 47 U.S.C. 154(i), 201, 302a, and 303.

Total Annual Burden: 7,000 hours.

Total Annual Cost: $151,000.

Nature and Extent of Confidentiality: No information is requested that would require assurance of confidentiality.

Privacy Act Impact Assessment: No impact(s).

Needs and Uses: On October 28, 2020, the Federal Communications Commission (Commission) released a Report and Order, 86 FR 2278, January 21, 2021, and Further Notice of Proposed Rulemaking, 86 FR 11490, February 25, 2021, *Unlicensed White Space Device Operations in the Television Bands,* ET Docket No. 20–36, FCC 20–156. The Commission increased the antenna height above average terrain (HAAT) limit from 250 meters to 500 meters for fixed white space devices operating in ''less congested'' areas, which are defined as those areas where at least half the TV channels in a device's band of operation are vacant. Parties planning to operate devices with an HAAT that exceeds 250 meters must notify all potentially affected TV stations at least four days before commencing operation in accordance with the procedure set forth in § 15.709(g)(1)(ii). The Commission adopted this procedure because white space devices operating at high HAAT have the potential to interfere with TV reception at large distances.

Federal Communications Commission.

Sheryl Todd,

Deputy Secretary.

[FR Doc. 2022–18960 Filed 9–7–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 367

[Docket No. FMCSA–2022–0001]

RIN 2126–AC51

Fees for the Unified Carrier Registration Plan and Agreement

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Final rule; correcting amendment.

SUMMARY: The Federal Motor Carrier Safety Administration is correcting a final rule that published September 1, 2022, in the **Federal Register**. The document amended the regulations for the annual registration fees States collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2023 registration year and subsequent registration years.

DATES: Effective September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Riddle, Director, Office of Registration and Safety Information, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, *FMCSA-MCRS@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION: FMCSA is correcting the final rule on UCR fees that published September 1, 2022 at 87 FR 53680. This rule amended the regulations for the annual registration fees States collect from motor carriers, motor private carriers of property, brokers, freight forwarders, and leasing companies for the Unified Carrier Registration (UCR) Plan and Agreement for the 2023 registration year and subsequent registration years. An inadvertent typographical error created an incorrect authority citation. This document corrects this error.

List of Subjects in 49 CFR Part 367

Intergovernmental relations, Motor carriers, Brokers, Freight Forwarders.

Accordingly, FMCSA corrects 49 CFR part 367 by making the following correcting amendment:

PART 367—STANDARDS FOR REGISTRATION WITH STATES

■ 1. The authority citation for part 367 is revised to read as follows:

Authority: 49 U.S.C. 13301, 14504a; and 49 CFR 1.87.

Issued under authority delegated in 49 CFR 1.87.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2022–19354 Filed 9–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600, 648, 660, and 679

[Docket No. 220805–0170]

RIN 0648–BJ33

Establishment of National Minimum Insurance Standard for National Marine Fisheries Service Programs That Permit or Approve Observer Providers

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

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to establish a uniform, nationally consistent minimum insurance standard that would apply in regional regulatory programs that authorize an observer provider to deploy a person in any mandatory or voluntary observer program and that specify responsibilities of authorized providers. NMFS has concluded that this action is

necessary to clarify the types of insurance that are appropriate to address the financial risks that observer coverage presents in any federally managed fishery that is subject to observer coverage. This rule also revises regional observer program regulations to reference the national minimum insurance standard. The rule does not modify existing regional observer program regulatory procedures that specify how an observer provider demonstrates compliance with insurance requirements.

DATES:

Effective date: This final rule is effective September 8, 2022.

Compliance date: Compliance is not required until or during the next insurance certification or February 6, 2023, whichever date is later, after which time NMFS may request observer providers that are approved to deploy observers to provide a certificate of insurance that demonstrates compliance with this final rule.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Dennis Hansford, 301–427–8136 or *dennis.hansford@noaa.gov.*

SUPPLEMENTARY INFORMATION: The insurance standard established in this final rule provides a nationally consistent suite of insurance coverages that an observer provider seeking authorization, or that has been authorized, must have to mitigate the financial risks associated with providing observer services; specifically observer deployments to fishing vessels or shoreside locations such as processing facilities, and those that arise with training personnel for these deployments. Through compliance with this minimum standard, observer providers would be properly insured, thereby mitigating the financial risks that fishing vessels, first receivers, and shoreside processors have when complying with observer coverage requirements.

Background

The Magnuson-Stevens Fishery Conservation and Management Act (MSA), 16 U.S.C. 1801 *et seq.,* establishes a national program for conservation and management of fishery resources within the United States Exclusive Economic Zone (EEZ). *See* id. 1801(a)(6), 1811(a). NMFS, acting under authority delegated from the Secretary of Commerce, is responsible for managing fisheries under the MSA, in conjunction with eight regional fishery management councils (Councils) established under the Act. *See* id. 1852(a). Each Council has authority to develop fishery management plans (FMPs) for fisheries in a specific geographical area and to deem proposed regulations that are necessary for plan implementation. *See* id. 1852(a), (c).

Collection of information on fishing and fish processing, such as type and quantity of fishing gear used, catch in numbers of fish or weight thereof, fishing locations, and biological information, are critical to effective fishery management. *See* id. 1853(a)(5). To obtain this information, the MSA authorizes, among other things, that an FMP may ''[r]equire that one or more observers be carried on board a vessel of the United States engaged in fishing for species that are subject to the plan, for the purpose of collecting data necessary for the conservation and management of the fishery . . .''. *See* id. 1853(b)(8). The MSA defines the term ''observer'' as ''any person required or authorized to be carried on a vessel for conservation and management purposes by regulations or permits under this Act.'' *See* id. 1802(31). This definition would thus cover persons referred to in FMPs and regulations as ''observers'' as well as ''catch-monitors'' or ''at-sea monitors.'' In this final rule, the term ''observer'' refers to a person who is deployed as an observer, a catch or at-sea monitor on a fishing vessel or mothership, or as an observer deployed to a shoreside first receiver location or processing facility. Also, in the preamble of this final rule, NMFS refers to a company that provides observer or catch monitor or at-sea monitor services as an ''observer provider.''

At present, all at-sea and shoreside observer deployments for NMFS observer programs are staffed by observer providers. These companies provide observer staffing support under two distinct models: (1) direct service, where the NMFS observer program contracts with an observer provider and oversees the provider's services based on the terms of the contract; and (2) industry-funded service, where the observer provider provides services directly to a vessel or a fleet of vessels, and a NMFS regional observer program oversees the provision of those services based on requirements set forth in NMFS regulations.

In the North Pacific and most West Coast programs, an observer provider must be permitted under the programs' regulations and satisfy other responsibilities specified in regulations in order to provide services in either the direct contract model or industry-funded model. The North Pacific and West Coast programs have regulatory-based insurance requirements for observer providers that are permitted to deploy observers. Permitted observer providers must demonstrate compliance with these requirements on an annual basis by providing the relevant program copies of certificates of insurance that name the applicable program as the certificate holder and that verify that the company has the insurance specified in the applicable regulation.

In the Northeast/Mid-Atlantic region an observer provider must be approved to provide services in the at-sea sampler/observer coverage program or at-sea monitoring services in the Northeast Multispecies sector program. The Northeast at-sea sampler/observer coverage program insurance requirements are included as elements of an approved program provider application. In other words, an observer provider must demonstrate evidence that it holds the insurance specified in the regulation as part of its application to become an approved provider. Likewise, as part of an application to be an approved services provider in the Northeast Multispecies sector at-sea monitoring program, a company must demonstrate that it holds insurance that NMFS deems adequate.

The Southeast, Southwest, and Pacific Islands programs use only the direct contract model, and do not have regulations to authorize a company to deploy observers in their programs through an approval or permit process. Nor do these programs have regulations that specify observer provider responsibilities. Further information about NMFS' regional observer programs is available at *https://www.fisheries.noaa.gov/topic/fishery-observers.*

In 2014, NMFS initiated an evaluation of observer provider insurance requirements in North Pacific observer program regulations. This effort was prompted by a letter from Alaskan Observers Inc. (AOI) to the North Pacific Fishery Management Council (NPFMC) which asserted that some North Pacific insurance requirements are excessive or inapplicable to observer provider operations. AOI also asserted that there are inconsistent insurance requirements among regional observer programs. In a 2015 letter to the NPFMC Executive Director, NMFS agreed with AOI's views that certain insurance requirements are necessary and noted that NPFMC could consider revising those North Pacific observer program regulations to specify different types of insurance. NMFS then initiated a broader, national evaluation of observer provider insurance regulation to address concerns with the North Pacific Observer program requirements that are

reflected in other program regulations and to address the lack of consistency between regional requirements. Through this evaluation, NMFS obtained extensive input from observer providers, insurance experts, and other interested parties, on the different types of insurance and associated coverage amounts that are needed to address the financial risks that observer deployments present in any federally managed fishery that is subject to observer coverage. Based on this effort, and internal research and analysis, NMFS published a proposed rule to establish a uniform, nationally consistent minimum insurance standard that would apply in regional regulatory programs that authorize an observer provider to deploy a person in any mandatory or voluntary observer program and that specify responsibilities of authorized providers (86 FR 66259; November 22, 2021). NMFS concluded that establishment of a minimum insurance standard for observer providers is necessary to clarify the types of insurance that are appropriate to mitigation the financial risks associated with provided observers services; specifically observer deployments to fishing vessels or shoreside locations such as processing facilitates, and those that arise with training personnel for these deployments. Further background on NMFS' development of, and rationale for specific elements of the national minimum insurance standard is available in the proposed rule.

Responses to Public Comments

NMFS received comments on the proposed rule in three letters received from the Purse Seine Vessel Owners' Association (PSVOA), Gallagher Insurance (Gallagher), and LIG Marine Managers. Summaries of the comments and agency responses are provided below.

Comment 1. Gallagher commented on NMFS' citation to a 2017 Bureau of Labor Statistics, Census of Fatal Occupational Injuries report that ranked commercial fishing as one of the most dangerous occupations and NMFS' suggestion that, because observers are usually deployed to commercial fishing vessels, observers' risk of occupational injury is equal to that of commercial fishermen. Gallagher noted that an occupation with a high Fatal Occupational Injuries ranking does necessarily mean that it has a high level of Occupation Injury overall. Certain characteristics of commercial fishing—a relatively low number of employees compared to other food processing industries and a unique at-sea work environment—lead it to having a higher level of per-employee fatalities, but not necessarily a higher level of overall occupational injuries compared to other industries. Lastly, for observers, several factors mitigate the risk of occupational injury that is otherwise faced by commercial fishermen, including: work stations designated for observers; different proximity to mechanical equipment, and deployment to processing vessels or motherships or shoreside facilities which have less or no risk of sinking.

Response. NMFS agrees that a high Fatal Occupational Injuries ranking does not necessarily mean a high level of Occupation Injury overall for commercial fishing. NMFS also agrees that the risk of observer occupational injury may not always be equivalent to such risks for commercial fishermen. However, NMFS maintains its view that occupational injury risks faced by commercial fishermen are relevant to assessing, as a general matter, the risks for observers and the minimum level of insurance observer providers should have to insure against those risks.

Comment 2. In response to NMFS' specific request for comments on the issue, PSVOA expressed strong support for enhancing the proposed Marine General Liability (MGL) policy requirement with an endorsement that extends protection to vessel or shoreside processor owners from legal actions filed by an observer. Such an endorsement should be added, because vessel owners face significant exposure to liability from incidents that arise involving compliance with federal observer coverage requirements. The endorsement should name a vessel owner as a party that will be indemnified against a lawsuit or other legal action that seeks redress of an observer injury or death.

Response. NMFS recognizes PSVOA's concern that vessel owners have some risk of legal actions filed against them by observers, whether specifically or as part of an action brought against the employer. However, NMFS has decided not to add an endorsement to the MGL policy requirement in the rule. The proposed rule noted that the incidence or risk of observer-initiated legal actions against parties other than their employer are likely to be low, and NMFS did not receive public comments that would affect that conclusion. Such risks should be addressed through the Marine Employer's Liability (MEL) policy element of the minimum insurance standard. In addition, the minimum insurance standard is intended to protect vessel and shoreside processor owners against employer-based claims. Based on available information about risks and costs, NMFS believes that requiring observer providers to have an enhanced MGL policy that protects vessel and shoreside processor owners against any legal action brought by an observer, not just those that are employer-based, is too broad and overly burdensome. For that same reason, NMFS also declines PSVOA's request that the minimum insurance standard be modified to require that the MGL have an endorsement that names a vessel or shoreside processor as a party that that will be indemnified against a lawsuit or other legal action that seeks redress of an observer injury or death.

Comment 3. Gallagher and LIG Marine Managers commented that the preamble of the proposed rule incorrectly suggested that there is a distinction between a MEL policy and a policy for maritime liability to cover claims under the Jones Act and General Maritime Law (GML). There is no difference between the two policies because MEL is a policy for maritime liability that covers claims under the Jones Act and GML.

Response. NMFS agrees that an MEL policy covers claims under the Jones Act and GML. In the preamble to the proposed rule, NMFS used the same terminology reflected in existing regional observer program regulations. North Pacific and West Coast program regulations require coverage for maritime liability to cover Jones Act and GML claims while the Northeast program regulations require the same coverage but describe it as an MEL policy. This rule includes an MEL policy and, as NMFS explained in the proposed rule, the purpose of that policy is to provide coverage for Jones Act and GML claims.

Comment 4. Gallagher commented extensively on the applicability of the U.S. Longshore and Harborworkers Compensation Act (LHWCA), the Jones Act, and GML to observers and expressed support for requiring observer providers to have insurance for observer claims for benefits under these authorities. Gallagher asserted that if LHWCA applies to observers on land, it must also be applicable to observers while deployed on a vessel in US navigable waterways. Gallagher referenced analysis by insurance expert Vincent Gullette, of American Equity Underwriters, that is documented in NMFS' Fisheries Observers Insurance, Liability and Labor Workshop Technical Memorandum, dated June 12–14, 2001, available at Observer Insurance Tech Memo.

According to Mr. Gullette, observers may not be covered under the LHWCA

because they do not meet the criteria for longshore status. Observers may be considered ''aquaculture workers'' for purposes of the LHWCA, and, as such, would be excluded from coverage under that authority. But if not considered ''aquaculture workers,'' they would be covered under the LHWCA whether on land or at-sea. Gallagher expressed support for the finding of that insurance expert and NMFS' finding that, because observers are not vessel crew, neither the Jones Act nor GML apply to them. Notwithstanding, Gallagher expressed support for inclusion of LHWCA coverage and MEL coverage for Jones Act and GML claims in the rule. While observers may not have the requisite status needed to recover benefits under these authorities, observers are nonetheless free to pursue such benefits and that could result in significant legal costs for observer providers.

Response. NMFS agrees that the details of whether and how the LHWCA, Jones Act, and GML apply to observers are unclear in some cases. Regardless of these uncertainties, NMFS agrees that a minimum suite of insurance for observer provider operations must include coverage for claims under those authorities, and thus made no change to the final rule as a result of this comment. NMFS notes that the minimum insurance standard is designed to be narrowly tailored to cover the reasonable risks, but not every possible risk, that may arise with observer provider operations. As explained in the proposed rule, based on independent research and extensive outreach efforts to insurance experts, observer providers, and other government agencies, NMFS determined that the LHWCA applies only to shoreside incidents. While deployed on a vessel under the MSA or the Marine Mammal Protection Act, observers have status as Federal employees for purposes of compensation under the Federal Employee Compensation Act. See 16 U.S.C. 1881b(c). Accordingly, because observers can seek FECA benefits for injuries sustained while deployed on a vessel, NMFS concluded that, for purposes of the minimum insurance standard, observer providers need only obtain LHWCA coverage for observers when they perform duties shoreside. Nonetheless, the minimum insurance standard establishes a floor, not a ceiling, for the appropriate insurance policy types and levels of associated insurance policy coverage amounts. Thus, this rule would not prevent an observer provider from having broader insurance or higher coverage amounts than what is required under the minimum standard.

NMFS agrees that observers do not have the requisite status for Jones Act and GML claims, but also agrees that the minimum standard should include an MEL policy to address legal costs should observers pursue Jones Act or GML claims. Moreover, as NMFS explained in the proposed rule, an MEL policy is appropriate to cover certain GML benefits that do apply to incidents at-sea involving observers, specifically potential remedies related to claims based on Unseaworthiness, Wrongful Death, Transportation, Wages, Maintenance and Cure, and the Death on the High Seas Act.

Comment 5. LIG Marine Managers commented as follows on LHWCA and State Workers' Compensation policies. LHWCA and State Workers' Compensation policies are always issued to provide statutory coverage, thus it is not necessary to specify ''at statutory limits'' in the rule. The requirement for State Workers' Compensation should be changed to apply for ''all states of operation'' because some observer programs involve multiple states. LHWCA and State Workers' Compensation policies include a sublimit for employers' liability (EL) and that sublimit should be increased to $1 million. LIG Marine Managers illustrated these comments, and those in comment 6, in Table 1 below.

Response. NMFS agrees that LHWCA and State Workers' Compensation policies issued by insurance carriers provide statutory coverage. No change is needed in the rule, as reference to ''at statutory limits'' was not in the proposed regulatory text, only in the preamble. NMFS does not agree that the requirement for State Workers' Compensation should be revised to require coverage in ''all states of operation''. As explained in the proposed rule, the minimum insurance standard applies only when NMFS regulations require observer provider companies to obtain approval or a permit to deploy a person in any mandatory or voluntary observer program. The North Pacific, West Coast, and Northeast observer programs have such regulatory requirements, whereas the Southeast, Southwest and Pacific Islands programs do not, as they currently operate only under a direct contract model. Requiring that State Workers' Compensation (or other policies) cover ''all states of operation'' would be overly broad for the former programs, which are subject to approval or permitting under regulations for particular fisheries and not for all states where they might operate. While direct contract programs are not subject to this rule, as explained in the proposed rule, NMFS will apply the minimum insurance standard in this rule as a condition of direct contracts for observer provider services by adding that standard to the National Oceanic and Atmospheric Administration's Acquisitions and Grants Office Policy Manual. NMFS contracts with observer providers for services in specific fisheries, and thus, as with the regulations-based programs, believes requiring coverage in ''all states of operation'' would be overly broad.

Comment 6. LIG Marine Managers commented that commercial general liability coverage, which generally does not apply to any vessel-based operations, should be a component of MGL with a minimum of $1 million. Policy coverage amounts for MEL, EL, and MGL can be identified at common market limits, *e.g.,* $1 million for each respective policy, but some insurance carriers prefer to write them differently. It does not matter how these coverage amounts are set out in any combination of primary and excess layers as long the total coverage is equal to or greater than the total of the coverage amounts required for each policy. LIG Marine Managers submitted Table 1 with its comments, which illustrates its recommendations summarized under Comments 5 and 6.

TABLE 1—LIG MARINE MANAGERS' RECOMMENDATIONS

State worker's compensation coverage (WC)	LHWCA (longshore)	Employers liability (EL)	Marine employer's liability (MEL) covering Jones Act/GML, seamen's claims coverage	Marine general liability (MGL)	Excess or umbrella coverage over MGL, EL and MEL
Must meet requirements within all state(s) of operation: Statutory Limit.	Monoline or endorsed to the WC policy. Statutory Limit	As part of the WC coverage. $1 million	$1 million per occurrence.	$1 million per occurrence.	$2 million minimum.

Any combination of primary and excess policies can be provided for the EL, MEL and MGL in order to achieve the total limits required above.

Response. NMFS agrees that some insurance carriers may craft policy coverage amounts differently than the market standard. Those variations do not weaken coverage so long as the total coverage of each policy is equal to or greater than the sum of what is required for each policy. Accordingly, this final rule amends the regulatory text of the proposed rule at 50 CFR 600.748 by adding a new paragraph (d) to include flexibility in satisfying the coverage amounts required for MGL and MEL policies.

With regard to the comment on an EL policy sublimit for LHWCA and State Workers' Compensation policies, NMFS believes that the standard limit for EL coverage is sufficient. Moreover, the purpose of this rule is to address the risks that observer provider operations present for fishing vessels and shoreside processors. An EL policy would do little to advance that purpose because it is intended to address the risks associated with lawsuits in which employees allege that their employers negligently created an unsafe work environment. Coverage that only addresses negligence claims by observers against observer providers—which to our knowledge are rare—would not mitigate the financial risks that observer deployments present for fishing vessels subject to observer coverage. NMFS reiterates that, as with all elements of the minimum standard in this rule, observer providers can choose to increase EL coverage as they deem necessary to address their operational needs.

Changes From the Proposed Rule

As described above in the Responses to Public Comments section, in response to public comments and after further agency consideration, in this final rule NMFS has added a new paragraph (d) to section 600.748 to allow policy coverage amounts for Marine General Liability and Marine Employers' Liability under paragraph (b)(1) and (2) respectively to be higher or lower than the specified amounts so long as the total is equal to or greater than the combined specified amounts (*i.e.,* so long as the combined coverage for these policies is $2 million). Paragraphs (b)(1) and (2) were revised to include cross-references to paragraph (d).

TABLE 2—FINAL MINIMUM INSURANCE STANDARD

LHWCA	State workers' compensation coverage (WC)	Marine general liability (MGL)	Marine employer's liability (MEL)	Excess or umbrella coverage
Required $1 million coverage.	Must meet requirements within state of operation.	Required $ 1 million per occurrence.	Required $ 1 million per occurrence.	Required $ 2 million per occurrence.

Coverage amounts specified for MGL and MEL may be higher or lower for each respective policy so long as the combined coverage for these policies is $2 million.

In addition, NMFS has clarified the preface of paragraph 600.748(c) by replacing the phrase ''policy coverages'' with the phrase ''scope of coverages,'' which is a more accurate description of that paragraph.

Classification

NMFS issues this final rule pursuant to Magnuson-Stevens Act (MSA) section 305(d), which provides the Secretary of Commerce with general responsibility to carry out any FMP or FMP amendment, and to promulgate regulations as may be necessary to discharge such responsibility (16 U.S.C. 1855(d)). The NMFS Assistant Administrator has determined that this final rule is consistent with the MSA and other applicable laws.

NEPA Determination

NOAA's Policy and Procedures for Compliance with the National Environmental Policy Act (NEPA) and Related Authorities (NOAA Administrative Order (NAO) 216–6A and Companion Manual for NAO 216–6A) provide that all NOAA major Federal actions be reviewed with respect to environmental consequences on the human environment. Based on the NAO and Companion Manual, NMFS examined the proposed rule for its potential to impact the quality of the human environment and concluded that it would not have a significant adverse effect, individually or cumulatively, on the human environment and would not involve any extraordinary circumstances listed in the Companion Manual. NMFS has made the same conclusion for the final rule, and received no public comments related to effects on the human environment. Furthermore, NMFS determined that this final rule may appropriately be categorically excluded from the requirement to prepare either an environmental assessment or environmental impact statement in accordance with the categorical exclusion described at G7 in the Companion Manual for NAO 216–6A, Appendix, page E–14, which applies to preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and

will be subject later to the NEPA process, either collectively or on a case-by-case basis.

Executive Order 12866

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

Regional regulatory programs that authorize an observer provider to deploy a person in any mandatory or voluntary observer program and that specify responsibilities of authorized providers already include insurance requirements. Thus, to operate in these programs, observer providers already must demonstrate that they have the insurance specified in the applicable regulations.

Due to the nuances of maritime law and the unique nature of observer deployments, regions have adopted differing insurance requirements that are in some cases overly burdensome and inefficient. This action would provide a national standard that clarifies the types and amounts of insurance and associated coverage amounts that best address the financial risks of observer provider operations regardless of the fishery or region in which an observer provider operates. In some cases, compliance with the final national insurance standard would require observer providers to have insurance that is different from what they are required to have under current regulations. While this final action could change the suite of insurance that observer providers are required to have, it does not make substantive increases to the insurance that is required in current regional programs.

For these reasons, we do not expect this action to result in a significant increase in the premiums that observer providers currently pay. In fact, the action could result in lower premiums due to the increased efficiency of having a national standard and the fact that the standard does not include certain coverages that are required under current regulations. Additionally, section 600.748(d) of the final rule has modified how the coverage amounts for MGL and MEL may be met, which provides greater flexibility to observer providers.

Paperwork Reduction Act

This action does not contain a change to a collection-of-information requirement for purposes of the Paperwork Reduction Act. NMFS' regional observer program regulations that authorize observer providers or that specify authorized provider responsibilities already include procedures for demonstrating compliance with program insurance requirements, and this proposed rule would not change those procedures. The following existing collection of information requirements would continue to apply, under the following control numbers: (1) 0648–0318, Alaska Observer Program (applies to the North Pacific Observer Program); (2) 0648–0500, An Observer Program for At-Sea Processing Vessels in the Pacific Coast Groundfish Fishery; and (3) 0648–0546, Northeast Region Observer Providers Requirements. Note that, while this action would make clear that the existing regulations for the West Coast Catcher Processor Program (50 CFR 660.160) include insurance requirements for permitted observer providers (by adding a reference to the minimum insurance standard to the program's regulations), the collection of an insurance certificate from observer providers that are permitted to operate in this program is already covered under the existing control number 0648–0500, An Observer Program for At-Sea Processing Vessels in the Pacific Coast Groundfish Fishery.

Final Regulatory Flexibility Analysis

In compliance with section 604 of the Regulatory Flexibility Act, NMFS prepared a final regulatory flexibility analysis (FRFA), which is included below.

In the Response to Comments section above, NMFS clarified that insurance policies for State Workers' Compensation and LHWCA are routinely issued ''at statutory limits'' and, therefore, that the level of coverage need not be specified in this final rule as it had been in the preamble to the proposed rule. NMFS also revised the regulatory text of the proposed rule at 50 CFR 600.748 by adding a new paragraph (d) to provide an observer provider with flexibility in satisfying required policy coverage amounts for Marine General Liability (MGL) and Marine Employers' Liability (MEL). Specifically, new paragraph (d) allows coverage amounts for those policies to be higher or lower than the specified amounts so long as the combined total coverage is equal to or greater than the required amounts for each respective policy. Neither the clarification to the coverage amount required for State Workers' Compensation and LHWCA, nor the addition of new paragraph (d) adding flexibility for satisfying the coverage amounts for MGL and MEL, have any cost implications.

No economic issues were raised by public comment, and, therefore, no changes to this final rule were made in response to public comments of an economic nature. NMFS received no comments on the initial regulatory flexibility analysis (IRFA), nor any comments from the Office of Advocacy for the Small Business Administration. NMFS does not have any new information to take into account for purposes of that analysis. For these reasons, the FRFA provided below, with the exception of non-substantive technical updates, reflects the initial regulatory flexibility analysis that NMFS prepared for the proposed rule.

Description of the Reasons Why Action Is Being Considered

The policy reasons for issuing this final rule are discussed in the preamble above and in the proposed rule and are not repeated here.

Statement of the Objectives of, and Legal Basis for, the Proposed Rule; Identification of All Relevant Federal Rules Which May Duplicate, Overlap, or Conflict With the Final Rule

The objective of this final rule is to promote effective operation of regional observer programs by ensuring that observer providers have a nationally consistent suite of insurance coverages that properly addresses the financial risks of their operations, regardless of the fishery observed or the region in which the provider operates. The legal basis for this rule is 16 U.S.C. 1855(d). No other Federal rules duplicate, overlap, or conflict with this proposed rule.

Number and Description of Small Entities Regulated by the Final Action

Currently, there are six companies that provide observer services in a NMFS mandatory or voluntary observer program. These entities, which would be directly regulated by this rule include: A.I.S. Inc.; Alaskan Observers, Inc.; Saltwater, Inc.; TechSea International; Fathom Resources LLC; and East West Technical Services, LLC. Four of these entities operate in the North Pacific Observer Program. Three operate in the West Coast Observer Program, and two operate in the Northeast Observer Program. The specific NMFS regional observer programs in which these companies may be permitted or approved to deploy observers are as follows: the North Pacific Observer Program, 50 CFR 679.52; the West Coast Groundfish Observer Program, 50 CFR 660.16; the West Coast Catch Monitor Program, 50 CFR 660.17; the West Coast Groundfish Observer and Catch Monitor Provider Permits Program, 50 CFR 660.18; the West Coast Shoreside IFQ Program, 50 CFR 660.140; the West Coast

Mothership Cooperative Program, 50 CFR 660.150; the West Coast Catcher Processor Cooperative Program, 50 CFR 660.160; the program for Northeast at-sea sampler/observer coverage, 50 CFR 648.11(h); and the Northeast Multispecies at-sea sector monitoring program, 50 CFR 648.87(b)(4). The information available to NMFS indicates that the principal activity of most of these companies is providing observers. All of the current observer provider companies are considered small entities under the RFA.

Additionally, firms interested in obtaining approval or a permit to provide observer services under a NMFS regional observer program in the future would be regulated under this rule. Observer provider services are specialized services, and NMFS does not know how many other firms might want to become providers in the future. In any event, NMFS anticipates that any new providers would be considered small entities. For purposes of the RFA, NMFS established a small business size standard (NAICS 11411) for all businesses in the commercial fishing industry including their affiliates, whose primary industry is commercial fishing. (See 80 FR 81194; 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including its affiliates), and has combined annual receipts not in excess of $11 million for all of its affiliated operations worldwide. Based on available information, NMFS has determined that all six of these companies are small entities, *i.e.,* they are engaged in the business of fish harvesting (NAICS 114111), are independently owned or operated, are not dominant in their field of operation, and have annual gross receipts not in excess of $11 million.

Even though this rule would apply to a substantial number of the relevant businesses, the implementation of this action would not result in a significant adverse economic impact on individual companies. As described below, this rule could result in possible changes in insurance costs for these companies, ranging from an increase of approximately $10,000 to an approximate decrease of a similar amount. This range includes potential benefits to the companies stemming from clarifying requirements and allowing them to drop certain insurance policies that NMFS has determined to be no longer necessary.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

This final rule does not include new reporting, recordkeeping, or other compliance requirements. As noted under the Paperwork Reduction Act header above, NMFS' regional observer program regulations that authorize observer providers or that specify authorized provider responsibilities, already include procedures for demonstrating compliance with program insurance requirements, and this proposed rule would not change those procedures.

Description of Any Significant Alternatives to the Final Rule That Accomplish the Stated Objectives of Applicable Statutes and That Minimize Any Significant Economic Impact of the Final Rule on Small Entities

As required by 5 U.S.C. 604(a), NMFS' analysis considered whether there are any significant alternatives to the proposed rule that would accomplish its stated objectives while minimizing any significant economic impact on small entities. To identify alternatives, NMFS took several information gathering actions. In 2016, NMFS held an Observer Provider Insurance Workshop (2016 Workshop), which was attended by marine insurance experts, observer providers, observer representatives, and officials from relevant federal and state agencies. Additionally, in 2018, NMFS issued a Request for Information (2018 RFI) in which it asked for input on an appropriate suite of insurance and associated coverage amounts for observer providers (83 FR 32829, July 16, 2018). Through this engagement, NMFS identified no alternatives to the proposed rule that would reasonably address the unique risks that observer coverage presents for observer providers, observers, and the industry that is subject to observer coverage requirements. After considering public comment on the proposed rule, NMFS determined that there were no significant alternatives to the final rule. Therefore, in the proposed rule and this final rule, NMFS analyzed only whether this action would have a significant economic impact on observer providers, all of which are small entities.

Whether this final rule would have a significant economic impact depends upon whether carrying the required policies under the minimum national standard would result in increased premiums compared to the premiums that observer providers currently pay to comply with existing regional requirements. However, for both the proposed and final rules, NMFS lacked the precise baseline information on existing premium costs that is necessary to determine, with any specificity, the economic impact that may result from the rule. During development of the proposed rule, NMFS attempted to obtain baseline information on current observer provider insurance premium costs through outreach to the six companies that provide observer services in a NMFS mandatory or voluntary observer program. However, these companies viewed insurance cost information as proprietary, and, therefore, declined to provide details of their insurance costs or estimates of what premium costs would be to comply with the proposed national minimum standard. Nonetheless, based on the limited information that these companies did provide, NMFS estimated that current observer provider insurance premiums cost less than $5,000 per employee. It is possible that this action could result in a decrease of premiums from the estimated $5,000 per employee baseline, due to cost savings from lower premiums, from the consolidation of policies, or from the cancellation of policies that are no longer necessary. It is also possible for a premium increase to an outer bound of $10,000 per employee if a company previously had no policy coverage at all. Using these general assumptions, NMFS developed ranges in observer provider premium changes that could result from the proposed rule, if finalized and implemented (see table 3 below).

To form an accurate assessment of the economic impact that may result from the rule, in the proposed rule, NMFS specifically requested public comment on whether the magnitude of the ranges described below accurately captures the likely premium changes that may result from the rule and which of these ranges is most likely to apply upon implementation of this final rule.

TABLE 3—ESTIMATED RANGES OF OBSERVER PROVIDER PREMIUM CHANGES

Insurance premium increases	Insurance premium decreases
$0 to $2,500 per employee	$0 to $2,500 per employee.
$2,500 to $5,000 per employee	$2,500 to $5,000 per employee.
$5,000 to $7,500 per employee	$5,000 to $7,500 per employee.
$7,500 to $10,000 per employee	$7,500 to $10,000 per employee.

NMFS received no comments on the premium ranges in the table, the table in general, or other aspects of the Initial

Regulatory Flexibility Act analysis. NMFS also did not receive comments on or related to baseline information on observer provider insurance premium costs, and thus the agency's estimates of such costs remains unchanged from the IRFA.

Small Business Compliance Guide

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that, for each rule or group of related rules for which an agency is required to prepare a FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as small entity compliance guides. As part of the rulemaking process, NMFS prepared a small entity compliance guide, which will be sent to all interested parties.

List of Subjects

50 CFR Part 600

Administrative practice and procedure, Confidential business information, Fish, Fisheries, Fishing, Fishing vessels, Foreign relations, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Statistics.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

50 CFR Part 660

Fisheries, Fishing, Indians, Recreation and recreation areas, Reporting and recordkeeping requirements, Treaties.

50 CFR Part 679

Alaska, Fisheries, Reporting and recordkeeping requirements.

Dated: August 31, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 600, 648, 660, and 679, are amended as follows:

PART 600—MAGNUSON-STEVENS ACT PROVISIONS

■ 1. The authority citation for 50 CFR part 600 continues to read as follows:

Authority: 5 U.S.C. 561 and 16 U.S.C. 1801 *et seq.*

■ 2. Add § 600.748 to subpart H to read as follows:

§ 600.748 National Minimum Observer Provider Insurance Standard.

(a) *Applicability.* As part of regulations for observer provider companies to obtain approval or a permit to deploy a person in any mandatory or voluntary observer program, or regulations that specify approved or permitted observer provider responsibilities, NMFS must reference and ensure compliance with the following national minimum insurance standard.

(b) *Policies and Coverage Amounts.* (1) Marine General Liability ($1 million any one occurrence or as provided under paragraph (d) of this section).

(2) Marine Employers Liability ($1 million any one occurrence or as provided under paragraph (d) of this section) for an observer provider that is authorized, or has applied to be authorized, to deploy observers or monitors at-sea.

(3) State workers' compensation as required by each state in which the observer provider is authorized, or has applied to be authorized, to deploy observers or monitors at-sea or shoreside.

(4) U.S. Longshore and Harbor Workers' Act coverage, either as a stand-alone policy or as a state workers' compensation policy endorsement, if that policy or a policy endorsement is required by the respective state(s) in which the observer provider is authorized, or has applied to be authorized, to deploy observers or monitors at-sea or shoreside.

(5) Excess or umbrella coverage ($2 million any one occurrence).

(c) *Scope of coverages.* Coverage must extend to injury, liability, and accidental death during the period of employment, including training, of observers or monitors at-sea or shoreside.

(d) *Combined coverage amounts.* Coverage amounts specified for Marine General Liability and Marine Employers Liability may be higher or lower for each respective policy so long as the combined coverage for these policies is $2 million.

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

■ 3. The authority citation for 50 CFR part 648 continues to read as follows:

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

■ 4. In § 648.11, revise paragraph (h)(3)(vii) to read as follows:

§ 648.11 Monitoring coverage.

* * * * *

(h) * * *

(3) * * *

(vii) Evidence of holding insurance specified at § 600.748(b) and (c) of this chapter.

* * * * *

■ 5. In § 648.87, revise paragraph (b)(4)(i)(G) to read as follows:

§ 648.87 Sector allocation.

* * * * *

(b) * * *

(4) * * *

(i) * * *

(G) Evidence of holding insurance specified at § 600.748(b) and (c) of this chapter.

* * * * *

PART 660—FISHERIES OFF WEST COAST STATES

■ 6. The authority citation for 50 CFR part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.,* 16 U.S.C. 773 *et seq.,* and 16 U.S.C. 7001 *et seq.*

■ 7. In § 660.17, revise paragraph (f)(1)(vii)(B) to read as follows:

§ 660.17 Catch monitor program.

* * * * *

(f) * * *

(1) * * *

(vii) * * *

(B) The observer provider must submit copies of ''certificates of insurance,'' that names the Catch Monitor Program Coordinator as the ''certificate holder'' to the Catch Monitor Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

■ 8. In § 660.140, revise paragraph (h)(5)(xi)(C) to read as follows:

§ 660.140 Shorebased IFQ Program.

* * * * *

(h) * * *

(5) * * *

(xi) * * *

(C) *Certificates of insurance.* The observer provider must submit copies of ''certificates of insurance'' that name the Northwest Fisheries Science Center Observer Program manager as the ''certificate holder'' to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

■ 9. In § 660.150, add paragraph (j)(4)(xi)(A)(*6*), and revise paragraph (j)(4)(xi)(B)(*3*) to read as follows:

§ 660.150 Mothership (MS) Coop Program.

* * * * *

(j) * * *

(4) * * *

(xi) * * *

(A) * * *

(*6*) *Certificates of insurance.* The observer service provider must submit copies of ''certificates of insurance'' that name the Northwest Fisheries Science Center Observer Program manager as the ''certificate holder'' to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

(B) * * *

(*3*) *Certificates of insurance.* The observer provider must submit copies of ''certificates of insurance'' that name the Northwest Fisheries Science Center Observer Program manager as the ''certificate holder'' to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

■ 10. In § 660.160, add paragraph (g)(1)(v) to read as follows:

§ 660.160 Catcher/processor (C/P) Coop Program.

* * * * *

(g) * * *

(1) * * *

(v) *Certificates of insurance.* The observer provider must submit copies of ''certificates of insurance'' that name the Northwest Fisheries Science Center Observer Program manager as the ''certificate holder'' to the Observer Program Office by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

■ 11. The authority citation for 50 CFR part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.;* 1801 *et seq.;* 3631 *et seq.;* Pub. L. 108–447; Pub. L. 111–281.

■ 12. In § 679.52, revise paragraph (b)(11)(vi) to read as follows:

§ 679.52 Observer provider permitting and responsibilities.

* * * * *

(b) * * *

(11) * * *

(vi) *Certificates of insurance.* Copies of ''certificates of insurance'' that name the NMFS Observer Program leader as the ''certificate holder'' must be submitted to the Observer Program by February 1 of each year. The certificates of insurance shall verify all coverage provisions specified at § 600.748(b) and (c) of this chapter and state that the insurance company will notify the certificate holder if insurance coverage is changed or canceled.

* * * * *

[FR Doc. 2022–19146 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0119; RTID 0648–XC282]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; General Category September Quota Transfer

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS is transferring 90.5 metric tons (mt) of Atlantic bluefin tuna (BFT) quota from the Reserve category to the General category. With this transfer, the adjusted General category September 2022 subquota is 225.5 mt. This action is intended to account for an accrued overharvest of 20.5 mt from previous time period subquotas and to provide further opportunities for General category fishermen to participate in the September General category fishery, based on consideration of the regulatory determination criteria regarding inseason adjustments. This action applies to Atlantic tunas General category (commercial) permitted vessels and Highly Migratory Species (HMS) Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT.

DATES: Effective September 7, 2022, through September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8583; Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503; or Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated Atlantic HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

The baseline General and Reserve category quotas are 587.9 mt and 31.2 mt, respectively. The General category baseline subquota is further suballocated to different time periods. Relevant to this action, the subquota for the September time period is 155.8 mt. To date for 2022, NMFS has published three actions that have resulted in adjustments to the General and Reserve category quotas, including the allowable carryover of underharvest from 2021 to 2022 (87 FR 5737, February 2, 2022; 87 FR 33049, June 1, 2022; 87 FR 43447, July 21, 2022). The current adjusted Reserve category quota is 276.7 mt.

Transfer of 90.5 mt From the Reserve Category to the General Category

Under § 635.27(a)(9), NMFS has the authority to transfer quota among fishing categories or subcategories after considering the determination criteria provided under § 635.27(a)(8). NMFS has considered all of the relevant determination criteria and their applicability to this inseason quota transfer. These considerations include, but are not limited to, the following.

Regarding the usefulness of information obtained from catches in the particular category for biological sampling and monitoring of the status of

the stock (§ 635.27(a)(8)(i)), biological samples collected from BFT landed by General category fishermen and provided by BFT dealers provide NMFS with valuable parts and data for ongoing scientific studies of BFT age and growth, migration, and reproductive status. Additional opportunity to land BFT in the General category would support the continued collection of a broad range of data for these studies and for stock monitoring purposes.

Regarding the likelihood of closure of the General category fishery if no adjustment is made (§ 635.27(a)(8)(ii) and (ix)), NMFS considered the catches and catch rates of the General category quota to date (including during the summer/fall and winter fisheries in the last several years). NMFS also took into consideration the final rule that set restricted-fishing days for the General Category through November 30, 2022 (87 FR 33056, June 1, 2022). To date, preliminary landings data indicate that the General category landed a cumulative total of 391.1 mt through August 31, which exceeds the cumulative adjusted quota available through August 31 (370.6 mt) by 20.5 mt. While the General category September time period subquota has not yet been exceeded, without a quota transfer at this time, based on catch rates in recent years in comparison to the available quota, NMFS anticipates it would likely need to close the General category fishery shortly. Once the fishery is closed, participants would have to stop BFT fishing activities even though commercial-sized BFT remain available in the areas where General category permitted vessels operate at this time of year. Transferring 90.5 mt of BFT quota from the Reserve category would account for the 20.5 mt (391.1 mt − 370.6 mt = 20.5 mt) of accrued overharvest from the prior time periods and result in an additional 70 mt (90.5 mt − 20.5 mt = 70 mt) being available for the September 2022 subquota time period, thus effectively providing limited additional opportunities to harvest the U.S. BFT quota while avoiding exceeding it.

Regarding the projected ability of the vessels fishing under the General category quota to harvest the additional amount of BFT quota transferred before the end of the fishing year (§ 635.27(a)(8)(iii)), NMFS considered General category landings over the last several years and landings to date this year. Landings are highly variable and depend on access to commercial-sized BFT and fishing conditions, among other factors. A portion of the transferred quota covers the 20.5 mt overharvest in the category to date, and NMFS anticipates that General category participants will be able to harvest the remaining 70 mt of transferred BFT quota by the end of the subquota time period. NMFS may adjust each time period's subquota based on overharvest or underharvest in the prior period and may transfer subquota from one time period to another time period. By allowing for such quota adjustments and transfers, NMFS anticipates that the General category quota would be used before the end of the fishing year. Thus, this quota transfer would allow fishermen to take advantage of the availability of BFT on the fishing grounds and provide a reasonable opportunity to harvest the available U.S. BFT quota.

NMFS also considered the estimated amounts by which quotas for other gear categories of the fishery might be exceeded (§ 635.27(a)(8)(iv)) and the ability to account for all 2022 landings and dead discards. In the last several years, total U.S. BFT landings have been below the available U.S. quota such that the United States has carried forward the maximum amount of underharvest allowed by ICCAT from one year to the next. NMFS recently took such an action to carryover the allowable 127.3 mt of underharvest from 2021 to 2022 (87 FR 33049, June 1, 2022). NMFS will need to account for 2022 landings and dead discards within the adjusted U.S. quota, consistent with ICCAT recommendations, and anticipates having sufficient quota to do that.

NMFS also considered the effects of the adjustment on the BFT stock and the effects of the transfer on accomplishing the objectives of the FMP (§ 635.27(a)(8)(v) and (vi)). This transfer would be consistent with established quotas and subquotas, which are implemented consistent with ICCAT recommendations (established in Recommendation 21–07), ATCA, and the objectives of the 2006 Consolidated HMS FMP and amendments. In establishing these quotas and subquotas and associated management measures, ICCAT and NMFS considered the best scientific information available, objectives for stock management and status, and effects on the stock. This quota transfer is in line with the established management measures and stock status determinations. Another principal consideration is the objective of providing opportunities to harvest the available General category quota without exceeding the annual quota, based on the objectives of the 2006 Consolidated HMS FMP and amendments, including to achieve optimum yield on a continuing basis and to optimize the ability of all permit categories to harvest available BFT quota allocations (related to § 635.27(a)(8)(x)). Specific to the General category, this includes providing opportunities equitably across all time periods.

Given these considerations, NMFS is transferring 90.5 mt of the available 276.7 mt of Reserve category quota to the General category. Of this amount, 20.5 mt accounts for preliminary overharvest of the January through March and June through August time period subquotas, and 70 mt is added to the September subquota to provide further opportunities for General category fishermen to participate in the September General category fishery. Therefore, NMFS adjusts the General category September 2022 subquota to 225.5 mt after accounting for the 20.5 mt of overharvest for the prior 2022 time periods and adjusts the Reserve category quota to 186.2 mt (276.7 mt − 90.5 mt = 186.2 mt). The General category fishery will remain open until September 30, 2022, or until the adjusted General category quota is reached, whichever comes first.

Monitoring and Reporting

NMFS will continue to monitor the BFT fishery closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustments, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *hmspermits.noaa.gov,* by using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available quota is not exceeded, or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at 978–281–9260, or access *hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that it is impracticable and contrary to the public interest to provide prior notice of, and an opportunity for public comment on, this action for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Affording prior notice and opportunity for public comment on the quota transfer for the September 2022 time period is impracticable. The General category fishery is underway, there was an exceedance of the August subquota, and while the September subquota has not yet been exceeded, NMFS anticipates that it will likely need to close the General category soon. Thus, NMFS needs to take this quota transfer action quickly. Delaying the action is contrary to the public interest, not only because it would likely result in a General category closure and associated costs to the fishery, but also administrative costs due to further agency action needed to re-open the fishery after quota is transferred. The delay would preclude the fishery from harvesting BFT that are available on the fishing grounds and that might otherwise become unavailable during a delay. This action does not raise conservation and management concerns. Transferring quota from the Reserve category to the General category does not affect the overall U.S. BFT quota, and available data show the adjustment would have a minimal risk of exceeding the ICCAT-allocated quota. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria. Therefore, the AA finds good cause under 5 U.S.C. 533(b)(B) to waive prior notice and the opportunity for public comment. For all of the above reasons, there is good cause under 5 U.S.C. 5523(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 2, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19437 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0119; RTID 0648–XC206]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the Harpoon Category Fishery

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the Harpoon category fishery for large medium and giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the remainder of the 2022 Harpoon category fishing season, which ends November 15, 2022, and thus for the year. This closure applies to Atlantic Tunas Harpoon category (commercial) permitted vessels.

DATES: Effective 11:30 p.m., local time, September 5, 2022, through November 15, 2022.

FOR FURTHER INFORMATION CONTACT: Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, Nicholas Velseboer, *nicholas.velsboer@noaa.gov,* 978–281–9260, or Ann Williamson, *ann.williamson@noaa.gov,* 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure notice with the Office of the Federal Register for publication when a BFT quota is reached or is projected to be reached. Retaining, possessing, or landing BFT under a quota category is prohibited on or after the effective date and time of a closure notice for that category, for the remainder of the fishing year, until the opening of the relevant subsequent quota period, or until such date as specified.

Harpoon Category Closure

The baseline U.S. BFT quota is 1,316.14 mt (§ 635.27(a)). The current baseline quota for the Harpoon category is 47.8 mt. Effective July 19, 2022, NMFS transferred 30 mt from the Reserve category to the Harpoon category, resulting in an adjusted subquota of 78.7 mt for the Harpoon category and 276.7 mt for the Reserve category (87 FR 43447, July 21, 2022).

As of September 1, 2022, reported landings for the Harpoon category total approximately 70.8 mt. Based on these landings data, as well as average catch rates and anticipated fishing conditions, NMFS projects that the adjusted Harpoon category quota of 78.7 mt will be reached shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT by persons aboard vessels permitted in the Atlantic tunas Harpoon category must cease at 11:30 p.m. local time on September 5, 2022. The Harpoon category BFT fishery will be closed for the remainder of the Harpoon category season, which ends November 15, 2022, and thus for the year. The Harpoon category will reopen automatically on June 1, 2023, for the 2023 fishing season. This action applies to Atlantic Tunas Harpoon category (commercial) permitted vessels, and is taken consistent with the regulations at § 635.28(a)(1).

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to implement actions in a timely manner

such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, Harpoon category vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *www.hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling 888–872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

Depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *www.hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 635, which was issued pursuant to section 304(c), and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, for the following reasons:

The regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and an opportunity to comment is impracticable and contrary to the public interest. This fishery is currently underway and delaying this action could result in BFT landings exceeding the Harpoon category quota. For all of the above reasons, there is good cause under 5 U.S.C. 553(d) to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 1, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19325 Filed 9–2–22; 11:15 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220223–0054: RTID 0648–XC350

Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod in the Bering Sea and Aleutian Islands Management Area

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by American Fisheries Act trawl catcher/processors in the Bering Sea and Aleutian Islands Management Area (BSAI). This action is necessary to fully use the 2022 total allowable catch of Pacific cod allocated to American Fisheries Act trawl catcher/processors in the BSAI.

DATES:

Effective date: Effective 1200 hours, Alaska local time (A.l.t.), September 6, 2022, through 1200 hours, A.l.t., November 1, 2022.

Comments due date: Comments must be received at the following address no later than 4:30 p.m., A.l.t., September 23, 2022.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2022–0076, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0076 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Josh Keaton, Acting Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Krista Milani, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for Groundfish of the Bering Sea and Aleutian Islands Management Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR parts 600 and 679.

NMFS closed directed fishing for Pacific cod by American Fisheries Act trawl catcher/processors in the BSAI under § 679.20(d)(1)(iii) on January 20, 2022 (87 FR 3048, January 20, 2022).

NMFS has determined that as of September 2, 2022, approximately 900 metric tons of Pacific cod remain in the 2022 Pacific cod total allowable catch (TAC) allocated to the American Fisheries Act trawl catcher/processors in the BSAI. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2022 TAC of Pacific cod in the BSAI, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by American Fisheries Act trawl catcher/processors in the BSAI. The Administrator, Alaska Region, NMFS, considered the following factors in reaching this decision: (1) the current catch of Pacific cod by American Fisheries Act trawl catcher/processors in the BSAI and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion, and would delay the opening of directed fishing for Pacific cod by American

Fisheries Act trawl catcher/processors in the BSAI. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of September 6, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by American Fisheries Act trawl catcher/processors in the BSAI to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until September 23, 2022.

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

Dated: September 2, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19450 Filed 9–6–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 173
Thursday, September 8, 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.

FEDERAL ELECTION COMMISSION

11 CFR Parts 1, 4, 5, 6, 100, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 116, 200, 201, 300, 9003, 9004, 9007, 9032, 9033, 9034, 9035, 9036, 9038, and 9039

[NOTICE 2022–18]

Technological Modernization

AGENCY: Federal Election Commission.

ACTION: Request for additional comment.

SUMMARY: The Federal Election Commission is seeking additional public comment on previously proposed rules that would modernize the agency's regulations in light of technological advances in communications, recordkeeping, and financial transactions, and that would eliminate and update references to outdated technologies and address similar technological issues.

DATES: Comments must be submitted on or before October 11, 2022.

ADDRESSES: All comments must be in writing. Commenters may submit comments electronically via the Commission's website at *http://sers.fec.gov/fosers/,* reference REG 2013–01.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Joanna S. Waldstreicher or Mr. Tony Buckley, Attorneys, Office of the General Counsel, at *techmod@fec.gov.*

SUPPLEMENTARY INFORMATION: The Federal Election Commission is seeking additional public comment on certain aspects of its prior proposals to modernize campaign finance regulations in light of technological advances. The Commission published its proposals in a Notice of Proposed Rulemaking (''NPRM'') on November 2, 2016.[1] The Commission had previously issued an Advance Notice of Proposed Rulemaking (''ANPRM'') on the subject.[2] The Commission received several public comments in response to both the ANPRM and the NPRM, which are available on the Commission website, at *https://sers.fec.gov/fosers/search.htm* (search for REG 2013–01).

The Commission is now seeking additional public comment about any technological developments that may have occurred following publication of the NPRM that would be relevant to the Commission's consideration of its proposed rules. In particular, the Commission is soliciting updated information regarding electronic payment processing, newer electronic payment technologies, and contributions made via prepaid cards, to ensure that its understanding of the relevant technologies and associated practices in these areas is up to date.

Payment Processing

Several of the Commission's proposed rules relate to the standards and practices that vendors and payment processors use to process payments made by credit card, debit card, prepaid card, and other electronic payment methods such as text message and direct carrier billing. Some of the proposed rules also concern the methods by which vendors and payment processors verify a payor's identity, attribute payments, and collect, maintain, and transmit transaction records. The Commission seeks comment on whether practices in these areas have changed since publication of the NPRM in ways that would affect the applicability and utility of the proposed rules.

The Commission also seeks additional comment on proposed revisions to its regulations regarding when a contribution initiated through electronic means is considered to be ''made'' and ''received.'' Specifically, in the NPRM the Commission proposed to revise 11 CFR 110.1(b)(6), which describes when a contribution is ''made.'' As revised, it would state that ''[a] contribution made in an electronic transaction is considered to be made when the contributor authorizes the transaction,'' even if the contributor has not yet transmitted any funds. Similarly, the Commission proposed to revise 11 CFR 102.8(a) and (b)(2), which describe when a person ''receives'' a contribution for a political committee and must forward the contribution to the political committee's treasurer. As revised, the ''date of receipt'' of ''a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds'' would be the date the person ''obtains the contributor's authorization of the transaction.'' Finally, the Commission recognized that many electronically initiated contributions to political committees—including contributions made via text message or internet-based platforms—are first received by commercial entities that process the contributions electronically. Accordingly, the Commission proposed new 11 CFR 102.8(d), which would provide that ''[e]very person whose usual and normal business involves the processing and transmission of payments and who processes a contribution to a political committee in the ordinary course of its business will satisfy the [forwarding] requirements . . . if such person transmits funds and contributor information to the recipient political committee within the time periods prescribed,'' even if the payment processor has not yet received any funds from the contributor.

The Commission received one comment on these proposals. The commenter, a wireless communication industry trade association, opposed the proposals as applied to wireless companies involved in direct carrier billing.[3] The commenter stated that

[1] Technological Modernization, 81 FR 76416 (Nov. 2, 2016).

[2] Technological Modernization, 78 FR 25635 (May 2, 2013).

[3] The commenter described direct carrier billing as ''a payment process . . . which enables

Continued

''[w]ireless companies do not front—in the ordinary course of business—money to merchants, political committees, or other designated recipients of funds before the customer pays his or her wireless bill,'' and asserted that ''[a]ny regulatory requirement that would force money to be transferred to political committees sooner than standard business practices dictate will preclude wireless carriers from offering DCB as a means of processing political contributions.'' [4] The commenter characterized these proposals as effectively ''overturn[ing] the conclusion in the m-Qube advisory opinion—and preclud[ing] political contributions made by the processes approved therein.'' [5]

The Commission invites additional comment on the proposed rules in light of these statements, and on current processes used by the wireless communication industry to process contributions to political committees. For example, how prevalent is direct carrier billing in processing payments generally, and contributions to political committees in particular? Under current processes, would these proposals, if adopted, require wireless carriers or other companies participating in processing contributions to depart from their standard business practices? Do wireless carriers or other companies typically extend credit to political committees and other customers as described in Advisory Opinion 2012–17 (Red Blue T, Armour Media, m-Qube)? Would the proposals present an obstacle to direct carrier billing or other methods wireless carriers use in processing political contributions? Do connection aggregators still engage in factoring as described in Advisory Opinion 2012–17 (Red Blue T, Armour Media, m-Qube)? What other post-NPRM developments in the processing of electronic payments should the Commission consider?

Electronic Payment Technologies

Some of the Commission's proposed rules also relate to newer electronic payment methods such as PayPal, Venmo, BitPay, Square, and other electronic wallet, swipe P2P, mobile app, and social media payment platforms. The Commission seeks comment on whether practices in these areas have changed since publication of the NPRM in ways that would affect the applicability and utility of the proposed rules. The Commission also seeks comment on whether additional new methods of electronic payment have been developed or become more commonly used, that would be affected by the existing or proposed rules in ways that the Commission has not yet considered.

Contributions by Prepaid Cards

The Commission also proposed revisions to its regulations with respect to contributions made by prepaid cards. Like currency, prepaid cards are easily transferable and relatively untraceable. They are not linked to a customer's identity, and they are not associated with a depository institution and thus are not subject to those institutions' ''know-your-customer'' obligations under federal law.

Accordingly, the Commission proposed to update its rules to apply the limitations on contributions of cash or currency at 11 CFR 110.4(c) to contributions made by prepaid cards, to clarify that a ''cash contribution'' includes a contribution made using a prepaid card. The Commission also proposed a conforming change to 11 CFR 110.4(c)(1) by updating the current prohibition on making contributions aggregating more than $100 in ''currency of the United States, or of any foreign country'' to apply to any ''cash contribution,'' as provided in new 11 CFR 110.4(c)(4).

The Commission received one comment on this proposal. The commenter, a non-connected political committee that processes electronic contributions, opposed treating prepaid cards differently from other electronic contributions.[6] The commenter acknowledged that prepaid cards could be used to evade campaign finance regulations, but pointed out that ''[n]o online contribution is ever made without the contributor providing identifying information.'' [7] The commenter further stated that a ''committee to whom the card number is presented online for payment is unlikely to know that it is a prepaid card.'' [8] The Commission requests feedback on these two statements by this commenter. First, as a practical matter, are online contributions made by prepaid cards always accompanied by sufficient identifying information about the contributor to enable recipient political committees to fulfill their reporting obligations and avoid accepting prohibited contributions? Are there any ways in which the process of making a contribution using a prepaid card differs from the process of making a contribution using a credit card, such as the information collected or the way the card number is provided? Second, are recipient political committees actually able to determine whether online contributions are made using prepaid cards? How do (or could) they make that determination?

The same commenter also stated that it ''would not be practical to expect that the payment industry would limit all transactions using these cards to $100 to accommodate campaign finance regulations.'' [9] The Commission's understanding, however, is that prepaid card issuers are able to exclude certain categories of merchants from receiving payments made by prepaid cards.[10] Is this understanding accurate? Do prepaid card issuers, in fact, exclude certain categories of merchants from receiving payments made by prepaid cards? Could political committees, as a category of merchants, use this or another mechanism (such as partial authorization) to decline contributions made by prepaid cards either entirely or in excess of $100? The Commission is interested in how this might work in practice. For example, does Merchant Category Code 8651 (''political organizations'') cover all political committees (including separate segregated funds, party committees, and nonconnected committees), or only a

consumers to purchase goods and services by charging them to a wireless bill.'' CTIA, Comment at 1 (Dec. 2, 2016), REG 2013–01.

[4] CTIA, Comment at 9.

[5] *Id.* In Advisory Opinion 2012–17 (Red Blue T, Armour Media, m-Qube), which concerned the use of text messaging to raise funds for political committees, the Commission concluded that ''[u]nder m-Qube's proposed factoring arrangement, which is similar to how credit card contributions are handled, the Commission considers the contributions to be received at the time of the opt-in, as opposed to when the bill is paid.'' Advisory Opinion 2012–17 (Red Blue T, Armour Media, m-Qube) at 6. The Commission further concluded that ''because m-Qube's factored payments will be extensions of credit under 11 CFR part 116,'' the payments would not constitute prohibited corporate contributions by m-Qube. *Id.* at 9. Consequently, because ''the factored payments are extensions of credit by m-Qube in the ordinary course of business and are not contributions that m-Qube has received and forwarded, the factored payments do not trigger the forwarding requirements of [52 U.S.C. 30102(b)] and 11 CFR 102.8.'' *Id.* at 10.

[6] ActBlue, Comment at 3 (June 3, 2013), REG 2013–01.

[7] *Id.* at 6.

[8] *Id.*

[9] *Id.*

[10] *See, e.g.,* Visa, Visa Core Rules and Visa Product and Service Rules 258 (2022), *https://www.visa.com.bs/content/dam/VCOM/download/about-visa/visa-rules-public.pdf* (indicating that selective authorization may be based on criteria including merchant category classification); Visa Merchant Data Standards Manual, Visa Supp. Requirements 101 (2021), visa-merchant-data-standards-manual.pdf (listing ''political organizations'' as Merchant Category Code 8651); *see also* U.S. Dept. of Labor, Description for 8651: Political Organizations | Occupational Safety and Health Administration (*osha.gov*) (describing ''political organizations'' in SIC 8651 as including ''Political Action Committees (PACs),'' ''Political campaign organizations,'' and ''Political fundraising (except on a contract or fee basis'')).

subset? [11] Is it possible to exclude political committees without also excluding any non-political committees that might also fall under MCC 8651? Who would request the political committees' exclusion, and who would be responsible for putting their exclusion into effect?

What other means do political committees have to limit or decline contributions made by prepaid cards? Can individual merchants set limits on the amounts of payments they will accept using prepaid cards? Are there other factors relating to the mechanisms of prepaid card transactions that the Commission should take into consideration?

Finally, the Commission invites comments on whether it should consider any other post-NPRM developments in the processing of electronic payments in general, or prepaid cards in particular, before promulgating final rules.

Conclusion

The Commission's goal in this rulemaking is to promulgate final rules that are flexible enough to encompass both traditional and electronic forms of payments and communications, and that remain relevant as new forms of information storage and payment methods emerge in the future. Accordingly, the Commission welcomes comment on any other recent innovations in technologies used for recordkeeping, payment processing, or communications that would affect issues addressed by this rulemaking.

Dated: August 31, 2022.

On behalf of the Commission.

Allen J. Dickerson,

Chairman, Federal Election Commission.

[FR Doc. 2022–19382 Filed 9–7–22; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0816; Project Identifier AD–2022–00355–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain The Boeing Company Model 747–8 and –8F series airplanes. This proposed AD was prompted by reports of cracking in stringers and splice fittings located at stringer splices at multiple body stations. This proposed AD would require an inspection of each free flange of the stringers at the stringer splice for the presence of radius fillers at fastener locations, an inspection for cracking of the stringers and stringer splice fittings at certain stringer splice locations, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 24, 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 *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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *www.myboeingfleet.com.* You may view this referenced 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. It is also available at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0816.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0816; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *stefanie.n.roesli@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–2022–0816; Project Identifier AD–2022–00355–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *stefanie.n.roesli@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

[11] *See* Visa Merchant Data Standards Manual, Visa Supp. Requirements 101 (2021), visa-merchant-data-standards-manual.pdf (listing ''political organizations'' as Merchant Category Code 8651).

Background

The FAA has received a report indicating that during inspections for foreign object debris (FOD), two airplanes were found to have cracking at multiple stringers at splice locations. Nine additional airplanes were also found to have similar cracking in stringer splices at multiple body stations. The cracking was attributed to sustained internal tensile stresses in the splice joints induced during assembly, which, over time and under normal operating conditions, caused a localized rupture of the material from stress corrosion cracking. This condition, if not addressed, could result in inability of a structural element to sustain limit load and could affect structural integrity of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–53A2907 RB, dated March 3, 2022. This service information specifies procedures for an inspection of each free flange of the stringers at the stringer splice for the presence of radius fillers at fastener locations, an inspection for cracking of the stringers and stringer splice fittings at certain stringer splice locations, and applicable on-condition actions. On-condition actions include follow-on detailed inspections for cracking or the presence of radius fillers, removal or installation of radius fillers, and repair.

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 **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described and except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0816.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 40 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection for radius filler	1 work-hour × $85 per hour = $85	None	$85	$3,400
Inspection for cracking	1 work-hour × $85 per hour = $85	None	85	3,400

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

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Inspection for cracking or for radius fillers	1 work-hour × $85 per hour = $85	None	$85
Removing radius fillers and inspection	7 work-hours × $85 per hour = $595	None	595
Replacement of cracked splice channel	300 work-hours × $85 per hour = $85	$809	26,309

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

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:

The Boeing Company: Docket No. FAA–2022–0816; Project Identifier AD–2022–00355–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to The Boeing Company Model 747–8, and –8F series airplanes, certificated in any category, as identified in Boeing Alert Requirements Bulletin 747–53A2907 RB, dated March 3, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 53, Fuselage.

(e) Unsafe Condition

This AD was prompted by reports of cracking in stringers and splice fittings located at stringer splices at multiple body stations. The FAA is issuing this AD to address such cracking, which could result in the inability of a structural element to sustain limit load and could affect structural integrity of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2907 RB, dated March 3, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–53A2907 RB, dated March 3, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–53A2907, dated March 3, 2022, which is referred to in Boeing Alert Requirements Bulletin 747–53A2907 RB, dated March 3, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–53A2907 RB, dated March 3, 2022, use the phrase ''the original issue date of Requirements Bulletin 747–53A2907 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–53A2907 RB, dated March 3, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Stefanie Roesli, Aerospace Engineer, Airframe Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone: 206–231–3964; email: *stefanie.n.roesli@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *www.myboeingfleet.com.* You may view this referenced 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 July 5, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–19297 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1058; Project Identifier AD–2022–00256–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2021–07–09, which applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. AD 2021–07–09 requires repetitively inspecting all trim air diffuser ducts or sidewall riser duct assemblies (collectively referred to as TADDs) for damage, including repetitive structural inspections of the center fuel tanks for damage, and applicable on-condition actions. Since the FAA issued AD 2021–07–09, the agency has determined that the existing requirements do not adequately address the unsafe condition. This proposed AD would continue to require repetitive inspections of the TADDs for damage with revised compliance times, and repair if applicable. This proposed AD would also require repetitive replacement of the TADDs and would remove the structural inspections of the center fuel tanks. This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 24, 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 *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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1058.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1058; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Nicole S. Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@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–2022–1058; Project Identifier AD–2022–00256–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 *regulations.gov,* including any personal information you provide. The agency will also post a report summarizing each substantive verbal contact received about this proposed AD.

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Nicole S. Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2021–07–09, Amendment 39–21486 (86 FR 17899, April 7, 2021) (AD 2021–07–09), for all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. AD 2021–07–09 was prompted by reports of sealant deteriorating on the outside of the center wing fuel tank and analysis showing that sealant may deteriorate inside the tank due to excess heat from TADDs. AD 2021–07–09 was also prompted by reports indicating that the high temperature composite material TADD failed. AD 2021–07–09 requires replacing original fiberglass fabric material with high temperature composite material TADDs, repetitively inspecting the TADDs for damage, and as applicable inspecting the center wing fuel tank secondary fuel barrier coating and primary sealant for damage, and repairing damage. The agency issued AD 2021–07–09 to address potential hot air leakage from original fiberglass fabric material or high temperature composite material TADD that can cause damage to the center wing fuel tank secondary fuel barrier coating and primary sealant, which can cause fuel leakage into an ignition zone, possibly resulting in a fire or explosion.

Actions Since AD 2021–07–09 Was Issued

The FAA issued AD 2021–07–09 as an interim action and indicated that the FAA might consider additional rulemaking. Since AD 2021–07–09 was issued, Boeing received further data from operators complying with AD 2021–07–09 and continued to investigate the unsafe condition. Based on the information Boeing received, the FAA has determined that the existing requirements do not adequately address the unsafe condition.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022. This service information specifies procedures for repetitive detailed inspections for damage of TADDs made of original fiberglass fabric material and high temperature composite material, repetitive replacement of TADDs, and repair of damaged TADDs.

The FAA also reviewed Boeing Alert Service Bulletin 747–21A2577, Revision 1, dated March 9, 2022. This service information specifies, among other things, the list of original fiberglass fabric material TADD assembly part numbers in Appendix A of Boeing Alert Service Bulletin 747–21A2577, Revision 1, dated March 9, 2022, and a list of high temperature composite material TADD assembly part numbers in Appendix B of Boeing Alert Service Bulletin 747–21A2577, Revision 1, dated March 9, 2022. Appendix A and Appendix B of Boeing Alert Service Bulletin 747–21A2577, Revision 1, dated March 9, 2022, were not included in Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022. The parts listed in Appendix A are affected parts that are prohibited from installation.

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.

Proposed AD Requirements in This NPRM

Although this proposed AD does not explicitly restate the requirements of AD 2021–07–09, this proposed AD would retain certain requirements of AD 2021–07–09. Those requirements are referenced in the service information identified previously, except for any differences identified as exceptions in the regulatory text of this proposed AD;

that service information, in turn, is referenced in paragraph (g) of this proposed AD. This proposed AD would continue to require repetitive inspections of the TADDs for damage (loose connection between a TADD and the adjacent duct, delamination, removed surface material, softened material, or blackened material on the TADD surface that can be easily rubbed off by hand) with revised compliance times, and repair if applicable. For certain airplane configurations, the TADDs' repetitive inspection intervals were reduced from 3,600 flight hours to 1,200 flight hours if the number of flight hours since the TADD replacement are not known. For airplanes with certain configurations and certain conditions, the TADDs' repetitive inspection intervals were increased from 1,200 flight hours after replacement to 16,000 flight hours after replacement. This proposed AD would also require repetitive replacement of the TADDs and would remove the structural inspections of the center fuel tanks. In addition, this proposed AD would also prohibit the installation of affected parts.

For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2022–1058.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 104 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Retained repetitive inspections (AD2021–07–09).	Up to 44 work-hours × $85 per hour = up to $3,740 per inspection cycle.	$0	Up to $3,740 per inspection cycle.	Up to $388,960 per inspection cycle.
Repetitive TADD replacement.	Up to 49 work-hours × $85 per hour = $4,165 per replacement cycle.	Up to $12,000	Up to $16,165 per inspection cycle.	Up to $1,681,160 per replacement cycle.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

The FAA has included all known costs in its cost estimate. According to the manufacturer, however, some or all of the costs of this proposed AD may be covered under warranty, thereby reducing the cost impact on affected operators.

Authority for This Rulemaking

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

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

Regulatory Findings

The FAA has determined that this proposed AD would not have federalism implications under Executive Order 13132. This proposed AD would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government.

For the reasons discussed above, I certify that the proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:

■ a. Removing Airworthiness Directive (AD) 2021–07–09, Amendment 39–21486 (86 FR 17899, April 7, 2021), and

■ b. Adding the following new AD:

The Boeing Company: Docket No. FAA–2022–1058; Project Identifier AD–2022–00256–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) action by October 24, 2022.

(b) Affected ADs

This AD replaces AD 2021–07–09, Amendment 39–21486 (86 FR 17899, April 7, 2021) (AD 2021–07–09).

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 21, Air conditioning.

(e) Unsafe Condition

This AD was prompted by reports of sealant deteriorating on the outside of the center wing fuel tank and analysis showing that sealant could deteriorate inside the fuel tank due to excess heat from trim air diffuser ducts or sidewall riser duct assemblies (collectively referred to as TADDs), and by the determination that existing requirements do not adequately address the unsafe condition. The FAA is issuing this AD to address potential hot air leakage from original fiberglass fabric material or high temperature composite material TADDs that can cause damage to the center wing fuel tank secondary fuel barrier coating and primary sealant, which can cause fuel leakage into an ignition zone, possibly resulting in a fire or explosion.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–21A2577, Revision 1, dated March 9, 2022, which is referred to in Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time column of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022, uses the phrase ''the Revision 1 date of Requirements Bulletin 747–21A2577 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (k) of this AD.

(3) Where Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022, refers to ''new high temperature composite material TADD,'' for this AD high temperature composite material TADD is defined as the list of TADDs, indicated by part numbers, in Appendix B of Boeing Alert Service Bulletin 747–21A2577, Revision 1, dated March 9, 2022.

(4) Where Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022, refers to ''original fiberglass fabric material TADD,'' for this AD, original fiberglass fabric material TADD is defined as the list of TADDs, indicated by part numbers, in Appendix A of Boeing Alert Service Bulletin 747–21A2577, Revision 1, dated March 9, 2022.

(i) Parts Installation Prohibition

As of the effective date of this AD, no person may install an original fiberglass fabric material TADD assembly, having a part number listed in Appendix A of Boeing Alert Service Bulletin 747–21A2577, Revision 1, dated March 9, 2022, on any airplane.

(j) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin 747–21A2577 RB, dated February 18, 2020, which was incorporated by reference in AD 2021–07–09.

(k) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(4) AMOCs approved for AD 2021–07–09 are approved as AMOCs for the corresponding provisions of Boeing Alert Requirements Bulletin 747–21A2577 RB, Revision 1, dated March 9, 2022, that are required by paragraph (g) of this AD.

(l) Related Information

(1) For more information about this AD, contact Nicole S. Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@faa.gov*.

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110 SK57, Seal Beach, CA 90740 5600; telephone 562–797–1717; internet *myboeingfleet.com*. You may view this referenced 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 17, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–19273 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1061; Project Identifier AD–2022–00441–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company 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 The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes. This proposed AD was prompted by a report indicating that a crack was found in one of the holes of the wing rear spar lower chord at the main landing gear (MLG) aft fitting at a certain wing buttock line (WBL). This proposed AD would require repetitive open hole high frequency eddy current (HFEC) inspections or surface HFEC and ultrasonic (UT) inspections for cracking of the wing rear spar lower chord at the MLG aft fitting at a certain WBL, and applicable on-condition actions. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by October 24, 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 *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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com*. You may view this referenced 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. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1061.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1061; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; email: *wayne.ha@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–2022–1061; Project Identifier AD–2022–00441–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; email: *wayne.ha@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that cracking was found in one of the holes of the wing rear spar lower chord at the MLG aft fitting at WBL 157 on a Model 737–400 airplane. The airplane had accumulated 52,936 total flight hours and 43,944 total flight cycles at the time of the crack finding. Cracking in the rear spar lower chord at a fastener common to the MLG aft support fitting at WBL 157, if not addressed, could result in the inability of the rear spar lower chord to sustain limit loads, resulting in reduced structural integrity of the airplane and possible loss of control of the airplane.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022. This service information specifies procedures for repetitive open hole HFEC inspections or surface HFEC and UT inspections for cracking, and applicable on-condition actions. On-condition actions include installing fasteners and repair.

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 **ADDRESSES**.

Explanation of Applicability

Model 737 airplanes having line numbers 1 through 291 have a limit of validity (LOV) of 34,000 total flight cycles, and the actions proposed in this NPRM, as specified in Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022, would be required at a compliance time occurring after that LOV. Although operation of an airplane beyond its LOV is prohibited by 14 CFR 121.1115 and 129.115, this NPRM would include those airplanes in the applicability so that these airplanes are tracked in the event the LOV is extended in the future.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2022–1061.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 69 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Open hole HFEC inspection	30 work-hours × $85 per hour = $2,550 per inspection cycle.	$0	$2,550 per inspection cycle	Up to $175,950 per inspection cycle.
Surface HFEC/UT inspections.	4 work-hours × $85 per hour = $340 per inspection cycle.	0	$340 per inspection cycle ...	Up to $23,460 per inspection cycle.

The FAA estimates the following costs to do any necessary fastener installations that would be required based on the results of the proposed inspection. The agency has no way of determining the number of aircraft that might need these installations:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Install fasteners	1 work-hour × $85 per hour = $85	*$0	$85

*The FAA anticipates no parts cost because operators will have spare fasteners in stock.

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

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:

The Boeing Company: Docket No. FAA–2022–1061; Project Identifier AD–2022–00441–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 737–100, –200, –200C, –300, –400, and –500 series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by a report indicating that a crack was found in one of the holes of the wing rear spar lower chord at the main landing gear (MLG) aft fitting at wing buttock line (WBL) 157. The FAA is issuing this AD to address cracking in the rear spar lower chord at a fastener common to the MLG aft support fitting. This condition, if not addressed, could result in the inability of the rear spar lower chord to sustain limit loads, resulting in reduced structural integrity of the airplane and possible loss of control of the airplane.

(f) Compliance

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

(g) Required Actions for Group 1 Airplanes

For airplanes identified as Group 1 in Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022: Within 120 days after the effective date of this AD, inspect the airplane and do all applicable on-condition actions using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(h) Required Actions for Group 2 and Group 3 Airplanes

For airplanes identified as Group 2 and Group 3 in Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022: Except as specified by paragraph (h) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–57A1353, dated February 10, 2022, which is referred to in Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022.

(i) Exceptions to Service Information Specifications

(1) Where the Compliance Time columns of the tables in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022, use the phrase ''the original issue date of Requirements Bulletin 737–57A1353 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 737–57A1353 RB, dated February 10, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair using a method approved in accordance with the procedures specified in paragraph (j) of this AD.

(j) Alternative Methods of Compliance (AMOCs)

(1) The Manager, Los Angeles ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the

certification office, send it to the attention of the person identified in paragraph (k)(1) of this AD. Information may be emailed to: *9-ANM-LAACO-AMOC-Requests@faa.gov.*

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Los Angeles ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(k) Related Information

(1) For more information about this AD, contact Wayne Ha, Aerospace Engineer, Airframe Section, FAA, Los Angeles ACO Branch, 3960 Paramount Boulevard, Lakewood, CA 90712–4137; phone: 562–627–5238; email: *wayne.ha@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com.* You may view this referenced 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 19, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–19271 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1055; Project Identifier AD–2022–00573–T]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes. This proposed AD was prompted by reports of two landing incidents in which the alpha limiter engaged in the landing flare in unstable air, resulting in high rate of descent landings and damage to the airplanes. This proposed AD would require updating the flight control computer (FCC) software. 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 24, 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 *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.

Examining the AD Docket

You may examine the AD docket at regulations.gov by searching for and locating Docket No. FAA–2022–1055; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Myles Jalalian, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5572; email: *9-ASO-ATLACO-ADs@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–2022–1055; Project Identifier AD–2022–00573–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to 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 Myles Jalalian, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5572; email: *9-ASO-ATLACO-ADs@faa.gov*. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating two landing incidents in which the alpha limiter engaged in the landing flare in unstable air, resulting in high rate of descent landings and damage to the airplanes. These incidents occurred on Model GVII–G500 airplanes on February 6, 2020 and April 4, 2022. In both events, the angle of attack (AOA) protection function (alpha limiter) of the FCC engaged and overrode the pilot pitch control inputs which the flight control law erroneously predicted would exceed the stall AOA. This resulted in a high rate of descent landing on the runway. Additionally, the pilots in both events had full aft-stick input when the aircraft contacted the runway, and the full-up pitch control did not arrest the high rate of descent landing.

Based on analyses and investigations performed by the FAA and Gulfstream, the root cause of the incidents was determined to be that the flight control laws did not account for the types of

control inputs experienced on the February 6, 2020 and April 4, 2022 flights. The FCC incorrectly determined the airplane was about to exceed the critical AOA, and therefore, the FCC limited the pilot's ability to input sufficient pitch control to prevent a high rate of descent landing. This condition, if not addressed, could limit pilot pitch authority during a critical phase of flight near the ground, and result in a high rate of descent landing with possible consequent loss of control of the airplane.

The FAA issued AD 2022–10–05, Amendment 39–22043 (87 FR 27494, May 9, 2022) (AD 2022–10–05), for all Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes. AD 2022–10–05 retains certain airplane flight manual (AFM) revision requirements, and also adds and replaces certain AFM sections with more restrictive limitations and procedures. The agency issued AD 2022–10–05 to address inappropriate alpha limiter engagement during the landing flare, which can limit pilot pitch authority during a critical phase of flight near the ground, and result in a high rate of descent landing with possible consequent loss of control of the airplane on landing. The FAA considered the requirements in AD 2022–10–05 an interim action to address the unsafe condition identified after the two incidents. The FAA has since determined that an update to the FCC software is also needed to address the unsafe condition.

Relationship Between This Proposed AD and AD 2022–10–05

This NPRM would not supersede AD 2022–10–05. Rather, the FAA has determined that a stand-alone AD would be more appropriate to address the changes in the FCC software. This NPRM would require updating the FCC software. Accomplishment of the proposed action would then terminate all of the requirements of AD 2022–10–05 for that airplane only.

Explanation of the Compliance Time and the Applicability

This proposed AD includes a compliance time that specifies a calendar date. In determining this compliance time, the FAA conducted a risk assessment, which indicated that all corrective actions must be implemented in the affected fleet no later than April 30, 2023 in order to remain within acceptable risk guidelines.

Additionally, this proposed AD includes an applicability of Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes with certain FCC software installed. Only airplanes with this affected FCC software need to apply the update. All in-service airplanes currently have this affected FCC software. The affected software part numbers are identified by the Gulfstream Aerospace Corporation part numbers.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Proposed AD Requirements in This NPRM

This proposed AD would require updating the FCC software. This proposed AD would also terminate all of the requirements of AD 2022–10–05 for that airplane only.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 120 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Software update	6 work-hours × $85 per hour = $510	$0	$510	$61,200

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:

Gulfstream Aerospace Corporation: Docket No. FAA–2022–1055; Project Identifier AD–2022–00573–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 24, 2022.

(b) Affected ADs

This AD affects AD 2022–10–05, Amendment 39–22043 (87 FR 27494, May 9, 2022).

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes, certificated in any category, with flight control computer (FCC) software revisions installed as specified in figure 1 to paragraph (c) of this AD.

Figure 1 to paragraph (c) – *FCC Software Revision Installed*

Model–	Nomenclature–	Gulfstream Aerospace Corporation Part Number (P/N)–
GVII-G500 airplanes	FCC COM-MON Module A	72P2700001Z100-SW6.3
	FCC COM-MON Module B	72P2700001Z200-SW6.3
GVII-G600 airplanes	FCC COM-MON Module A	72P2700001Z100-SW8.1
	FCC COM-MON Module B	72P2700001Z200-SW6.3

Note 1 to paragraph (c): The FCC software label, which identifies the software revision installed, can be found on the face of the FCC module. The FCC modules are installed within the left and right electronic equipment racks. The labels may be viewed by opening the rack doors and removing 4 screws per FCC (8 screws total per airplane) from the FCC cover.

(d) Subject

Air Transport Association (ATA) of America Code 27, Flight controls.

(e) Unsafe Condition

This AD was prompted by reports of two landing incidents where the alpha limiter engaged in the landing flare in unstable air while on the approach and caused high rate of descent landings and damage to the airplane. The FAA is issuing this AD to address inappropriate alpha limiter engagement during the landing flare, which can limit pilot pitch authority during a critical phase of flight near the ground, and result in a high rate of descent landing with possible consequent loss of control of the airplane.

(f) Compliance

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

(g) Software Update

No later than April 30, 2023, update the FCC software in accordance with a method approved by the Manager, Atlanta ACO Branch, FAA.

(h) Terminating Action for AD 2022–10–05

Accomplishing the software update required by paragraph (g) of this AD on an airplane terminates all requirements of AD 2022–10–05, for that airplane only.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(j) Related Information

For more information about this AD, contact Myles Jalalian, Aerospace Engineer, Systems and Equipment Section, FAA, Atlanta ACO Branch, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5572; email: *9-ASO-ATLACO-ADs@faa.gov*.

Issued on August 15, 2022.

Gaetano A. Sciortino,

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

[FR Doc. 2022–19265 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1059; Project Identifier AD–2022–00204–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company 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 The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes. This proposed AD was prompted by reports that high temperature composite trim air diffuser ducts (TADD) showed composite degradation and signs of hot air leakage. This proposed AD would require a one-time low frequency eddy current (LFEC) inspection of certain center tank upper skin panels on the right and left side for any structural damage due to heat exposure, and repair if necessary. 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 24, 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 *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 Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com.* You may view this referenced 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. It is also available at *regulations.gov* by searching for and locating Docket No. FAA–2022–1059.

Examining the AD Docket

You may examine the AD docket at *regulations.gov* by searching for and locating Docket No. FAA–2022–1059; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@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–2022–1059; Project Identifier AD–2022–00204–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report of multiple failures of the high temperature composite material TADDs, which showed composite degradation and signs of hot air leakage. Sustained hot air leakage from damaged TADDs could result in undetected damage to adjacent airframe structure. This condition, if not addressed, could lead to heat damage to the wing center section and adjacent structure and adversely affect the structural integrity of the airplane, resulting in the inability of the structure to carry limit load and the possible loss of continued safe flight and landing.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022. This service information specifies procedures for a one-time LFEC inspection for any structural damage due to heat exposure of the center tank upper skin panels on the right and left side between station (STA) 1100–1120, 1140–1160, and 1180–1200 bays outboard of left buttock line (LBL) 98 and right buttock line (RBL) 98 seat tracks, and repair.

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 **ADDRESSES**.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* by searching for and locating Docket No. FAA–2022–1059.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 104 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
LFEC inspection	101 work-hours × $85 per hour = $8,585	$0	$8,585	$892,840

The FAA has received no definitive data on which to base the cost estimates for the on-condition repairs specified in this proposed AD.

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:

The Boeing Company: Docket No. FAA–2022–1059; Project Identifier AD–2022–00204–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 24, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 747–100, 747–100B, 747–100B SUD, 747–200B, 747–200C, 747–200F, 747–300, 747–400, 747–400D, 747–400F, 747SR, and 747SP series airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 57, Wings.

(e) Unsafe Condition

This AD was prompted by reports that high temperature composite trim air diffuser ducts (TADD) showed composite degradation and signs of hot air leakage. The FAA is issuing this AD to address sustained hot air leakage from damaged TADDs that could result in undetected damage to adjacent airframe structure. This condition, if not addressed, could lead to heat damage to the wing center section and adjacent structure and adversely affect the structural integrity of the airplane, resulting in the inability of the structure to carry limit load and the possible loss of continued safe flight and landing.

(f) Compliance

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

(g) Required Actions

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022.

Note 1 to paragraph (g): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 747–57A2370, dated March 2, 2022, which is referred to in Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022.

(h) Exceptions to Service Information Specifications

(1) Where the Compliance Time column of the table in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022, uses the phrase ''the original issue date of Requirements Bulletin 747–57A2370 RB,'' this AD requires using ''the effective date of this AD.''

(2) Where Boeing Alert Requirements Bulletin 747–57A2370 RB, dated March 2, 2022, specifies contacting Boeing for repair instructions: This AD requires doing the repair before further flight using a method approved in accordance with the procedures specified in paragraph (i) of this AD.

(i) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(j) Related Information

(1) For more information about this AD, contact Nicole Tsang, Aerospace Engineer, Cabin Safety and Environmental Systems, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3959; email: *nicole.s.tsang@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *myboeingfleet.com.* You may view this referenced 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 17, 2022.

Christina Underwood,

Acting Director, Compliance & Airworthiness Division, Aircraft Certification Service.

[FR Doc. 2022–19272 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 11

[Docket No. PTO–C–2021–0045]

RIN 0651–AD58

Changes to the Representation of Others Before the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Patent and Trademark Office (USPTO or Office) proposes to amend the rules of practice in patent cases and the rules regarding the representation of others before the USPTO to better protect the public and improve compliance with USPTO requirements. In particular, this rulemaking proposes to formalize the USPTO's Diversion Pilot Program for patent and trademark practitioners whose physical or mental health issues or law practice management issues resulted in minor misconduct. Formalizing the Pilot would align USPTO disciplinary practice with a majority of states and provide practitioners an opportunity to address the root causes of such misconduct. In addition, the USPTO proposes to require foreign attorneys or agents granted reciprocal recognition in trademark matters to provide and update their contact and status information or have their recognition withdrawn so the public will have access to up-to-date information. Also, the USPTO proposes to defer to state bars regarding fee sharing between practitioners and non-practitioners to reduce the potential for conflicts between USPTO and state bar rules. Further, the USPTO proposes to remove a fee required when changing one's status from a patent agent to a patent attorney and to make minor adjustments to other rules related to the representation of others before the USPTO.

DATES: Written comments on the proposed rule and draft diversion guidance document must be received on or before November 7, 2022.

ADDRESSES: For reasons of Government efficiency, comments on the proposed rule and draft diversion guidance document must be submitted through the Federal eRulemaking Portal at *www.regulations.gov.* To submit comments via the portal, one should enter docket number PTO–C–2021–0045 on the homepage and click ''search.'' The site will provide search results listing all documents associated with this docket. Commenters can find a reference to this rulemaking and click on the ''Comment Now!'' icon, complete the required fields, and enter or attach their comments. Comments on the proposed rule and draft diversion guidance document should be addressed to Will Covey, Deputy General Counsel for Enrollment and Discipline and Director for the Office of Enrollment and Discipline (OED Director). Attachments to electronic comments will be accepted in Adobe® portable document format (pdf) or Microsoft Word® format. Because comments will be made available for public inspection, information that the submitter does not desire to make public, such as an address or phone number, should not be included in the comments.

Visit the Federal eRulemaking Portal for additional instructions on providing comments via the portal. If electronic submission of or access to comments is not feasible due to a lack of access to a computer and/or the internet, please contact the USPTO using the contact information below for special instructions.

FOR FURTHER INFORMATION CONTACT: Will Covey, Deputy General Counsel for Enrollment and Discipline and OED Director, at 571–272–4097.

SUPPLEMENTARY INFORMATION:

Purpose

The USPTO proposes to amend 37 CFR parts 1 and 11 to better protect the public and improve compliance with the requirements of part 11. 35 U.S.C. 2(b)(2)(A) and 2(b)(2)(D) provide the USPTO with the authority to establish regulations to govern ''the conduct of proceedings in the Office'' and ''the recognition and conduct of agents, attorneys, or other persons representing applicants or other parties before the Office,'' respectively. Title 37 CFR part 11 contains those regulations that govern the representation of others before the USPTO, including regulations related to the recognition to practice before the USPTO, investigations, and disciplinary proceedings, and the USPTO Rules of Professional Conduct.

The USPTO seeks to formalize its Diversion Pilot Program initiated in September 2017 for patent and trademark practitioners whose physical or mental health issues or law practice management issues resulted in minor misconduct. The public has been supportive of the Pilot. Making the Pilot permanent will provide practitioners an opportunity to address the root causes of such misconduct to adhere to high standards of ethics and professionalism in order to provide valuable service to the public. Also, it will align USPTO disciplinary practice with a majority of state attorney disciplinary systems.

The USPTO also seeks to require foreign attorneys or agents granted reciprocal recognition in trademark matters to provide and update their contact and status information or have their recognition withdrawn in order to provide the public with current information.

Further, certain state bars have begun permitting the sharing of legal fees between a practitioner and a non-practitioner. However, such arrangements are currently prohibited by the USPTO Rules of Professional Conduct, creating potential conflicts for patent and trademark practitioners who are licensed to practice law in those states. Accordingly, the USPTO proposes to defer to state bars regarding certain aspects pertaining to the sharing of legal fees between a practitioner and a non-practitioner in order to reduce the potential for such conflicts.

Lastly, the USPTO proposes to make revisions to promote efficiency and clarity in its regulations, such as to remove a fee required when changing one's status from a patent agent to a patent attorney in order to encourage more practitioners to update their status; align the rule governing the limited recognition of persons ineligible to become registered to practice before the Office in patent matters because of their immigration status with existing practice; clarify procedures and improve efficiencies regarding disciplinary proceedings and appeals; and remove a reference to ''emeritus status.''

Formalizing a Diversion Program for Practitioners

The USPTO seeks to formalize its OED Diversion Pilot Program for patent and trademark practitioners whose physical or mental health issues or law practice management issues resulted in minor misconduct. For example, a practitioner who lacked diligence in a matter due to a law practice management issue that resulted in minimal impact on their clients and/or the public may wish to consider diversion. Accordingly, the program allows those practitioners to avoid formal discipline by entering into, and successfully completing, diversion agreements with the OED Director. The goal of the program is to help practitioners address the root causes of such misconduct and adhere to high standards of ethics and professionalism

in order to provide valuable service to the public.

Diversion is intended to be an action that the OED Director may take to dispose of a disciplinary investigation. The program is not typically available to a practitioner after the filing of a disciplinary complaint. However, in extraordinary circumstances, the OED Director may enter into a diversion agreement with an eligible practitioner after a complaint under 37 CFR 11.34 has been filed. If diversion is requested after a complaint has been filed, the matter will be referred to the OED Director for consideration. The terms of any diversion agreement will be determined by the OED Director and the practitioner.

In 2017, the USPTO initiated the OED Diversion Pilot Program for patent and trademark practitioners. The Pilot Program has enabled practitioners to successfully implement specific remedial measures and improve their practice, and the USPTO has received public comment urging that the Pilot Program be incorporated into part 11. *See* Changes to Representation of Others Before the United States Patent and Trademark Office, 86 FR 28442, 28446 (May 26, 2021). Accordingly, the USPTO proposes changes to part 11 to formalize the Pilot Program. As the Pilot Program is set to expire in November 2022, formalizing the Pilot Program will emphasize the USPTO's commitment to wellness within the legal profession and align the USPTO with the practices of more than 30 attorney disciplinary systems in the United States.

The criteria for participation are set forth in proposed rule 37 CFR 11.30. The criteria address eligibility, completion of the program, and material breaches of the program. Based on the American Bar Association Model Rules for Lawyer Disciplinary Enforcement, the criteria also draw from experience gained during the administration of the Pilot Program. Specifically, the criteria now allow practitioners who have been disciplined by another jurisdiction within the past three years to participate if the discipline was based on the conduct that forms the basis for the OED Director's investigation. For example, participation in the USPTO's diversion program may be appropriate in cases in which the practitioner was recently publicly disciplined by a jurisdiction that does not have a diversion program. *See* Changes to Representation of Others Before the United States Patent and Trademark Office, 86 FR 28442, 28443 (May 26, 2021). Additional experience gained from the Pilot Program also indicates that eligibility could be extended to practitioners evidencing a pattern of similar misconduct if the misconduct at issue is minor and related to a chronic physical or mental health condition or disease. Under the Pilot Program criteria, practitioners recently disciplined by another jurisdiction and practitioners evidencing a pattern of similar misconduct were not eligible to participate.

The OED Director may consider all relevant factors when determining whether a practitioner meets the criteria. *See generally,* Model Rules of Lawyer Disciplinary Enforcement Rule 11 cmt. (American Bar Association, 2002) (''Both mitigating and aggravating factors should also be considered. The presence of one or more mitigating factors may qualify an otherwise ineligible respondent for the program.''). Any aspects of diversion not fully addressed in § 11.30, such as specific details regarding the material breach of an agreement, will be addressed in individualized diversion agreements.

The USPTO believes that the diversion program is a valuable tool that will benefit the public by fostering the skills and abilities of those individuals who represent others before the USPTO. Additional information may be found in a draft diversion guidance document, available at *https://www.uspto.gov/sites/default/files/documents/OED-Diversion-Guidance-Document.pdf.* Comments regarding the draft diversion guidance document must be provided as discussed in the **DATES** and **ADDRESSES** sections above.

Changes to the Regulation of Foreign Attorneys or Agents Granted Reciprocal Recognition in Trademark Matters

The USPTO proposes to amend § 11.14 to ascertain the status and contact information of foreign attorneys or agents who are granted reciprocal recognition in trademark matters under § 11.14(c)(1). The proposed amendments will provide potential clients with more certainty regarding the good standing of a foreign attorney or agent.

Accordingly, the USPTO proposes that any foreign attorney or agent granted reciprocal recognition in trademark matters under § 11.14(c)(1) must provide the OED Director their postal address, at least one and up to three email addresses where they receive email, and a business telephone number, as well as any change to these addresses and telephone number, within 30 days of the date of any change. A foreign attorney or agent granted reciprocal recognition under § 11.14(c)(1) must also notify the OED Director of any lapse in their authorization to represent clients before the trademark office in the country in which they are registered and reside.

The USPTO also proposes that the OED Director may address a letter to any foreign attorney or agent granted reciprocal recognition under § 11.14(c)(1) for the purposes of ascertaining the validity of the foreign attorney or agent's contact information and good standing with the trademark office or other duly constituted authority in the country in which they are registered and reside (for Canadian trademark agents, the term ''trademark office'' shall mean the College of Patent Agents and Trademark Agents with respect to matters of practice eligibility in Canada). Any such foreign attorney or agent failing to reply and provide any information requested by the OED Director within a time limit specified would be subject to having their reciprocal recognition withdrawn by the OED Director. Withdrawal of recognition by the OED Director does not obviate the foreign attorney's or agent's duty to comply with any other relevant USPTO rules, such as the requirement to withdraw from pending trademark matters.

Unless good cause is shown, the OED Director shall promptly withdraw the reciprocal recognition of foreign attorneys or agents who: (1) are no longer eligible to represent others before the trademark office of the country upon which reciprocal recognition is based, (2) no longer reside in such country, (3) have not provided current contact information, or (4) failed to reply to the letter from the OED Director within the time limit specified and/or provide any of the information requested by the OED Director in that letter. The proposed rule shall require the OED Director to publish a notice of any withdrawal of recognition.

Lastly, the USPTO proposes that any foreign attorney or agent whose recognition has been withdrawn may reapply for recognition upon submission of a request to the OED Director and payment of the application fee in § 1.21(a)(1)(i), as provided under amended § 11.14(f).

Removal of the Term ''Nonimmigrant Alien'' From § 11.9(b)

The USPTO proposes to revise 37 CFR 11.9(b) in regard to limited recognition for individuals who are neither U.S. citizens nor lawful permanent residents, but who nevertheless have been granted status and the authority to work in the United States by the U.S. Government in order to practice before the USPTO in patent matters. Specifically, the USPTO proposes to remove the term ''nonimmigrant alien'' from § 11.9(b)

because the term does not include all individuals eligible for limited recognition under this provision. For example, the term ''nonimmigrant alien'' does not include all individuals who are neither U.S. citizens nor lawful permanent residents, but who nevertheless have been granted status and the authority to work in the United States by the U.S. Government. Rather, the appropriate description for those who may qualify for limited recognition includes individuals who: (1) are ineligible to become registered under § 11.6 because of their immigration status, (2) are authorized by the U.S. Government to be employed or trained in the United States to represent a patent applicant by preparing or prosecuting a patent application, and (3) meet the requirements of paragraphs (d) and (e) of § 11.9. This revision would result in no change in practice.

Clarification That Limited Recognition Shall Not Be Granted or Extended to a Non-U.S. Citizen Residing Outside the United States

The USPTO proposes to amend § 11.9(b) to clarify that limited recognition to practice before the USPTO in patent matters for individuals who are neither U.S. citizens nor lawful permanent residents, but who nevertheless have been granted status and the authority to work in the United States by the U.S. Government, shall not be granted or extended to non-U.S. citizens residing outside the United States. This is consistent with current practice in which an individual's limited recognition will not terminate if the individual has been approved by the U.S. Government to temporarily depart from the United States, but will terminate when the individual ceases to reside in the United States.

Removal of Fee Required When Changing Status From Patent Agent to Patent Attorney

The USPTO proposes to eliminate the $110.00 fee in § 1.21(a)(2)(iii) that is charged when a registered patent agent changes their registration from an agent to an attorney. It is expected that the removal of this fee will improve the accuracy of the register of patent attorneys and agents by incentivizing patent agents who become patent attorneys to promptly update their status in that register.

Arrangements Between Practitioners and Non-Practitioners

The USPTO proposes to add § 11.504(e) to allow a practitioner who is an attorney to share legal fees with a non-practitioner, to form a partnership with a non-practitioner, or to be part of a for-profit association or corporation owned by a non-practitioner, provided such arrangement fully complies with the laws, rules, and regulations of the attorney licensing authority of a State that regulates such arrangement and in which the practitioner is an active member in good standing. Accordingly, this addition provides the practitioner some flexibility when considering a business arrangement with a non-practitioner when such business arrangement might have previously conflicted with § 11.504(a), (b), and (d)(1) and (2) of the USPTO Rules of Professional Conduct. However, that flexibility does not obviate the practitioner's obligations under any other USPTO rules, including the USPTO Rules of Professional Conduct, that may be relevant to such an arrangement. Further, this addition does not permit a person who recommends, employs, or pays the practitioner to render legal services for another to direct or regulate the practitioner's professional judgment in rendering such legal services as described in § 11.504(c), nor does this addition permit the practitioner to practice with or in the form of a professional corporation or association authorized to practice law for a profit, if a non-practitioner has the right to direct or control the professional judgment of the practitioner as described in § 11.504(d)(3).

Clarification of Written Memoranda Regarding Motions in Disciplinary Proceedings

The USPTO proposes to amend § 11.43 to clarify that: (1) only motions for summary judgment and motions to dismiss are required to be accompanied by a written memorandum, and (2) the prescribed time periods to file response and reply memoranda regarding such motions only apply to motions for summary judgment and motions to dismiss. While not intended to discourage parties from providing support for other types of motions, limiting memoranda and the specified briefing schedule to motions for summary judgment and motions to dismiss promotes the goal of continued efficient progress of disciplinary proceedings. Hearing officers retain the discretion to order memoranda and set time limits for other types of motions and papers.

Clarification That Disciplinary Hearings May Continue To Be Held by Videoconference

The USPTO proposes to amend § 11.44(a) to clarify that hearings may be held by videoconference. The amendment reflects the current practice of scheduling and conducting remote hearings. The amendment also clarifies that a stenographer need not be used to create a hearing transcript.

Five Days To Serve Discovery Requests After Authorization; 30 Days To Respond After Service

The USPTO proposes to amend § 11.52 to improve the procedures for written discovery in disciplinary proceedings and to order those procedures in a more chronological fashion. Accordingly, the contents of paragraphs (a) and (b) are proposed to be restructured into revised paragraphs (a), (b), and (c), and paragraphs (c) through (f) are redesignated as paragraphs (d) through (g).

First, under paragraph (a), the amended rule sets forth the types of requests for which a party may seek authorization in a motion for written discovery. While the current rule sets forth the information in paragraph (b), the amended rule logically sets forth the information in paragraph (a) because paragraph (a) pertains to the content of the initial motion for written discovery.

Second, under paragraph (b), the amendment requires a copy of the proposed written discovery requests and a detailed explanation, for each request made, of how the discovery sought is reasonable and relevant to an issue actually raised in the complaint or the answer. Any response to the motion shall include specific objections to each request, if any. Any objection not raised in the response will be deemed to have been waived.

Third, under paragraph (c), the amendment requires the moving party to serve a copy of any authorized discovery requests following the issuance of an order authorizing discovery within a default deadline of five days following the order. This requirement ensures that the opposing party promptly receives a copy of the authorized requests to which the party must respond. Amended paragraph (c) also sets a default deadline of 30 days from the date of service of the authorized requests for the opposing party to serve responses. Setting the default period to begin on the date of service provides the opposing party a predictable and definitive time period for responding to authorized discovery requests in circumstances in which the hearing officer's order does not specify a different deadline.

Changes to Procedures Regarding Appeals to the USPTO Director

The USPTO proposes to amend § 11.55(m) to remove the requirement to submit a supporting affidavit when moving for an extension of time to file a brief regarding an appeal of the initial decision of a hearing officer and to place the amended requirement to file a motion for an extension in a new paragraph (p) at the end of § 11.55. Affidavits would be removed to eliminate an unnecessarily burdensome requirement in requesting the extension of time, while retaining the necessity to show good cause. The provision would be moved to the new paragraph (p) because it logically falls at the end of § 11.55.

Removal of Emeritus Status

The USPTO proposes to remove the reference to ''emeritus status'' in § 11.19(a) because no such status was ever finalized and inadvertently remains from a previous rulemaking.

Discussion of Specific Rules

The USPTO proposes to eliminate the fee in § 1.21(a)(2)(iii) for changing one's status from a registered patent agent to a registered patent attorney.

The USPTO proposes to amend § 11.7(l) to reflect the elimination of the fee set forth in § 1.21(a)(2)(iii).

The USPTO proposes to amend § 11.9(b) to remove the term ''nonimmigrant alien'' and to clarify that limited recognition shall not be granted or extended to a non-U.S. citizen residing outside the United States.

The USPTO proposes to amend § 11.14(c)(1) to remove unnecessary references to paragraph (c).

The USPTO proposes to amend § 11.14(f) to add references to § 11.14(c)(1) where § 11.14(c) is presently referenced.

The USPTO proposes to add § 11.14(g) to create a requirement for a foreign attorney or agent granted reciprocal recognition under § 11.14(c)(1) to notify the OED Director of updates to contact information within 30 days of the date of the change and to notify the OED Director of any lapse in their authorization to represent clients before the trademark office in the country in which they are registered and reside.

The USPTO proposes to add § 11.14(h) to ascertain the validity of a reciprocally recognized foreign attorney's or agent's contact information and good standing with the trademark office or other duly constituted authority in the country in which the agent is registered and resides. Any foreign attorney or agent failing to give any information requested by the OED Director within a time limit specified is subject to having their reciprocal recognition withdrawn.

The USPTO proposes to add § 11.14(i) to create a process to withdraw reciprocal recognition of a foreign attorney or agent registered under paragraph (c)(1) if they: (1) are no longer registered with, in good standing with, or otherwise eligible to practice before, the trademark office of the country upon which reciprocal recognition is based; (2) no longer reside in such country; or (3) have not provided current contact information or have failed to validate their good standing with the trademark office in the country in which they are registered and reside as required in proposed § 11.14(g) and (h).

The USPTO proposes to add § 11.14(j) to specify that the process for a foreign attorney or agent whose recognition has been withdrawn and who desires to become reinstated is to reapply for recognition under § 11.14(f).

The USPTO proposes to amend § 11.19(a) to remove the term ''emeritus status.''

The USPTO proposes to amend § 11.22(h)(3) and (4) and add § 11.22(h)(5) to state that the OED Director may dispose of an investigation by entering into a diversion agreement with a practitioner.

The USPTO proposes to add § 11.30 to state the criteria by which the OED Director may enter into a diversion agreement with a practitioner.

The USPTO proposes to amend § 11.43 to clarify that prescribed time periods apply to only dispositive motions and that such motions shall be accompanied by a written memorandum.

The USPTO proposes to amend § 11.44(a) to allow hearings to be held by videoconference.

The USPTO proposes to amend § 11.52 to redesignate paragraphs (c) through (f) as paragraphs (d) through (g), and revise and restructure the contents of paragraphs (a) and (b) into revised paragraphs (a), (b), and (c) to provide clarity regarding certain discovery obligations on the part of the propounding and responding parties.

The USPTO proposes to amend § 11.55(m) to eliminate the requirement to submit an affidavit of support with a motion for an extension of time to file a brief regarding an appeal to the USPTO Director and to reorganize the section to move to new paragraph (p) the provision allowing the USPTO Director to extend, for good cause, the time for filing such a brief.

The USPTO proposes to add § 11.504(e) to allow a practitioner who is an attorney to share legal fees with a non-practitioner, to form a partnership with a non-practitioner, or to be part of a for-profit association or corporation owned by a non-practitioner, provided such arrangement fully complies with the laws, rules, and regulations of the attorney licensing authority of a State that regulates such arrangement and in which the practitioner is an active member in good standing.

Rulemaking Requirements

A. Administrative Procedure Act: The changes in this rulemaking involve rules of agency practice and procedure, and/or interpretive rules. *See Perez* v. *Mortgage Bankers Ass'n,* 135 S. Ct. 1199, 1204 (2015) (interpretive rules ''advise the public of the agency's construction of the statutes and rules which it administers'') (citations and internal quotation marks omitted); *Nat'l Org. of Veterans' Advocates* v. *Sec'y of Veterans Affairs,* 260 F.3d 1365, 1375 (Fed. Cir. 2001) (rule that clarifies interpretation of a statute is interpretive); *Bachow Commc'ns Inc.* v. *FCC,* 237 F.3d 683, 690 (D.C. Cir. 2001) (rules governing an application process are procedural under the Administrative Procedure Act); *Inova Alexandria Hosp.* v. *Shalala,* 244 F.3d 342, 350 (4th Cir. 2001) (rules for handling appeals are procedural where they do not change the substantive standard for reviewing claims).

Accordingly, prior notice and opportunity for public comment for the changes in this rulemaking are not required pursuant to 5 U.S.C. 553(b) or (c), or any other law. *See Perez,* 135 S. Ct. at 1206 (notice-and-comment procedures are not required when an agency ''issue[s] an initial interpretive rule'' or when it amends or repeals that interpretive rule); *Cooper Techs. Co.* v. *Dudas,* 536 F.3d 1330, 1336–37 (Fed. Cir. 2008) (stating that 5 U.S.C. 553, and thus 35 U.S.C. 2(b)(2)(B), do not require notice-and-comment rulemaking for ''interpretative rules, general statements of policy, or rules of agency organization, procedure, or practice'') (quoting 5 U.S.C. 553(b)(A)). Nevertheless, the USPTO has chosen to seek public comment before implementing the rule to benefit from the public's input.

B. Regulatory Flexibility Act: For the reasons set forth in this rulemaking, the Senior Counsel for Regulatory and Legislative Affairs, Office of General Law, of the USPTO, has certified to the Chief Counsel for Advocacy of the Small Business Administration that the changes proposed in this rule will not

have a significant economic impact on a substantial number of small entities. *See* 5 U.S.C. 605(b).

This proposed rule would eliminate the $110.00 fee that is charged when a registered patent agent changes their registration from an agent to an attorney to incentivize patent agents who become patent attorneys to promptly update their status in the register. This proposed change is expected to impact approximately 350 patent agents each year. Patent agents who become licensed attorneys are expected to request a change in status in order to accurately convey their status to the public. The USPTO does not collect or maintain statistics on the size status of impacted entities, which would be required to determine the number of small entities that would be affected by the proposed rule. However, assuming that all patent agents impacted by this rule are small entities, the elimination of the fee would not impact a substantial number of small entities because the approximately 350 patent agents do not constitute a significant percentage of the approximately 47,000 patent practitioners registered to appear before the Office. In addition, the elimination of the $110.00 fee would result in a modest benefit to those patent agents, as they would no longer be required to pay the fee when changing their designation from patent agent to patent attorney.

This proposed rule would also amend the rules regarding the representation of others before the USPTO by implementing new requirements and clarifying or improving existing regulations to better protect the public. This rule would make changes to the rules governing reciprocal recognition for the approximately 400 recognized foreign attorneys or agents who practice before the Office in trademark matters. These changes would require any reciprocally recognized foreign attorney or agent to keep contact information up to date, provide proof of good standing as a trademark practitioner before the trademark office of the country in which they reside, and notify the OED Director of any lapse in their authorization to represent clients before the trademark office in the country in which they are registered and reside. Absent a showing of cause, failure to comply shall result in the withdrawal of the reciprocal recognition, but an opportunity for reinstatement may be offered.

The Office also proposes to make changes to its disciplinary procedures to formalize a diversion program for patent and trademark practitioners who struggle with physical or mental health issues or law practice management issues. The program assists those practitioners in addressing the root causes of those issues, in lieu of formal discipline.

Finally, this rule would make other minor administrative changes to the regulations to simplify and otherwise improve consistency with existing requirements, thereby facilitating the public's compliance with existing regulations, including aligning with existing practice the rule governing practice before the Office by persons ineligible to become registered under § 11.6 because of their immigration status; changing the rule governing the professional independence of a practitioner to allow a practitioner to share legal fees with a non-practitioner, to form a partnership with a non-practitioner, or to be part of a for-profit association or corporation owned by a non-practitioner, provided such arrangement fully complies with the laws, rules, and regulations of the attorney licensing authority of a State that regulates such arrangement and in which the practitioner is an active member in good standing; clarifying the procedures regarding disciplinary hearings and appeals of the same; and removing an inadvertent reference to ''emeritus status.''

These proposed changes to the rules governing the recognition to practice before the Office would apply to the approximately 400 reciprocally recognized trademark practitioners who currently appear before the Office and approximately 47,000 patent practitioners registered or granted limited recognition to appear before the Office, as well as licensed attorneys practicing in trademark and other non-patent matters before the Office. The USPTO does not collect or maintain statistics on the size status of impacted entities, which would be required to determine the number of small entities that would be affected by the rule. However, a large number of the changes in this rule are not expected to have any impact on otherwise regulated entities because the changes to the regulations are procedural in nature. The one proposed change that may impose a new requirement is the provision for the approximately 400 reciprocally recognized foreign attorneys or agents to provide contact information and certificates of good standing as trademark practitioners before the trademark offices of the countries in which they reside. However, this provision is not expected to place a significant burden on those foreign attorneys or agents. Accordingly, the changes are expected to be of minimal or no additional burden to those practicing before the Office.

For the reasons discussed above, this rulemaking will not have a significant economic impact on a substantial number of small entities.

C. Executive Order 12866 (Regulatory Planning and Review): This rulemaking has been determined to be significant for purposes of E.O. 12866 (Sept. 30, 1993).

D. Executive Order 13563 (Improving Regulation and Regulatory Review): The Office has complied with E.O. 13563 (Jan. 18, 2011). Specifically, the Office has, to the extent feasible and applicable: (1) made a reasoned determination that the benefits justify the costs of the rule; (2) tailored the rule to impose the least burden on society consistent with obtaining the regulatory objectives; (3) selected a regulatory approach that maximizes net benefits; (4) specified performance objectives; (5) identified and assessed available alternatives; (6) involved the public in an open exchange of information and perspectives among experts in relevant disciplines, affected stakeholders in the private sector, and the public as a whole, and provided online access to the rulemaking docket; (7) attempted to promote coordination, simplification, and harmonization across Government agencies and identified goals designed to promote innovation; (8) considered approaches that reduce burdens and maintain flexibility and freedom of choice for the public; and (9) ensured the objectivity of scientific and technological information and processes.

E. Executive Order 13132 (Federalism): This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under E.O. 13132 (Aug. 4, 1999).

F. Executive Order 13175 (Tribal Consultation): This rulemaking will not: (1) have substantial direct effects on one or more Indian tribes; (2) impose substantial direct compliance costs on Indian tribal governments; or (3) preempt tribal law. Therefore, a tribal summary impact statement is not required under E.O. 13175 (Nov. 6, 2000).

G. Executive Order 13211 (Energy Effects): This rulemaking is not a significant energy action under E.O. 13211 because this rulemaking is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Therefore, a Statement of Energy Effects is not required under E.O. 13211 (May 18, 2001).

H. Executive Order 12988 (Civil Justice Reform): This rulemaking meets

applicable standards to minimize litigation, eliminate ambiguity, and reduce burden, as set forth in sections 3(a) and 3(b)(2) of E.O. 12988 (Feb. 5, 1996).

I. Executive Order 13045 (Protection of Children): This rulemaking does not concern an environmental risk to health or safety that may disproportionately affect children under E.O. 13045 (Apr. 21, 1997).

J. Executive Order 12630 (Taking of Private Property): This rulemaking will not effect a taking of private property or otherwise have taking implications under E.O. 12630 (Mar. 15, 1988).

K. Congressional Review Act: Under the Congressional Review Act provisions of the Small Business Regulatory Enforcement Fairness Act of 1996 (5 U.S.C. 801 *et seq.*), prior to issuing any final rule, the USPTO will submit a report containing the final rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the Government Accountability Office. The changes in this rulemaking are not expected to result in an annual effect on the economy of $100 million or more, a major increase in costs or prices, or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic and export markets. Therefore, this rulemaking is not expected to result in a ''major rule'' as defined in 5 U.S.C. 804(2).

L. Unfunded Mandates Reform Act of 1995: The proposed changes in this rulemaking do not involve a Federal intergovernmental mandate that will result in the expenditure by State, local, and tribal governments, in the aggregate, of $100 million (as adjusted) or more in any one year, or a Federal private sector mandate that will result in the expenditure by the private sector of $100 million (as adjusted) or more in any one year, and will not significantly or uniquely affect small governments. Therefore, no actions are necessary under the provisions of the Unfunded Mandates Reform Act of 1995. *See* 2 U.S.C. 1501 *et seq.*

M. National Environmental Policy Act of 1969: This rulemaking will not have any effect on the quality of the environment and is thus categorically excluded from review under the National Environmental Policy Act of 1969. *See* 42 U.S.C. 4321 *et seq.*

N. National Technology Transfer and Advancement Act of 1995: The requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) are not applicable because this rulemaking does not contain provisions that involve the use of technical standards.

O. Paperwork Reduction Act of 1995: The Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) requires that the Office consider the impact of paperwork and other information collection burdens imposed on the public. This rulemaking involves information collection requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The collections of information involved in this rulemaking have been reviewed and previously approved by OMB under OMB control numbers 0651–0012 (Admission to Practice and Roster of Registered Patent Attorneys and Agents Admitted to Practice Before the USPTO) and 0651–0017 (Practitioner Conduct and Discipline).

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information has a currently valid OMB control number.

P. E-Government Act Compliance: The USPTO is committed to compliance with the E-Government Act to promote the use of the internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Biologics, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 11

Administrative practice and procedure, Inventions and patents, Lawyers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the USPTO proposes to amend 37 CFR parts 1 and 11 as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

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

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

§ 1.21 [Amended]

■ 2. Amend § 1.21 by removing and reserving paragraph (a)(2)(iii).

PART 11—REPRESENTATION OF OTHERS BEFORE THE UNITED STATES PATENT AND TRADEMARK OFFICE

■ 3. The authority citation for part 11 continues to read as follows:

Authority: 5 U.S.C. 500; 15 U.S.C. 1123; 35 U.S.C. 2(b)(2), 32, 41; Sec. 1, Pub. L. 113–227, 128 Stat. 2114.

■ 4. Amend § 11.7 by revising paragraph (l) to read as follows:

§ 11.7 Requirements for registration.

* * * * *

(l) *Transfer of status from agent to attorney.* An agent registered under § 11.6(b) may request registration as an attorney under § 11.6(a). The agent shall demonstrate their good standing as an attorney.

■ 5. Amend § 11.9 by revising paragraph (b) to read as follows:

§ 11.9 Limited recognition in patent matters.

* * * * *

(b) *Limited recognition for a period consistent with immigration status.* An individual ineligible to become registered under § 11.6 because of their immigration status may be granted limited recognition to practice before the Office in patent matters, provided the U.S. Government authorizes employment or training in the United States for the individual to represent a patent applicant by preparing or prosecuting a patent application, and the individual fulfills the provisions of paragraphs (d) and (e) of this section. Limited recognition shall be granted only for a period consistent with the terms of the immigration status and employment or training authorized. Limited recognition is subject to United States immigration rules, statutes, laws, and regulations. If granted, limited recognition shall automatically terminate if the individual ceases to: lawfully reside in the United States, maintain authorized employment or training, or maintain their immigration status. Limited recognition shall not be granted or extended to a non-U.S. citizen residing outside the United States.

* * * * *

■ 6. Amend § 11.14 by revising paragraphs (c)(1) and (f) and adding paragraphs (g) through (j) to read as follows:

§ 11.14 Individuals who may practice before the Office in trademark and other non-patent matters.

* * * * *

(c) * * *

(1) Any foreign attorney or agent who is not a resident of the United States who shall file a written application for reciprocal recognition under paragraph (f) of this section and prove to the satisfaction of the OED Director that they are a registered and active member in good standing as a trademark practitioner before the trademark office of the country in which they reside and practice and possess good moral character and reputation, may be recognized for the limited purpose of representing parties located in such country before the Office in the presentation and prosecution of trademark matters, provided the trademark office of such country and the USPTO have reached an official understanding to allow substantially reciprocal privileges to those permitted to practice in trademark matters before the Office. Recognition under this paragraph (c)(1) shall continue only during the period in which the conditions specified in this paragraph (c)(1) are met.

* * * * *

(f) *Application for reciprocal recognition.* An individual seeking reciprocal recognition under paragraph (c)(1) of this section, in addition to providing evidence satisfying the provisions of paragraph (c)(1) of this section, shall apply in writing to the OED Director for reciprocal recognition, and shall pay the application fee required by § 1.21(a)(1)(i) of this subchapter.

(g) *Obligation to provide updated contact information and licensure status.* A practitioner granted reciprocal recognition under paragraph (c)(1) of this section must provide to the OED Director their postal address, at least one and up to three email addresses where they receive email, and a business telephone number, as well as any change to such addresses and telephone number within 30 days of the date of the change. Any reciprocally recognized practitioner failing to provide the information to the OED Director or update the information within 30 days of the date of change is subject to having their reciprocal recognition withdrawn under paragraph (i) of this section. A practitioner granted reciprocal recognition under paragraph (c)(1) of this section must notify the OED Director of any lapse in their authorization to represent clients before the trademark office in the country in which they are registered and reside.

(h) *Communications with recognized trademark practitioners.* The OED Director may address a letter to any practitioner granted reciprocal recognition under paragraph (c)(1) of this section, to the postal address last provided to the OED Director, for the purposes of ascertaining the practitioner's contact information and/or the practitioner's good standing with the trademark office in the country in which the practitioner is registered and resides. Any practitioner who receives such letter must provide their contact information, and, if requested, a certificate of good standing with the trademark office in the country in which the practitioner is registered and resides. Any practitioner failing to reply and give any information requested by the OED Director within a time limit specified will be subject to having their reciprocal recognition withdrawn under paragraph (i) of this section.

(i) *Withdrawal of reciprocal recognition.* Upon notice that a trademark practitioner registered under paragraph (c)(1) of this section is no longer registered with, in good standing with, or otherwise eligible to practice before, the trademark office of the country upon which reciprocal recognition is based; that such practitioner no longer resides in such country; or that such practitioner has not provided information required in paragraphs (g) and/or (h) of this section, and absent a showing of cause why the practitioner's recognition should not be withdrawn, the OED Director shall promptly withdraw such recognition and publish a notice of such action.

(j) *Reinstatement of reciprocal recognition.* Any practitioner whose recognition has been withdrawn pursuant to paragraph (i) of this section may reapply for recognition under paragraph (f) of this section.

■ 7. Amend § 11.19 by revising paragraph (a) to read as follows:

§ 11.19 Disciplinary jurisdiction; grounds for discipline and for transfer to disability inactive status.

(a) *Disciplinary jurisdiction.* All practitioners engaged in practice before the Office, all practitioners administratively suspended under § 11.11, all practitioners registered or recognized to practice before the Office in patent matters, all practitioners resigned or inactivated under § 11.11, all practitioners authorized under § 41.5(a) or § 42.10(c) of this chapter, and all practitioners transferred to disability inactive status or publicly disciplined by a duly constituted authority are subject to the disciplinary jurisdiction of the Office and to being transferred to disability inactive status. A non-practitioner is also subject to the disciplinary authority of the Office if the person engages in or offers to engage in practice before the Office without proper authority.

* * * * *

■ 8. Amend § 11.22 by revising paragraphs (h)(3) and (4) and adding paragraph (h)(5) to read as follows:

§ 11.22 Disciplinary investigations.

* * * * *

(h) * * *

(3) Instituting formal charges upon the approval of the Committee on Discipline;

(4) Entering into a settlement agreement with the practitioner and submitting the same for the approval of the USPTO Director; or

(5) Entering into a diversion agreement with the practitioner.

* * * * *

■ 9. Add § 11.30 to read as follows:

§ 11.30 Participation in the USPTO Diversion Program.

(a) Before or after a complaint under § 11.34 is filed, the OED Director may dispose of a disciplinary matter by entering into a diversion agreement with a practitioner. Diversion agreements may provide for, but are not limited to, law office management assistance, counseling, participation in lawyer assistance programs, and attendance at continuing legal education programs. Neither the OED Director nor the practitioner is under any obligation to propose or enter into a diversion agreement. To be an eligible party to a diversion agreement, a practitioner cannot have been disciplined by the USPTO or another jurisdiction within the past three years, except that discipline by another jurisdiction is not disqualifying if that discipline in another jurisdiction was based on the conduct forming the basis for the current investigation.

(b) For a practitioner to be eligible for diversion, the conduct at issue must not involve:

(1) The misappropriation of funds or dishonesty, deceit, fraud, or misrepresentation;

(2) Substantial prejudice to a client or other person as a result of the conduct;

(3) A serious crime as defined in § 11.1; or

(4) A pattern of similar misconduct unless the misconduct at issue is minor and related to a chronic physical or mental health condition or disease.

(c) The diversion agreement is automatically completed when the terms of the agreement have been fulfilled. A practitioner's successful

completion of the diversion agreement bars the OED Director from pursuing discipline based on the conduct set forth in the diversion agreement.

(d) A material breach of the diversion agreement shall be cause for termination of the practitioner's participation in the diversion program. Upon a material breach of the diversion agreement, the OED Director may pursue discipline based on the conduct set forth in the diversion agreement.

■ 10. Revise § 11.43 to read as follows:

§ 11.43 Motions before a hearing officer.

Motions, including all prehearing motions commonly filed under the Federal Rules of Civil Procedure, shall be served on an opposing party and filed with the hearing officer. Every motion must include a statement that the moving party or attorney for the moving party has conferred with the opposing party or attorney for the opposing party in a good-faith effort to resolve the issues raised by the motion and whether the motion is opposed. If, prior to a decision on the motion, the parties resolve issues raised by a motion presented to the hearing officer, the parties shall promptly notify the hearing officer. Any motion for summary judgment or motion to dismiss shall be accompanied by a written memorandum setting forth a concise statement of the facts and supporting reasons, along with a citation of the authorities upon which the movant relies. All memoranda shall be double-spaced and written in 12-point font unless otherwise ordered by the hearing officer. Unless the hearing officer extends the time for good cause, the opposing party shall serve and file a memorandum in response to any motion for summary judgment or motion to dismiss within 21 days of the date of service of the motion, and the moving party may file a reply memorandum within 14 days after service of the opposing party's responsive memorandum.

■ 11. Amend § 11.44 by revising paragraph (a) to read as follows:

§ 11.44 Hearings.

(a) The hearing officer shall preside over hearings in disciplinary proceedings. After the time for filing an answer has elapsed, the hearing officer shall set the time and place for the hearing. In cases involving an incarcerated respondent, any necessary oral hearing may be held at the location of incarceration. The hearing officer may order a hearing to be conducted by remote videoconference in whole or in part. Oral hearings will be recorded and transcribed, and the testimony of witnesses will be received under oath or affirmation. The hearing officer shall conduct the hearing as if the proceeding were subject to 5 U.S.C. 556. A copy of the transcript of the hearing shall become part of the record. A copy of the transcript shall also be provided to the OED Director and the respondent at the expense of the Office.

* * * * *

■ 12. Amend § 11.52 by:

■ a. Revising paragraphs (a) and (b);

■ b. Redesignating paragraphs (c) through (f) as paragraphs (d) through (g); and

■ c. Adding a new paragraph (c).

The revisions and addition read as follows:

§ 11.52 Written discovery.

(a) After an answer is filed under § 11.36, a party may file a motion under § 11.43 seeking authorization to propound written discovery of relevant evidence, including:

(1) A reasonable number of requests for admission, including requests for admission as to the genuineness of documents;

(2) A reasonable number of interrogatories;

(3) A reasonable number of documents to be produced for inspection and copying; and

(4) A reasonable number of things other than documents to be produced for inspection.

(b) The motion shall include a copy of the proposed written discovery requests and explain in detail, for each request made, how the discovery sought is reasonable and relevant to an issue actually raised in the complaint or the answer. Any response shall include specific objections to each request, if any. Any objection not raised in the response will be deemed to have been waived.

(c) The hearing officer may authorize any discovery requests the hearing officer deems to be reasonable and relevant. Unless the hearing officer orders otherwise, within 5 days of the hearing officer authorizing any discovery requests, the moving party shall serve a copy of the authorized discovery requests to the opposing party and, within 30 days of such service, the opposing party shall serve responses to the authorized discovery requests.

* * * * *

■ 13. Amend § 11.55 by revising paragraph (m) and adding paragraph (p) to read as follows:

§ 11.55 Appeal to the USPTO Director.

* * * * *

(m) Unless the USPTO Director permits, no further briefs or motions shall be filed.

* * * * *

(p) The USPTO Director may extend the time for filing a brief upon the granting of a motion setting forth good cause warranting the extension.

■ 14. Amend § 11.504 by adding paragraph (e) to read as follows:

§ 11.504 Professional independence of a practitioner.

* * * * *

(e) The prohibitions of paragraph (a), (b), or (d)(1) or (2) of this section shall not apply to an arrangement that fully complies with the laws, rules, and regulations of the attorney licensing authority of a State that regulates such arrangement and in which the practitioner is an active member in good standing.

Katherine K. Vidal,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 2022–18215 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–16–P

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 523 and 552

[GSAR Case 2022–G517, Docket No. GSA–GSAR–2022–0014, Sequence No. 1]

RIN 3090–AK60

General Services Administration Acquisition Regulation (GSAR); Single-Use Plastics and Packaging

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Advance notice of proposed rulemaking; extension of comment period.

SUMMARY: The General Services Administration (GSA) published an advance notice of proposed rulemaking on July 7, 2022, seeking public feedback pertaining to the use of plastic consumed in both packaging and shipping, as well as other single-use plastics for which the agency contracts. The deadline for submitting comments is being extended from September 6, 2022, to September 27, 2022, to provide additional time for interested parties to provide inputs.

DATES: For the advance notice of proposed rulemaking published on July 7, 2022 (87 FR 40476), submit comments on or before September 27, 2022.

ADDRESSES: Submit comments in response to GSAR Case 2022–G517 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''GSAR Case 2022–G517''. Select the link ''Comment Now'' that corresponds with ''GSAR Case 2022–G517''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''GSAR Case 2022–G517'' on your attached document. If your comment cannot be submitted using *https://www.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 ''GSAR Case 2022–G517'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: Ms. Adina Torberntsson, Procurement Analyst, at 303–236–2677 or *gsarpolicy@gsa.gov,* for clarification of content. For information pertaining to status or publication schedules, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite GSAR Case 2022–G517.

SUPPLEMENTARY INFORMATION:

I. Background

On July 7, 2022, the General Services Administration published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** at 87 FR 40476 seeking public feedback pertaining to the use of plastic consumed in both packaging and shipping, as well as other single-use plastics for which the agency contracts. The comment period is extended to September 27, 2022, to allow additional time for interested parties to submit comments in response to the questions posed in the ANPR.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Governmentwide Policy, General Services Administration.

[FR Doc. 2022–19376 Filed 9–7–22; 8:45 am]

BILLING CODE 6820–61–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 271

[Docket No. FRA–2021–0035, Notice No. 1]

RIN 2130–AC89

Risk Reduction Program

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: In response to issues raised by a petition for reconsideration of the Risk Reduction Program (RRP) final rule, FRA is issuing this NPRM to solicit information to help determine whether FRA should retain or remove a provision in the RRP final rule clarifying that contractors who perform a significant portion of a railroad's operations are considered the railroad's directly affected employees for purposes of the RRP rule.

DATES: Comments on this proposed rulemaking must be received on or before November 7, 2022. Comments received after that date will be considered to the extent possible without incurring additional expense or delay.

ADDRESSES:

Comments: Comments related to Docket No. FRA–2021–35 may be submitted by going to *https://www.regulations.gov* and following the online instructions for submitting comments.

Instructions: All submissions must include the agency name and docket number or Regulatory Identification Number (RIN) for this rulemaking. 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 heading in the **SUPPLEMENTARY INFORMATION** section of this document for Privacy Act information related to any submitted comments or materials.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: Miriam Kloeppel, Staff Director, Risk Reduction Program Division, Office of Railroad Safety, FRA, telephone: 202–493–6224, email: *Miriam.Kloeppel@dot.gov*; or Elizabeth Gross, Attorney Adviser, Office of the Chief Counsel, FRA, telephone: 202–493–1342, email: *Elizabeth.Gross@dot.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents for Supplementary Information

I. Background

Risk reduction is a comprehensive, system-oriented approach to improving safety by which an organization formally identifies and analyzes applicable hazards and takes action to mitigate, if not eliminate, the risks associated with those hazards. It provides a railroad with a set of decision-making processes and procedures that can help it plan, organize, direct, and control its railroad operations in a way that enhances safety and promotes compliance with regulatory standards. As such, risk reduction is a form of safety management system, which is a term generally referring to a comprehensive, process-oriented approach to managing safety throughout an organization.

A. Statutory Mandate

On October 16, 2008, the Rail Safety Improvement Act of 2008 (RSIA) was enacted. Section 103 of the RSIA, codified at 49 U.S.C. 20156, directed the Secretary of Transportation (Secretary) to issue a regulation requiring Class I railroads, railroad carriers that provide intercity rail passenger or commuter rail passenger transportation (passenger railroads), and railroads with inadequate safety performance (ISP railroads) to develop, submit to the Secretary for review and approval, and implement a railroad safety risk reduction program. Under sec. 20156(g), each railroad carrier required to submit a railroad safety risk reduction program must ''consult with, employ good faith, and use its best efforts to reach agreement with, all of its directly affected employees, including any

nonprofit employee labor organization representing a class or craft of directly affected employees of the railroad carrier, on the contents of the safety risk reduction program.'' The Secretary delegated the authority to conduct this rulemaking and implement the rule to the Federal Railroad Administrator.[1]

B. Rulemaking Background

On February 27, 2015, FRA responded to the RSIA mandate by publishing an RRP NPRM that would apply to each Class I freight railroad and each ISP railroad. The RRP NPRM explained it would not implement the RSIA mandate for passenger railroads, which FRA was addressing in a separate System Safety Program (SSP) rulemaking. On August 12, 2016, FRA published an SSP final rule [2] applying to passenger rail operations.[3]

On February 18, 2020, FRA published an RRP final rule [4] that added regulations at 49 CFR part 271 (part 271) requiring each Class I freight railroad and each ISP railroad to develop and implement an RRP under a written RRP plan that FRA has reviewed and approved.[5] The RRP final rule contains the following requirements that relate to how an RRP must engage a railroad's directly affected employees:

- Section 271.207(a), as mandated by sec. 20156(g), requires each railroad to consult in good faith, and best efforts to reach agreement with, its directly affected employees (including any non-profit labor organization representing the directly affected employees) on the contents of its RRP plan.
- For RRP plan substantive amendments, section 271.303(a)(1) requires a railroad to follow the process described in its RRP plan, pursuant to § 271.209, for consulting with its directly affected employees and submitting a consultation statement to FRA.
- Section 271.113(a) requires a railroad to involve its directly affected employees in the establishment and implementation of its RRP.
- Section 271.221 requires a railroad's RRP plan to describe the railroad's processes for involving railroad employees in the establishment and implementation of an RRP pursuant to § 271.113. If a railroad contracts out significant portions of its operations, the contractor and the contractor's employees performing the railroad's operations shall be considered employees.

The RRP final rule does not contain a definition for ''directly affected employee.'' However, the rule clarifies in § 271.3(c) that ''[i]f a railroad contracts out significant portions of its operations, the contractor and the contractor's employees performing the railroad's operations shall be considered directly affected employees for purposes of this part.''

While FRA did not propose § 271.3(c) in the RRP NPRM, the preamble to the RRP final rule explained that the added language came from 49 CFR 270.107(a)(2) of the SSP rule, and was necessary to address how directly affected employee consultation and involvement would be handled when a railroad contracts out significant portions of its operations to other entities.[6] The preamble further explained that contractors and contractor employees would be considered directly affected employees only when the contracts were ongoing and involved significant aspects of the railroad's operations (*e.g.,* contracting out maintenance of locomotives and rail cars).[7] The preamble encouraged railroads to contact FRA for guidance if they were unsure whether a contracted entity and its employees would be directly affected employees under § 271.3(c).[8] For purposes of this NPRM, FRA will refer to this population of § 271.3(c) contractors as ''operationally significant contractors.''

C. Petition for Reconsideration

On April 10, 2020, FRA received a petition for reconsideration of the RRP final rule from the Association of American Railroads (AAR).[9] AAR's petition asked FRA to reconsider certain aspects of the final rule, including requirements regarding both employee and contractor involvement.[10] Relevant to this NPRM, AAR asked FRA, to reconsider the inclusion of § 271.3(c).[11] As explained above, § 271.3(c) requires a railroad to consider a contractor and its employees who perform significant portions of the railroad's operations (*i.e.,* operationally significant contractors) as directly affected employees for purposes of RRP plan consultation (§ 271.207) and employee involvement (§ 271.113(a)).

In asking FRA to consider removing § 271.3(c) from the RRP final rule, AAR's petition argued that while the inclusion of contractor employees may be appropriate in the SSP rule for passenger railroads that contract out their entire operations, the same is not true for Class I freight railroads.[12] As such, AAR argued that including § 271.3(c), without corresponding safety justifications or notice and opportunity to comment, was arbitrary and unreasonable.[13] AAR further argued that FRA did not adequately define a ''significant portion'' of a railroad's operation or account for costs associated with § 271.3(c).[14]

FRA responded to AAR's petition on November 16, 2020, granting the petition in part by stating it would initiate a rulemaking to consider removing § 271.3(c) from the RRP final rule.[15] FRA's response indicated a rulemaking would allow a thorough discussion of whether the RRP final rule should include § 271.3(c), taking into account both Class I railroads, which FRA acknowledged may not contract out significant portions of their operations to the extent that § 271.3(c) would apply, and ISP railroads.

FRA's response also acknowledged that a rulemaking to remove § 271.3(c) may not be completed before the arrival of certain implementation deadlines in the rule for Class I freight railroads. FRA's response, therefore, made clear that, through its enforcement discretion, FRA intended to neither take enforcement action based on § 271.3(c) nor disapprove a Class I freight railroad's RRP plan on grounds that it did not comply with § 271.3(c) before the rulemaking was completed.

Since issuing this response, FRA has received and approved RRP plans from all seven Class I freight railroads. Consistent with AAR's petition, none of the Class I railroad RRP plans stated that the railroads use operationally significant contractors. FRA also did not receive any statement from directly affected employees implicating § 271.3(c) concerns as part of the RRP plan consultation process.[16] FRA has

[1] 49 CFR 1.89(b).

[2] 81 FR 53850.

[3] On March 4, 2020, FRA published a final rule amending the SSP rule to clarify its applicability to passenger rail operations. 85 FR 12826, 12829–12833.

[4] 85 FR 9262.

[5] 49 CFR 271.101(b).

[6] 85 FR 9277.

[7] *Id.*

[8] *Id.*

[9] FRA–2009–0038–0116.

[10] AAR's petition also asked FRA to reconsider requirements regarding implementation deadlines and FRA's methodology and accompanying costs calculations used to determine which railroads demonstrate ISP. On May 8, 2020, FRA provided an initial response to AAR's petition, denying AAR's request to extend the implementation deadlines in the RRP final rule. FRA–2009–0038–0117. FRA's response stated that the agency would reply to AAR's petition regarding employee/contractor involvement and ISP determinations in a separate communication.

[11] AAR Pet. at 8–10.

[12] AAR Pet. at 8.

[13] *Id.*

[14] *Id.* at 8–10.

[15] FRA otherwise denied AAR's petition. FRA–2009–0038–0124.

[16] Section 271.207(e).

not yet identified which Class II or III freight railroads must comply with the RRP final rule because they demonstrate ISP.

II. Discussion

This NPRM solicits information to help FRA determine whether § 271.3(c) should be retained in or removed from the RRP final rule. For reasons discussed below, this NPRM does not specifically propose removing § 271.3(c) because FRA currently believes the provision should be retained. However, FRA may issue a final rule removing § 271.3(c) and making any necessary conforming changes (such as removing similar language from § 271.221) in response to public comment.

A. FRA's Rationale for Retaining § 271.3(c)

For reasons explained in the preamble to the RRP final rule, FRA continues to maintain that § 271.3(c) is necessary in the RRP final rule.[17] Specifically, § 271.3(c) contains language from § 270.107(a)(2) of the SSP rule,[18] and is necessary to address how directly affected employee consultation and involvement will be handled when a railroad contracts out significant portions of its operations to operationally significant contractors.[19] FRA intends the scope of § 271.3(c) to be limited so that contractors and contractor employees are considered operationally significant contractors (and thereby treated as directly affected employees for purposes of the RRP rule) only when the contracts are ongoing and involve significant aspects of the railroad's operations (*e.g.,* contracting out maintenance of locomotives and rail cars or dispatching services).[20] For example, § 271.3(c) would cover contractor employees who were performing duties for a railroad on a daily basis, particularly if those duties were necessary for the daily operations of a railroad. If a contractor performs operations for a railroad only on a one-time or intermittent basis, the limited scope of § 271.3(c) would not apply because these duties would not constitute a significant portion of the railroad's operations. By illustration, § 271.3(c) would not apply to contractors hired for a one-time construction project of limited duration or to contractors who may only provide the railroad services on an as-needed or intermittent basis (such as environmental response contractors who respond to a hazardous materials leak or accident-clearing contractors).

As explained in FRA's response to AAR's petition, FRA acknowledges that § 271.3(c) may not currently impact Class I railroads—indeed, FRA has already approved all Class I freight railroad RRP plans without identifying any potential operationally significant contractors. FRA's review, however, focused primarily on information provided in the submitted Class I RRP plans, and any statements received from directly affected employees, and was not a comprehensive evaluation of a railroad's operations. FRA notes, however, that even if Class I railroads currently do not hire operationally significant contractors, that does not mean they will not do so in the future.

FRA does not believe a current lack of Class I operationally significant contractors is sufficient reason for removing § 271.3(c) altogether because AAR's argument does not address Class II and Class III railroads that may be subject to the RRP rule because FRA determines they demonstrate ISP. There is a large amount of organizational diversity among Class II and Class III freight railroads, and FRA believes some of these Class II and Class III freight railroads may hire operationally significant contractors.

Finally, FRA notes that there may be adverse railroad safety effects if the RRP rule treats operationally significant contractors and employees differently by not requiring a railroad to consult with and involve operationally significant contractors in RRP planning and implementation. Contractors perform a range of important railroad operation services, such as dispatching, switching, track construction, and flagging. FRA is also aware of contractors who provide certified locomotive engineers and conductors to conduct train operations. To comprehensively address the hazards and risk on a railroad's system, FRA believes an RRP must treat operationally significant contractors the same as employees for purposes of the rule's consultation and involvement requirements. For example, a person who is regularly performing dispatching services for a railroad should be consulted on the contents of a railroad's RRP plan and involved in the railroad's RRP, regardless of whether that person is an employee or a contractor.[21] The comprehensive, system-wide nature of RRP also makes it important for a railroad to incorporate operationally significant contractors directly into its RRP, rather than requiring contractors to establish their own RRPs that would then apply piecemeal to a railroad's operation. This type of fragmented approach could lead to safety gaps where it was not clear whether the operation was covered by the railroad's RRP or the contractor's RRP, or where safety hazards and risks were not effectively communicated between the railroad and operationally significant contractors.

B. Exercise of Enforcement Discretion if FRA Retains § 271.3(c)

Until the conclusion of this rulemaking, and as indicated in its response to AAR's petition,[22] FRA will continue to exercise its discretion to neither take enforcement against a Class I freight railroad based on § 271.3(c) nor to disapprove a Class I freight railroad's RRP plan on grounds that it did not comply with § 271.3(c).

As discussed above, based on the information available to FRA, FRA understands that, at this time, Class I freight railroads do not employ operationally significant contractors. If Class I freight railroads indeed do not hire operationally significant contractors, their RRP plans would remain in compliance with the rule even if FRA elects to retain § 271.3(c). FRA would, however, monitor for § 271.3(c) compliance as part of its external audit process under Part 271, Subpart F—External Audits. If FRA were to find during an audit that a Class I freight railroad utilizes operationally significant contractors, FRA would address any identified § 271.3(c) non-compliance as part of the audit process, which could include reopening review of the railroad's RRP plan pursuant to § 271.305.[23]

FRA may receive information during this rulemaking indicating that one or more Class I freight railroads do hire operationally significant contractors. If FRA finalizes this rulemaking by retaining § 271.3(c), FRA will continue exercising its enforcement discretion to provide any such Class I freight railroads a reasonable amount of time to amend their RRP plans and conduct any additional consultation necessary to achieve compliance with § 271.3(c). FRA specifically requests public

[17] 85 FR 9277.

[18] There were no petitions for reconsideration of § 270.107(a)(2) of the SSP rule.

[19] 85 FR 9277.

[20] *Id.*

[21] The importance of contractors to railroad safety is reflected in the numerous FRA safety regulations that define ''employee'' to include employees of a contractor to a railroad. *See, e.g.,* 49 CFR 214.7 (definitions of ''employee,'' ''roadway worker,'' and ''railroad bridge worker or bridge worker''), § 218.93 (definition of ''employee''), § 220.5 (definition of ''employee''), and § 241.5 (definition of ''employee'').

[22] FRA–2009–0038–0124.

[23] Section 271.305 authorizes FRA to reopen review of an RRP plan for cause stated.

comment on what would be a reasonable amount of time, anticipating that it would be between six months and one year. Providing six months would be consistent with the amount of time provided Class I freight railroads to file initial RRP plans after the rule's information protection provisions went into effect,[24] and providing a year would allow a Class I freight railroad the opportunity to submit any required RRP plan revisions along with its annual internal assessment report,[25] which would lessen administrative filing burdens. After this additional period of enforcement discretion, FRA would have the authority under § 271.305 to reopen review of a Class I freight railroad's RRP plan for cause stated, such as non-compliance with § 271.3(c).

C. Information Requested

Although FRA currently believes § 271.3(c) should be retained, this NPRM solicits additional information for FRA to consider. FRA specifically requests comments on whether contractors play a different role for Class I freight railroads and Class II and III freight railroads (which would have to comply with the RRP rule if FRA determines they demonstrate ISP). FRA is also interested in additional information regarding the extent to which contractors perform operations for freight railroads and for how long FRA should exercise its enforcement discretion if it determines that Class I freight railroads do hire operationally significant contractors. FRA is requesting information not only about the current role of contractors in the freight railroad industry, but also information about how contractors' role may change in the future.

As this NPRM is only addressing those issues raised in the petition for reconsideration, FRA is specifically limiting the requested public comment to the need to retain or remove § 271.3(c). For purposes of this NPRM, FRA will not consider any comments that go beyond the scope of § 271.3(c). For example, FRA will not consider comments on the employee consultation requirements in § 271.207, comments on the employee involvement requirements in § 271.113, or comments requesting revisions to any section of the rule other than § 271.3(c).

As discussed under the Privacy Act heading in the **SUPPLEMENTARY INFORMATION** section of this document, if you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

III. Regulatory Impact and Notices

A. Executive Order 12866

This NPRM is a nonsignificant regulatory action under Executive Order 12866, ''Regulatory Planning and Review.'' [26] FRA made this determination by finding that this proposed regulatory action did not meet the definition of ''significant regulatory action'' in section 3(f) of E.O. 12866.

This section evaluates the economic impacts associated with the proposed rulemaking. Because FRA is proposing to retain § 271.3(c) in the RRP rule to address how directly affected employee consultation and involvement will be handled when a railroad contracts out significant portions of its operations to operationally significant contractors, this proposed rulemaking will not have an economic impact unless FRA revises the provision in response to information and comments gathered following publication of this NPRM. The economic impacts of such potential alternatives are described below. FRA requests comments and data related to § 271.3(c) and the assumptions and calculations presented in this analysis.

1. Need for Regulatory Action

This NPRM does not propose to make any regulatory change to the existing RRP rule. Rather, this NPRM provides an opportunity for public comment on § 271.3(c), which was included in the RRP final rule but not proposed in the RRP NPRM. This rulemaking provides an expanded opportunity for public comment on this section. Under § 271.3(c), ''If a railroad contracts out significant portions of its operations, the contractor and the contractor's employees performing the railroad's operations shall be considered directly affected employees for purposes of this part.'' For ease of reference, this analysis refers to this universe of § 271.3(c) contractors as ''operationally significant contractors.'' As previously explained in this rulemaking, the RRP rule contains two requirements that relate to how an RRP must engage with a railroad's directly affected employees in §§ 271.207(a) (RRP plan consultation) and § 271.113(a) (employee involvement). Generally, these provisions require a railroad to consult with its directly affected employees on the contents of its RRP plan and any substantive amendments thereto, and to involve its directly affected employees in the establishment and implementation of the RRP.

This NPRM notes FRA may consider alternatives to § 271.3(c), given sufficient data and evidence of an unjustified burden or superior approach. Since this proposed rulemaking is primarily an effort to collect public comment on § 271.3(c) and does not propose new requirements, this analysis determined that this proposed rulemaking would not carry any economic impacts or paperwork burden. While the proposed rule would not have economic impacts, FRA examined two alternatives that would trigger costs and/or benefits if included in a final rule.

2. Regulatory Alternatives

This analysis considers two alternative regulatory approaches to retaining § 271.3(c) in the RRP final rule, including the alternative of removing § 271.3(c), which is considered in this proposed rulemaking and associated preamble. The assumptions and calculations upon which the analyses are based are included below to provide clarity and document FRA's methodology.

The first alternative considers the removal of § 271.3(c) and would generate an estimated $4,069,640 in cost savings. The second alternative considers expanding § 271.3(c) to include all contractors who perform or utilize significant safety-related services, as identified by a railroad's RRP plan pursuant to § 271.101(d). For ease of reference, this analysis refers to § 271.101(d) contractors as ''safety significant contractors.'' This analysis also assumes all operationally significant contractors are included in this broader category of safety significant contractors. This second alternative would trigger an estimated $1,887,473 in costs.

Per U.S. Office of Management and Budget (OMB) guidance in Circular A–4, the alternatives considered in this analysis present both a less stringent case (Alternative 1) and a more stringent case (Alternative 2) compared to the baseline case expected for the proposed rulemaking if finalized.[27] As discussed above, this rulemaking proposes to retain § 271.3(c) to address how directly affected employee consultation and

[24] The rule's information protection provisions went into effect on February 17, 2021, and the filing deadline for Class I freight railroad RRP plans was no later than August 16, 2021. 49 CFR 271.11(a) and 271.301(b)(1).

[25] The RRP rule requires a railroad to conduct an internal assessment of its RRP once every calendar year, and to provide FRA an internal assessment report within 60 days of completing the internal assessment. 49 CFR 271.401(a) and 271.405(a).

[26] 58 FR 51735 (Sep. 30, 1993).

[27] U.S. Office of Management and Budget. 2003. Circular A–4. Washington, DC.

involvement will be handled when a railroad contracts out significant portions of its operations. The proposed rulemaking would therefore not generate any economic impacts if finalized, and this analysis only addresses the economic impacts of the two alternatives in comparison to the baseline case of retaining § 271.3(c).

TABLE I.1—SUMMARY OF REGULATORY ALTERNATIVES FOR ANALYSIS

	Baseline Case: retain § 271.3(c)	Alt. 1: Remove § 271.3(c)	Alt. 2: Expand § 271.3(c)
Affected Workers	Railroad employees and operationally significant contractors.	Railroad employees only	Railroad employees and safety significant contractors.

3. Methodology

This analysis employs benefit-cost analysis to evaluate more and less stringent regulatory alternatives. The baseline case is not evaluated because it presents the expected steady state of the economy without additional regulatory action. The analysis presents each case in monetary values to facilitate comparison. The value of the variables included are based on industry research, subject matter expertise, and a list of stated assumptions listed below.

Alternative 1 is narrower than the baseline case and is expected to produce cost savings, while Alternative 2 is broader than the baseline case and is expected to increase costs.[28] To calculate the net cost savings of Alternative 1, which would drop the requirement for railroads to consider operationally significant contractors as directly-affected employees for purposes of the RRP rule by removing § 271.3(c), the analysis estimates the expected costs of compliance with that provision and assumes the entirety of those costs would be removed. To calculate the net costs of Alternative 2, which would expand § 271.3(c) beyond operationally significant contractors in the baseline case to include all safety significant contractors, the analysis estimates the total compliance costs of the broader alternative and then removes the estimated compliance costs of the baseline case (*i.e.,* the amount estimated for Alternative 1). The number of contractors impacted is the only variable that changes in the calculations.[29]

The scope of this analysis covers Class I freight railroads and potential ISP railroads.[30] It applies a ten-year period of analysis that is long enough to capture ongoing costs without unduly predicting longer term impacts, which are liable to shift as the industry evolves. The first year of the analysis term is assumed to be the year of the effective date of a final rule arising from this NPRM. All Class I railroads have already consulted with directly affected employees and submitted their initial RRP plans, which FRA has reviewed and approved. However, FRA's response to AAR's petition notified these railroads that it would exercise enforcement discretion regarding § 271.3(c) as it worked on this rulemaking. Therefore, this analysis assumes that upon promulgation of this rulemaking, Class I railroads would perform an initial consultation with the applicable contractors. Because it is currently unclear whether Class I railroads hire operationally significant contractors to whom § 271.3(c) would apply, this assumption may result in exaggerated savings and costs for Alternatives 1 and 2, respectively, which FRA finds preferable to underestimating the impact. FRA welcomes comments and data on whether railroads have treated any contractors as directly affected employees in their RRP plan development and the extent to which railroads contract out their operations.

Over the course of the analysis' time horizon, FRA expects the total number of ISP railroads will increase, starting with 10 in the first year and adding 5 each year thereafter. FRA subject matter experts expect the number of ISP railroads will plateau as safety operations are improved, as the poorest performing railroads correct their practices in the initial years of the program, and risk reduction planning becomes more engrained in railroad culture at large.[31] The number of ISP railroads may decline following the ten-year analysis term for these same reasons, but such a scenario is not included in the scope of this analysis. FRA anticipates that as the industry realizes the benefits of the RRP process, more railroads will engage in risk reduction planning voluntarily (as permitted by § 271.15), which is another reason for not extending the analysis of the rule's impact beyond ten years.

The Class I freight railroads' costs are front-loaded in the first year of the rule because FRA's analysis assumes they will consult with operationally significant contractors and amend their RRP plans within that year to ensure § 271.3(c) compliance (unlike a Class II or Class III freight railroad, which will only submit an RRP plan if FRA determines that it demonstrates ISP). The analysis assumes the number of Class I freight railroads (currently 7) will not change over the ten-year time horizon.[32]

This analysis does not separate the impacts by country among the Class I or ISP freight railroads. OMB Circular A–4 instructs that regulatory impact analyses should focus on the impacts on U.S. residents; however, consistent with FRA practice, the impacts of the rule associated with the two Canada-based Class I freight railroads, Canadian National and Canadian Pacific (as well as any international Class II or III freight railroads under FRA jurisdiction), are included in this analysis because they operate extensively in the U.S. and the process of filtering out the relevant country-specific impacts would be prohibitively extensive.

[28] This analysis does not attempt to quantify a monetary value for the costs or savings associated with each alternative's potential impact on safety risk (*e.g.,* the marginal impact of including additional contractors in the RRP consultation pool) because the amount of uncertainty exceeds the confidence FRA has that it could correctly estimate these figures. Rather, the analysis focuses exclusively on the anticipated administrative costs and savings associated with the proposed alternatives because the data needed to evaluate them are more readily available. For a qualitative discussion of the safety benefits associated with retaining § 271.3(c) in the RRP rule, please see the background discussion for this proposed rulemaking.

[29] Baseline = (Railroad Employees + Operationally Significant Contractors). Alternative 1 = Baseline—Operationally Significant Contractors = Railroad Employees only. Alternative 2 = Baseline + Safety Significant Contractors.

[30] FRA uses a statistical process guided by expert review to determine which railroads demonstrate inadequate safety performance. Essentially, FRA compares a railroad to its peers and evaluates its three-year accident/incident history, and operational characteristics to see if its performance is significantly different than comparable railroads.

[31] Under the RRP final rule, an ISP railroad may petition FRA to discontinue compliance after five years. 49 CFR 271.13(g).

[32] FRA is aware of potential mergers within the Class I freight railroad industry. However, this analysis assumes the number of Class I railroads will remain unchanged over the ten-year time horizon of the proposed rulemaking. Notably, even in the case of a merger, FRA assumes the number of Class I railroad employees would be expected to be unaffected by the merger.

4. Baseline

In most economic and regulatory impact analyses, the ''no action alternative'' is an important case to consider and contrast with the proposed rulemaking. In the case of this proposed rulemaking, which is a follow-up to the RRP final rule, the ''no action'' baseline is the expected course if a final rule arises from this proposed rulemaking. Because FRA believes the RRP rule should retain § 271.3(c) to address railroads with operationally significant contractors, this NPRM proposes no changes to the RRP final rule as it was published on February 18, 2020. Rather, this rulemaking is intended to solicit and receive feedback on FRA's position that § 271.3(c) should be retained. Therefore, the baseline is assumed to be the current state of the industry under the RRP final rule as promulgated. FRA measures the impact of the alternatives relative to this base case.

5. Scope

The sections of the RRP rule that apply to the operationally significant contractors under § 271.3(c) include the following:

- Section 271.207—Consultation requirements, which requires a railroad to ''consult with, employ good faith, and use its best efforts to reach agreement with'' all directly affected employees;
- Section 271.303(a)(1)—Amendments, which requires a railroad to follow the process, described in its RRP plan pursuant to § 271.209, for consulting with its directly affected employees and submitting a consultation statement to FRA for substantive amendments to its RRP plan.
- Section 271.113—Involvement of railroad employees, which requires a railroad to involve its directly affected employees in the establishment and implementation of the RRP. Section 271.221—Involvement of railroad employees process requires an RRP plan to describe the railroad's processes for involving railroad employees in the establishment and implementation of an RRP under § 271.113, and repeats the § 271.3(c) requirement that if a railroad contractors out significant portions of its operations, the contractor and the contractor's employees performing the railroad's operations shall be considered directly affected employees for the purposes of this section.

6. Calculations

The following section-by-section calculation formulas are applied to each of the two alternatives presented, which include either operationally significant contractors or safety significant contractors. The calculations in this analysis are applied to Class I and ISP freight railroads separately. The values of the variables for these two types of railroads differ and are displayed in the Assumptions list of this analysis. For clarity, the calculations below are presented in simplified form. Furthermore, the calculations apply to each year of the analysis, with the values of the variables changing each year according to the assumptions listed below.

Section 271.207—Consultation Requirements

Initial Consultation:

(Number of RRs Conducting RRP Plan Consultations * Administrative Time Spent on Consultation * Administrative Wage Rate) + (Average Number of Contractors * Contractor Time Spent on Consultation * Contractor Wage Rate)

Consultation Revision Tasked by FRA:

(Number of RRs Tasked w/ Revision * Administrative Time Spent for Revision * Administrative Wage Rate) + (Average Number of Contractors * Contractor Time Spent Consulting for Revisions * Contractor Wage Rate)

Section 271.303(a)(1)—Amendments

(Number of RRs Amending RRP Plans * Administrative Time for Update Process * Administrative Wage Rate) + (Total Contractors Involved * Time Spent per Contractor on Update Process * Contractor Wage Rate)

Section 271.113—Involvement of Railroad Employees

(Number of RRs Conducting Ongoing Involvement * Administrative Time Spent * Administrative Wage Rate) + (Average Number of Contractors * Average Contractor Time Spent on Ongoing Involvement * Contractor Wage Rate)

7. Analysis of Alternatives

Alternative 1: Remove the Operationally Significant Contractor Engagement Component

The first case analyzes the primary alternative of removing § 271.3(c). This case is the less stringent alternative. It evaluates the potential savings that would accrue to Class I and ISP freight railroads by not having to comply with the existing requirement to include operationally significant contractors as directly affected employees for purposes of RRP plan consultation and ongoing RRP involvement. However, the resultant benefits must be analyzed alongside FRA's position that the inclusion of such operationally significant contractors as directly affected employees, both in terms of added safety and in regulatory clarity by maintaining continuity between both the RRP (for freight railroads) and SSP (for passenger railroads) rules, is more valuable.

If Alternative 1 were adopted, the railroads could experience marginally lower costs by saving compliance costs for including operationally significant contractors as directly affected employees in their RRP process. Over the 10-year analysis, these benefits are estimated to be $4,069,640 and are displayed in Tables 1.1 and 1.2, along with totals at both 3 and 7 percent discount rates. Table 1.1 presents the anticipated savings arising from not incurring costs from including operationally significant contractors as directly affected employees in railroad RRP processes. Table 1.2 delineates the year-by-year benefits anticipated.

TABLE 1.1—TOTAL SAVINGS FROM REMOVING SECTION 271.3(c)

	Initial consultation (271.207)	Consultation revision tasked by FRA (271.207, pt 2)	Resubmission due to RRP revision (271.209)	Ongoing involvement (271.213)	Total	Discounted, 3%	Discounted, 7%
Class I RRs	$1,027,384	$290,110	$222,285	$2,034,044	$3,573,823	$3,203,815	$2,816,054
ISP RRs	187,898	14,505	46,033	247,382	495,817	415,735	334,952
	.....	.....	.....	.....	4,069,640	3,619,549	3,151,006

TABLE 1.2—YEAR-BY-YEAR SAVINGS FROM REMOVING SECTION 271.3(c)

	Total cost by year										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Class I RRs	$1,543,127	$225,633	$225,633	$225,633	$225,633	$225,633	$225,633	$225,633	$225,633	$225,633	$3,573,823
ISP RRs	45,829	31,942	36,457	40,971	45,485	49,999	54,513	59,027	63,541	68,055	495,817
Yearly Total	1,588,955	257,575	262,089	266,604	271,118	275,632	280,146	284,660	289,174	293,688	4,069,640
Discounted, 3%	1,542,675	242,789	239,849	236,874	233,868	230,837	227,784	224,713	221,628	218,531	3,619,549
Discounted, 7%	1,485,005	224,976	213,943	203,391	193,303	183,665	174,461	165,675	157,291	149,296	3,151,006

Alternative 2: Expand § 271.3(c) To Include Safety Significant Contractors

The second alternative presents a scenario in which Class I and ISP freight railroads must expand the universe of contractors that they consider directly affected employees for RRP purposes (*i.e.,* RRP plan consultation and ongoing employee involvement) to include all safety significant contractors identified in their RRP plans under § 271.101(d). This case is the more stringent alternative. FRA's proposed position is that § 271.3(c) should remain tailored to apply only to those contractors who perform operationally significant work for the railroads. Based on the information available, FRA has determined that this narrowed scope of operationally significant contractors accomplishes the intended goal of the RRP rule without unduly burdening the industry. Furthermore, expanding § 271.3(c) would make the RRP rule inconsistent with the SSP rule, and FRA has no data indicating freight and passenger railroads should be subject to different contractor requirements. However, it could be the case that requiring railroads to include more contractors as directly affected employees could lead to better input in their RRPs, with corresponding safety and operational benefits. While it is conceivable there could be marginal safety benefits from the addition of more information from the expanded universe of contractors, FRA lacks information to define or to quantify such benefits at this time. Furthermore, based on subject matter experience, FRA expects this approach would cost more than it would provide in safety benefits.

If the baseline universe of operationally significant contractors were expanded to include other safety significant contractors, the additional consultations and involvement to integrate these additional workers into the railroads' RRP processes would increase the cost of the rule. There would also be marginally higher administrative costs to accommodate the expansion of the number of contractors included, but FRA did not attempt to estimate those costs here because it believes they would be relatively minimal. It is also possible that an expansion of the application of § 271.3(c), and thereby the RRP consultation and involvement requirements, to more contractors would eventually impact contract costs for these workers who must now engage in additional tasks. FRA did not include estimates for these impacts because it lacked data to make a confident estimate. The total cost of Alternative 2 over the ten-year analysis is estimated to be $1,887,473 and the details are displayed in Tables 2.1 and 2.2, along with totals at both 3 and 7 percent discount rates.

TABLE 2.1—TOTAL COSTS FROM EXPANDING SECTION 271.3(c)

	Initial consultation (271.207)	Consultation revision tasked by FRA (271.207, pt 2)	Resubmission due to RRP Revision (271.209)	Ongoing involvement (271.213)	Total	Discounted, 3%	Discounted, 7%
Class I RRs	$501,694	$143,341	$95,561	$1,003,388	$1,743,983	$1,563,673	$1,374,692
ISP RRs	51,098	10,252	21,750	60,389	143,490	120,432	97,160
	.....	.....	.....	.....	1,887,473	1,684,105	1,471,852

TABLE 2.2—YEAR-BY-YEAR COSTS FROM EXPANDING SECTION 271.3(c)

	Total cost by year										
	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Total
Class I RRs	$754,930	$109,895	$109,895	$109,895	$109,895	$109,895	$109,895	$109,895	$109,895	$109,895	$1,743,983
ISP RRs	13,682	9,368	10,632	11,896	13,159	14,423	15,687	16,950	18,214	19,478	143,490
Yearly Total	768,612	119,263	120,527	121,791	123,054	124,318	125,582	126,845	128,109	129,373	1,887,473
Discounted, 3%	746,225	112,417	110,299	108,209	106,148	104,114	102,109	100,133	98,185	96,265	1,684,105
Discounted, 7%	718,329	104,169	98,386	92,913	87,736	82,838	78,206	73,825	69,683	65,767	1,471,852

8. Results of Alternatives Analysis

The analysis of the two alternatives above demonstrates that there would be measurable economic impacts to selecting either path. If upon receiving public input on this proposed rulemaking FRA decides to remove § 271.3(c) from the final rule in line with Alternative 1, there would be an anticipated cost savings to the regulated entities of $4,069,640 ($3,619,549, discounted at 3 percent; $3,151,006, discounted at 7 percent). If FRA decides to expand § 271.3(c) in line with Alternative 2, the result would be an anticipated total cost increase for the regulated entities of $1,887,473 ($1,684,105, discounted at 3 percent; $1,471,852, discounted at 7 percent). FRA does not have data to quantify monetarily the safety impacts of either removing or expanding § 271.3(c). Nevertheless, FRA believes retaining § 271.3(c) in the RRP rule is consistent with the systemic approach of a safety risk management program, for reasons

explained in the background section of this proposed rulemaking. FRA welcomes data and comment on the impacts of eliminating or expanding the applicability of § 271.3(c) to inform the final rule.

Regulatory Path	Action	Cost	Benefits
Baseline	Maintain § 271.3(c) as is	0	0
Alternative 1	Remove § 271.3(c)	N/A	$ 4,069,640
Alternative 2	Expand contractor pool subject to § 271.3(c)	$ 1,887,473	N/A

9. Assumptions and Inputs

These assumptions are based on published industry and economic data, FRA data, and FRA subject matter expertise. These assumptions include definitions for certain variables that were not included in the initial RRP rule. Since the publication of the RRP rule, FRA has reviewed submitted Class I freight railroad plans and gathered more information and experience on the RRP process and anticipated resources needed to comply. Accordingly, FRA has updated the calculations and assumptions to reflect this improved understanding in evaluating the regulatory alternatives above. FRA requests comment on the assumptions and welcomes any data that may contribute to better understanding how the retention, exclusion, or expansion of § 271.3(c) might impact railroads.

Railroads

There are 7 Class I freight railroads. There are 784 total railroads on the general system.[33] There will be 10 ISP freight railroads in Year 1, and an additional 5 per year in Years 2–10. Once designated as ISP, FRA assumes railroads will not cease to be designated as such during the ten-year analysis time horizon.[34] There are 135,000 Class I railroad employees. The average number of employees on an ISP railroad is 125. The number of employees is assumed to remain constant over the ten-year analysis term. One Class I railroad will amend its RRP each year. Ten percent of ISP railroads will amend their RRPs each year.

Contractors

Contractors who are operationally significant account for 10 percent of a Class I railroad's total workforce. Contractors who are safety significant account for 15 percent of a Class I railroad's total workforce. Contractors who are operationally significant account for 20 percent of an ISP railroad's total workforce. Contractors who are safety significant account for 30 percent of an ISP railroad's total workforce. For the purpose of this analysis, operationally significant contractors are considered to be fully subsumed in the safety significant contractor pool.

Wages

Overhead and fringe costs impose a 75 percent multiplier on average worker wages, which are reflected in the following wage rates. The fully burdened wage rate for professional and administrative railroad staff is $77.91.[35] The fully burdened wage rate for railroad contractors is equivalent to average railroad employees, which is $59.46. Average wage rates are equivalent between Class I and ISP railroads. Wages are not adjusted for inflation for the ten-year time horizon of the rule.

Time

Administrative time spent per Class I freight railroad for initial consultation is 44 hours. Administrative time spent per Class I freight railroad for consultation revision tasked by FRA is 22 hours, half the time needed for the initial consultation. Administrative time spent per ISP railroad for initial consultation is 20 hours. Administrative time spent per ISP railroad for consultation revision tasked by FRA is 10 hours. Contractor time spent for initial consultation (applies to Class I and ISP RRs) is 1.25 hours per contractor. Contractor time spent for consultation revision tasked by FRA is the same as the initial consultation and is 1.25 hours per applicable contractor. This equivalent contractor time assumes that a component of the FRA-tasked update is insufficient consultation with the employees/contractors that needs to be completed, applicable to Class I and ISP railroads. Administrative time spent by an ISP railroad making substantial changes to its RRP in compliance with the rule is 15 hours. Administrative time spent by a Class I railroad making substantial changes to its RRP to comply with the rule is 40 hours. Contractor time spent to update materials for RRP revision is 10 minutes per contractor. This economic analysis assumes that railroads will only revise portions of their RRP and therefore the average amount of time spent by each contractor will not be greater than for full consultation on the initial RRP. Administrative time spent per railroad for ongoing involvement (Class I and ISP railroads) is 5 hours. Contractor time spent per railroad for ongoing involvement is 15 minutes per contractor on average.

10. Discount Rates

Discount rates of 3 and 7 percent are presented to meet the guidelines set forth in OMB Circular A–4. Discount rates are intended to reflect the value of money over time in order to reveal opportunity cost. The 7 percent discount rate is an estimate of the average rate of return to private capital in the U.S. For regulatory changes that do not primarily impact the allocation of capital, but rather impact consumption, the lower discount rate of 3 percent is a historical approximation of that impact.

Because this analysis does not attempt to quantify the safety impacts of either alternative, it skews the results of the discounting because it lacks the relative comparison to how net impacts would be experienced over time.

B. Regulatory Flexibility Act and Executive Order 13272

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) and Executive Order 13272 (67 FR 53461, Aug. 16, 2002) require agency review of proposed and final rules to assess their impacts on small entities. An agency must prepare an Initial Regulatory Flexibility Analysis (IRFA) unless it determines and certifies that a rule, if promulgated, would not have a significant economic impact on a substantial number of small entities. FRA has not determined whether this proposed rulemaking would have a significant economic impact on a substantial number of small

[33] Based on 2021 FRA data.

[34] Under the RRP final rule, an ISP railroad may petition FRA to discontinue compliance after five years. Section 271.13(g). FRA is assuming ISP railroads would continue to be designated as such for ten years to avoid underestimating costs in this analysis, not to imply that all ISP railroads will be required to comply for ten years.

[35] The wage data in this analysis are based on railroad wage data provided by the Surface Transportation Board for 2021 in its Quarterly Wage A&B Data, specifically Group 200 to represent professional and administrative staff, and Group 300 to represent a proxy for railroad contractors similar in duties to maintenance of way and structures employees (*https://www.stb.gov/reports-data/economic-data/quarterly-wage-ab-data/*).

entities, and has therefore prepared this IRFA. FRA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of the proposals in this NPRM. FRA seeks comment on the economic impacts of this proposed rulemaking on small entities.

1. Reasons for Considering Agency Action

This action provides notice and solicits comment on FRA's position that the RRP final rule should retain § 271.3(c) and is responsive to petitions of reconsideration received by FRA.

2. A Succinct Statement of the Objectives of, and the Legal Basis for, the Proposed Rule

FRA is proposing to keep part 271 in effect as published, but is using this rulemaking to gather additional public response to the proposal of retaining § 271.3(c). FRA initiated the RRP rulemaking in response to a statutory mandate set forth in section 103 of RSIA that directed FRA develop comprehensive, system-oriented, risk reduction planning requirements for Class I railroads, passenger railroads, and ISP railroads. This proposed rulemaking addresses issues raised by petitions for reconsideration that FRA received on the RRP final rule.

3. A Description of, and Where Feasible, an Estimate of the Number of Small Entities to Which the Proposed Rule Would Apply

The Regulatory Flexibility Act of 1980 requires a review of proposed and final rules to assess their impact on small entities, unless the Secretary certifies that the rule would not have a significant economic impact on a substantial number of small entities. ''Small entity'' is defined in 5 U.S.C. 601 as a small business concern that is independently owned and operated, and is not dominant in its field of operation. The U.S. Small Business Administration (SBA) has authority to regulate issues related to small businesses, and stipulates in its size standards that a ''small entity'' in the railroad industry is a for profit ''line-haul railroad'' that has fewer than 1,500 employees, a ''short line railroad'' with fewer than 500 employees, or a ''commuter rail system'' with annual receipts of less than seven million dollars. See ''Size Eligibility Provisions and Standards,'' 13 CFR part 121, subpart A.

Federal agencies may adopt their own size standards for small entities in consultation with SBA and in conjunction with public comment. Pursuant to that authority FRA has published a final statement of agency policy that formally establishes ''small entities'' or ''small businesses'' as railroads, contractors, and hazardous materials shippers that meet the revenue requirements of a Class III railroad as set forth in 49 CFR 1201.1–1, which is $20 million or less in inflation-adjusted annual revenues, and commuter railroads or small governmental jurisdictions that serve populations of 50,000 or less. See 68 FR 24891 (May 9, 2003) (codified at appendix C to 49 CFR part 209).

The $20 million limit is based on the Surface Transportation Board's revenue threshold for a Class III railroad carrier. Railroad revenue is adjusted for inflation by applying a revenue deflator formula in accordance with 49 CFR 1201.1–1. FRA is using this definition for the proposed rulemaking. For other entities, the same dollar limit in revenues governs whether a railroad, contractor, or other respondent is a small entity.

This proposed rulemaking would be applicable to ISP railroads, who must comply with the RRP rule. The only ISP railroads that may be considered a small entity would be those that meet the above definition. FRA estimates that the maximum number of ISP railroads would be 55, although the average number of ISP railroads over the next ten years is estimated to be 33.[36] It is unclear at this point how many of these ISP railroads may meet the definition of ''small entity''; however, as an upper bound, even if all of the ISP railroads that are anticipated to be identified over the ten-year horizon of this analysis are small entities, they would only comprise 7 percent of the small entities. This holds true for any given year (ranging from a minimum of 1.3 percent in Year 1 to a maximum of 7 percent in Year 10 and beyond) and the ten-year average (4.2 percent).

4. A Description of the Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Class of Small Entities That Would Be Subject to the Requirements and the Type of Professional Skill Necessary for Preparation of the Report or Record

Since this rulemaking is not proposing to make any revisions to the existing regulation, small railroads are not required to take any action for reporting, recordkeeping, or other compliance matters. Therefore, this proposed rulemaking would not have any economic impact on small entities.

5. Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

FRA is not aware of any relevant Federal rule that duplicates, overlaps with, or conflicts with the proposed regulations in this NPRM.

FRA invites all interested parties to submit comments, data, and information demonstrating the potential economic impact on small entities that would result from the proposed rulemaking or any of the alternatives. FRA particularly encourages small entities that could potentially be impacted by the proposed rulemaking and any alternatives to participate in the public comment process. FRA will consider all comments received during the public comment period for this NPRM when making a final determination of the NPRM's economic impact on small entities.

6. A Description of Significant Alternatives to the Proposed Rule

This NPRM does not propose to make any rule changes but opens the opportunity to receive data and comment about a specific section of the previously published RRP final rule, § 271.3(c). There are two significant alternatives to the rule as proposed. The proposed rulemaking states that FRA may decide to amend § 271.3(c) in response to the data and comments received during the public comment period.

One significant alternative would be the removal of § 271.3(c), which would eliminate the requirement that railroads consider certain contractors, specifically their operationally significant contractors, as directly affected employees in complying with the consultation and employee involvement requirements of the RRP rule. This alternative is discussed in this NRPM and would decrease the administrative burden. Small railroads would receive cost savings, however marginal, from this change.

A second alternative would move in the opposite direction, expanding the applicable pool of contractors subject to § 271.3(c) to include safety significant contractors a railroad identifies in its RRP plan pursuant to § 271.101(d). While this could impact additional small entities, that impact is expected to be marginal.

FRA anticipates that neither of the significant alternatives to this proposed

[36] There are expected to be 10 ISP railroads in Year 1, followed by 5 additional ISP railroads each year after, which will accumulate to, and plateau at, 55 in Year 10 and thereafter. Averaged across the ten-year time horizon, the result is 32.5 per year, rounded up to 33.

regulation that have been outlined above would disproportionately place any small railroads that are small entities at a significant competitive disadvantage.

C. Paperwork Reduction Act

There are no new collection of information requirements contained in this proposed rulemaking and, in accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* an information collection submission to OMB is not required. The recordkeeping and reporting requirements already contained in the RRP final rule (*see* 85 FR 9262) were approved by OMB on June 5, 2020. The information collection requirements thereby became effective when they were approved by OMB. The OMB approval number is OMB No. 2130–0610, and OMB approval expires on June 30, 2023.

D. Environmental Impact

Consistent with the National Environmental Policy Act [37] (NEPA), the Council on Environmental Quality's NEPA implementing regulations,[38] and FRA's NEPA implementing regulations,[39] FRA has evaluated this proposed rulemaking and determined that it is categorically excluded from environmental review and therefore does not require the preparation of an environmental assessment (EA) or environmental impact statement (EIS). Categorical exclusions (CEs) are actions identified in an agency's NEPA implementing regulations that do not normally have a significant impact on the environment and therefore do not require either an EA or EIS.[40] Specifically, FRA has determined that this proposed rulemaking is categorically excluded from detailed environmental review pursuant to 23 CFR 771.116(c)(15), ''[p]romulgation of rules, the issuance of policy statements, the waiver or modification of existing regulatory requirements, or discretionary approvals that do not result in significantly increased emissions of air or water pollutants or noise.''

The purpose of this rulemaking is to solicit information on whether FRA should retain a provision in the RRP final rule clarifying that contractors who perform significant portions of a railroad's operations are considered the railroad's directly affected employees for purposes of the rule. This proposed rulemaking would not directly or indirectly impact any environmental resources and would not result in significantly increased emissions of air or water pollutants or noise. In analyzing the applicability of a CE, FRA must also consider whether unusual circumstances are present that would warrant a more detailed environmental review.[41] FRA has concluded that no such unusual circumstances exist with respect to this proposed rulemaking and the proposal meets the requirements for categorical exclusion under 23 CFR 771.116(c)(15).

Pursuant to section 106 of the National Historic Preservation Act and its implementing regulations, FRA has determined this undertaking has no potential to affect historic properties.[42] FRA has also determined that this proposed rulemaking does not approve a project resulting in a use of a resource protected by Section 4(f).[43]

E. Executive Order 12898 (Environmental Justice)

Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and DOT Order 5610.2C [44] require DOT agencies to achieve environmental justice as part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects, including interrelated social and economic effects, of their programs, policies, and activities on minority populations and low-income populations. The DOT Order instructs DOT agencies to address compliance with Executive Order 12898 and requirements within the DOT Order in rulemaking activities, as appropriate. FRA has evaluated this proposed rulemaking under Executive Order 12898 and the DOT Order and has determined it would not cause disproportionately high and adverse human health and environmental effects on minority populations or low-income populations.

F. Federalism Implications

Executive Order 13132, ''Federalism,'' [45] requires FRA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' are defined in the Executive Order to include regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Under Executive Order 13132, an Agency may not issue a regulation with federalism implications that imposes substantial direct compliance costs and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments or the agency consults with State and local government officials early in the process of developing the regulation. Where a regulation has federalism implications and preempts State law, the Agency seeks to consult with State and local officials in the process of developing the regulation.

FRA has analyzed the proposed rulemaking under the principles and criteria contained in Executive Order 13132. This proposed rulemaking would 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. In addition, FRA has determined that the proposed rulemaking would not impose substantial direct compliance costs on State and local governments. Therefore, the consultation and funding requirements of Executive Order 13132 would not apply. However, this proposed rulemaking could have preemptive effect by operation of law under certain provisions of the Federal railroad safety statutes, specifically the former Federal Railroad Safety Act of 1970, repealed and recodified at 49 U.S.C. 20106. Section 20106 provides that States may not adopt or continue in effect any law, regulation, or order related to railroad safety or security that covers the subject matter of a regulation prescribed or order issued by the Secretary of Transportation (with respect to railroad safety matters) or the Secretary of Homeland Security (with respect to railroad security matters), except when the State law, regulation, or order qualifies under the ''essentially local safety or security hazard'' exception to section 20106.

In sum, FRA has analyzed this proposed rulemaking under the principles and criteria in Executive Order 13132. As explained above, FRA has determined this proposed

[37] 42 U.S.C. 4321 *et seq.*

[38] 40 CFR parts 1500 through 1508.

[39] 23 CFR part 771.

[40] *See* 40 CFR 1508.4.

[41] 23 CFR 771.116(b).

[42] *See* 54 U.S.C. 306108.

[43] *See* Department of Transportation Act of 1966, as amended (Pub. L. 89–670, 80 Stat. 931); 49 U.S.C. 303.

[44] 91 FR 27534 (May 10, 2012).

[45] 64 FR 43255 (Aug. 10, 1999).

rulemaking has no federalism implications, other than the possible preemption of State laws under Federal railroad safety statutes, specifically 49 U.S.C. 20106. Therefore, preparation of a federalism summary impact statement for this proposed rulemaking is not required.

G. Unfunded Mandates Reform Act of 1995

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995,[46] each Federal agency shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law). Section 202 of the Act [47] further requires that before promulgating any general notice of proposed rulemaking that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year, and before promulgating any final rule for which a general notice of proposed rulemaking was published, the Agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector. This proposed rulemaking would not result in such an expenditure, and thus preparation of such a statement is not required.

H. Energy Impact

Executive Order 13211 requires Federal agencies to prepare a Statement of Energy Effects for any ''significant energy action.'' [48] FRA has evaluated this proposed rulemaking in accordance with Executive Order 13211 and determined that this regulatory action is not a ''significant energy action'' within the meaning of the Executive Order.

I. Tribal Consultation

FRA has evaluated this proposed rulemaking under the principles and criteria in Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, dated November 6, 2000. This proposed rulemaking would not have a substantial direct effect on one or more Indian tribes, would not impose substantial direct compliance costs on Indian tribal governments, and would not preempt tribal laws. Therefore, the funding and consultation requirements of Executive Order 13175 do not apply, and a tribal summary impact statement is not required.

J. Privacy Act Statement

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.transportation.gov/privacy*. To facilitate comment tracking and response, FRA encourages commenters to provide their names, or the name of their organization; although submission of names is optional. Whether or not commenters identify themselves, FRA will fully consider all timely comments. If you wish to provide comments containing proprietary or confidential information, please contact FRA for alternate submission instructions.

Issued in Washington, DC.

Amitabha Bose,

Administrator.

[FR Doc. 2022–19432 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–06–P

[46] Public Law 104–4, 2 U.S.C. 1531.

[47] 2 U.S.C. 1532.

[48] 66 FR 28355 (May 22, 2001).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 222

[Docket No. 220902–0182]

RIN 0648–BL37

2023 Annual Determination To Implement the Sea Turtle Observer Requirement

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

ACTION: Proposed rule, request for comment.

SUMMARY: The National Marine Fisheries Service (NMFS) publishes this proposed Annual Determination (AD) for 2023, pursuant to its authority under the Endangered Species Act (ESA). Through the AD, NMFS identifies U.S. fisheries operating in the Atlantic Ocean, Gulf of Mexico, and Pacific Ocean that will be required to take fisheries observers upon NMFS' request. The purpose of observing identified fisheries is to learn more about sea turtle interactions in a given fishery, evaluate measures to prevent or reduce sea turtle takes, and implement the prohibition against sea turtle takes. Fisheries identified on the 2023 AD (see Table 1) will be eligible to carry observers upon NMFS' request as of January 1, 2023, and will remain on the AD for a five-year period until December 31, 2027.

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

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0062, by either of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0062 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Chief, Marine Mammal and Sea Turtle Conservation Division, Attn: Sea Turtle Annual Determination, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, etc.), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Jaclyn Taylor, Office of Protected Resources, 301–427–8402; Ellen Keane, Greater Atlantic Region, 978–282–8476; Dennis Klemm, Southeast Region, 727–824–5312; Dan Lawson, West Coast Region, 206–526–4740; Irene Kelly, Pacific Islands Region, 808–725–5141. Individuals who use a telecommunications device for the hearing impaired may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays.

SUPPLEMENTARY INFORMATION:

Purpose of the Sea Turtle Observer Requirement

Under the ESA, 16 U.S.C. 1531 *et seq.,* NMFS has the responsibility to implement programs to conserve marine life listed as endangered or threatened.

All sea turtles found in U.S. waters are listed as either endangered or threatened under the ESA. Kemp's ridley (*Lepidochelys kempii*), loggerhead (*Caretta caretta;* North Pacific distinct population segment (DPS)), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas;* Central West Pacific and Central South Pacific DPSs) and hawksbill (*Eretmochelys imbricata*) sea turtles are listed as endangered. Loggerhead (Northwest Atlantic distinct population segment), green (North Atlantic, South Atlantic, Central North Pacific, and East Pacific DPSs), and olive ridley (*Lepidochelys olivacea*) sea turtles are listed as threatened, except for breeding colony populations of olive ridleys on the Pacific coast of Mexico, which are listed as endangered. Due to the inability to distinguish between populations of olive ridley turtles away from the nesting beach, NMFS considers these turtles endangered wherever they occur in U.S. Pacific waters. While some sea turtle populations have shown signs of recovery, many populations continue to decline.

Bycatch in fishing gear is the primary anthropogenic source of sea turtle injury and mortality in U.S. waters. Section 9 of the ESA prohibits the take (defined to include harassing, harming, pursuing, hunting, shooting, wounding, killing, trapping, capturing, or collecting or attempting to engage in any such conduct), including incidental take, of endangered sea turtles. Pursuant to section 4(d) of the ESA, NMFS has issued regulations extending the prohibition of take, with exceptions, to threatened sea turtles (50 CFR 223.205 and 223.206). Section 11 of the ESA provides for civil and criminal penalties for anyone who violates the Act or a regulation issued to implement the ESA. NMFS may grant exceptions to the take prohibitions with an incidental take statement or an incidental take permit issued pursuant to ESA section 7 or 10, respectively. To do so, NMFS must determine the activity that will result in incidental take is not likely to jeopardize the continued existence of the affected listed species. For some Federal fisheries and most state fisheries, NMFS has not granted an exception for incidental takes of sea turtles primarily because we lack information about fishery-sea turtle interactions.

For most fisheries, the most effective way for NMFS to learn more about bycatch in order to implement the take prohibitions and prevent or minimize take is to place observers aboard fishing vessels. In 2007, NMFS issued a regulation (50 CFR 222.402) establishing procedures to annually identify, pursuant to specified criteria and after notice and opportunity for comment, those fisheries in which the agency intends to place observers (72 FR 43176; August 3, 2007). These regulations specify that NMFS may place observers on U.S. fishing vessels, commercial or recreational, operating in U.S. territorial waters, the U.S. exclusive economic zone (EEZ), or on the high seas or on vessels that are otherwise subject to the jurisdiction of the United States. Failure to comply with the requirements under these regulations may result in civil or criminal penalties under the ESA.

NMFS will pay the direct costs for vessels to carry the required observers. These include observer salary and insurance costs. NMFS may also evaluate other potential direct costs, should they arise. Once selected, a fishery will be required to carry observers, if requested, for a period of five years without further action by NMFS. This will enable NMFS to develop appropriate observer coverage and sampling protocols to investigate whether, how, when, where, and under what conditions sea turtle bycatch is occurring, and to evaluate whether existing measures are minimizing or preventing bycatch.

Sea Turtle Distribution

Atlantic Ocean and Gulf of Mexico

Sea turtle species found in waters of the Atlantic Ocean and Gulf of Mexico include green, hawksbill, Kemp's ridley, leatherback, and loggerhead turtles. The waters off the U.S. east coast and Gulf of Mexico provide important foraging, breeding, and migrating habitat for these species. Further, the southeastern United States, from North Carolina through the Florida Gulf coast, is a major sea turtle nesting area for loggerhead, leatherback, and green turtles, and, to a much lesser extent, Kemp's ridley and hawksbill turtles.

Four sea turtle species occur seasonally in New England and mid-Atlantic continental shelf waters north of Cape Hatteras, North Carolina: green, Kemp's ridley, leatherback, and loggerhead. The occurrence of these species in these waters is largely temperature dependent. In general, some turtles move up the coast from southern wintering areas as water temperatures warm in the spring. The trend reverses in the fall as water temperatures decrease. By December, turtles that migrated northward return to southern waters for the winter. Hard-shelled species are most commonly found south of Cape Cod, Massachusetts. Leatherbacks regularly occur as far north in U.S. waters as the Gulf of Maine in the summer and fall.

Green turtles generally inhabit inshore and nearshore waters from Texas to Massachusetts, the U.S. Virgin Islands, and Puerto Rico.

In the Atlantic, hawksbills are most common in Puerto Rico and its associated islands and in the U.S. Virgin Islands. In the continental United States, the species is primarily recorded from south Texas and south Florida and infrequently from the remaining Gulf States and north of Florida.

Kemp's ridleys occur throughout waters of the Gulf of Mexico and U.S. Atlantic coast from Florida to New England. The major nesting area for Kemp's ridleys is in Tamaulipas, Mexico, with limited nesting extending to the Texas coast and occasional nesting on the east coast from Florida to North Carolina.

Loggerheads occur throughout the Atlantic and Gulf of Mexico, ranging from inshore shallow water habitats to deeper oceanic waters. The largest nesting assemblage of loggerheads in the world is in the southeastern United States from Florida to North Carolina.

Adult leatherbacks are capable of tolerating a wide range of water temperatures and have been sighted along the entire continental coast of the United States as far north as the Gulf of Maine and south to Puerto Rico, the U.S. Virgin Islands, and into the Gulf of Mexico. The southeast coast of Florida represents a significant nesting area for leatherbacks in the western North Atlantic.

U.S. Pacific Ocean

Leatherback sea turtles are consistently present off the U.S. west coast, usually north of Point Conception, California. They migrate to central and northern California from their natal beaches in the Western Pacific to feed on jellyfish during summer and fall. Leatherback turtles usually appear in Monterey Bay and California coastal waters during August and September and move offshore in October and November. Other observed concentrations of leatherbacks include areas north of Cape Blanco, Oregon to Cape Flattery, Washington offshore from the Columbia River plume.

Loggerhead and olive ridley sea turtles are rarely observed in the U.S. west coast EEZ, but records show that all species have stranded in California and the Pacific Northwest. Two small resident populations of green turtles have been identified in the southern California Bight, associated historically with the warm water outflows from power plants in San Diego Bay, the Seal

Beach National Wildlife Refuge, and the San Gabriel River in Long Beach, California.

In the eastern Pacific, loggerheads have been reported as far north as Alaska and as far south as Chile. Occasionally there are sightings reported from the coasts of Washington and Oregon, but most records are of juveniles off the coast of California. Based upon observer records and aerial observations, loggerheads travel into the southern California Bight during El Niño events (or anomalously warm water conditions similar to an El Niño). The majority of fishery interactions with loggerheads during El Niño conditions have occurred during the summer.

Olive ridleys have been recorded stranded all along the U.S. west coast, although they are usually cold-stunned (*i.e.,* out of their normal habitat). Olive ridleys are believed to use warm water currents along the west coast for foraging. The specific distribution of olive ridleys along the U.S. west coast is unknown at this time.

Sea turtles occur throughout the Pacific Islands Region including the State of Hawaii and the U.S. territories of Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Pacific Island Remote Areas (PRIA; comprised of Baker, Howland, and Jarvis Islands, Johnston Atoll, Kingman Reef, and Palmyra Atoll). Green and hawksbill turtles are most common in these nearshore U.S. EEZ waters while leatherbacks, loggerheads, and olive ridleys occur in offshore pelagic waters.

Process for Developing the Annual Determination (AD)

Pursuant to 50 CFR 222.402, NOAA's Assistant Administrator for Fisheries (AA), in consultation with Regional Administrators and Fisheries Science Center Directors, develops a proposed AD identifying which fisheries are required to carry observers, if requested, to monitor potential interactions with sea turtles. NMFS provides an opportunity for public comment on any proposed determination. The determination is informed by the best available scientific, commercial, or other information regarding sea turtle-fishery interactions; sea turtle distribution; sea turtle strandings; fishing techniques, gears used, target species, seasons and areas fished; and/or qualitative data from logbooks or fisher reports. Specifically, fisheries are identified for inclusion on the AD based on the extent to which:

(1) The fishery operates in the same waters and at the same time as when sea turtles are present;

(2) The fishery operates at the same time or prior to elevated sea turtle strandings; or

(3) The fishery uses a gear or technique that is known or likely to result in incidental take of sea turtles based on documented or reported takes in the same or similar fisheries; and

(4) NMFS intends to monitor the fishery and anticipates that it will have the funds to do so.

The AA uses the most recent version of the annually published Marine Mammal Protection Act (MMPA) List of Fisheries (LOF) as the comprehensive list of commercial fisheries for consideration. The LOF includes all known state and Federal commercial fisheries that occur in U.S. waters and on the high seas. However, in preparing the AD, we do not rely on the three-part MMPA LOF classification scheme. In addition, unlike the LOF, the AD may include recreational fisheries likely to interact with sea turtles based on the best available information.

NMFS consults with appropriate state and Federal fisheries officials to identify which fisheries, both commercial and recreational, to consider. NMFS carefully considers all recommendations and information available for developing the proposed AD. The proposed AD is not an exhaustive or comprehensive list of all fisheries with documented or suspected sea turtle bycatch; rather it is intended as a mechanism to fill critical data gaps, where observer data is not currently sufficient for turtle data collection needs. NMFS will not include a fishery on the proposed AD if that fishery does not meet the criteria for inclusion on the AD (50 CFR 222.402(a)).

For many fisheries, NMFS may already be addressing bycatch through another mechanism (*e.g.,* rulemaking to implement modifications to fishing gear and/or practices), may be observing the fishery under a separate statutory authority, or will consider including them in future ADs based on the four previously noted criteria (50 CFR 222.402(a)). The fisheries not included on the 2023 AD may still be observed by NMFS fisheries observers under different authorities (*e.g.,* MMPA, Magnuson-Stevens Fishery Conservation and Management Act (MSA)) than the ESA, if applicable.

The final determination will publish in the **Federal Register** and individuals permitted for each fishery identified on the AD will receive a written notification. NMFS will also notify state or territory agencies. Once included in the final determination, a fishery will remain eligible for observer coverage for a period of five years to enable the design of an appropriate sampling program and to ensure collection of sufficient scientific data for analysis. If NMFS determines a need for more than five years to obtain sufficient scientific data, NMFS will include the fishery in another proposed AD, prior to the end of the fifth year.

On the 2018 AD, NMFS identified two fisheries and required them to carry observers, if requested, through December 31, 2022. The 2020 AD identified four additional fisheries and required them to carry observers, if requested, through September 29, 2025. The fisheries included on the current AD are available at *https://www.fisheries.noaa.gov/national/bycatch/sea-turtle-observer-requirement-annual-determination.*

Fisheries Proposed for Inclusion on the 2023 Annual Determination

NMFS proposes to include two fisheries in the Atlantic Ocean/Gulf of Mexico on the 2023 AD. The two fisheries, described below and listed in Table 1, are the mid-Atlantic gillnet and Gulf of Mexico menhaden purse seine fisheries. These two fisheries were previously listed on the 2018 AD for a five-year period ending December 31, 2022.

NMFS used the 2022 MMPA LOF (87 FR 23122; April 19, 2022) as the comprehensive list of commercial fisheries to evaluate for fisheries to include on the AD. The fishery name, definition, and number of vessels/persons for fisheries listed in the AD are taken from the most recent MMPA LOF. Additionally, the fishery descriptions below include a particular fishery's current classification on the MMPA LOF (*i.e.,* Category I, II, or III); Category I and II fisheries are required to carry observers under the MMPA, if requested by NMFS. As noted previously, NMFS also has authority to observe fisheries in Federal waters under the MSA and collect sea turtle bycatch information. The AD authority will work within the current observer programs, and allow NMFS the flexibility to further consider sea turtle data collection needs when allocating observer resources.

Gillnet Fisheries

Sea turtles are vulnerable to entanglement and drowning in gillnets, especially when gear is unattended. The main risk to sea turtles from capture in gillnet gear is forced submergence. Sea turtle entanglement in gillnets can also result in severe constriction wounds and/or abrasions. Large mesh gillnets (*e.g., 7* inch stretched mesh or greater) have been documented as particularly effective at capturing sea turtles.

However, sea turtles are prone to and have been commonly documented entangled in smaller mesh gillnets as well.

Mid-Atlantic Gillnet Fishery

NMFS proposes to include the mid-Atlantic gillnet fishery on the 2023 AD due to known sea turtle bycatch and the need to collect more data in state gillnet fisheries. This fishery has an estimated 4,020 vessels/persons and targets monkfish, spiny dogfish, smooth dogfish, bluefish, weakfish, menhaden, spot, croaker, striped bass, large and small coastal sharks, Spanish mackerel, king mackerel, American shad, black drum, skate spp., yellow perch, white perch, herring, scup, kingfish, spotted seatrout, and butterfish.

The fishery uses drift and sink gillnets, including nets set in a sink, stab, set, strike, or drift fashion, with some unanchored drift or sink nets used to target specific species. The dominant material is monofilament twine with stretched mesh sizes from 2.5–12 inches (6.4–30.5 cm), and string lengths from 150–8,400 feet (46–2,560 m). This fishery includes any residual large pelagic driftnet effort in the mid-Atlantic and any shark and dogfish gillnet effort in the mid-Atlantic zone.

Fishing occurs from right off the beach (6 ft. (1.8 m)) or in nearshore coastal waters to offshore waters (250 ft. (76 m)). This fishery operates year-round west of a line drawn at 72°30′ W longitude south to 36°33.03′ N latitude and east to the eastern edge of the EEZ and north of the North Carolina/South Carolina border. The fishery does not include the Category II and III inshore gillnet fisheries (*i.e.,* Chesapeake Bay, North Carolina, Long Island Sound inshore gillnet, Delaware River inshore gillnet, Rhode Island, southern Massachusetts (to Monomoy Island), and New York Bight (Raritan and Lower New York Bays) inshore gillnet fisheries).

The mid-Atlantic gillnet fishery is managed by several Federal Fishery Management Plans (FMPs) and Interstate FMPs managed by the Atlantic States Marine Fisheries Commission. These fisheries are primarily managed by total allowable catch, individual trip limits (quotas), effort caps (limited number of days at sea per vessel), time and area closures, and gear restrictions and modifications.

The mid-Atlantic gillnet fishery is classified as Category I fishery on the MMPA LOF, which authorizes NMFS to observe this fishery in state and Federal waters for marine mammal interactions and to collect information on sea turtles should a take occur on an observed trip. This fishery was listed on the 2018 AD and was eligible for observer coverage through 2022. The Chesapeake Bay inshore gillnet fishery and Long Island inshore gillnet fishery were listed on the 2020 AD and are eligible for observer coverage if requested by NMFS through September 29, 2025. By including the mid-Atlantic gillnet fishery on the 2023 AD, NMFS may authorize observer coverage more completely along the mid-Atlantic region.

NMFS proposes to include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in this fishery, and NMFS intends to monitor this fishery, particularly the segment that occurs in the nearshore state coastal waters of the mid-Atlantic and Delaware Bay. There were 3,006 observed trips in the mid-Atlantic gillnet fishery, excluding Chesapeake Bay and Long Island Sound, from 2017 through 2021. Other gillnet fisheries (*i.e.,* Chesapeake Bay and Long Island inshore gillnet fisheries) in nearshore waters of the mid-Atlantic are currently listed on the AD through 2025. The re-listing of the mid-Atlantic gillnet fishery on the 2023 AD will allow NMFS to take a more holistic approach to evaluating sea turtle bycatch in gillnet fisheries in state waters from New York through Virginia.

Seine Fisheries

Seine fisheries may use mesh similar to that used in gillnets, but the gear is prosecuted differently from traditional gillnets. Purse seines have the potential to entangle and drown sea turtles.

Gulf of Mexico Menhaden Purse Seine Fishery

NMFS proposes to include the Gulf of Mexico menhaden purse seine fishery on the 2023 AD. The Gulf of Mexico menhaden purse seine fishery has an estimated 40–42 vessels/persons, and targets menhaden and thread herring. This fishery uses purse seine gear and operates in bays, sounds, and nearshore coastal waters along the Gulf of Mexico coast. The majority of fishing effort occurs in Louisiana and Mississippi, with lesser effort in Alabama and Texas state waters. Florida prohibits the use of purse seines in state waters. The fishery is managed under the Gulf States Marine Fisheries Commission Interstate Gulf Menhaden FMP.

The fishery was observed in the early-1990s by Louisiana State University. Sea turtle strandings in the northern Gulf of Mexico have been documented during times and in areas near where the Gulf of Mexico menhaden purse seine fishery operates. In 2011, NMFS operated a pilot observer program in this fishery to better understand the fishery's operations and evaluate the feasibility of observing marine mammal and sea turtle bycatch. During the pilot observer program, two sea turtles were documented; one dead Kemp's ridley that was excluded by the large fish excluder and one live unidentified turtle that was successfully released from the purse-seine net.

A new collaborative project with NMFS and the Gulf of Mexico menhaden purse seine industry to develop effective observer methods to collect information about sea turtle bycatch in the Gulf of Mexico menhaden purse seine fishery began in 2020. This project is funded through the Deepwater Horizon Oil Spill Open Ocean Trustee Implementation Group to restore resources injured in the Gulf of Mexico by the 2010 Deepwater Horizon oil spill. A one-week proof-of-concept testing was conducted in October 2021, and a full-scale pilot observer project began in 2022.

The Gulf of Mexico menhaden purse seine fishery is classified as a Category II fishery on the MMPA LOF. This fishery was listed on the 2018 AD and was eligible for observer coverage through 2022. The re-listing of this fishery on 2023 AD will continue the efforts of the pilot observer program.

NMFS proposes to include this fishery pursuant to the criteria identified at 50 CFR 222.402(a)(1) for listing a fishery on the AD because sea turtles are known to occur in the same areas where the fishery operates, takes have been documented in this fishery, and NMFS intends to monitor this fishery.

Implementation of Observer Coverage in a Fishery Listed on the 2023 AD

As part of the proposed 2023 AD, NMFS has included, to the extent practicable, information on the fisheries and gear types to observe, geographic and seasonal scope of coverage, and any other relevant information. NMFS intends to monitor the fisheries and anticipates that it will have the funds to support observer activities. The final rule implementing this proposed 2023 AD will include a 30-day delay in the date of effectiveness for implementing observer coverage, except for those fisheries where the AA has determined that there is good cause pursuant to the Administrative Procedure Act to make the rule effective upon publication of the final rule.

The design of any observer program for fisheries identified through the AD

process, including how observers will be allocated to individual vessels, will vary among fisheries, fishing sectors, gear types, and geographic regions, and will ultimately be determined by the individual NMFS Regional Office, Science Center, and/or observer program. Pursuant to 50 CFR 222.404, during the program design, NMFS will follow the standards below for distributing and placing observers among fisheries identified in the AD and among vessels in those fisheries:

(1) The requirement to obtain the best available scientific information;

(2) The requirement that observers be assigned fairly and equitably among fisheries and among vessels in a fishery;

(3) The requirement that no individual person or vessel, or group of persons or vessels, be subject to inappropriate, excessive observer coverage; and

(4) The need to minimize costs and avoid duplication, where practicable.

Vessels subject to observer coverage under the AD must comply with observer safety requirements specified in 50 CFR 600.725 and 600.746. Specifically, 50 CFR 600.746(c) requires vessels subject to observer coverage to provide adequate and safe conditions for carrying an observer and conditions that allow for operation of normal observer functions. To provide such conditions, a vessel must comply with the applicable regulations regarding observer accommodations (see 50 CFR parts 229, 300, 600, 622, 635, 648, 660, and 679) and possess a current United States Coast Guard (USCG) Commercial Fishing Vessel Safety Examination decal or a USCG certificate of examination. A vessel that fails to meet these requirements at the time an observer is to be deployed is prohibited from fishing (50 CFR 600.746(f)), unless NMFS determines that an alternative platform (*e.g.,* a second vessel) may be used or that the vessel is not required to take an observer under 50 CFR 222.404(b). All fishers on a vessel must cooperate in the operation of observer functions. Observer programs designed or carried out in accordance with 50 CFR 222.404 are consistent with existing NOAA observer policies and applicable federal regulations, such as those under the Fair Labor and Standards Act (29 U.S.C. 201 *et seq.*), the Service Contract Act (41 U.S.C. 351 *et seq.*), and the Observer Health and Safety regulations (50 CFR part 600).

Additional information on observer programs in commercial fisheries is located on the NMFS National Observer Program's website: *https://www.fisheries.noaa.gov/topic/fishery-observers.*

TABLE 1—STATE AND FEDERAL COMMERCIAL FISHERIES PROPOSED FOR INCLUSION ON THE 2023 ANNUAL DETERMINATION

Fishery	Years eligible to carry observers
Purse Seine Fisheries:	
Gulf of Mexico menhaden purse seine	2023–2027
Gillnet Fisheries:	
Mid-Atlantic gillnet	2023–2027

Classification

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule would not have a significant economic impact on a substantial number of small entities. Any entity with combined annual fishery landing receipts less than $11 million is considered a small entity for purposes of the Regulatory Flexibility Act (50 CFR 200.2). Under this $11 million standard, all entities subject to this action are considered small entities.

NMFS has estimated that approximately 4,062 vessels participating in the two proposed fisheries listed in Table 1 would be eligible to carry an observer, if requested. However, NMFS would only request a fraction of the total number of participants to carry an observer, based on the sampling protocol identified for each fishery by regional observer programs. As noted throughout this proposed rule, NMFS would select vessels and focus coverage during times and areas where fishing effort overlaps with sea turtle distribution. Due to the unpredictability of fishing effort, NMFS cannot pre-determine the specific number of vessels that it will request to carry an observer.

If a vessel is requested to carry an observer, fishers will not incur any direct economic costs associated with carrying that observer. In addition, 50 CFR 222.404(b) states that an observer will not be placed on a vessel if the facilities for quartering an observer or performing observer functions are inadequate or unsafe, thereby exempting from this requirement vessels that are too small to accommodate an observer. Because this proposed rule would not have a significant economic impact on a substantial number of small entities, an initial regulatory flexibility analysis is not required and was not prepared.

The information collection for the AD is approved under Office of Management and Budget (OMB) control number 0648–0593. 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 Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

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

In accordance with the Companion Manual for NOAA Administrative Order (NAO) 216–6A, NMFS preliminarily determined that publishing this proposed AD qualifies to be categorically excluded from further NEPA review, consistent with categories of activities identified in Categorical Exclusion G7 (''Preparation of policy directives, rules, regulations, and guidelines of an administrative, financial, legal, technical, or procedural nature, or for which the environmental effects are too broad, speculative or conjectural to lend themselves to meaningful analysis and will be subject later to the NEPA process, either collectively or on a case-by-case basis'') of the Companion Manual, and we have not identified any extraordinary circumstances listed in Chapter 4 of the Companion Manual for NAO 216–6A that would preclude application of this categorical exclusion. If NMFS takes a management action for a specific fishery, for example, requiring fishing gear modifications, NMFS would first prepare any environmental document specific to that action that is required under NEPA.

This proposed rule would not affect species listed as threatened or endangered under the ESA or their associated critical habitat. The impacts of numerous fisheries have been analyzed in various biological opinions, and this proposed rule would not affect the conclusions of those opinions. The inclusion of fisheries on the AD is not considered a management action that would adversely affect threatened or endangered species. If NMFS takes a management action, for example, requiring modifications to fishing gear and/or practices, NMFS would review the action for potential adverse effects to listed species under the ESA.

This proposed rule would have no adverse impacts on sea turtles, and information collected from observer programs may have a positive impact on sea turtles by improving knowledge of sea turtles and the fisheries interacting with sea turtles.

This proposed rule would not affect the land or water uses or natural resources of the coastal zone, as specified under section 307 of the Coastal Zone Management Act.

Dated: September 2, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

[FR Doc. 2022–19411 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register
Vol. 87, No. 173
Thursday, September 8, 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

Animal and Plant Health Inspection Service

[Docket No. APHIS–2022–0046]

Notice of Request for Extension of Approval of an Information Collection; Importation of Pork-Filled Pasta Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection associated with the regulations for the importation of pork-filled pasta products into the United States.

DATES: We will consider all comments that we receive on or before November 7, 2022.

ADDRESSES: You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2022–0046 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2022–0046, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at regulations.gov or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

FOR FURTHER INFORMATION CONTACT: For information on the regulations for the importation of pork-filled pasta products, contact Dr. Lynette Williams, Senior Staff Veterinary Medical Officer, Animal Product Imports, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737; (301) 851–3334. For information on the information collection reporting process, contact Mr. Joseph Moxey, APHIS' Information Collection Coordinator, at (301) 851–2483.

SUPPLEMENTARY INFORMATION:

Title: Importation of Pork-Filled Pasta Products.

OMB Control Number: 0579–0214.

Type of Request: Extension of approval of an information collection.

Abstract: Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) is authorized, among other things, to prohibit or restrict the importation and interstate movement of animals, animal products, and other articles to prevent the introduction into and dissemination within the United States of animal diseases and pests. To fulfill this mission, APHIS regulates the importation of animals and animal products into the United States. The regulations are contained in 9 CFR parts 91 through 99.

The regulations in 9 CFR part 94 (referred to below as the regulations) prohibit or restrict the importation of specified animals and animal products into the United States to prevent the introduction into the U.S. livestock population of certain contagious animal diseases, including swine vesicular disease (SVD). Section 94.12 of the regulations contains, among other things, specific processing, recordkeeping, and certification requirements for pork-filled pasta products exported to the United States from regions affected with SVD.

The regulations require, among other things, that the pork-filled pasta products be accompanied by a certificate stating that the product has been processed according to the requirements set forth in the regulations. This certificate must be issued and signed by an official of the national government of the region in which the pork-filled pasta products were processed.

In addition, the processing facility where the pork-filled pasta products are produced must maintain original records for a minimum of 2 years for each lot of pork or pork products used. The records must include the date the cooked or dry-cured pork product was received in the processing facility, the lot number or other identification marks, the health certificate that accompanied the cooked or dry-cured pork from the slaughter/processing facility to the meat-filled pasta product processing facility, and the date the pork or pork product used in the pasta either started dry-curing (if the product used is a dry-cured ham) or the date the product was cooked (if the product used is a cooked pork product). The records must also include the number of packages, the number of hams or cooked pork products per package, and the weight of each package. These records would provide important information in any trace-back investigation that may need to be conducted by officials of the region of origin of the pork-filled pasta product or by USDA officials.

The regulations also require the operator of a foreign processing establishment to enter into a cooperative service agreement with APHIS stating that: (1) The establishment agrees to process pork in accordance with the regulations; (2) the establishment will allow APHIS representatives unannounced entry into the establishment to inspect the facility, operations, and records of the establishment; and (3) the establishment will pay for the costs of the associated inspections and be current on the payments. Any storage room area reserved for pork or pork products eligible for export to the United States must, among other things, be marked by signs.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate 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;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 1 hour per response.

Respondents: Officials of the national government of the region in which the pork-filled pasta is processed and operators of pork-filled pasta product processing facilities.

Estimated annual number of respondents: 3.

Estimated annual number of responses per respondent: 2.

Estimated annual number of responses: 5.

Estimated total annual burden on respondents: 5 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 2nd day of September 2022.

Anthony Shea,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 2022–19408 Filed 9–7–22; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Javier Melesio Deleon, Inmate Number: 48161–480, FMC Fort Worth, Federal Medical Center, P.O. Box 15330, Fort Worth, TX 76119

On January 21, 2021, in the U.S. District Court for the Western District of Texas, Javier Melesio Deleon (''DeLeon'') was convicted of violating 18 U.S.C. 554(a). Specifically, DeLeon was convicted of knowingly and unlawfully concealing, buying or facilitating the transportation and concealment of any merchandise, article and object from the United States to Mexico, to wit: a SCCY, model CPX–1, 9mm caliber pistol; a Taurus, Model PT 138 PRO, .38 caliber; a Taurus, Model PT 111 G2, 9mm; a Smith & Wesson, model SD40 VE, .40 caliber; and a Taurus, model 82, .38 special caliber revolver. As a result of his conviction, the Court sentenced Deleon to 46 months in prison, three years supervised release, $900 court assessment and forfeiture in the amount of $1,040.

Pursuant to Section 1760(e) of the Export Control Reform Act (''ECRA''),[1] the export privileges of any person who has been convicted of certain offenses, including, but not limited to, 18 U.S.C. 554, may be denied for a period of up to ten (10) years from the date of his/her conviction. 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of DeLeon's conviction for violating 18 U.S.C. 554. As provided in Section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''), BIS provided notice and opportunity for DeLeon to make a written submission to BIS. 15 CFR 766.25.[2] BIS has received and considered a written submission from DeLeon.

Based upon my review of the record, including Mr. DeLeon's written submission, and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny DeLeon's export privileges under the Regulations for a period of seven years from the date of DeLeon's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which DeLeon had an interest at the time of his conviction.[3]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until January 21, 2028, Javier Melesio Deleon, with a last known address of Inmate Number: 48161–480, FMC Fort Worth, Federal Medical Center, P.O. Box 15330, Fort Worth, TX 76119, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item

[1] ECRA was enacted on August 13, 2018, as part of the John S. McCain National Defense Authorization Act for Fiscal Year 2019, and as amended is codified at 50 U.S.C. 4801–4852.

[2] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[3] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders pursuant to amendments to the Regulations (85 *FR* 73411, November 18, 2020).

subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA and Sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to DeLeon by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, DeLeon may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security. The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to DeLeon and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until January 21, 2028.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–19446 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Denying Export Privileges; In the Matter of: Wei Sun, 7146 W. Fall Haven Way, Tucson, AZ 85757

On November 17, 2020 in the U.S. District Court for the District of Arizona, Wei Sun (''Sun'') was convicted of violating Section 38 of the Arms Export Control Act (22 U.S.C. 2778) (''AECA''). Sun was convicted of knowingly and willfully exporting from the United States to China, technical data, specifically, two files of computer data contained in an HP Elitebook 840 computer possessed by Sun, controlled under the International Traffic in Arms Regulations and the United State Munitions List without having first obtained from the Department of State a license for such export or written authorization for such export.

As a result of his conviction, the Court sentenced Sun to 38 months in prison, three years of supervised release and a $100 special assessment. The Department of State also added Sun to its list of debarred parties.

Pursuant to section 1760(e) of the Export Control Reform Act (''ECRA''), the export privileges of any person who has been convicted of certain offenses, including, but not limited to, section 38 of the AECA, may be denied for a period of up to ten (10) years from the date of his/her conviction. *See* 50 U.S.C. 4819(e). In addition, any Bureau of Industry and Security (''BIS'') licenses or other authorizations issued under ECRA, in which the person had an interest at the time of the conviction, may be revoked. *Id.*

BIS received notice of Sun's conviction for violating Section 38 of the AECA. BIS provided notice and opportunity for Sun to make a written submission to BIS, as provided in section 766.25 of the Export Administration Regulations (''EAR'' or the ''Regulations''). 15 CFR 766.25.[1] BIS has not received a written submission from Sun.

Based upon my review of the record and consultations with BIS's Office of Exporter Services, including its Director, and the facts available to BIS, I have decided to deny Sun's export privileges under the Regulations for a period of 10 years from the date of Sun's conviction. The Office of Exporter Services has also decided to revoke any BIS-issued licenses in which Sun had an interest at the time of his conviction.[2]

Accordingly, it is hereby *ordered*:

First, from the date of this Order until November 17, 2030, Wei Sun, with a last known address of: 7146 W. Fall Haven Way, Tucson, AZ 85757, and when acting for or on his behalf, his successors, assigns, employees, agents or representatives (''the Denied Person''), may not directly or indirectly participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the Regulations, including, but not limited to:

A. Applying for, obtaining, or using any license, license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or engaging in any other activity subject to the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or from any other activity subject to the Regulations.

Second, no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of the Denied Person any item subject to the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by the Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the Denied Person acquires or attempts to acquire such ownership, possession or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the Denied Person of any item subject to the Regulations that has been exported from the United States;

D. Obtain from the Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and which is owned, possessed or controlled by the Denied Person, or service any item, of whatever origin, that is owned, possessed or controlled by the Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, servicing means installation, maintenance, repair, modification or testing.

Third, pursuant to Section 1760(e) of ECRA (50 U.S.C. 4819(e)) and sections 766.23 and 766.25 of the Regulations, any other person, firm, corporation, or business organization related to Sun by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order in order to prevent evasion of this Order.

Fourth, in accordance with part 756 of the Regulations, Sun may file an appeal of this Order with the Under Secretary of Commerce for Industry and Security.

[1] The Regulations are currently codified in the Code of Federal Regulations at 15 CFR parts 730–774 (2022).

[2] The Director, Office of Export Enforcement, is the authorizing official for issuance of denial orders, pursuant to recent amendments to the Regulations (85 *FR* 73411, November 18, 2020).

The appeal must be filed within 45 days from the date of this Order and must comply with the provisions of part 756 of the Regulations.

Fifth, a copy of this Order shall be delivered to Sun and shall be published in the **Federal Register**.

Sixth, this Order is effective immediately and shall remain in effect until November 17, 2030.

John Sonderman,

Director, Office of Export Enforcement.

[FR Doc. 2022–19447 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[[A–533–871]

Finished Carbon Steel Flanges From India: Preliminary Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that producers and/or exporters subject to this administrative review made sales of subject merchandise at less than normal value (NV) during the period of review (POR) August 1, 2020, through July 31, 2021. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Fred Baker or Preston Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–2924 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2017, Commerce published in the **Federal Register** the antidumping duty order on finished carbon steel flanges from India.[1] On August 2, 2021, Commerce published a notice of opportunity to request an administrative review of the *Order.*[2] Between August 12 and 30, 2021, Commerce received timely requests for an administrative review from the petitioners,[3] Norma Group,[4] R.N. Gupta & Co. Ltd. (RNG), Munish Forge Private Limited (Munish), Jai Auto Pvt. Ltd. of India (Jai Auto), Cetus Engineering Private Limited (Cetus), and Balkrishna Steel Forge Pvt. Ltd. (Balkrishna).[5] On October 7, 2021, Commerce published a notice of initiation of an administrative review of the *Order* with respect to 42 companies.[6] On November 2, 2021, Commerce selected Norma Group and RNG as mandatory respondents in this administrative review.[7] On April 29, 2022, Commerce extended the time period for issuing these preliminary results by 120 days until August 31, 2022, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.213(h)(2).[8]

[1] *See Finished Carbon Steel Flanges from India and Italy: Antidumping Duty Orders,* 82 FR 40136 (August 24, 2017) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 41436, 41437 (August 2, 2021).

[3] The petitioners are Weldbend Corporation and Boltex Manufacturing Co., L.P.

[4] In prior segments of this proceeding, we determined that Norma (India) Limited, USK Exports Private Limited, Uma Shanker Khandelwal & Co., and Bansidhar Chiranjilal were affiliated and should be collapsed and treated as a single entity (Norma Group). *See Finished Carbon Steel Flanges from India: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination,* 82 FR 9719 (February 8, 2017), and accompanying Preliminary Decision Memorandum, at 4–5, unchanged in *Finished Carbon Steel Flanges from India: Final Determination of Sales at Less Than Fair Value,* 82 FR 29483 (June 29, 2017); *Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018,* 84 FR 57848 (October 29, 2019), unchanged in *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review; 2017–2018,* 85 FR 21391 (April 17, 2020); *Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 85 FR 83051 (December 21, 2021), unchanged in *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2018–2019,* 86 FR 33226 (June 24, 2021); and *Finished Carbon Steel Flanges from India: Preliminary Results of Antidumping Duty Administrative Review; 2019–2020,* 86 FR 50048 (September 7, 2021), unchanged in *Finished Carbon Steel Flanges from India: Final Results of Antidumping Duty Administrative Review; 2019–2020,* 87 FR 13701 (March 10, 2022). In this review, Norma (India) Limited and its affiliated entities have affirmed that the factual basis on which Commerce made its prior determinations has not changed. *See* Norma Group's Letter, ''Finished Carbon Steel Flanges from India: 1st Supplemental Response to Section C and D of Anti-Dumping Duty Original Questionnaire,'' dated July 1, 2022, at 2–4. Therefore, Commerce continues to collapse and treat these four companies as a single entity.

[5] *See* Petitioners' Letter, ''Finished Carbon Steel Flanges from India: Request for Administrative Review,'' dated August 31, 2021; Norma Group's Letter, ''Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review for Norma (India) Limited, USK Export Private Limited, Umashanker Khandelwal and Co. and Bansidhar Chiranjilal,'' dated August 30, 2021; RNG's Letter, ''Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review, dated August 30, 2021; Munish's Letter, ''Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review,'' dated August 12, 2021; Jai Auto's Letter, ''Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review for Jai Auto Pvt. Ltd during POR August 01, 2020 to July 31, 2021,'' dated August 30, 2021; Cetus' Letter, ''Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review for Cetus Engineering Private Limited during POR August 01, 2020 to July 31, 2021,'' dated August 30, 2021; and Balkrishna's Letter, ''Finished Carbon Steel Flanges from India: Request for Anti-Dumping Duty Administrative Review for Balkrishna Steel Forge Pvt. Ltd. during POR August 01, 2020 to July 31, 2021,'' dated August 30, 2021.

[6] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55811 (October 7, 2021) (*Initiation Notice*).

[7] *See* Memorandum, ''Antidumping Duty Administrative Review of Finished Carbon Steel Flanges from India: Respondent Selection,'' dated November 2, 2021.

[8] *See* Memorandum, ''Finished Carbon Steel Flanges from India: Extension of Preliminary Results of Antidumping Duty Administrative Review; 2020–21,'' dated April 29, 2022.

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[9] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Order* is finished carbon steel flanges. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(1)(B) and (2) of the Act. Export price is calculated in accordance with section 772 of the Act and NV is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Rate for Non-Selected Companies

The Act and Commerce's regulations do not address the establishment of a rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual examination in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.''

In this administrative review, we preliminarily calculated weighted-average dumping margins for Norma Group and RNG that are not zero, *de minimis,* or determined entirely on the basis of facts available. Accordingly, Commerce is preliminarily assigning to the companies not individually examined, listed in Appendix II, a margin of 0.79 percent, which is the weighted average of Norma Group's margin and RNG's margin based on publicly ranged data.[10]

Preliminary Results of Review

We preliminarily determine that the following weighted-average dumping margins exist for the period August 1, 2020, through July 31, 2021:

Producer/exporter	Weighted-average dumping margin (percent)
R.N. Gupta & Co. Ltd	0.69
Norma (India) Limited/USK Export Private Limited/Uma Shanker Khandelwal & Co./Bansidhar Chiranjilal[11]	0.94
Non-Selected Companies[12]	0.79

Disclosure and Public Comment

Commerce will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[13] Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results.[14] Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than seven days after the date for filing case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants, whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues addressed during the hearing will be limited to those raised in the respective case and rebuttal briefs.[16] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[17]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2),

[9] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of Antidumping Duty Administrative Review: Finished Carbon Steel Flanges from India; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[10] *See* Memorandum, ''Preliminary Results of the Antidumping Duty Administrative Review of Finished Carbon Steel Flanges from India; 2020–21: Calculation of Margin for Respondents Not Selected for Individual Examination,'' dated concurrently with this notice; *see also, e.g., Xanthan Gum from the People's Republic of China: Preliminary Results of the Antidumping Duty Administrative Review, and Partial Rescission; 2018–2019,* 85 FR 75686 (November 23, 2020); *Albemarle Corp.* v. *United States,* 821 F. 3d 1345 (Fed. Cir. 2016); and *Emulsion Styrene-Butadiene Rubber from the Republic of Korea: Preliminary Results of the Administrative Review of the Antidumping Duty Order; 2018–2019,* 85 FR 39534 (July 1, 2020).

[11] Commerce initiated on ''Uma Shanker Khandelwal & Co.'' and ''UmaShanker Khandelwal and Co.'' based on the requests for administrative review that Commerce received from interested parties. *See Initiation Notice.* Because of the minor differences in the spelling of these company names, we have combined them under the name Uma Shanker Khandelwal & Co., which is part of the collapsed entity, Norma Group.

[12] *See* Appendix II for a list of companies not selected for individual examination.

[13] *See* 19 CFR 351.224(b).

[14] *See* 19 CFR 351.309(c)(1)(ii).

[15] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

[16] *See* 19 CFR 351.310(c).

[17] *See Temporary Rule.*

Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rates

Upon issuance of the final results, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If the weighted-average dumping margin for a mandatory respondent is not zero or *de minimis* in the final results of this review, we will calculate an importer-specific assessment rate on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1).[18] If the weighted-average dumping margin is zero or *de minimis* in the final results of review, or if an importer-specific assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[19] For entries of subject merchandise during the period of review produced by the respondents for which they did not know its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries pursuant to the reseller policy, *i.e.,* the assessment rate for such entries will be the all-others rate established in the investigation if there is no rate for the intermediate company(ies) involved in the transaction.[20]

For the companies which were not selected for individual examination, we intend to assign an assessment rate based on the methodology described in the ''Rate for Non-Examined Companies'' section.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication). The final results of this administrative review shall be the basis for the assessment of antidumping duties on entries of merchandise under review and for future cash deposits of estimated antidumping duties, where applicable.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for companies subject to this review will be equal to the company-specific weighted-average dumping margin established in the final results of this administrative review; (2) for merchandise exported by a company not covered in this review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the less-than-fair-value investigation, but the producer is, then the cash deposit rate will be the rate established in the most recently completed segment of the proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 8.91 percent, the all-others rate established in the less-than-fair-value investigation.[21] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

These preliminary results of review are issued and published in accordance with sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(4).

Dated: August 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Rates for Non-Examined Companies
V. Discussion of the Methodology
VI. Recommendation

Appendix II

List of Companies Not Selected for Individual Examination

1. Adinath International
2. Allena Group
3. Alloyed Steel
4. Balkrishna Steel Forge Pvt. Ltd.
5. Bebitz Flanges Works Private Limited
6. C. D. Industries
7. Cetus Engineering Private Limited
8. CHW Forge
9. CHW Forge Pvt. Ltd.
10. Citizen Metal Depot
11. Corum Flange
12. DN Forge Industries
13. Echjay Forgings Limited
14. Falcon Valves and Flanges Private Limited
15. Heubach International
16. Hindon Forge Pvt. Ltd.
17. Jai Auto Pvt. Ltd.
18. Kinnari Steel Corporation
19. Mascot Metal Manufacturers
20. M F Rings and Bearing Races Ltd.
21. Munish Forge Private Limited
22. OM Exports
23. Punjab Steel Works
24. Raaj Sagar Steels
25. Ravi Ratan Metal Industries
26. R. D. Forge
27. Rolex Fittings India Pvt. Ltd.
28. Rollwell Forge Engineering Components and Flanges
29. Rollwell Forge Pvt. Ltd.
30. SHM (ShinHeung Machinery)
31. Siddhagiri Metal & Tubes
32. Sizer India
33. Steel Shape India
34. Sudhir Forgings Pvt. Ltd.
35. Tirupati Forge Pvt. Ltd.
36. Umashanker Khandelwal Forging Limited

[FR Doc. 2022–19367 Filed 9–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–827]

Certain Cased Pencils From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

[18] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8103 (February 14, 2012).

[19] *Id.,* 77 FR at 8102–03; *see also* 19 CFR 351.106(c)(2).

[20] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[21] *See Order,* 82 FR at 40138.

SUMMARY: The U.S. Department of Commerce (Commerce) has completed its administrative review of the antidumping duty order on certain cased pencils (cased pencils) from the People's Republic of China (China) for the period of review (POR) December 1, 2020, through November 30, 2021. We continue to find that the single entity Wah Yuen Stationery Co. Ltd./ Shandong Wah Yuen Stationery Co. Ltd. (Wah Yuen) had no shipments of cased pencils during the POR. We also continue to find that Tianjin Tonghe Stationery Co., Ltd. (Tianjin Tonghe) and Ningbo Homey Union Co., Ltd. (Ningbo Homey) are not eligible for a separate rate and should be treated as part of the China-wide entity.

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sergio Balbontin, AD/CVD Operations, Office VIII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–6478.

SUPPLEMENTARY INFORMATION:

Background

On July 19, 2022, Commerce published the *Preliminary Results* in the **Federal Register**.[1] We invited interested parties to comment on the *Preliminary Results;* however, no interested parties submitted comments. Accordingly, we made no changes to the *Preliminary Results.*

Scope of the Order [2]

The merchandise covered by the *Order* is certain cased pencils of any shape or dimension (except as described below) which are writing and/or drawing instruments that feature cores of graphite or other materials, encased in wood and/or man-made materials, whether or not decorated and whether or not tipped (*e.g.,* with erasers, *etc.*) in any fashion, and either sharpened or unsharpened. The pencils subject to the *Order* are currently classifiable under subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Specifically excluded from the scope of the *Order* are mechanical pencils, cosmetic pencils, pens, non-cased crayons (wax), pastels, charcoals, chalks, and pencils produced under U.S. patent number 6,217,242, from paper infused with scents by the means covered in the above-referenced patent, thereby having odors distinct from those that may emanate from pencils lacking the scent infusion. Also excluded from the scope of the *Order* are pencils with all of the following physical characteristics: (1) length: 13.5 or more inches; (2) sheath diameter: not less than one-and-one quarter inches at any point (before sharpening); and (3) core length: not more than 15 percent of the length of the pencil.

In addition, pencils with all of the following physical characteristics are excluded from the scope of the *Order:* novelty jumbo pencils that are octagonal in shape, approximately ten inches long, one inch in diameter before sharpening, and three-and-one eighth inches in circumference, composed of turned wood encasing one-and-one half inches of sharpened lead on one end and a rubber eraser on the other end.

Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise covered by the scope of the *Order* is dispositive.

Final Determination of No Shipments

In the *Preliminary Results,* Commerce determined that Wah Yuen [3] had no shipments of cased pencils during the POR, based on our analysis of U.S. Customs and Border Protection (CBP) entry documentation and Wah Yuen's questionnaire responses. We received no comments on our preliminary finding. As there is no information on the record that calls into question the finding in the *Preliminary Results,* we continue to find in the final results of this review that Wah Yuen had no shipments of subject merchandise during the POR.

China-Wide Entity

With the exception of Wah Yuen, we find all other companies for which a review was requested to be part of the China-wide entity, because they did not file no-shipment statements, separate rate applications, or separate rate certifications. Accordingly, Tianjin Tonghe and Ningbo Homey are part of the China-wide entity. Because no party requested a review of the China-wide entity, and Commerce no longer considers the China-wide entity as an exporter conditionally subject to administrative reviews, we did not conduct a review of the China-wide entity.[4] Accordingly, the rate previously established for the China-wide entity is 114.90 percent and is not subject to change as a result of this review.[5]

Assessment Rates

Commerce will determine, and CBP shall assess, antidumping duties on all appropriate entries in accordance with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1). Because we determined that Tianjin Tonghe and Ningbo Homey are not eligible for a separate rate and are part of the China-wide entity, we intend to instruct CBP to apply an *ad valorem* assessment rate of 114.90 percent (*i.e.,* the China-wide entity rate) to all entries of subject merchandise during the POR that were exported by these companies. In addition, as Commerce continues to find that Wah Yuen did not have any shipments of subject merchandise during the POR, we will instruct CBP to assess any suspended entries of subject merchandise associated with Wah Yuen at the China-wide rate.

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results of review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

[1] *See Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2020–2021,* 87 FR 42998 (July 19, 2022).

[2] *See Certain Cased Pencils from the People's Republic of China: Continuation of Antidumping Duty Order,* 82 FR 41608 (September 1, 2017); and *Antidumping Duty Order: Certain Cased Pencils from the People's Republic of China,* 59 FR 66909 (December 28, 1994) (collectively, *Order*).

[3] In a prior administrative review, Commerce determined that Wah Yuen Stationery Co. Ltd. and Shandong Wah Yuen Stationery Co. Ltd. are affiliated pursuant to section 771(33) of the Tariff Act of 1930, as amended (the Act), and should be treated as a single entity pursuant to 19 CFR 351.401(f). *See Certain Cased Pencils from the People's Republic of China: Preliminary Results of Antidumping Duty New Shipper Review; 2014–2015,* 81 FR 37573 (June 10, 2016), and accompanying Preliminary Decision Memorandum, at 9–10, unchanged in *Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty New Shipper Review; 2014–2015,* 81 FR 74764 (October 27, 2016); *see also Certain Cased Pencils from the People's Republic of China: Amended Final Results of Antidumping Duty New Shipper Review; 2014–2015,* 81 FR 92784 (December 20, 2016) (*Amended New Shipper Review*). We received no comments regarding our treatment of these companies as a single entity and therefore continue to collapse them for the final results of this administrative review.

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] *See Certain Cased Pencils from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2012–2013,* 80 FR 26897 (May 11, 2015).

Cash Deposit Requirements

The following cash deposit requirements will be effective for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) Wah Yuen's cash deposit rate will continue to be its existing exporter-producer specific rate, 30.55 percent; [6] (2) for previously investigated or reviewed Chinese and non-Chinese exporters for which a review was not requested and that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate published for the most recently-completed period; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise that have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h) and 19 CFR 351.221(b)(5).

Dated: August 26, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19341 Filed 9–7–22; 8:45 am]

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[6] *See Amended New Shipper Review.*

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–017]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review and Rescission of Review, in Part; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are being provided to producers/exporters of certain passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) during the period of review (POR), January 1, 2020, through December 31, 2020. In addition, we are rescinding the review with respect to 12 companies. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Nicholas Czajkowski or Richard Roberts, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1395 or (202) 482–2631, respectively.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 2020, Commerce published the notice of initiation of an administrative review of the countervailing duty (CVD) order on passenger tires from China.[1] On March 30, 2022, Commerce exercised its discretion to extend the preliminary results of this administrative review by 120 days, until August 31, 2022.[2]

For a complete description of the events that followed the initiation of this review, see the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order [4]

The products covered by the *Order* are certain passenger vehicle and light truck tires from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Rescission of Administrative Review, in Part

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received timely-filed withdrawal requests with respect to the following nine companies: (1) Sailun Group Co., Ltd., formerly known as Sailun Jinyu Group Co., Ltd.; (2) Sailun Group (HongKong) Co., Limited., formerly known as Sailun Jinyu Group (Hong Kong) Co., Limited; (3) Sailun Tire Americas Inc., formerly known as SJI North America Inc; [5] (4)

[1] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55811 (October 7, 2021) (*Initiation Notice*).

[2] *See* Memorandum, ''Passenger Vehicle and Light Truck Tires from the People's Republic of China: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2020,'' dated March 30, 2022.

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020 Countervailing Duty Administrative Review of Certain Passenger Vehicles and Light Truck Tires from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902 (August 10, 2015) (*Order*).

[5] *See* Sailum's Letter, ''Countervailing Duty Order on Passenger Vehicle and Light Truck Tires

Continued

Zhongce Rubber Group Co., Ltd.;[6] (5) Qingdao Lakesea Tyre Co., Ltd.;[7] (6) Safe & Well (HK) International Trading Limited;[8] (7) Zhaoqing Junhong Co., Ltd;[9] (8) Shandong Wanda Boto Tyre Co., Ltd.;[10] and (9) Hankook Tire China Co., Ltd.,[11] pursuant to 19 CFR 351.213(d)(1). Because the withdrawal requests were timely filed, and no other parties requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect to these nine companies.

In addition, it is Commerce's practice is to rescind an administrative review of a CVD order, pursuant to 19 CFR 351.213(d)(3), when there are no reviewable entries of subject merchandise during the POR for which liquidation is suspended.[12] Normally, upon completion of an administrative review, the suspended entries are liquidated at the CVD assessment rate calculated for the review period.[13] Therefore, for an administrative review of a company to be conducted, there must be a reviewable, suspended entry that Commerce can instruct U.S. Customs and Border Protection (CBP) to liquidate at the calculated CVD assessment rate calculated for the review period.[14]

On June 21, 2022, we issued a memorandum declaring our intent to rescind the reviews of six companies: (1) Kumho Tire Co., Inc.; (2) Kumho Tire (Changchun) Co., Inc.; (3) Kumho Tire (Tanjin) Co., Inc.; (4) Mayrun Tyre (Hong Kong) Limited; (5) Nanjing Kumho Tire Co., Ltd.; and (6) Qingdao Nexen Tire Corporation.[15] According to the CBP import data, these companies did not have reviewable entries of subject merchandise during the POR for which liquidation is suspended. However, on July 1, 2022, we received objections to rescind this review from five of six companies.[16] Qingdao Nexen Tire Corporation, Kumho Tire Co., Inc., and Kumho Tire (Tianjin) Co., Inc., submitted evidence that they manufactured or exported certain suspended entries during the POR. Based on the additional information, we find that these three companies had suspended entries during the POR. *See* the Preliminary Decision Memorandum for a full discussion. Therefore, these three companies will continue in the review as non-selected respondents. Mayrun Tyre (Hong Kong) Limited did not object to the intent to rescind, while the other two companies who objected did not show evidence that they produced and/or exported any of the suspended entries during the POR. Accordingly, in the absence of reviewable, suspended entries of subject merchandise during the POR, we are rescinding this administrative review with respect to three companies, in accordance with 19 CFR 351.213(d)(3): (1) Kumho Tire (Changchun) Co., Inc.; (2) Mayrun Tyre (Hong Kong) Limited; and (3) Nanjing Kumho Tire Co., Ltd. As a result, we are rescinding the review with respect to 12 companies.

Methodology

Commerce is conducting this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that confers a benefit to the recipient, and that the subsidy is specific.[17] For a full description of the methodology underlying our conclusions), including our reliance, in part, on adverse facts available pursuant to sections 776(a) and (b) of the Act, *see* the Preliminary Decision Memorandum.

Preliminary Rate for Non-Selected Companies Under Review

There are eight companies for which a review was requested and not rescinded, and which were not selected for individual examination as mandatory respondents or found to be cross-owned with a mandatory respondent. The statute and Commerce's regulations do not directly address the establishment of rates to be applied to companies not selected for individual examination where Commerce limits its examination in an administrative review pursuant to section 777A(e)(2) of the Act. However, Commerce normally determines the rates for non-selected companies in reviews in a manner that is consistent with section 705(c)(5) of the Act, which provides the basis for calculating the all-others rate in an investigation.

Section 705(c)(5)(A)(i) of the Act instructs Commerce, as a general rule, to calculate an all-others rate equal to the weighted average of the countervailable subsidy rates established for exporters and/or producers individually examined, excluding any rates that are zero, *de minimis,* or based entirely on facts available. In this review, only one mandatory respondent, Sumitomo Rubber (Hunan) Co., Ltd. (Sumitomo Rubber), had a rate which was not zero, *de minimis,* or based entirely on facts available. Thus, for the companies for which a review was requested that were not selected as mandatory company respondents and for which Commerce is not rescinding the review, Commerce is basing the subsidy rate on the rate calculated for Sumitomo Rubber.

Preliminary Results of Review

We preliminarily find the following net countervailable subsidy rates exist for the period January 1, 2020, through December 31, 2020:

('PVLT') from the People's Republic of China,'' dated November 12, 2021.

[6] *See* Zhongce Rubber Group Co., Ltd.'s Letter, ''Passenger Vehicle and Light Truck Tires from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated October 26, 2021.

[7] *See* Qingdao Lakesea Tyre Co., Ltd., Safe & Well (HK) International Trading Limited, and Zhaoqing Junhong Co., Ltd.'s Letter, ''Passenger Vehicle and Light Truck Tires from the People's Republic of China: Withdrawal of Request for Administrative Review,'' dated December 14, 2021.

[8] *Id.*

[9] *Id.*

[10] *See* Shandong Wanda Boto Tyre Co., Ltd.'s Letter, ''Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China—Withdrawal of Request for Administrative Review,'' dated December 30, 2021.

[11] *See* Hankook Tire China Co., Ltd.'s Letter, ''Withdrawal of Request for Administrative Review,'' dated January 5, 2022.

[12] *See, e.g., Lightweight Thermal Paper from the People's Republic of China: Notice of Rescission of Countervailing Duty Administrative Review; 2015,* 82 FR 14349 (March 20, 2017); *see also Circular Welded Carbon Quality Steel Pipe from the People's Republic of China: Rescission of Countervailing Duty Administrative Review; 2017,* 84 FR 14650 (April 11, 2019).

[13] *See* 19 CFR 351.212(b)(2).

[14] *See* 19 CFR 351.213(d)(3).

[15] *See* Commerce's Letter, ''Notice of Intent to Rescind Review, In Part,'' dated June 21, 2022.

[16] *See* Qingdao Nexen Tire Corporation's Letter, ''Response to the Notice of Intent to Rescind Review, In Part,'' dated July 1, 2022; *see also* Kumho Tire Co., Inc.; Kumho Tire (Changchun) Co., Inc.; Kumho Tire (Tianjin) Co., Inc.; and Nanjing Kumho Tire Co., Ltd.'s Letter, ''Request for Correction and Comments on the Department's June 21 Notice of Intent to Rescind Review,'' dated July 1, 2022 (Correction and Comment Letter).

[17] *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.

[18] Commerce finds the following companies to be cross owned with Sumitomo Rubber (Hunan) Co., Ltd.: Sumitomo Rubber (China) Co., Ltd. and Sumitomo Rubber (Changshu) Co. Ltd.

[19] This rate is based on the rate for the respondent that was selected for individual review, excluding rates that are zero, *de minimis,* or based entirely on facts available. *See* section 735(c)(5)(A) of the Act.

[20] The company originally requested a review of Kumho Tire (Tanjin) Co., Inc. *See* Kumho's Letter, ''Request for Administrative Review,'' dated August 31, 2021. We accordingly initiated a review of Kumho Tire (Tanjin) Co., Inc. *See Initiation Notice.* On July 1, 2022, Kumho noted that it made a typographical error in its review request, and its name is actually Kumho Tire (Tianjin) Co., Inc. *See* Correction and Comment Letter. This notice corrects the company's name as listed in the *Initiation Notice* to Kumho Tire (Tianjin) Co., Inc.

Producer/exporter	Subsidy rate (percent *ad valorem*)
Sumitomo Rubber (Hunan) Co., Ltd. and its cross-owned affiliates[18]	29.28
Review-Specific Average Rate Applicable to the Following Companies[19]	
Jiangsu Hankook Tire Co., Ltd	29.28
Kumho Tire Co., Inc	29.28
Kumho Tire (Tianjin) Co., Inc[20]	29.28
Prinx Chengshan (Shandong) Tire Company Ltd	29.28
Qingdao Nexen Tire Corporation	29.28
Shandong Haohua Tire Co., Ltd	29.28
Shandong Province Sanli Tire Manufactured Co., Ltd	29.28
Triangle Tyre Co., Ltd	29.28

Disclosure and Public Comment

We will disclose to parties in this review, the calculations performed for these preliminary results within five days after the date of publication of this notice.[21] Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results of review.[22] Rebuttals to case briefs may be filed no later than seven days after the case briefs are filed, and all rebuttal comments must be limited to comments raised in the case briefs.[23] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit case briefs or rebuttal briefs in this review are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[24]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, filed electronically using ACCESS by 5:00 p.m. Eastern Time within 30 days after the date of publication of this notice. Hearing requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants, whether any participant is a foreign national; and (3) a list of the issues to be discussed. If a request for a hearing is made, parties will be notified of the date and time for the hearing to be determined. Parties should confirm the date and time of the hearing two days before the schedule date.

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of the issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h).

Cash Deposit Requirements

Pursuant to section 751(a)(2)(C) of the Act, Commerce intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respondents listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For all non-reviewed firms, CBP will continue to collect cash deposits of estimated countervailing duties at the all-others rate or the most recent company-specific rate applicable to the company, as appropriate. These cash deposit requirements, when imposed, shall remain in effect until further notice.

Assessment Rates

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producer/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and CBP shall assess, CVDs on all appropriate entries covered by this review.

For the companies for which this review is rescinded, we will instruct CBP to assess countervailing duties on all appropriate entries at a rate equal to the cash deposit of estimated countervailing duties required at the time of entry, or withdrawal from warehouse, for consumption, during the period January 1, 2020, through December 31, 2020, in accordance with 19 CFR 351.212(c)(l)(i). For the companies remaining in the review, we intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**.

If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Notification to Interested Parties

These preliminary results are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act, and 19 CFR 351.213 and 351.221(b)(4).

Dated: August 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2022–19340 Filed 9–7–22; 8:45 am]

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[21] *See* 19 CFR 351.224(b).

[22] *See* 19 CFR 351.309(c).

[23] *See* 19 CFR 351.309(d).

[24] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–872]

Finished Carbon Steel Flanges From India: Preliminary Results of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Norma (India) Ltd. (Norma) and R.N. Gupta & Co. Ltd. (RNG) received countervailable subsidies during the period of review (POR), January 1, 2020, through December 31, 2020. Interested parties are invited to comment on these preliminary results.

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: James R. Hepburn or Preston N. Cox, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401

Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1882 or (202) 482–5041, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 24, 2017, Commerce published in the **Federal Register** the countervailing duty order on finished carbon steel flanges from India.[1] On August 2, 2021, Commerce published a notice of opportunity to request an administrative review of the *Order*.[2] On August 31, 2021, Weldbend Corporation and Boltex Manufacturing Co., L.P. (the petitioners) requested a review of 41 producers and/or exporters of subject merchandise.[3] Further, between August 9 and 30, 2021, Commerce received multiple requests for an administrative review of the *Order*.[4] On October 7, 2021, Commerce published a notice of initiation of an administrative review of the *Order*.[5] On November 15, 2021, Commerce selected Norma and RNG as mandatory respondents in this administrative review.[6] On April 25, 2022, Commerce extended the time period for issuing these preliminary results by 120 days, in accordance with section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), to August 31, 2021.[7]

For a complete description of the events that followed the initiation of this review, *see* the Preliminary Decision Memorandum.[8] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise covered by the *Order* is finished carbon steel flanges. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with section 751(a)(l)(A) of the Act. For each of the subsidy programs found to be countervailable, we preliminarily determine that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[9] For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Companies Not Selected for Individual Review

For the companies not selected for individual review, because the rates calculated for Norma and RNG were above *de minimis* and not based entirely on facts available, we applied a subsidy rate based on a weighted average of the subsidy rates calculated for Norma and RNG using publicly ranged sales data submitted by the respondents.[10]

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated individual subsidy rates for Norma and RNG. For the period January 1, 2020, through December 31, 2020, we preliminarily determine that the following net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Norma (India) Ltd.[11]	4.21
R.N. Gupta & Co. Ltd	3.61
Non-Selected Companies Under Review (*see* Appendix II)[12]	3.88

Disclosure and Public Comment

We will disclose to parties to this proceeding the calculations performed in reaching the preliminary results within five days of the date of publication of these preliminary results.[13] Interested parties may submit case briefs no later than 30 days after the date of publication of these preliminary results.[14] Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than seven days after the date for filing case briefs.[15] Pursuant to 19 CFR 351.309(c)(2) and (d)(2), parties who submit arguments are requested to submit with the argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, using Enforcement and Compliance's ACCESS system within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants, whether any participant is a foreign national; and (3) a list of the issues to be discussed. Issues addressed during the hearing will be limited to those raised in the

[1] *See Finished Carbon Steel Flanges from India: Countervailing Duty Order,* 82 FR 40138 (August 24, 2017) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 41436 (August 2, 2021).

[3] *See* Petitioners' Letter, ''Finished Carbon Steel Flanges from India: Request for Administrative Review,'' dated August 31, 2021.

[4] *See* Munish Forge Private Limited's Letter, ''Finished Carbon Steel Flanges from India: Request for Counter Vailing Duty Administrative Review,'' dated August 9, 2021; Balkrishna Steel Forge Pvt. Ltd.'s Letter, ''Finished Carbon Steel Flanges from India: Request for Countervailing Duty Administrative Review of Balkrishna Steel Forge Pvt. Ltd. for the Period of January 01, 2020 to December 31, 2020,'' dated August 30, 2021; Cetus Engineering Private Limited's Letter, ''Finished Carbon Steel Flanges from India: Request for Countervailing Duty Administrative Review of Cetus Engineering Private Limited (''Cetus'') for the period of January 01, 2020 to December 31, 2020,'' dated August 30, 2021; Jai Auto Pvt. Ltd.'s Letter, ''Finished Carbon Steel Flanges from India: Request for Countervailing Duty Administrative Review of Jai Auto Pvt. Ltd for the Period of January 01, 2020 to December 31, 2020,'' dated August 30, 2021; Norma's Letter, ''Finished Carbon Steel Flanges from India: Request for Countervailing Duty Administrative Review for Norma (India) Limited, USK Export Private Limited, Umashanker Khandelwal and Co. and Bansidhar Chiranjilal,'' dated August 30, 2021; and RNG's Letter, ''Finished Carbon Steel Flanges from India: Request for Countervailing Duty Administrative Review,'' dated August 30, 2021.

[5] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 85 FR 55811, 55817–18 (October 7, 2021).

[6] *See* Memorandum, ''Countervailing Duty Administrative Review of Finished Carbon Steel Flanges from India: Respondent Selection,'' dated November 15, 2021.

[7] *See* Memorandum, ''Finished Carbon Steel Flanges from India: Extension of Deadline for Preliminary Results of Countervailing Duty Administrative Review; 2020,'' dated April 25, 2022.

[8] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the 2020 Administrative Reivew of the Countervailing Duty Order on Finished Carbon Steel Flanges from India,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[9] *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.

[10] *See* Memorandum, ''Preliminary Results Calculation of Subsidy Rate for Non-Selected Companies Under Review,'' dated concurrently with this notice.

[11] As discussed in the Preliminary Decision Memorandum, Commerce has found the following companies to be cross-owned with Norma (India) Ltd.: USK Export Private Limited; Uma Shanker Khandelwal and Co.; and Bansidhar Chiranjilal. This rate applies to all cross-owned companies.

[12] *See* Appendix II for a list of companies not selected for individual examination.

[13] *See* 19 CFR 351.224(b).

[14] *See* 19 CFR 351.309(c)(1)(ii)

[15] *See* 19 CFR 351.309(d)(1); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020) (*Temporary Rule*).

respective case and rebuttal briefs.[16] If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm the date and time of the hearing two days before the scheduled date.

Parties are reminded that all briefs and hearing requests must be filed electronically using ACCESS and received successfully in their entirety by 5:00 p.m. Eastern Time on the due date. Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[17]

Unless the deadline is extended pursuant to section 751(a)(3)(A) of the Act and 19 CFR 351.213(h)(2), Commerce intends to issue the final results of this administrative review, including the results of our analysis of the issues raised by the parties in any written briefs, no later than 120 days after the date of publication of these preliminary results.

Assessment Rate

In accordance with 19 CFR 351.221(b)(4)(i), we preliminarily assigned subsidy rates in the amounts shown above for the producers/exporters shown above. Upon completion of the administrative review, consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Rate

In accordance with section 751(a)(1) of the Act, Commerce intends, upon publication of the final results, to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts shown for each of the respective companies listed above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of final results of this administrative review. For all non-reviewed firms, we will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit instructions, when imposed, shall remain in effect until further notice.

Notification to Interested Parties

These preliminary results of review are issued and published pursuant to sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 351,221(b)(4).

Dated: August 30, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I—List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Subsidies Valuation Information
V. Benchmark Interest Rates and Discount Rates
VI. Analysis of Programs
VII. Rate for Non-Examined Companies
VIII. Recommendation

Appendix II—Companies Not Selected for Individual Examination

1. Adinath International
2. Allena Group
3. Alloyed Steel
4. Balkrishna Steel Forge Pvt. Ltd.
5. Bebitz Flanges Works Private Limited
6. C. D. Industries
7. Cetus Engineering Private Limited
8. CHW Forge
9. CHW Forge Pvt. Ltd.
10. Citizen Metal Depot
11. Corum Flange
12. DN Forge Industries
13. Echjay Forgings Limited
14. Falcon Valves and Flanges Private Limited
15. Heubach International
16. Hindon Forge Pvt. Ltd.
17. Jai Auto Pvt. Ltd.
18. Kinnari Steel Corporation
19. Mascot Metal Manufacturers
20. M F Rings and Bearing Races Ltd.
21. Munish Forge Private Limited
22. OM Exports
23. Punjab Steel Works
24. Raaj Sagar Steels
25. Ravi Ratan Metal Industries
26. R.D. Forge
27. Rolex Fittings India Pvt. Ltd.
28. Rollwell Forge Engineering Components and Flanges
29. Rollwell Forge Pvt. Ltd.
30. SHM (ShinHeung Machinery)
31. Siddhagiri Metal & Tubes
32. Sizer India
33. Steel Shape India
34. Sudhir Forgings Pvt. Ltd.
35. Tirupati Forge Pvt. Ltd.
36. Umashanker Khandelwal Forging Limited

[FR Doc. 2022–19368 Filed 9–7–22; 8:45 am]

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[16] *See* 19 CFR 351.310(c).

[17] *See Temporary Rule.*

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–836]

Light-Walled Rectangular Pipe and Tube From Mexico: Preliminary Results and Partial Rescission of the Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that Maquilacero S.A. de C.V. (Maquilacero) and Tecnicas de Fluidos S.A. de C.V. (TEFLU), (collectively, Maquilacero/TEFLU) and Regiomontana de Perfiles y Tubos S. de R.L. de C.V. (Regiopytsa) made sales of light-walled rectangular pipe and tube from Mexico at less than normal value during the period of review August 1, 2020, through July 31, 2021. We are also rescinding this review for 14 companies where timely requests for withdrawals were filed by all parties who requested their review. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: John Conniff or Kyle Clahane, 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) 482–1009 and (202) 482–5449, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 5, 2008, Commerce published the antidumping duty order on light-walled rectangular pipe and tube from Mexico in the **Federal Register**.[1] On August 2, 2021, we published a notice of opportunity to request an administrative review of the *Order*.[2] On October 7, 2021, based on

[1] *See Light-Walled Rectangular Pipe and Tube from Mexico, the People's Republic of China, and the Republic of Korea: Antidumping Duty Orders; Light-Walled Rectangular Pipe and Tube from the Republic of Korea: Notice of Amended Final Determination of Sales at Less Than Fair Value,* 73 FR 45403 (August 5, 2008) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review,* 86 FR 41436 (August 2, 2021).

timely requests for reviews, in accordance with 19 CFR 351.221(c)(1)(i), we initiated an administrative review of the *Order* covering 18 companies.[3] On October 27, 2021, we selected Maquilacero/TEFLU and Regiopytsa for individual examination as the mandatory respondents in this administrative review.[4]

For a complete description of the events that followed the initiation of the review, *see* the Preliminary Decision Memorandum.[5] A list of topics included in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The merchandise subject to the *Order* is certain light-walled rectangular pipe and tube from Mexico. For a complete description of the scope, *see* the Preliminary Decision Memorandum.

Methodology

Commerce is conducting this review in accordance with sections 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Export price was calculated in accordance with section 772 of the Act. Normal value was calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, *see* the Preliminary Decision Memorandum.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if the parties that requested a review withdraw the request within 90 days of the date of publication of the notice of initiation. Commerce received a timely-filed withdrawal request from Nucor Tubular Products Inc. (Nucor) on January 5, 2022, withdrawing its request for 14 companies, pursuant to 19 CFR 351.213(d)(1).[6] Because the withdrawal request was timely filed, and no other party requested a review of these companies, in accordance with 19 CFR 351.213(d)(1), Commerce is rescinding this review of the *Order* with respect Aceros Cuatro Caminos S.A. de C.V.; Arco Metal S.A. de C.V.; Fabricaciones y Servicios de Mexico; Galvak, S.A. de C.V.; Grupo Estructuras y Perfiles; Industrias Monterrey S.A. de C.V; Internacional de Aceros, S.A. de C.V.; Nacional de Acero S.A. de C.V.; PEASA-Productos Especializados de Acero; Talleres Acero Rey S.A. de C.V.; Ternium Mexico S.A. de C.V.; Tuberias Aspe S.A de C.V.; Tuberia Laguna, S.A. de C.V.; and Tuberias y Derivados S.A. de C.V. However, Perfiles LM, S.A. de C.V. (Perfiles) and Productos Laminados de Monterrey S.A. de C.V. (Prolamsa) remain subject to this review.

Rate for Non-Selected Companies

For the rate for companies not selected for individual examination in an administrative review, generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a less-than-fair-value (LTFV) investigation. Under section 735(c)(5)(A) of the Act, the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' In this administrative review, we calculated weighted-average dumping margins for Maquilacero/TEFLU and Regiopysta that are not zero, *de minimis,* or based entirely on total facts available. For the respondents that were not selected for individual examination in this administrative review, we have assigned to them the simple average of the margins for Maquilacero/TEFLU and Regiopysta, consistent with the guidance in section 735(c)(5)(B) of the Act.[7]

Preliminary Results of Review

We preliminarily determine that, for the period August 1, 2020, through July 31, 2021, the following estimated weighted-average dumping margins exist:

Exporter or producer	Weighted-average dumping margin (percent)
Maquilacero S.A. de C.V./Tecnicas de Fluidos S.A. de C.V	3.11
Regiomontana de Perfiles y Tubos S. de R.L. de C.V	4.47
Perfiles LM, S.A. de C.V	3.79
Productos Laminados de Monterrey S.A. de C.V	3.79

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55811, 55813 (October 7, 2021) (*Initiation Notice*). Commerce determined that Regiomontana de Perfiles y Tubos S. de R.L. de C.V. is the successor-in-interest to Regiomontana de Perfiles y Tubos S.A. de C.V. in *Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 83886 (December 23, 2020), and accompanying Preliminary Decision Memorandum (PDM), at 6, unchanged in *Light Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 33646 (June 25, 2021). The successor company, Regiomontana de Perfiles y Tubos S. de R.L. de C.V., is merely a revision of the type of incorporation under Mexican law that did not impact the company's ownership, management, or operations. For the current review, the *Initiation Notice* included both the current and former versions of Regiopytsa's company name. Additionally, we collapsed Maquilacero and TEFLU in the 2018–19 administrative review. *See Light-Walled Rectangular Pipe and Tube from Mexico: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2018–2019,* 85 FR 83886 (December 23, 2020), and accompanying PDM, at 6, unchanged in *Light Walled Rectangular Pipe and Tube from Mexico: Final Results of Antidumping Duty Administrative Review; 2018–2019,* 86 FR 33646 (June 25, 2021). Because there is no information on the record of this administrative review that would lead us to revisit this determination, we are continuing to treat these companies as part of a single entity for the purposes of this administrative review.

[4] *See* Memorandum, ''Respondent Selection,'' dated October 27, 2021.

[5] *See* Memorandum, ''Decision Memorandum for the Preliminary Results: Light-Walled Rectangular Pipe and Tube from Mexico; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[6] *See* Nucor's Letter, ''Partial Withdrawal of Request for Administrative Review,'' dated January 5, 2022.

[7] *See* Memorandum, ''Calculation of Non-Selected Rate in Preliminary Results,'' dated concurrently with this notice; *see also Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part,* 75 FR 53661, 53663 (September 1, 2010).

Disclosure

We intend to disclose the calculations performed for these preliminary results to parties within five days after the date of publication of this notice.[8]

Verification

On January 18, 2022, Nucor requested that Commerce conduct verification of Maquilacero/TEFLU's and Regiopytsa's responses. Accordingly, as provided in section 782(i)(3) of the Act, Commerce intends to verify the information relied upon in determining its final results.

Public Comment

Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than seven days after the date for filing case briefs.[9] Parties who submit case or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[10] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance, filed electronically via Commerce's electronic records system, ACCESS, within 30 days of the date of publication of this notice.[11] Requests should contain: (1) the party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a time and date to be determined. Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

All submissions to Commerce should be filed using ACCESS.[12] An electronically filed document must be received successfully in its entirety by ACCESS, by 5:00 p.m. Eastern Time on the date that the document is due. Note that Commerce has modified certain of its requirements for serving documents containing business proprietary information, until further notice.[13]

Unless extended, we intend to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case and rebuttal briefs, within 120 days of publication of these preliminary results in the **Federal Register**, pursuant to section 751(a)(3)(A) of the Act.

Assessment Rates

Upon completion of the administrative review, pursuant to section 751(a)(2)(A) of the Act, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

For individually examined respondents whose weighted-average dumping margin is not zero or *de minimis* (*i.e.,* less than 0.50 percent), we will calculate importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping calculated for the examined sales made to that importer by the total quantity associated with those transactions. To determine whether an importer-specific, per-unit assessment rate is *de minimis,* in accordance with 19 CFR 351.106(c)(2), we also will calculate an importer-specific *ad valorem* ratio based on estimated entered values.

We will instruct CBP to assess antidumping duties on all appropriate entries covered by this review when the importer-specific assessment rate calculated in the final results of this review is not zero or *de minimis.* If a respondent's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), or an importer-specific assessment rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties. The final results of this review shall be the basis for the assessment of antidumping duties on entries of merchandise covered by this review where applicable.

Regarding entries of subject merchandise during the period of review that were produced by Maquilacero/TEFLU and Regiopytsa and for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate such entries at the all-others rate of 3.76 percent, as established in the LTFV investigation, if there is no rate for the intermediate company(ies) involved in the transaction.[14] For a full discussion of this issue, *see* the *Assessment Policy Notice.*[15]

For those companies which were not individually examined, we will instruct CBP to assess antidumping duties at an *ad valorem* rate equal to that companies weighted-average dumping margin as determined in the final results of this review.

Commerce intends to issue assessment instructions to CBP no earlier than 41 days after the date of publication of the final results of this review in the **Federal Register**, in accordance with 19 CFR 356.8(a).

Cash Deposit Requirements

The following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for each specific company listed above will be equal to the weighted-average dumping margin established in the final results of this administrative, review, except if the rate is less than 0.50 percent and, therefore, *de minimis* within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rates will be zero; (2) for companies not participating in this review, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which the producer or exporter participated; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 3.76 percent.[16]

These cash deposit requirements, when imposed, shall remain in effect until further notice.

[8] *See* 19 CFR 351.224(b).

[9] *See* 19 CFR 351.309(d)(1).

[10] *See* 19 CFR 351.309(c)(2) and (d)(2).

[11] *See* 19 CFR 351.310(c).

[12] *See* 19 CFR 351.303.

[13] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID 19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[14] *See Order,* 73 FR at 45405.

[15] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003) (*Assessment Policy Notice*).

[16] *See Order,* 73 FR at 45405.

Notification to Importers

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(4).

Dated: August 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Companies Not Selected for Individual Examination
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

[FR Doc. 2022–19337 Filed 9–7–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–810]

Stainless Steel Bar From India: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that exporters/producers of stainless steel bar (SS Bar) from India made sales at prices below normal value during the period of review (POR) of February 1, 2020, through January 31, 2021.

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Jacob Keller or Konrad Ptaszynski, AD/CVD Operations, Office I, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4849 or (202) 482–6187, respectively.

SUPPLEMENTARY INFORMATION:

Background

On March 4, 2022, Commerce published in the **Federal Register** the *Preliminary Results* of the 2020–2021 administrative review of the antidumping duty order on SS Bar from India.[1] We invited interested parties to comment on the *Preliminary Results* and on June 30, 2022, Carpenter Technology Corporation, Crucible Industries LLC, Electralloy, a Division of G.O. Carlson, Inc., North American Stainless, Universal Stainless & Alloy Products, Inc., and Valbruna Slater Stainless, Inc. (collectively, the petitioners) submitted timely filed case briefs.[2] On July 6 and 12, 2022, Venus Wire Industries Pvt. Ltd., Hindustan Inox, Precision Metals and Sieves Manufacturers (India) Pvt. Ltd. (collectively, the Venus Group) and Laxcon Steels Limited, Ocean Steels Private Limited, Metlax International Private Limited, Parvati Private Limited, and Mega Steels Private Limited (collectively, Laxcon), respectively, submitted timely filed rebuttal briefs.[3] On June 6, 2022, we extended the preliminary results of this review to no later than August 31, 2022.[4] For a complete description of the events that followed the initiation of this review, *see* the Issues and Decision Memorandum.[5]

Scope of the Order[6]

The products covered by the *Order* are SS Bar. A full description of the scope of the *Order* is contained in the Issues and Decision Memorandum.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by interested parties in this review are addressed in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is included in the appendix to this notice. The Issues and Decision Memorandum is a public document and is made available to the public 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.*

Changes Since the Preliminary Results

Based on our analysis of the comments received, we made certain changes to the margin calculation for Laxcon. For a discussion of these changes, *see* the Issues and Decision Memorandum.

Use of Adverse Facts Available

Pursuant to sections 776(a) and (b) of the Tariff Act of 1930, as amended (the Act), and for the reasons explained in the Issues and Decision Memorandum, we applied certain changes to Laxcon's margin calculation based on the use of partial adverse facts available.

Final Results of Administrative Review

As a result of this administrative review, Commerce determines that the following estimated weighted-average dumping margins exists for the period February 1, 2020, through January 31, 2021:

[1] *See Stainless Steel Bar from India: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review; 2020–2021,* 87 FR 12428 (March 4, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Petitioner's Letters, ''Petitioners' Case Brief Concerning Laxcon,'' dated June 30, 2022; and ''Petitioners' Case Brief Concerning Venus,'' dated June 30, 2022.

[3] *See* Laxcon's Letter, ''Rebuttal of Petitioner Case Brief Concerning to Laxcon Steels Limited of Anti-Dumping Order on Stainless Steels Bar from India (A–533–810),'' dated July 12, 2022; *see also* Venus Group's Letter, ''Rebuttal Brief,'' dated August 6, 2022. We rejected the Venus Group's initial rebuttal brief submission because it contained untimely new factual information. Accordingly, the Venus Group resubmitted its redacted rebuttal brief on August 6, 2022.

[4] *See* Memorandum, ''Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2020–2021,'' dated June 6, 2022.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Stainless Steel Bar from India; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See Antidumping Duty Orders: Stainless Steel Bar from Brazil, India and Japan,* 60 FR 9661 (February 21, 1995) (*Order*).

[7] *See* Issues and Decision Memorandum.

[8] Collectively, these companies are known as the Venus Group.

[9] We are not disclosing any final margin calculations for Venus Wire Industries Pvt. Ltd., and its affiliates Hindustan Inox Ltd., Precision Metals and Sieves Manufacturers (India) Pvt. Ltd. because we made no changes to the preliminary margin calculations, and we have not performed any calculations in connection with this final determination. *See* Memorandum, ''Administrative Review of the Antidumping Duty Order on Stainless-Steel Bar from India—Preliminary Analysis Memorandum for the Venus Group; 2020–2021,'' dated February 25, 2022.

[10] Collectively, these companies are known as Laxcon.

Producer or exporter	Weighted-average dumping margin (percent)
Venus Wire Industries Pvt. Ltd., and its affiliates Hindustan Inox Ltd., Precision Metals and Sieves Manufacturers (India) Pvt. Ltd[8]	[9] 0.00
Laxcon Steels Limited, and its affiliates Ocean Steels Private Limited, Metlax International Private Limited, Parvati Private Limited, and Mega Steels Private Limited[10]	3.76

Disclosure

With respect to Laxcon, we intend to disclose the calculations performed for these final results of review to the parties within five days after public announcement, in accordance with 19 CFR 351.224(b). With respect to the Venus Group, because we made no changes to the margin for the Venus Group in these final results there are no calculations to disclose.

Assessment Rates

Consistent with section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(1), upon issuance of the final results of review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries covered by this review. Commerce intends to issue appropriate assessment instructions to CBP no earlier than 35 days after publication of these final results of review. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For Laxcon, we calculated importer-specific assessment rates on the basis of the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales in accordance with 19 CFR 351.212(b)(1).[11] Where an importer-specific assessment rate is *de minimis* (*i.e.,* less than 0.5 percent), the entries by that importer will be liquidated without reference to antidumping duties.

For entries of subject merchandise during the POR produced by Laxcon for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate (*i.e.,* 12.45 percent)[12] if there is no rate for the intermediate company(ies) involved in the transaction.[13]

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register** of this notice for all shipments of SS Bar entered, or withdrawn from warehouse, for consumption on or after the date of publication as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rates for the companies subject to this review will be equal to the dumping margin established in the final results of the review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; (4) the cash deposit rate for all other producers or exporters will continue to be 12.45 percent, the all-others rate established in the less-than-fair-value investigation for this proceeding.[14] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of the antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of proceeding. 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

Commerce is issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: August 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[11] In these final results, Commerce applied the assessment rate calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification, 77 FR 8101 (February 14, 2012).

[12] *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from India,* 59 FR 66915, 66921 (December 28, 1994) (*Order*).

[13] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

[14] *See Order,* 59 FR at 66921.

VI. Recommendation

[FR Doc. 2022–19338 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–016]

Certain Passenger Vehicle and Light Truck Tires From the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; Rescission, in Part; and Preliminary Determination of No Shipments; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily finds that certain producers and exporters of passenger vehicle and light truck tires (passenger tires) from the People's Republic of China (China) made sales of subject merchandise at prices below normal value (NV) during the period of review (POR), August 1, 2020, through July 31, 2021. Commerce also preliminarily finds that 17 companies qualified for separate rate status, eight companies are part of the China-wide entity, nine companies timely withdrew their requests for an administrative review, and ten companies did not ship subject merchandise to the United States during the POR. We invite interested parties to comment on these preliminary results.

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Toni Page or Peter Shaw, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1398 or (202) 482–0697, respectively.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 2015, Commerce published in the **Federal Register** the antidumping duty order on passenger tires from China.[1] On August 2, 2021, Commerce published in the **Federal Register** a notice of opportunity to request an administrative review of the *Order* on passenger tires from China for the period August 1, 2020, through July 31, 2021.[2] On October 7, 2021, based on timely requests for review, Commerce published the initiation of the administrative review of the *Order* with respect to 47 companies.[3] The petitioner in this review is the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO, CLC (USW). This review covers mandatory respondents, Giti [4] and Sumitomo,[5] as well as 33 additional exporters that were not selected for individual examination.

On March 31, 2022, Commerce extended the deadline for these preliminary results to August 31, 2022.[6] For a complete description of the events that followed the initiation and the partial rescission of this administrative review, *see* the Preliminary Decision Memorandum.[7] A list of topics discussed in the Preliminary Decision Memorandum is included in Appendix I to this notice. The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Scope of the Order

The products covered by the *Order* are certain passenger vehicle and light truck tires from China. A full description of the scope of the *Order* is contained in the Preliminary Decision Memorandum.[8]

Methodology

Commerce is conducting this review in accordance with section 751(a)(1)(B) of the Act and 19 CFR 351.213. In determining the dumping margins in this review, we calculated constructed export price in accordance with section 772 of the Act. Because Commerce has determined that China is a non-market economy (NME) country, within the meaning of section 771(18) of the Act, we calculated normal value in this review in accordance with section 773(c) of the Act. For a full description of the methodology underlying the preliminary results of this review, *see* the Preliminary Decision Memorandum.

[1] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902 (August 10, 2015) (*Order*).

[2] *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review,* 86 FR 41436 (August 2, 2021).

[3] *See Initiation of Antidumping and Countervailing Duty Administrative Reviews,* 86 FR 55811 (October 7, 2021).

[4] In a prior administrative review, we determined that it was appropriate to treat the following companies as a single entity: Giti Tire Global Trading Pte. Ltd. (GTT); Giti Radial (Anhui) Tire Company Ltd. (Giti Radial Anhui), and Giti Tire Fujian Company Ltd. (Giti Fujian), Giti Tire (Hualin) Company, Ltd., Giti Tire Greatwall Company. Ltd., Giti Tire (Anhui) Company, Giti Tire (Yinchuan) Company Ltd., Giti Tire (Chongqing Company Ltd., and Giti Tire USA, Ltd. collectively, Giti). *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; Preliminary Determination of No Shipments, and Rescission, In Part; 2015–2016,* 82 FR 42281 (September 7, 2017), and accompanying Preliminary Decision Memorandum (PDM), at ''Affiliation and Single Entity Treatment,'' unchanged in *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; and Final Determination of No Shipments; 2015–2016,* 83 FR 11690 (March 16, 2018). Because no interested party submitted comments on this issue, and in the absence of any new information regarding this finding, Commerce is continuing to find that these companies are affiliated, pursuant to section 771(33)(E) of the Tariff Act of 1930, as amended (the Act), and are a single entity, pursuant to 19 CFR 351.401(f). However, because Giti Tire USA, Ltd. is an affiliated entity located in California, we find that, per Commerce's practice, this affiliate should be removed from the single entity. *See* Giti's Letter, ''Passenger Vehicle and Light Truck Tires from the People's Republic of China: Section A Questionnaire Response,'' dated January 4, 2022, at 2 and Exhibit A–3.

[5] In the prior segment of this proceeding, we determined that it was appropriate to treat the following entities as a single entity: Sumitomo Rubber (Hunan) Co., Ltd. (SRH), Sumitomo Rubber (Changshu) Co., Ltd. (SRC), and Sumitomo Rubber Industries (SRI) (collectively, Sumitomo). *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review; and Preliminary Determination of No Shipments; 2019–2020,* 86 FR 50029 (September 7, 2021), and accompanying PDM, at ''Affiliation and Single Entity Treatment,'' unchanged in *Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Antidumping Duty Administrative Review; and Final Determination of No Shipments; 2019–2020,* 87 FR 13966 (March 11, 2022). Because no interested party submitted comments on this issue, and in the absence of any new information regarding this finding, Commerce is continuing to find that SRH, SRC, and SRI are affiliated, pursuant to section 771(33)(F) of the Act, as, and are a single entity, pursuant to 19 CFR 351.401(f).

[6] *See* Memorandum, ''Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review 2020–2021,'' dated March 31, 2022.

[7] *See* Memorandum, ''Decision Memorandum for the Preliminary Results of the Antidumping Duty Administrative Review of Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China and Preliminary Determination of No Shipments; 2020–2021,'' dated concurrently with, and hereby adapted by, this notice (Preliminary Decision Memorandum).

[8] *See* Preliminary Decision Memorandum at ''Scope of the Order.''

Preliminary Determination of No Shipments

Between October 15 and November 8, 2021, 13 companies timely filed certifications that they had no exports, shipments, sales, or entries of subject merchandise to the United States during the POR.[9] Based on an analysis of information from U.S. Customs and Border Protection (CBP), Commerce preliminarily determines that the following ten companies had no shipments of subject merchandise during the POR: (1) Hongtyre Group Co.; (2) Mayrun Tyre (Hong Kong) Limited; (3) Qingdao Nama Industrial Co., Ltd.; (4) Shandong Changfeng Tyres Co., Ltd.; (5) Shandong Duratti Rubber Corporation Co., Ltd.; (6) Shandong Linglong Tyre Co., Ltd.; (7) Shandong Yongsheng Rubber Group Co., Ltd.; (8) Tyrechamp Group Co., Limited; (9) Wendeng Sanfeng Tyre Co., Ltd.; and (10) Zhaoqing Junhong Co., Ltd.

In addition, Commerce preliminarily determines that Roadclaw Tyre (Hong Long) Limited; Shouguang Firemax Tyre Co., Ltd.; and Winrun Tyre Co., Ltd., had reviewable transactions during the POR. For additional information regarding these preliminary findings, *see* the Preliminary Decision Memorandum.

Consistent with Commerce's practice in NME cases, we are not rescinding this administrative review with respect to the companies for which we preliminarily found had no shipments but intend to complete the review and issue appropriate instructions to CBP based on the final results of the review.[10]

China-Wide Entity

Commerce's policy regarding conditional review of the China-wide entity applies to this administrative review.[11] Under this policy, the China-wide entity will not be under review unless a party specifically requests, or Commerce self-initiates, a review of the entity. Because no party requested a review of the China-wide entity, and we did not self-initiate a review, the China-wide entity cash deposit rate (*i.e.,* 76.46 percent) is not subject to change as a result of this review.[12]

Separate Rates

In all proceedings involving NME countries, Commerce maintains a rebuttable presumption that all companies within an NME country are subject to government control and, thus, should be assessed a single weighted-average dumping margin unless the company can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to its exports so that it is entitled to separate rate status.[13] Commerce preliminarily finds that the information placed on the record by: (1) Anhui Jichi Tire Co., Ltd.; (2) Crown International Corporation; (3) Hankook Tire China Co., Ltd.; (4) Jiangsu Hankook Tire Co., Ltd.; (5) Koryo International Industrial Limited; (6) Nankang (Zhangjiagang Free Trade Zone) Rubber Industrial Co., Ltd.; (7) Qingdao Sentury Tire Co., Ltd;[14] (8) Qingdao Sunfulcess Tyre Co., Ltd.; (9) Qingdao Transamerica Tire Industrial Co., Ltd.; (10) Shandong Haohua Tire Co., Ltd.; (11) Shandong Hengyu Science & Technology Co., Ltd.; (12) Shandong New Continent Tire Co., Ltd.; (13) Shandong Province Sanli Tire Manufactured Co., Ltd.; (14) Shandong Wanda Boto Tyre Co., Ltd.; and (15) Triangle Tyre Co., Ltd. demonstrates that these companies are entitled to separate rate status.

We have preliminarily determined that the companies listed in Appendix II have not demonstrated their eligibility for a separate rate because either the company did not file a timely separate rate application (SRA) or a separate rate certification with Commerce or it was unable to demonstrate an absence of government control, both in law and in fact, with respect to exports. We are treating the companies listed in Appendix II as part of the China-wide entity. Because no party requested a review of the China-wide entity, the entity is not under review and the entity's rate (*i.e.,* 76.46 percent) is not subject to change. For additional information regarding Commerce's preliminary separate rate determinations, *see* the Preliminary Decision Memorandum.

Weighted-Average Dumping Margin for Non-Selected Separate Rate Companies

The Act and Commerce's regulations do not identify the dumping margin to apply to respondents not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when determining the dumping margin for respondents that are not individually examined in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate should be calculated by averaging the weighted-average dumping margins for individually examined respondents, excluding dumping margins that are zero, *de minimis,* or based entirely on facts available. Where the dumping margins for individually examined respondents are all zero, *de minimis,* or

[9] *See* Hongtyre's Letter, ''No Shipment Letter for Hongtyre,'' dated November 8, 2021; *see also* Mayrun Tyre's Letter, ''No Sales and Separate Rate Certification,'' dated November 8, 2021; Qingdao Nama's Letter, ''Submission of Statement of No Shipments,'' dated October 15, 2021; Roadclaw's Letter, ''Roadclaw's No Shipment Certification,'' dated October 21, 2021; Shandong Changfeng's Letter, ''No Sales Certification,'' dated November 8, 2021; Duratti's Letter, ''No Sales Certification,'' dated November 8, 2021; Shandong Linglong's Letter, ''No Commercial Shipment Letter for Linglong,'' dated October 27, 2021; Shandong Yongsheng's Letter, ''Notice of No Sales,'' dated November 5, 2021; Firemax's Letter, ''Notice of No Sales,'' dated November 5, 2021 (Firemax's No Shipment Letter); Tyrechamp's Letter, ''Submission of Statement of No Shipments,'' dated October 20, 2021; Sanfeng Tyre's Letter, ''No Shipment Certification for the Administrative Review,'' dated October 21, 2021; Winrun's Letter, ''Winrun's No Shipment Certification,'' dated October 21, 2021; and Zhaoqing Junhong's Letter, ''No Sales & Separate Rate Certification,'' dated November 8, 2021.

[10] *See Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694, 65694–95 (October 24, 2011) (*NME Assessment of Duties*); *see also* the ''Assessment Rates'' section, *infra.*

[11] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[12] *See Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Amended Final Affirmative Countervailing Duty Determination and Countervailing Duty Order,* 80 FR 47902, 47906 (August 10, 2015).

[13] *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value, and Affirmative Critical Circumstances, In Part: Certain Lined Paper Products from the People's Republic of China,* 71 FR 53079, 53082 (September 8, 2006); and *Final Determination of Sales at Less Than Fair Value and Final Partial Affirmative Determination of Critical Circumstances: Diamond Sawblades and Parts Thereof from the People's Republic of China,* 71 FR 29303, 29307 (May 22, 2006).

[14] In a prior administrative review, we determined to treat the following companies as a single entity: Sentury Qingdao, Sentury Tire USA Inc. and Sentury (Hong Kong) Trading Co., Limited (collectively, Sentury). *See Certain Vehicle and Light Truck Tires from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Review, Preliminary Determination of No Shipments, and Rescission, in Part; 2015–2016,* 82 FR 42281 (September 7 2017), unchanged in *Certain Vehicle and Light Truck Tires from the People's Republic of China: Final Results of Administrative Review and Final Determination of No Shipments; 2015–2016,* 83 FR 11690 (March 16, 2018). We note that only Sentury Qingdao filed an SRA and stated that only it had exports to the United States during the POR. *See* Sentury Qingdao's Letter, ''Sentury Qingdao Separate Rate Application,'' dated November 17, 2021, at 21. Additionally, because Sentury Tire USA Inc. is an affiliated entity located in the United States, we find that, per Commerce's practice, this affiliate should be removed from the single entity. *Id.* at 20.

based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method to establish the estimated all others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the exporters and producers individually investigated.''

Commerce calculated an estimated weighted-average dumping margin of 9.08 percent for Giti and 0.59 percent for Sumitomo. Because Giti and Sumitomo have individually-calculated weighted-average dumping margins that are not zero, *de minimis,* or based entirely on facts otherwise available, we are assigning the separate rate respondents a dumping margin equal to the simple average of Giti's and Sumitomo's margins.

Partial Rescission of Administrative Review

Pursuant to 19 CFR 351.213(d)(1), Commerce will rescind an administrative review, in whole or in part, if all parties that requested a review withdraw their requests within 90 days of the publication date of the notice of initiation of the requested review in the **Federal Register**. Between October 25, 2021, and January 6, 2022, we received timely withdrawals from this administrative review from nine companies.[15]

Because no other party requested a review of the nine aforementioned companies, consistent with 19 CFR 351.213(d)(1), Commerce is rescinding this review, in part, with respect to these companies.

Preliminary Results of Review

Commerce preliminarily determines that the following weighted-average dumping margins exist for the period August 1, 2020, through July 31, 2021:

Exporter	Weighted-average dumping margin (percent)
Giti Tire Global Trading Pte. Ltd.; Giti Radial Tire (Anhui) Company Ltd.; and Giti Tire (Fujian) Company Ltd.; Giti Tire (Hualin) Company Ltd.; Giti Tire Greatwall Company, Ltd.; Giti Tire (Anhui) Company, ltd.; Giti Tire (Yinchuan) Company, Ltd.; Giti Tire (Chongqing) Company, Ltd	9.08
Sumitomo Rubber Industries Ltd.; Sumitomo Rubber (Hunan) Co., Ltd.; and Sumitomo Rubber (Changshu) Co., Ltd	0.59
Anhui Jichi Tire Co., Ltd	4.84
Crown International Corporation	4.84
Hankook Tire China Co., Ltd	4.84
Jiangsu Hankook Tire Co., Ltd	4.84
Koryo International Industrial Limited	4.84
Nankang (Zhangjiagang Free Trade Zone) Rubber Industrial Co., Ltd	4.84
Qingdao Sentury Tire Co., Ltd.; Sentury (Hong Kong) Trading Co., Limited	4.84
Qingdao Sunfulcess Tyre Co., Ltd	4.84
Qingdao Transamerica Tire Industrial Co., Ltd	4.84
Shandong Haohua Tire Co., Ltd	4.84
Shandong Hengyu Science & Technology Co., Ltd	4.84
Shandong New Continent Tire Co., Ltd	4.84
Shandong Province Sanli Tire Manufactured Co., Ltd	4.84
Shandong Wanda Boto Tyre Co. Ltd	4.84
Triangle Tyre Co., Ltd	4.84

Disclosure

Commerce will disclose calculations performed for these preliminary results to the parties within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of such case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than seven days after the date for filing case briefs.[16] Parties who submit case briefs or rebuttal briefs in this proceeding are encouraged to submit with each argument: (1) a statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities. Case and rebuttal briefs should be filed using ACCESS [17] and must be served on interested parties.[18] Note that Commerce has temporarily modified certain of its requirements for serving documents containing business proprietary information, until further notice.[19]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Enforcement and Compliance, within 30 days of the date of publication of this notice.[20] Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of issues to be discussed. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, Commerce intends to hold the hearing at a date and time to be determined.[21] Parties should confirm the date, time, and location of

[15] The nine companies that withdrew their requests for review are: (1) Sailun Group (HongKong) Co., Limited, formerly known as Sailun Jinyu Group (Hong Kong) Co., Limited; (2) Sailun Group Co., Ltd., formerly known as Sailun Jinyu Group Co., Ltd.; (3) Sailun Tire Americas Inc., formerly known as SJI North America Inc.; (4) Zhongce Rubber Group Co., Ltd.; (5) Qingdao Lakesea Tyre Co., Ltd.; (6) Safe & Well (HK) International Trading Limited; (7) Kumho Tire (Tianjin) Co., Inc.; (8) Nanjing Kumho Tire Co., Ltd.; and (9) Kumho Tire (Changchun) Co., Inc.

[16] *See* 19 CFR 351.309(d); *see also Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19,* 85 FR 17006, 17007 (March 26, 2020) (''To provide adequate time for release of case briefs via ACCESS, E&C intends to schedule the due date for all rebuttal briefs to be 7 days after case briefs are filed (while these modifications remain in effect)'').

[17] *See* 19 CFR 351.303 (for general filing requirements).

[18] *See* 19 CFR 351.303(f).

[19] *See Temporary Rule Modifying AD/CVD Service Requirements Due to COVID–19; Extension of Effective Period,* 85 FR 41363 (July 10, 2020).

[20] *See* 19 CFR 351.310(c).

[21] *See* 19 CFR 351.310(d).

the hearing two days before the scheduled date.

Commerce intends to issue the final results of this administrative review, which will include the results of our analysis of all issues raised in the case briefs, within 120 days of publication of these preliminary results in the **Federal Register**, unless extended, pursuant to section 751(a)(3)(A) of the Act.

Verification

On January 10, 2022, the petitioner requested, pursuant to 19 CFR 351.307(b)(1)(v), that Commerce conduct verification of the questionnaire responses submitted in this administrative review.[22] As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination for Giti.

Assessment Rates

Upon issuing the final results of this review, Commerce shall determine, and CBP shall assess, antidumping duties on all appropriate entries covered by this review.[23] Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

For each individually examined respondent in this review whose weighted-average dumping margin in the final results of review is not zero or *de minimis* (*i.e.,* less than 0.5 percent), Commerce intends to calculate importer/customer-specific assessment rates.[24] Where the respondent reported reliable entered values, Commerce intends to calculate importer/customer-specific *ad valorem* assessment rates by aggregating the amount of dumping calculated for all U.S. sales to the importer/customer and dividing this amount by the total entered value of the merchandise sold to the importer/customer.[25] Where the respondent did not report entered values, Commerce will calculate importer/customer-specific assessment rates by dividing the amount of dumping for reviewed sales to the importer/customer by the total quantity of those sales. Commerce will calculate an estimated *ad valorem* importer/customer-specific assessment rate to determine whether the per-unit assessment rate is *de minimis;* however, Commerce will use the per-unit assessment rate where entered values were not reported.[26] Where an importer/customer-specific *ad valorem* assessment rate is not zero or *de minimis,* Commerce will instruct CBP to collect the appropriate duties at the time of liquidation. Where either the respondent's weighted-average dumping margin is zero or *de minimis,* or an importer/customer-specific *ad valorem* assessment rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[27]

For entries that were not reported in the U.S. sales database submitted by an exporter individually examined during this review, but that entered under the case number of that exporter (*i.e.,* at the individually-examined exporter's cash deposit rate), Commerce will instruct CBP to liquidate such entries at the China-wide rate of 76.46 percent.[28] We also intend to liquidate entries containing subject merchandise exported: (1) by the companies under review that we determine in the final results to be part of the China-wide entity; and (2) under the name Tyrechamp Group Co. Ltd., at the China-wide cash deposit rate of 76.46 percent.

For the companies receiving a separate rate, we intend to assign an assessment rate of 4.84 percent, consistent with the methodology described above. Additionally, if Commerce determines that an exporter under review had no shipments of the subject merchandise, any suspended entries that entered under that exporter's CBP case number will be liquidated at the rate for the China-wide entity.

Finally, for companies for which we rescinded the review, antidumping duties shall be assessed at rates equal to the cash deposit of estimated antidumping duties required at the time of entry, or withdrawal from warehouse, for consumption, in accordance with 19 CFR 351.212(c)(1)(i).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(2)(C) of the Act: (1) for the companies listed above that have a separate rate, the cash deposit rate will be that rate established in the final results of this review (except, if the rate is zero or *de minimis,* then a cash deposit rate of zero will be established for that company); (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that have separate rates, the cash deposit rate will continue to be equal to the exporter-specific weighted-average dumping margin published of the most recently-completed segment of this proceeding; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be the rate for China-wide entity, 76.46 percent; and (4) for all exporters of subject merchandise which are not located in China and which are not eligible for a separate rate, the cash deposit rate will be the rate applicable to Chinese exporter(s) that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of double antidumping duties, and/or an increase in the amount of antidumping duties by the amount of the countervailing duties.

Notification to Interested Parties

We are issuing and publishing these results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213 and 19 CFR 351.221(b)(4).

[22] *See* Petitioner's Letter, ''Certain Passenger Vehicle and Light Truck Tires from the People's Republic of China (A–570–016)-Petitioner's Verification Request,'' dated January 10, 2022.

[23] *See* 19 CFR 351.212(b)(1).

[24] *See Antidumping Proceedings: Calculation of the Weighted Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101 (February 14, 2012) (*Final Modification*).

[25] *See* 19 CFR 351.212(b)(1).

[26] *Id.*

[27] *See Final Modification,* 77 FR at 8103.

[28] For a full discussion of this practice, *see NME Assessment of Duties.*

Dated: August 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix I

List of Topics Discussed in the Preliminary Decision Memorandum

I. Summary
II. Background
III. Scope of the *Order*
IV. Preliminary Determination of No Shipments
V. Discussion of the Methodology
VI. Currency Conversion
VII. Recommendation

Appendix II

Companies Preliminarily Determined To Be Part of the China-Wide Entity

1. Kenda Rubber (China) Co., Ltd.
2. Kumho Tire Co., Inc.
3. Qingdao Crowntyre Industries Co., Ltd.
4. Qingdao Odyking Tyre Co., Ltd.
5. Roadclaw Tyre (Hong Kong) Limited
6. Shouguang Firemax Tyre Co., Ltd.
7. Shandong Longyue Rubber Co., Ltd
8. Winrun Tyre Co., Ltd.

[FR Doc. 2022–19339 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Civil Nuclear Trade Advisory Committee

AGENCY: International Trade Administration, Industry and Analysis, U.S. Department of Commerce.

ACTION: Notice of renewal of the Civil Nuclear Trade Advisory Committee and solicitation of nominations for membership.

SUMMARY: Pursuant to provisions of the Federal Advisory Committee Act, the Department of Commerce (the Department) announces the renewal of the Civil Nuclear Trade Advisory Committee (CINTAC or ''Committee'') and requests nominations for membership. The purpose of the CINTAC is to provide advice to the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services in accordance with applicable U.S. laws and regulations, which will be used by the Department in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and of the TeamUSA interagency group to promote U.S. civil nuclear trade.

DATES: Nominations for members must be received on or before 5:00 p.m. Eastern Daylight Time (EDT) on September 23, 2022. After that date, the International Trade Administration (ITA) may continue to accept nominations under this notice to fill any vacancies that may arise.

ADDRESSES: Nominations may be emailed to *jonathan.chesebro@trade.gov.*

FOR FURTHER INFORMATION CONTACT: Jonathan Chesebro, Senior Nuclear Trade Specialist, Office of Energy & Environmental Industries, U.S. Department of Commerce; telephone: (202) 603–4968; email: *jonathan.chesebro@trade.gov.*

SUPPLEMENTARY INFORMATION:

I. Background and Authority

The CINTAC was established on August 13, 2008, pursuant to the Department of Commerce authority under 15 U.S.C. 1512 and the Federal Advisory Committee Act, as amended (FACA), 5 U.S.C. app. The CINTAC functions solely as an advisory committee in accordance with the provisions of FACA. The CINTAC provides advice to the Secretary of Commerce regarding the development and administration of programs to expand U.S. exports of civil nuclear goods and services which will be used by the Department in its role as a member of the Civil Nuclear Trade Working Group of the Trade Promotion Coordinating Committee and as a member of the TeamUSA interagency group to promote U.S. civil nuclear trade. In particular, the Committee advises on matters including, but not limited to:

(1) Matters concerning trade policy development and negotiations relating to U.S. civil nuclear exports;

(2) The effect of U.S. Government policies, regulations, programs, and foreign government policies and practices on the export of U.S. civil nuclear goods and services;

(3) The competitiveness of U.S. industry and its ability to compete for civil nuclear products and services opportunities in international markets, including specific problems in exporting, and provide specific recommendations regarding U.S. Government and public/private actions to assist civil nuclear companies in expanding their exports;

(4) The identification of priority civil nuclear products and services markets with the potential for high immediate returns for U.S. exports, as well as emerging markets with a longer-term potential for U.S. exports;

(5) Strategies to increase private sector awareness and effective use of U.S. Government export promotion programs, and recommendations on how U.S. Government programs may be more efficiently designed and coordinated;

(6) The development of complementary industry and trade association export promotion programs, including ways for greater and more effective coordination of U.S. Government efforts with private sector organizations' civil nuclear industry export promotion efforts; and

(7) The development of U.S. Government programs to encourage producers of civil nuclear products and services to enter new foreign markets, in connection with which CINTAC may advise on how to gather, disseminate, and promote awareness of information on civil nuclear exports and related trade issues.

II. Membership

CINTAC shall consist of approximately 40 members appointed by the Secretary, in accordance with applicable Department of Commerce guidance and based on their ability to carry out the objectives of the Committee. Members shall represent U.S. entities involved in the export of civil nuclear products and services and reflect the diversity of this sector, including in terms of entities' size and geographic location. The Committee shall also represent the diversity of company or organizational roles in the development of civil nuclear energy projects, including, for example, U.S. civil nuclear manufacturing and services companies, U.S. utilities, U.S. trade associations, and other U.S. organizations or civil society groups in the U.S. civil nuclear sector. Members will be selected based on their ability to carry out the objectives of the CINTAC, in accordance with applicable Department of Commerce guidelines. In selecting members, priority will be given to the selection of executives, *i.e.,* Chief Executive Officer, Executive Chairperson, President, or an officer with a comparable level of responsibility. The diverse membership of the Committee assures perspectives reflecting the full breadth of the Committee's responsibilities, and, where possible, the Department will also consider the ethnic, racial, and gender diversity and various abilities of the United States population. The Department is committed to achieving diversity in the membership of the Council to the maximum extent permitted by law consistent with the need for balanced industry representation. The Department may seek additional nominations as necessary to attain membership balance

and demographic diversity. The Secretary shall appoint to the Committee at least one individual representing each of the following:

a. Civil nuclear manufacturing and services companies;

b. small businesses;

c. utilities;

d. trade associations in the civil nuclear sector;

e. research institutions and universities; and

f. private sector organizations or other appropriate civil society groups, such as labor representatives, involved in strengthening the export competitiveness of U.S. civil nuclear products and services.

Members shall serve in a representative capacity, expressing the views and interests of a U.S. entity, as well as its particular subsector; they are, therefore, not Special Government Employees as defined in Title 18 of United States Code, section 202(a). Each member of the Committee must be a U.S. citizen and must not be registered as a foreign agent under the Foreign Agents Registration Act. No member may represent a U.S. entity that is majority owned or controlled by a foreign government entity (or foreign government entities). The Secretary of Commerce invites applications for the CINTAC, consistent with the above membership requirements. To be considered for membership, submit the following information (2 pages maximum) by 5:00 p.m. EDT on September 23, 2022, to the email listed in the **ADRRESSES** section. If you are interested in nominating someone to become a member of the CINTAC, please provide the following information (2 pages maximum):

(1) Name;

(2) Title;

(3) Work phone and email address;

(4) Name of entity to be represented and address including website address;

(5) Short biography of nominee including credentials;

(6) Brief description of the entity and its business activities, size (number of employees and annual sales), and export markets served; and,

(7) An affirmative statement that the applicant and entity to be represented meet all eligibility criteria, specifically addressing that the applicant:

(a) Is a U.S. citizen; and

(b) Is not required to register as a foreign agent under the Foreign Agents Registration Act of 1938, as amended.

Please do not send organization brochures or any other information.

All applications should be submitted in pdf or MS Word format via email to Jonathan Chesebro, Senior Nuclear Trade Specialist at the U.S. Department of Commerce's Office of Energy & Environmental Industries at *jonathan.chesebro@trade.gov.*

Nominees selected for appointment to the Committee will be notified by email.

Dated: August 29, 2022.

Man K. Cho,

Deputy Director, Office of Energy and Environmental Industries.

[FR Doc. 2022–19395 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–073]

Common Alloy Aluminum Sheet From the People's Republic of China: Final Results of Antidumping Duty Administrative Review; 2020–2021

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain companies under review sold common alloy aluminum sheet (aluminum sheet) from the People's Republic of China (China) at less than normal value during the period of review (POR) February 1, 2020, through January 31, 2021.

DATES: Applicable September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Frank Schmitt, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4880.

SUPPLEMENTARY INFORMATION:

Background

Commerce published the *Preliminary Results* of this administrative review on March 4, 2022.[1] After publication of the *Preliminary Results,* interested parties filed case and rebuttal briefs.[2] On June 15, 2022, we extended the deadline for these final results until August 23, 2022.[3] On August 19, 2022, we extended the deadline for these final results until August 31, 2022.[4] For a full summary of the events that occurred since Commerce published the *Preliminary Results, see* the Issues and Decision Memorandum.[5] Commerce conducted this review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of the Order [6]

The merchandise covered by the *Order* is common alloy aluminum sheet from China. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by interested parties are addressed in the Issues and Decision Memorandum. A list of these issues is attached to this notice.[7] 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 found at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes From the Preliminary Results

Based on our analysis of the record and the comments received from interested parties, we made certain changes to a surrogate value unit of measure conversion and to the calculation of surrogate financial ratios. Additionally, we changed the surrogate value used for the purchased recycled aluminum input. For a discussion of these changes, *see* the Issues and Decision Memorandum.

[1] *See Common Alloy Aluminum Sheet from the People's Republic of China: Preliminary Results of Antidumping Duty Administrative Reviews; 2020–2021 (Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] *See* Aluminum Association Common Alloy Aluminum Sheet Trade Enforcement Working Group (Domestic Industry)'s Letter, ''Domestic Industry's Case Brief,'' dated April 5, 2022; *see also* Jiangsu Alcha Aluminum Group Co., Ltd. and its affiliates (collectively, Alcha)'s Letter, ''Common Alloy Aluminum Sheet from the People's Republic of China: Alcha Group's Case Brief,'' dated April 4, 2022; Domestic Industry's Letter, ''Domestic Industry's Rebuttal Case Brief Concerning Jiangsu Alcha Aluminum Co., Ltd,'' dated April 13, 2022; and Alcha's Letter, ''Common Alloy Aluminum Sheet from the People's Republic of China: Alcha's Rebuttal Brief,'' dated April 13, 2022.

[3] *See* Memorandum, ''2020–2021 Administrative Review of the Antidumping Duty Order on Common Alloy Aluminum Sheet from the People's Republic of China: Extension of Deadline for Final Results,'' dated June 15, 2022.

[4] *See* Memorandum, ''2020–2021 Administrative Review of the Antidumping Duty Order on Common Alloy Aluminum Sheet from the People's Republic of China: Extension of Deadline for Final Results,'' dated August 19, 2022.

[5] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Common Alloy Aluminum Sheet from the People's Republic of China; 2020–2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *See Common Alloy Aluminum Sheet from the People's Republic of China: Antidumping Duty Order,* 84 FR 2813 (February 8, 2019) (*Order*).

[7] *See* appendix.

Separate Rates

In the *Preliminary Results,* Commerce determined that Jiangsu Alcha Aluminum Group Co., Ltd. (Jiangsu Alcha), Alcha International Holdings Limited (Alcha International), and Yinbang Clad Material Co., Ltd. (Yinbang Clad) are eligible for a separate rate.[8] No interested parties submitted comments on Commerce's preliminary separate rate determinations. For these final results, taking into account Commerce's previous single entity determination,[9] we continue to determine that the single entity of Jiangsu Alcha, Alcha International, Baotou Alcha Aluminum Co., Ltd. (Baotou Alcha) (collectively, Alcha), is eligible for a separate rate, as is Yinbang Clad.

Rate for Non-Examined Separate Rate Respondents

The statute and our regulations do not address the establishment of a rate to be assigned to respondents not selected for individual examination when we limit our examination of companies subject to the administrative review pursuant to section 777A(c)(2)(B) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in an investigation, for guidance when calculating the rate for respondents not individually examined in an administrative review. Section 735(c)(5)(A) of the Act states that the all-others rate is normally ''an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and *de minimis* margins, and any margins determined entirely {on the basis of facts available}.'' When the rates for individually examined companies are all zero, *de minimis,* or based entirely on facts available, section 735(c)(5)(B) of the Act provides that Commerce may use ''any reasonable method'' to establish the all-others rate.

For these final results, we calculated a weighted-average dumping margin that is not zero, *de minimis,* or determined entirely on the basis of facts available for Alcha. Accordingly, consistent with our *Preliminary Results,* Commerce has assigned Yinbang Clad, the sole separate rate respondent that was not selected for individual examination, a margin of 51.50 percent, Alcha's calculated weighted-average dumping margin, for these final results.

The China-Wide Entity

In accordance with Commerce policy,[10] because no party requested a review of the China-wide entity, and Commerce did not self-initiate a review of the entity, the China-wide entity is not under review, and the dumping margin assigned to the China-wide entity (*i.e.,* 59.72 percent) is not subject to change.[11] Commerce does not consider any company under review as part of the China-wide entity because every company under review demonstrated separate rate eligibility.

Final Results of Administrative Review

For the companies subject to this administrative review that established their eligibility for a separate rate, Commerce determines that the following weighted-average dumping margins exist for the period February 1, 2020, through January 31, 2021:

Exporter	Weighted-average dumping margin (percent)
Jiangsu Alcha Aluminum Co., Ltd.[12]/Baotou Alcha Aluminum Co., Ltd./Alcha International Holdings Limited	51.50
Non-Selected Company Under Review Receiving a Separate Rate	
Yinbang Clad Material Co., Ltd	51.50

Disclosure

Pursuant to 19 CFR 351.224(b), within five days of the publication of this notice in the **Federal Register**, we will disclose to the parties in this proceeding, the calculations that we performed for these final results of review.

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with these final results of review. We intend to issue assessment instructions to CBP no earlier than 35 days after the date of publication of these final results. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Where Alcha reported reliable entered values, we calculated importer- (or customer-) specific *ad valorem* rates by aggregating the dumping margins calculated for all U.S. sales to each importer (or customer) and dividing this amount by the total entered value of the sales to each importer (or customer).[13] Where Commerce calculated a weighted-average dumping margin by dividing the total amount of dumping for reviewed sales to that party by the total sales quantity associated with those transactions, Commerce will direct CBP to assess importer- (or customer-) specific assessment rates based on the resulting per-unit rates.[14] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is greater than *de minimis* (*i.e.,* 0.50 percent), Commerce will instruct CBP to collect the appropriate duties at the time of liquidation.[15] Where an importer- (or customer-) specific *ad valorem* or per-unit rate is zero or *de minimis,* Commerce will instruct CBP to liquidate appropriate entries without regard to antidumping duties.[16]

For the non-selected respondent that received a separate rate, Yinbang Clad, we will instruct CBP to apply an antidumping duty assessment rate of 51.50 percent to all entries of subject merchandise that entered the United States during the POR.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this review for shipments of the subject merchandise from China entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided by section 751(a)(2)(C)

[8] *See Preliminary Results,* 87 FR at 12432; *see also Preliminary Results* PDM at 5–8.

[9] In the 2018–2020 administrative review of this antidumping order, Commerce determined that Jiangsu Alcha Aluminum Co., Ltd., Baotou Alcha and Alcha International should be treated as a single entity. Additionally, Commerce determined that Jiangsu Alcha Aluminum Group Co., Ltd. is the successor-in-interest to Jiangsu Alcha Aluminum Co., Ltd. *See Common Alloy Aluminum Sheet from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, Final Successor-In-Interest Determination, and Final Determination of No Shipments; 2018–2020,* 86 FR 74066 (December 29, 2021).

[10] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963, 65969–70 (November 4, 2013).

[11] *See Order,* 84 FR at 2814.

[12] For the purposes of this review, we have considered the names Jiangsu Alcha Aluminum Co., Ltd. and Jiangsu Alcha Aluminium Co., Ltd., as equivalent.

[13] *See* 19 CFR 351.212(b)(1).

[14] *Id.*

[15] *Id.*

[16] *See* 19 CFR 351.106(c)(2).

of the Act: (1) for subject merchandise exported by the companies listed above that have separate rates, the cash deposit rate will be the rate established in these final results of review for each exporter as listed above; (2) for previously investigated or reviewed Chinese and non-Chinese exporters not listed above that received a separate rate in a prior segment of this proceeding, the cash deposit rate will continue to be the existing exporter-specific rate; (3) for all Chinese exporters of subject merchandise that have not been found to be entitled to a separate rate, the cash deposit rate will be that for the China-wide entity; and (4) for all non-Chinese exporters of subject merchandise which have not received their own rate, the cash deposit rate will be the rate applicable to the Chinese exporter that supplied that non-Chinese exporter. These deposit requirements, when imposed, shall remain in effect until further notice.

Reimbursement of Duties

This notice also serves as the final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this POR. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return or destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

These final results of review are issued and published in accordance with sections 751(a) and 777(i)(1) of the Act, and 19 CFR 351.221(b)(5).

Dated: August 31, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

Appendix—List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2022–19342 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–502]

Circular Welded Carbon Steel Pipes and Tubes From Thailand: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On August 25, 2022, the U.S. Court of International Trade (CIT) issued its final judgment in *Saha Steel Pipe Public Company, Ltd* v. *United States,* Court No. 20–00133, Slip Op. 22–99 (*Saha Steel*), sustaining the Department of Commerce (Commerce)'s final results of redetermination pertaining to the scope ruling for the antidumping duty (AD) order on circular welded carbon steel pipes and tubes (CWP) from Thailand. In the redetermination, Commerce found that dual-stenciled standard pipe and line pipe are outside the scope of the order, pursuant to the CIT's remand order in *Saha Thai Steel Pipe Public Company Ltd* v. *United States,* 547 F. Supp. 3d 1278 (CIT Oct. 6, 2021) (*Remand Order*). Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final scope ruling, and that Commerce is amending the scope ruling to find that dual-stenciled standard pipe and line pipe are outside the scope of the order.

DATES: Applicable September 4, 2022.

FOR FURTHER INFORMATION CONTACT: Leo Ayala, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3945.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2020, in its Final Scope Ruling, Commerce found that dual-stenciled standard pipe and line pipe, products which are stenciled as meeting industry standards for both standard pipe and line pipe, are within the scope of the AD order on CWP from Thailand.[1] Commerce also found that line pipe, which is not dual-stenciled as standard pipe and line pipe, is not within the scope of the *Order*.[2]

Saha Thai Steel Pipe Public Company Ltd. appealed Commerce's Final Scope Ruling with respect to its determination on dual-stenciled standard pipe and line pipe. On October 6, 2021, the CIT remanded the Final Scope Ruling to Commerce to conduct an analysis that reconsidered the sources listed in 19 CFR 351.225(k)(1) to determine whether dual-stenciled pipe, which is certified for use in standard pipe or line pipe applications, falls within the scope of the *Order*.[3] In accordance with the CIT's analysis and conclusions, Commerce issued its final results of redetermination, submitted to the CIT on April 22, 2022, in which Commerce, under protest, concluded that dual-stenciled standard pipe and line pipe

[1] *See* Memorandum, ''Antidumping Duty Order on Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Scope Ruling on Line Pipe and Dual-Stenciled Standard and Line Pipe,'' dated June 30, 2020 (Final Scope Ruling). *See also Antidumping Duty Order; Circular Welded Carbon Steel Pipes and Tubes from Thailand,* 51 FR 8341 (March 11, 1986) (*Order*).

[2] *See* Final Scope Ruling.

[3] *See Remand Order.*

are outside the scope of the *Order*.[4] The CIT subsequently sustained Commerce's Amended Final Redetermination.[5]

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of the Tariff Act of 1930, as amended (the Act), Commerce must publish a notice of court decision that is not ''in harmony'' with a Commerce determination, and must suspend liquidation of entries pending a ''conclusive'' court decision. The CIT's August 25, 2022, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's Final Scope Ruling. Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Scope Ruling

In accordance with the CIT's August 25, 2022, final judgment, Commerce is amending its Final Scope Ruling and determines that the scope of the *Order* does not cover dual-stenciled standard pine and line pipe addressed in the Final Scope Ruling.

Liquidation of Suspended Entries

Commerce will instruct U.S. Customs and Border Protection (CBP) that, pending any appeals, the cash deposit rate will be zero percent for entries of dual-stenciled standard pipe and line pipe produced in Thailand. In the event that the CIT's final judgment is not appealed or is upheld on appeal, Commerce will instruct CBP to lift suspension of liquidation of such entries, and to liquidate entries of dual-stenciled standard pipe and line pipe produced in Thailand without regard to antidumping duties.

[4] *See* ''*Saha Thai Steel Pipe Public Company, Ltd.,* v. *United States,* Court No. 1:20–cv–133, Slip Op. 21–135 (CIT October 6, 2021)—Amended Final Results of Redetermination Pursuant to Court Remand'' dated April 22, 2022. (Amended Final Redetermination). Commerce previously submitted a final results of redetermination on January 4, 2022. *See Saha Thai Steel Pipe Public Company, Ltd.,* v. *United States,* Court No. 1:20–cv–133, Slip Op. 21–135 (CIT October 6, 2021)—Final Results of Redetermination Pursuant to Court Remand,'' ECF No. 58. However, on a motion by the government, the Court granted Commerce leave to amend the final results of redetermination by removing extraneous legal arguments, and to submit an amended final results of redetermination. *See* Amended Final Redetermination.

[5] *See Saha Steel.*

[6] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[7] See *Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

Notification to Interested Parties

This notice is issued and published in accordance with sections 516A(c) and (e), and 777(i)(1) of the Act.

Dated: September 1, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19383 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of Open Meeting.

SUMMARY: National Institute of Standards and Technology (NIST)'s Visiting Committee on Advanced Technology (VCAT or Committee) will meet virtually on Tuesday, October 25, 2022, from 10 a.m. to 5:30 p.m. Eastern Time.

DATES: The VCAT will meet on Tuesday, October 25, 2022, from 10 a.m. to 5:30 p.m. Eastern Time.

ADDRESSES: The meeting will be a virtual meeting via webinar. Please note admittance instructions under the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Stephanie Shaw, VCAT, NIST, 100 Bureau Drive, Mail Stop 1060, Gaithersburg, Maryland 20899–1060, telephone number 240–446–6000. Ms. Shaw's email address is *stephanie.shaw@nist.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the VCAT will meet virtually on Tuesday, October 25, 2022, from 10 a.m. to 5:30 p.m. Eastern Time. The meeting will be open to the public. The VCAT is composed of not fewer than 9 members appointed by the NIST Director, eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The primary purpose of this meeting is for the VCAT to review and make recommendations regarding general policy for NIST, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The agenda will include an update on major programs at NIST. It will also include updates and discussions on strategic issues facing the agency, an update on implementation of the CHIPS Act, and other topics. The Committee will present its initial observations and findings of the three subcommittees recently established on visibility improvement, workforce development, and alignment of manufacturing efforts. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *https://www.nist.gov/director/vcat/agenda.cfm*.

Individuals and representatives of organizations who would like to offer comments and suggestions related to the Committee's business are invited to request a place on the agenda by 5 p.m. Eastern Time, Tuesday, October 18, 2022 by contacting Stephanie Shaw at *stephanie.shaw@nist.gov*. Approximately one-half hour will be reserved for public comments and speaking times will be assigned on a first-come, first-serve basis. The amount of time per speaker will be determined by the number of requests received, but is likely to be about 3 minutes each. The exact time for public comments will be included in the final agenda that will be posted on the NIST website at *https://www.nist.gov/director/vcat/agenda.cfm*. Questions from the public will not be considered during this period. Speakers who wish to expand upon their oral statements, those who had wished to speak but could not be accommodated on the agenda, and those who were unable to attend via webinar are invited to submit written statements to Stephanie Shaw at *stephanie.shaw@nist.gov*.

All participants will be attending via webinar and must contact Ms. Shaw at *stephanie.shaw@nist.gov* by 5 p.m. Eastern Time, Tuesday, October 18, 2022 for detailed instructions on how to join the webinar.

Authority: 15 U.S.C. 278, as amended, and the Federal Advisory Committee Act, as amended, 5 U.S.C. App.

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–19357 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

National Construction Safety Team Advisory Committee Meeting

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: The National Construction Safety Team (NCST) Advisory Committee (Committee) will hold an open meeting in-person and via web conference on Wednesday, October 19, 2022, from 9:30 a.m. to 5:00 p.m. Eastern Time. The primary purposes of this meeting are to update the Committee on the progress of the NCST investigation focused on the impacts of Hurricane Maria in Puerto Rico, progress of the NCST investigation focused on the Champlain Towers South partial building collapse that occurred in Surfside, Florida, and finalize the Committee's annual report to Congress. The final agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings.*

DATES: The NCST Advisory Committee will meet on Wednesday, October 19, 2022, from 9:30 a.m. to 5:00 p.m. Eastern Time. The meeting will be open to the public.

ADDRESSES: The meeting will be held in person and via teleconference in the Heritage Room of Building 101, NIST, 100 Bureau Drive, Gaithersburg, Maryland 20899. For instructions on how to participate in the meeting, please see the **SUPPLEMENTARY INFORMATION** section of this notice.

FOR FURTHER INFORMATION CONTACT: Tanya Brown-Giammanco, Disaster and Failure Studies Program, Engineering Laboratory, NIST. Tanya Brown-Giammanco's email address is *Tanya.Brown-Giammanco@nist.gov* and her phone number is (240) 267–9504.

SUPPLEMENTARY INFORMATION: The Committee was established pursuant to Section 11 of the NCST Act (Pub. L. 107–231, codified at 15 U.S.C. 7301 *et seq.*). The Committee is currently composed of seven members, appointed by the Director of NIST, who were selected on the basis of established records of distinguished service in their professional community and their knowledge of issues affecting the National Construction Safety Teams. The Committee advises the Director of NIST on carrying out the NCST Act; reviews the procedures developed for conducting investigations; and reviews the reports issued documenting investigations. Background information on the NCST Act and information on the NCST Advisory Committee is available at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee.*

Pursuant to the Federal Advisory Committee Act, as amended, 5 U.S.C. App., notice is hereby given that the NCST Advisory Committee will meet on Wednesday, October 19, 2022, from 9:30 a.m. to 5:00 p.m. Eastern Time. The meeting will be open to the public and will be held in- person and via web conference. Interested members of the public will be able to participate in the meeting from remote locations. The primary purposes of this meeting are to update the Committee on the progress of the NCST investigation focused on the impacts of Hurricane Maria in Puerto Rico, progress of the NCST investigation focused on the Champlain Towers South partial building collapse that occurred in Surfside, Florida, and finalize the Committee's annual report to Congress. The agenda may change to accommodate Committee business. The final agenda will be posted on the NIST website at *https://www.nist.gov/topics/disaster-failure-studies/national-construction-safety-team-ncst/advisory-committee-meetings.*

Individuals and representatives of organizations who would like to offer comments and suggestions related to items on the Committee's agenda for this meeting are invited to request a place on the agenda. Approximately fifteen minutes will be reserved for public comments and speaking times will be assigned on a first-come, first-served basis. The amount of time per speaker will be determined by the number of requests received. Questions from the public will not be considered during this period. All those wishing to speak must submit their request by email to the attention of Peter Gale at *Peter.Gale@nist.gov* by 5:00 p.m. Eastern Time, Monday, October 3, 2022. Any member of the public is also permitted to file a written statement with the advisory committee; ;speakers who wish to expand upon their oral statements, those who wish to speak but cannot be accommodated on the agenda, and those who are unable to attend are invited to submit written statements electronically by email to *disaster@nist.gov.*

Anyone wishing to attend this meeting via web conference must register by 5:00 p.m. Eastern Time, Monday, October 3, 2022, to attend. Please submit your full name, the organization you represent (if applicable), email address, and phone number to Peter Gale at *Peter.Gale@nist.gov.* Non-U.S. citizens must submit additional information; please contact Peter Gale at *Peter.Gale@nist.gov.* For participants attending in person, please note that federal agencies, including NIST, can only accept a state issued driver's license or identification card for access to federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Peter Gale or visit: *http://www.nist.gov/public_affairs/visitor/.*

Alicia Chambers,

NIST Executive Secretariat.

[FR Doc. 2022–19355 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC273]

Fisheries of the South Atlantic; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 76 South Atlantic Black Sea Bass Data/Assessment Webinar 1.

SUMMARY: The SEDAR 76 assessment of the South Atlantic stock of black sea bass will consist of a series of assessment webinars. See **SUPPLEMENTARY INFORMATION**.

DATES: The SEDAR 76 South Atlantic Black Sea Bass Data/Assessment Webinar 1 is scheduled for Monday, September 26, 2022, from 9 a.m. to 12 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the assessment process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Registration for the webinar is available by contacting the SEDAR coordinator via

email at *Kathleen.Howington@safmc.net.*

SEDAR address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Kathleen Howington, SEDAR Coordinator, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4371; email: *Kathleen.Howington@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions, have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a three-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report which compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report which describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, Highly Migratory Species Management Division, and Southeast Fisheries Science Center. Participants include: data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and non-governmental organizations (NGOs); international experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion at the SEDAR 76 South Atlantic Black Sea Bass Data/Assessment Webinar 1 are as follows: Discuss available data resources, any known data issues, and introduce/discuss model development and model setup.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) 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

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the South Atlantic Fishery Management Council office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 1, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19331 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC338]

Gulf of Mexico Fishery Management Council; Public Hearings

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

ACTION: Notice; public hearings and webinar.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will hold five in-person public hearings and one webinar to solicit public comments on Modifications to Greater Amberjack Catch Limits and Sector Allocation.

DATES: The public hearings will take place September 26–October 11, 2022. The in-person public hearings and webinar will begin at 6 p.m. and will conclude no later than 9 p.m., EDT. For specific dates and times, see **SUPPLEMENTARY INFORMATION.** Written public comments must be received on or before 5 p.m. EDT on Tuesday, October 18, 2022.

ADDRESSES: Please visit the Gulf Council website at *www.gulfcouncil.org* for meeting materials and webinar registration information.

Meeting addresses: The public hearings will be held in Madeira Beach and Marathon, FL; Galveston Island, TX; Kenner, LA; Orange Beach, AL; and one virtual. For specific locations, see **SUPPLEMENTARY INFORMATION.**

Public comments: Comments may be submitted online through the Council's public portal by visiting *www.gulfcouncil.org* and clicking on ''CONTACT US''.

FOR FURTHER INFORMATION CONTACT: Emily Muehlstein; Public Information Officer; *emily.muehlstein@gulfcouncil.org,* Gulf of Mexico Fishery Management Council; telephone: (813) 348–1630.

SUPPLEMENTARY INFORMATION: The agenda for the following five in-person public hearings and one webinar is as follows: Council staff will begin with a presentation on the purpose, need, and management options in Reef Fish Amendment 54. The Council is currently considering modifications to *Greater Amberjack* catch limits and sector allocations.

Staff and a Council member will be available to answer any questions, and the public will have the opportunity to provide testimony on the amendment and other related testimony.

In-Person Locations and Webinar:

Monday, September 26, 2022; The City Centre at City Hall, 300 Municipal Dr, Madeira Beach, FL 33708; (727) 391–9951.

Monday, October 3, 2022; Marathon Government Center, 2798 Overseas Highway, Marathon, FL 33050; (305) 289–6036.

Tuesday, October 4, 2022; Hilton Galveston Island Resort, 5400 Seawall Boulevard, Galveston, TX 77551; (409) 744–5000.

Wednesday, October 5, 2022; Doubletree New Orleans Airport, 2150 Veterans Memorial Boulevard, Kenner, LA 70062; (504) 467–3111.

Thursday, October 6, 2022; Adult Activity Center, 26251 Canal Road, Orange Beach, AL 36561; (251) 981–3440.

Tuesday, October 11, 2021; via webinar. Visit *www.gulfcouncil.org* website and click on the ''meetings'' tab for registration information. After registering, you will receive a confirmation email containing information about joining the webinar.

Special Accommodations

These hearings are physically accessible to people with disabilities.

Requests for sign language interpretation or other auxiliary aids should be directed to Kathy Pereira (see **ADDRESSES**), at least 5 working days prior to the hearing date.

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

Dated: September 2, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19423 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC290]

Fisheries of the South Atlantic, Gulf of Mexico, and Caribbean; Southeast Data, Assessment, and Review (SEDAR) Public Meeting

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

ACTION: Notice of the SEDAR Steering Committee meeting.

SUMMARY: The SEDAR Steering Committee will meet to discuss the SEDAR stock assessment process and assessment schedule. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR Steering Committee will meet Wednesday, September 28, 2022, from 9 a.m. until 5 p.m., Eastern and Thursday, September 29, 2022, from 9 a.m. until 12 p.m., Eastern. The established times may be adjusted as necessary to accommodate the timely completion of discussion relevant to the SEDAR process. Such adjustments may result in the meeting being extended from or completed prior to the time established by this notice.

ADDRESSES:

Meeting address: The SEDAR Steering Committee meeting will be held at the Crowne Plaza Charleston Airport, 4831 Tanger Outlet Blvd., North Charleston, SC 29418; phone: (843) 744–4422.

SEDAR address: 4055 Faber Place Drive, Suite 201, N. Charleston, SC 29405; *www.sedarweb.org.*

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Program Manager, 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The SEDAR Steering Committee provides guidance and oversight of the SEDAR stock assessment program and manages assessment scheduling. The items of discussion for this meeting are as follows: SEDAR Projects Update; SEDAR Projects Schedule; SEDAR Process Review and Discussions and Other Business.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) 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

This meeting is accessible to people with disabilities. Requests for auxiliary aids should be directed to the SEDAR office (see **ADDRESSES**) at least 5 business days prior to the meeting.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 2, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19418 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC193]

Fisheries of the Gulf of Mexico; Southeast Data, Assessment, and Review (SEDAR); Public Meeting

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

ACTION: Notice of SEDAR 74 Assessment Webinar I for Gulf of Mexico red snapper.

SUMMARY: The SEDAR 74 assessment of Gulf of Mexico red snapper will consist of a Data workshop, a series of assessment webinars, and a Review workshop. See **SUPPLEMENTARY INFORMATION.**

DATES: The SEDAR 74 Assessment Webinar I will be held September 26, 2022, from 9 a.m. to 12 p.m., Eastern.

ADDRESSES:

Meeting address: The meeting will be held via webinar. The webinar is open to members of the public. Those interested in participating should contact Julie A. Neer at SEDAR (see **FOR FURTHER INFORMATION CONTACT**) to request an invitation providing webinar access information. Please request webinar invitations at least 24 hours in advance of each webinar.

SEDAR address: 4055 Faber Place Drive, Suite 201, North Charleston, SC 29405.

FOR FURTHER INFORMATION CONTACT: Julie A. Neer, SEDAR Coordinator; (843) 571–4366; email: *Julie.neer@safmc.net.*

SUPPLEMENTARY INFORMATION: The Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils, in conjunction with NOAA Fisheries and the Atlantic and Gulf States Marine Fisheries Commissions have implemented the Southeast Data, Assessment and Review (SEDAR) process, a multi-step method for determining the status of fish stocks in the Southeast Region. SEDAR is a multi-step process including: (1) Data Workshop; (2) Assessment Process utilizing webinars; and (3) Review Workshop. The product of the Data Workshop is a data report that compiles and evaluates potential datasets and recommends which datasets are appropriate for assessment analyses. The product of the Assessment Process is a stock assessment report that describes the fisheries, evaluates the status of the stock, estimates biological benchmarks, projects future population conditions, and recommends research and monitoring needs. The assessment is independently peer reviewed at the Review Workshop. The product of the Review Workshop is a Summary documenting panel opinions regarding the strengths and weaknesses of the stock assessment and input data. Participants for SEDAR Workshops are appointed by the Gulf of Mexico, South Atlantic, and Caribbean Fishery Management Councils and NOAA Fisheries Southeast Regional Office, HMS Management Division, and Southeast Fisheries Science Center. Participants include data collectors and database managers; stock assessment scientists, biologists, and researchers; constituency representatives including fishermen, environmentalists, and NGO's; International experts; and staff of Councils, Commissions, and state and federal agencies.

The items of discussion in webinar are as follows:

Participants will review data and discuss modeling approaches for use in

the assessment of Gulf of Mexico red snapper.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) 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

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office (see **ADDRESSES**) at least 10 business days prior to each workshop.

Note: The times and sequence specified in this agenda are subject to change.

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

Dated: September 1, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19333 Filed 9–7–22; 8:45 am]

BILLING CODE 3510–22–P

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the U.S. Commission of Fine Arts is scheduled for September 15, 2022, at 9:00 a.m. and will be held via online videoconference. Items of discussion may include buildings, infrastructure, parks, memorials, and public art.

Draft agendas, the link to register for the online public meeting, and additional information regarding the Commission are available on our website: *www.cfa.gov.* Inquiries regarding the agenda, as well as any public testimony, should be addressed to Thomas Luebke, Secretary, U.S. Commission of Fine Arts, at the above address; by emailing *cfastaff@cfa.gov;* or by calling 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated: August 29, 2022 in Washington, DC.

Thomas Luebke,

Secretary.

[FR Doc. 2022–19392 Filed 9–7–22; 8:45 am]

BILLING CODE 6330–01–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

[Docket No. CFPB–2022–0058]

Agency Information Collection Activities: Comment Request

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice and request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the Consumer Financial Protection Bureau (Bureau) is requesting to extend the Office of Management and Budget's (OMB's) approval for an existing generic information collection plan titled ''Generic Information Collection Plan to Conduct Cognitive and Pilot Testing of Research Methods, Instruments, and Forms'' approved under OMB Control Number 3170–0055.

DATES: Written comments are encouraged and must be received on or before November 7, 2022 to be assured of consideration.

ADDRESSES: You may submit comments, identified by the title of the information collection, OMB Control Number (see below), and docket number (see above), by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments
- *Email: PRA_Comments@cfpb.gov.* Include Docket No. CFPB–2022–0058 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Consumer Financial Protection Bureau (Attention: PRA Office), 1700 G Street NW, Washington, DC 20552. Please note that due to circumstances associated with the COVID–19 pandemic, the Bureau discourages the submission of comments by mail, hand delivery, or courier. Please note that comments submitted after the comment period will not be accepted. In general, all comments received will become public records, including any personal information provided. Sensitive personal information, such as account numbers or Social Security numbers, should not be included.

FOR FURTHER INFORMATION CONTACT: Documentation prepared in support of this information collection request is available at *www.regulations.gov.* Requests for additional information should be directed to Anthony May, PRA Officer, at (202) 435–9267, or email: *CFPB_PRA@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.* Please do not submit comments to these email boxes.

SUPPLEMENTARY INFORMATION:

Title of Collection: Generic Information Collection Plan to Conduct Cognitive and Pilot Testing of Research Methods, Instruments, and Forms.

OMB Control Number: 3170–0055.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 5,190.

Estimated Total Annual Burden Hours: 5,460.

Abstract: Under the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau is charged with researching, analyzing, and reporting on topics relating to the Bureau's mission, including developments in markets for consumer financial products and services, consumer awareness, and consumer behavior. In order to improve its understanding of how consumers engage with financial markets, the CFPB seeks to obtain approval for a generic information collection plan to conduct research to improve the quality of data collection by examining the effectiveness of data-collection procedures and processes, including potential psychological and cognitive issues.

Request for Comments: Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Bureau, including whether the information will have practical utility; (b) The accuracy of the Bureau's estimate of the burden of the collection of information, including the validity of the methods and the assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record.

Anthony May,

Paperwork Reduction Act Officer, Consumer Financial Protection Bureau.

[FR Doc. 2022–19332 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Department of the Air Force

[Docket ID: USAF–2022–HQ–0006]

Submission for OMB Review; Comment Request

AGENCY: Department of the Air Force (DAF), 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 October 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Department of the Air Force Integrated Response Co-Location Pilot; OMB Control Number 0701–IRCP.

Type of Request: New.

Number of Respondents: 9,372.

Responses per Respondent: 2.

Annual Responses: 18,744.

Average Burden per Response: 5 minutes.

Annual Burden Hours: 1,562 hours.

Needs and Uses: The Integrated Response Co-Location Pilot seeks to improve DAF's response to and outcomes for victims and survivors of sexual assault, sexual harassment, domestic violence, stalking, and cyber harassment by piloting co-location of identified response services. Co-locating these victim support services will increase support, awareness, and accessibility for victims/survivors. To evaluate the effectiveness of an organizational change to victim services, a survey will be conducted at select installations with victims/survivors of interpersonal violence, Airmen and Guardians, command-team members, and helping agency members. The Integrated Response Office pilot program will assess how DAF is identifying and closing the gap between Victims/Survivors and Command Teams' reality and perceptions of access to quality support.

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: September 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–19414 Filed 9–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0042]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness (OUSD(P&R)), 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 October 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Sexual Violence Support and Experience Study; OMB Control Number 0704–SVSS.

Type of Request: New.

Number of Respondents: 300.

Responses per Respondent: 4.

Annual Responses: 1,200.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 300 hours.

Needs and Uses: Information from the Sexual Violence Support and Experience Study (SVSES) will be used by OUSD(P&R) policy offices, and the Military Departments to improve personnel policies, programs, practices, and trainings related to sexual assault response and accountability systems in the military. It will provide the policy offices of the OUSD(P&R) with current data on (1) Service member satisfaction with sexual assault support resources; (2) the impact that the military support and justice processes have on Service members who experience sexual assault during military service (*e.g.,* their psychological health and well-being); and (3) aspects of the military support and justice process that relate to retention intention, career progression, and separation from military service. Any Service member (Active or Reserve component) who has experienced sexual assault since joining the military will be eligible to participate in the study. Recruitment for the SVSES will include proactive outreach to Service members who previously filed an unrestricted report for sexual assault and Service members who requested to learn more about the study. The Office of People Analytics (OPA) will administer the SVSES via the web. The survey will be administered online via proprietary software developed by OPA's operations contractor. To reduce respondent burden, these online surveys will use ''smart skip'' technology to ensure respondents only answer questions that are applicable to them. The study will not produce generalizable statistics or findings; rather, it will inform policy and program offices within the DoD about Service member satisfaction with sexual assault response resources and processes and the sexual assault

accountability system. OPA will provide interim reports regarding the findings of the study to OUSD(P&R) policy offices on a biannual basis and a full report on a biennial basis. Data from the SVSES will also be used in future analyses.

Affected Public: Individuals or households.

Frequency: Quarterly.

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: September 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2022–19429 Filed 9–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–HA–0058]

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 October 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Third Party Collection Program (Insurance Information); DD Form 2569; OMB Control Number 0720–0055.

Type of Request: Revision.

Number of Respondents: 3,865,000.

Responses per Respondent: 1.5.

Annual Responses: 5,797,500.

Average Burden per Response: 4 minutes.

Annual Burden Hours: 386,500.

Needs and Uses: The DoD is authorized to collect ''reasonable charges'' from third party payers for the cost of inpatient and outpatient services rendered at military treatment facilities (MTFs) to military retirees, all dependents, and other eligible beneficiaries who have private health insurance. The DoD may also collect the cost of trauma or other medical care provided from civilians (or their insurers), and/or the average cost of health care provided to beneficiaries at DoD MTFs from other federal agencies. For DoD to perform such collections, eligible beneficiaries may elect to provide DoD with other health insurance information. For civilian non-beneficiary and interagency patients, DD Form 2569 is necessary and serves as an assignment of benefits, approval to submit claims to payers on behalf of the patient, and authorizes the release of medical information. This form is available to third-party payers upon request.

The collection of personal information from individuals of the public for use in medical services is authorized by title 10 U.S.C. 1095, ''Health Care Services Incurred on Behalf of Covered Beneficiaries: Collection from Third-Party Payers'' title 32 CFR 220, ''Collection From Third Party Payers of Reasonable Charges for Healthcare Services,'' title 10 U.S.C. 1079b(a), ''Procedures for Charging Fees for Care Provided to Civilians; Retention and Use of Fees Collected,'' and title 10 U.S.C. 1085, ''Medical and Dental Care from Another Executive Department: Reimbursement.''

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matthew Eliseo.

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: September 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 2022–19426 Filed 9–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–HA–0072]

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 October 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Centralized Credentials and Quality Assurance System; OMB Control Number 0720–AAGX.

Type of Request: New.

Number of Respondents: 62,500.

Responses per Respondent: 3.

Annual Responses: 187,500.

Average Burden per Response: 4 hours.

Annual Burden Hours: 750,000.

Needs and Uses: The information entered in the Centralized Credentials and Quality Assurance System (CCQAS) E-application is necessary to validate that a Military Health System (MHS) health care provider is educated and trained to be credentialed and privileged to provide health care within a Military Treatment Facility or military installation. Respondents are MHS health care providers and clinical quality managers that update records in CCQAS. The credentialing and privileging information collection begins with the online registration process at *https://ccqas.csd.disa.mil.* Once the respondent has completed registration and gained access to CCQAS, a new Credentials record is generated. A single Credentials record is maintained in CCQAS for each health care provider over the entirety of his or her service to the MHS and is updated over time to reflect the provider's qualifications for providing care.

Affected Public: Individuals or households.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Matthew Eliseo.

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: September 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–19421 Filed 9–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0111]

Proposed Collection; Comment Request

AGENCY: 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 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 November 7, 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: User Testing of the Financial Readiness website; OMB Control Number 0704–UTFR.

Needs and Uses: The DoD Office of Financial Readiness Information (FINRED) is sponsoring a website usability study to collect opinions, ideas, and concerns from members of the military community on their level of satisfaction with the FINRED website content, layout, and navigation of financial resources. This study will be used only for research purposes and the results and recommendations will be anonymous when shared with government officials. The feedback and insights will be used to drive future improvements to the FINRED website.

Affected Public: Individuals or households.

Annual Burden Hours: 106.7 hours.

Number of Respondents: 160.

Responses per Respondent: 1.

Annual Responses: 160.

Average Burden per Response: 40 minutes.

Frequency: On occasion.

Dated: September 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–19422 Filed 9–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID DoD–2022–OS–0069]

Submission for OMB Review; Comment Request

AGENCY: Office of the Under Secretary of Defense for Acquisition and Sustainment (OUSD(A&S)), 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 October 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: Defense Logistics Agency Energy Request for Customer QR Code; DLA Energy Form 2063; OMB Control Number 0704–DLQR.

Type of Request: New collection.

Number of Respondents: 730.

Responses per Respondent: 1.

Annual Responses: 730.

Average Burden per Response: 1 hour.

Annual Burden Hours: 730.

Needs and Uses: Entities with a fuel purchase agreement with Defense Logistics Agency (DLA) Energy, including DoD, Federal Agencies, Federal Contractors, and Non-U.S. Government Entities, can request a Customer Quick Response (QR) code to purchase petroleum and aerospace products from DLA Energy via the DLA Form 2063, ''DLA Energy Request for Customer QR Code.'' DoD Manual 4140.25, ''DoD Management of Energy Commodities: Sales Accountability and Documentation Management,'' authorizes customers to use several forms of Authorized Purchase Source Media to buy fuel from DLA Energy. One of these methods is via Customer QR codes. DLA Energy Publication P–29, ''EPoS Customer QR Codes,'' implements policy, assigns responsibilities, and provides procedures for managing Customer QR codes.

Affected Public: Business or other for-profit.

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: September 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–19419 Filed 9–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Department of the Navy

[Docket ID: USN–2022–HQ–0016]

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 October 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: United States Naval Academy Sponsor Program; OMB Control Number 0703–0054.

Type of Request: Extension.

Number of Respondents: 800.

Responses per Respondent: 1.

Annual Responses: 800.

Average Burden per Response: 1 hour.

Annual Burden Hours: 800.

Needs and Uses: The U.S. Naval Academy (USNA) Plebe Sponsor Program is a unique program offered through the Naval Academy that pairs midshipmen with faculty, staff, and local community area families to provide local support and a ''home away from home'' for midshipmen that is mutually beneficial to both the midshipman and the sponsor. This information collection is needed in order to determine the eligibility and overall compatibility between sponsor applicants and fourth class midshipmen at the USNA. In their first year, midshipmen desiring to participate in the program are assigned a sponsor from the local community area. An analysis of the information collected is performed by the Sponsor Program Officer in Charge in order to best match sponsor with a midshipman. Without this information collection, the sponsor program would not be able to determine if a sponsor family was ''safe'' to place a midshipman with nor appropriately match the interests of the midshipman with those of the sponsor family.

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: September 2, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–19416 Filed 9–7–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0111]

Agency Information Collection Activities; Comment Request; IES Research Training Program Surveys

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 collection.

DATES: Interested persons are invited to submit comments on or before November 7, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0111. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Meredith Larson, 202–245–7037.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: IES Research Training Program Surveys.

OMB Control Number: 1850–0873.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: Individuals and Households.

Total Estimated Number of Annual Responses: 537.

Total Estimated Number of Annual Burden Hours: 180.

Abstract: The surveys are for participants in the fellowship research training programs and the non-fellowship research training programs funded by Institute of Education Sciences (IES). IES's fellowship programs include predoctoral training under the National Center for Education Research (NCER) and postdoctoral training under NCER and the National Center for Special Education Research (NCSER). These programs provide universities support to provide training in education research and special education research to graduate students (predoctoral program) and postdoctoral fellows. IES also supports non-fellowship research training through its current programs, *e.g.,* NCER's Methods Research Training program and NCER's Undergraduate Pathways program. IES would like to collect satisfaction information from the participants in these programs and other similar training programs funded through NCER or NCSER grant programs. The results of the surveys will be used both to improve the training programs as well as to provide information on the programs to the participants, policymakers, practitioners, and the general public. All information released to the public will be in aggregate so that no one program or training group can be distinguished.

Dated: September 2, 2022.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–19396 Filed 9–7–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0110]

Agency Information Collection Activities; Comment Request; HEAL Program: Physician's Certification of Borrower's Total and Permanent Disability

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 November 7, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0110. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Beth Grebeldinger, (202) 377–4018.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: HEAL Program: Physician's Certification of Borrower's Total and Permanent Disability.

OMB Control Number: 1845–0124.

Type of Review: Extension without change of a currently approved collection.

Respondents/Affected Public: Individuals or Households; State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 82.

Total Estimated Number of Annual Burden Hours: 22.

Abstract: This is a request for an extension of the OMB approval of the information collection associated with the form for the Health Education Assistance Loan (HEAL) Program, Physician's Certification of Borrower's Total and Permanent Disability, currently approved under OMB Control Number 1845–0124. The form is HEAL 539. A borrower and the borrower's physician must complete this form. The borrower then submits the form and additional information to the lending institution (or current holder of the loan) who in turn forwards the form and additional information to the Secretary for consideration of discharge of the borrower's HEAL loans. The form provides a uniform format for borrowers and lenders to use when submitting a disability claim.

Dated: September 1, 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. 2022–19334 Filed 9–7–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2808–020]

KEI (Maine) Power Management (III), LLC; Notice of Application Accepted for Filing and Soliciting Comments, Motions To Intervene, and Protests

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Capacity License Amendment to Adopt Settlement Agreement, extend license term, incorporate Section 18 Fishway Prescriptions, and revise Maine Water Quality Certification.

b. *Project No:* 2808–020.

c. *Date Filed:* April 29, 2022 and supplemented on July 22, 2022, July 26, 2022, August 3, 2022, and August 5, 2022.

d. *Applicant:* KEI (Maine) Power Management (III), LLC.

e. *Name of Project:* Barker's Mill Hydroelectric Project.

f. *Location:* The project is located on the Little Androscoggin River in Androscoggin County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791a–825r.

h. *Applicant Contact:* Lewis Loon, 37 Alfred A. Plourde Parkway, Suite 2, Lewiston, ME 04240, (207)–786–8834.

i. *FERC Contact:* Michael Calloway, (202) 502–8041, *michael.calloway@ferc.gov*.

j. *Deadline for filing comments, motions to intervene, and protests:* October 3, 2022.

The Commission strongly encourages electronic filing. Please file comments, motions to intervene, and protests using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include the docket number P–2808–020. Comments emailed to Commission staff are not considered part of the Commission record.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Request:* The licensee is requesting to amend Ordering Paragraphs (A), (E), and (F) of the Order issuing Subsequent License issued by Commission staff on April 15, 2020,[1] consistent with the terms of the Relicensing Settlement Agreement for the Barker Mill Project (FERC No. 2808). The Settlement Agreement also relates to the Upper Barker Project (FERC No. 3562) and the Marcal Project (FERC No. 11482) which are not a part of this proceeding. The Settlement Agreement is proposing to extend the license term of Barker Mill Project FERC No. 2808 by 10 years, incorporate into the project license revised Section 18 Fishway Prescriptions filed by the Secretary of the U.S. Department of Interior filed on July 26, 2022, and the Secretary of the U.S. Department of Commerce filed on August 3, 2022, and August 5, 2022, along with a revised Water Quality Certification from Maine Department of Environmental Protection filed on July 22, 2022.

[1] 171 FERC ¶ 62,043.

l. *Locations of the Application:* This filing 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. 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, call 1–866–208–3676 or email *FERCOnlineSupport@ferc.gov,* for TTY, call (202) 502–8659. Agencies may obtain copies of the application directly from the applicant.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. *Comments, Protests, or Motions to Intervene:* Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214, respectively. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. *Filing and Service of Documents:* Any filing must (1) bear in all capital letters the title ''COMMENTS'', ''PROTEST'', or ''MOTION TO INTERVENE'' as applicable; (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person commenting, protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, motions to intervene, or protests must set forth their evidentiary basis. Any filing made by an intervenor must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 385.2010.

Dated: September 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19401 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2547–095]

Village of Swanton, Vermont; Notice of Scoping Meetings and Environmental Site Review and Soliciting Scoping Comments

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2547–095.

c. *Date Filed:* April 29, 2022.

d. *Applicant:* Village of Swanton, Vermont (Village).

e. *Name of Project:* Highgate Falls Hydroelectric Project.

f. *Location:* On Missisquoi River in Franklin County, Vermont. The project does not occupy any federal land.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Reginald R. Beliveau, Jr., Manager—Village of Swanton, 120 First Street, Swanton, Vermont 05488; call at (802) 868–3397; email at *rbeliveau@swanton.net.*

i. *FERC Contact:* John Baummer at (202) 502–6837; or email at *john.baummer@ferc.gov.*

j. *Deadline for filing scoping comments:* October 29, 2022.

The Commission strongly encourages electronic filing. Please file scoping comments using the Commission's eFiling system at *https://ferconline.ferc.gov/FERCOnline.aspx.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *https://ferconline.ferc.gov/QuickComment.aspx.* You must include your name and contact information at the end of your comments. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov,* (866) 208–3676 (toll free), or (202) 502–8659 (TTY). In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852. All filings must clearly identify the project name and docket number on the first page: Highgate Falls Hydroelectric Project (P–2547–095).

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application is not ready for environmental analysis at this time.

l. *Project Description:* The existing project consists of: (1) a dam about 670 feet long that consists of: (a) a 235-foot-long earth-filled embankment on the west bank; (b) a 174-foot-long concrete intake structure; (c) a 226-foot-long ogee-shaped concrete spillway section with a 15-foot-high pneumatic crest gate and a maximum crest elevation of 190.0 foot National Geodetic Vertical Datum of 1929 (NGVD29) when fully inflated; and (d) a 35-foot-long concrete abutment on the east bank; (2) an impoundment with a storage capacity of 3,327 acre-feet at an elevation of 190.0 feet NGVD29; (3) a 509-foot-long, 10.5-foot-wide, and 10.5-foot-high concrete conduit connecting to a 243-foot-long, 12-foot-diameter steel penstock that conveys flow from the intake structure to the primary powerhouse; (4) a surge tank; (5) a concrete and masonry main powerhouse containing two 1.0-megawatt (MW), one 2.8–MW, and one 6.0–MW vertical Francis turbine-generators; (6) a 75-foot-long, 5-foot-diameter steel penstock conveying flow from the intake structure to a 0.710–MW crossflow turbine-generator located within a secondary concrete powerhouse; (7) a substation; (8) a 0.5-mile-long, 32-megavolt ampere transmission line; and (9) appurtenant facilities. The project creates an approximately 1,100-foot-long bypassed reach of the Missisquoi River between the dam and the primary powerhouse discharge.

The current license requires that the project operate as a run-of-river facility such that outflow approximates inflow between March 31 and June 1. From June 1 through March 30, the Village operates the project as a peaking facility by generating electricity during daily peak demand periods. When peaking, the Village limits the daily impoundment drawdown to 30 inches or less from the full pond elevation of 190 feet NGVD29. The current license also requires a minimum flow release of 200 cubic feet per second (cfs) or inflow if less, as measured downstream of the primary powerhouse. The 200-cfs minimum flow must include at least 35

cfs or inflow if less, that is released from the dam to the bypassed reach. The average annual generation of the project was approximately 40,667 megawatt-hours from 1989 to 2020.

The applicant proposes to modify current project operation to: (1) operate the project in run-of-river mode between March 31 and June 15, and during periods when inflow is 400 cfs or less, instead of between March 31 and June 1 under current operation; (2) operate the project in a peaking mode from June 16 through March 30; (3) limit impoundment drawdowns during peaking operation to 18 to 24 inches, instead of 30 inches under current operation; (4) refill the impoundment within 8 hours of each drawdown for peaking operation; and (5) continue to provide a minimum flow of 200 cfs downstream of the primary powerhouse, including the following minimum flows to the bypassed reach: 150 cfs in April and May, 70 cfs in June, and 35 cfs from July through March.

The applicant proposes the following environmental measures: (1) develop a freshwater mussel plan for relocating mussels when the impoundment is lowered to 186 feet NGVD 29 or less for prolonged periods of time; (2) develop a plan for protecting horn-leaved riverweed downstream of the Swanton Dam ledges, which are located approximately 7 miles downstream of the powerhouse; (3) provide aesthetic flows of 1 to 3 inches of spill over the dam during certain holidays; (4) improve an existing parking area to accommodate 5 to 7 cars for recreation users; (5) develop a plan to provide access for hand-carry water craft to the impoundment and downstream of the project; and (6) develop an historic properties management plan to protect historic properties.

The applicant also proposes to: (1) conduct a post-licensing evaluation of the feasibility of using the existing downstream Swanton Dam canal works for upstream fish passage; (2) develop a recreational maintenance and enhancement plan to guide regular maintenance activities at recreation facilities; (3) install a warning system to alert recreation users to increases in flow in the bypassed reach and downstream of the powerhouse; and (4) install an electric vehicle charging station for five vehicles using electricity produced by the hydroelectric plant.

m. A copy of the application can be viewed on the Commission's website at *https://www.ferc.gov* using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. For assistance, contact FERC Online Support.

You may also register at *https://ferconline.ferc.gov/FERCOnline.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov.*

n. *Scoping Process:* Pursuant to the National Environmental Policy Act (NEPA), Commission staff intends to prepare either an environmental assessment (EA) or an environmental impact statement (EIS) (collectively referred to as the ''NEPA document'') that describes and evaluates the probable effects, including an assessment of the site-specific and cumulative effects, if any, of the proposed action and alternatives. The Commission's scoping process will help determine the required level of analysis and satisfy the NEPA scoping requirements, irrespective of whether the Commission issues an EA or an EIS.

Scoping Meetings

Commission staff will hold two public scoping meetings to receive input on the scope of the environmental issues that should be analyzed in the NEPA document. The daytime meeting will focus on the concerns of resource agencies, non-governmental organizations (NGOs), and Native American tribes. The evening meeting will focus on receiving input from the public. All interested individuals, resource agencies, Native American tribes, and NGOs are invited to attend one or both of the meetings. The times and locations of these meetings are as follows:

Daytime Scoping Meeting

Date: Thursday, September 29, 2022
Time: 10 a.m. (EDT)
Place: Highgate Elementary School, White Room
Address: 219 Gore Road, Highgate Center, Vermont 05459

Evening Scoping Meeting

Date: Thursday, September 29, 2022
Time: 7 p.m. (EDT)
Place: Highgate Elementary School, White Room
Address: 219 Gore Road, Highgate Center, Vermont, 05459

Copies of the Scoping Document (SD1) outlining the subject areas to be addressed in the NEPA document were distributed to the parties on the Commission's mailing list. Copies of the SD1 will be available at the scoping meeting or may be viewed on the web at *http://www.ferc.gov* using the ''eLibrary'' link (see item m above).

Environmental Site Review

The applicant and Commission staff will conduct an environmental site review of the project beginning at 1 p.m. on September 29, 2022. All interested individuals, agencies, tribes, and NGOs are invited to attend. All participants should meet at the parking lot next to the project dam, which is located at126, Baker Road, Highgate Center, Vermont 05459. All participants are responsible for their own transportation to the site and during the site visit. If you plan to attend the environmental site review, please contact Mr. Reginald R. Beliveau, Jr. of the Village of Swanton, Vermont at (802) 868–3397, or via email at *rbeliveau@swanton.net* on or before September 23, 2022.

Objectives

At the scoping meetings, Commission staff will: (1) summarize the environmental issues tentatively identified for analysis in the NEPA document; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the NEPA document, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the resource issues to be addressed in the NEPA document; and (5) identify those issues that require a detailed analysis, as well as those issues that do not require a detailed analysis.

Procedures

The meetings are recorded by a stenographer and become part of the formal record of the Commission proceeding on the project. Individuals, NGOs, Native American tribes, and agencies with environmental expertise and concerns are encouraged to attend the meeting and to assist the staff in defining and clarifying the issues to be addressed in the NEPA document.

Dated: September 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19402 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RD22–3–000]

Commission Information Collection Activities (FERC–725U)

AGENCY: Federal Energy Regulatory Commission, Department of Energy.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission FERC–725U, Mandatory Reliability Standards for the Bulk Power System; CIP Reliability Standards, which will be submitted to the Office of Management and Budget (OMB) for review. No Comments were received on the 60-day notice published on June 24, 2022.

DATES: Comments on the collection of information are due October 11, 2022.

ADDRESSES: Send written comments on FERC–725U, Mandatory Reliability Standards for the Bulk Power System; CIP Reliability Standards to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control No: 1902–0274(FERC–725U) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. RD22–3–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–725U, Mandatory Reliability Standards for the Bulk Power System; CIP Reliability Standards.

OMB Control No.: 1902–0274(FERC–725U).

Type of Request: Approval of the change from the removal of the recordkeeping requirement in (C.1.1.4) the currently approved collection: FERC–725U. There are no changes in burden resulting from this change.

Abstract: In compliance with the requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), the Commission is soliciting public comment on revisions to the information collection FERC–725U, Mandatory Reliability Standards for the Bulk Power System; CIP Reliability Standards; which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements. Comments on the collection of information are due within 60 days of the date this order is published in the **Federal Register**. Respondents subject to the filing requirements of this order will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

The information collection requirements are subject to review by the OMB under section 3507(d) of the Paperwork Reduction Act of 1995.[1] OMB's regulations require approval of certain information collection requirements imposed by agency rules.[2] The Commission solicits comments on the Commission's need for this information, whether the information will have practical utility, the accuracy of the burden estimates, ways to enhance the quality, utility, and clarity of the information to be collected or retained, and any suggested methods for minimizing respondents' burden, including the use of automated information techniques.

The number of respondents below is based on an estimate of the NERC compliance registry for transmission owners and transmission operator. The Commission based its paperwork burden estimates on the NERC compliance registry as of May 6, 2022. According to the registry, there are 326 transmission owners and 18 transmission operators not also registered as transmission owners. The estimate is based on a zero change in burden from the current standard to the standard approved in this Order. The Commission based the burden estimate on staff experience, knowledge, and expertise.

For the new Reliability Standard CIP–014–3, the burden for entities remains the same as they will still need to provide the same evidence to demonstrate compliance whether it is kept on-site or loaded electronically into the SEL. No comments were received that expressed a change in the manhour burden associated with the use of SEL.

Respondents: Business or other for profit, and not for profit institutions.

Frequency of Responses: On occasion.

Necessity of the Information: Reliability Standard CIP–014–3 (Physical Security) is part of the implementation of the Congressional mandate of the Energy Policy Act of 2005 to develop mandatory and enforceable Reliability Standards to better ensure the reliability of the nation's Bulk Power system. Specifically, the revised standard only changes the how the evidence is stored.

Internal review: The Commission has reviewed NERC's proposal and determined that its action is necessary to implement section 215 of the FPA.

Burden Estimates: The Commission estimates the changes in the annual public reporting burden and cost [3] as indicated below:

[1] 44 U.S.C. 3507(d).

[2] 5 CFR 1320 (2021).

[3] FERC staff estimates that industry costs for salary plus benefits are similar to Commission costs. The FERC 2021 average salary plus benefits for one FERC full-time equivalent (FTE) is $180,703/year (or $87.00/hour) posted by the Bureau of Labor Statistics for the Utilities sector (available at *https://www.bls.gov/oes/current/naics3_221000.htm*).

FERC–725U: (MANDATORY RELIABILITY STANDARDS: RELIABILITY STANDARD CIP–014) CHANGE IN BURDEN

	Number of respondents [4] (1)	Number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden hours & cost per response (4)	Total burden hours & total cost (3) * (4) = (5)	Average cost per respondent (5) ÷ (1)
Change Annual Reporting and Recordkeeping.	344	1	344	32.71 hrs.; 2,845.77	11,252.24 hrs.; $978,944.88.	$2,845.77
Total FERC–725U	344	1	344	32.71 hrs.; $2,845.77.	11,254.24 hrs.; $978,944.88.	2,845.77

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19399 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–19–000]

Commission Information Collection Activities (FERC–919 and FERC–919A), Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission FERC–919 (FERC–919, (Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities), and FERC–919A, (Data Collection for Analytics and Surveillance and Market-Based Rate Purposes), which will be submitted to the Office of Management and Budget (OMB) for review. No Comments were received on the 60-day notice published on June 24, 2022.

DATES: Comments on the collection of information are due October 11, 2022.

ADDRESSES: Send written comments on FERC–919 to OMB through *www.reginfo.gov/public/do/PRAMain.* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB Control Number (1902–0234) in the subject line of your comments. Comments should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.*

Please submit copies of your comments to the Commission. You may submit copies of your comments (identified by Docket No. IC22–19–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, Secretary of the Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review'' field, select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection. *FERC submissions* must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov/ferc-online/overview.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–919, (Refinements to Policies and Procedures for Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities), and FERC–919A, (Data Collection for Analytics and Surveillance and Market-Based Rate Purposes).

OMB Control No.: FERC–919 (1902–0234), FERC–919A (1902–0317-moving burden into 1902–0234)

Type of Request: Three-year extension of these information collection requirements for all collections described below with no changes to the current reporting requirements. Please note: FERC–919A is a temporary collection number proposed to be combined into FERC–919.

Abstract: The FERC–919 collection is necessary to ensure that market-based rates charged by public utilities are just and reasonable as mandated by Federal Power Act (FPA) sections 205 and 206. Section 205 of the FPA requires just and reasonable rates and charges. Section 206 allows the Commission to revoke a seller's market-based rate authorization if it determines that the seller may have gained market power since it was originally granted market-based rate authorization by the Commission. FERC–919, as stated in 18 Code of Federal Regulations (CFR) Part 35, Subpart H,[1] the Commission codifies

[4] The total number (344) of transmission owners (326) plus transmission operators (18) not also registered as owners, this represents the unique US entities (taken from data as of May 6, 2022).

[1] *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities,* Order No. 697, 72 FR 39904 (Jul. 20, 2007), 119 FERC ¶ 61,295 (2007).

market-based rate standards for generating electric utilities for use in the Commission's determination of whether a wholesale seller of electric energy, capacity, or ancillary services qualify for market-based rate authority. Subpart H mandates that sellers submit market power analyses and related filings (descriptions below). Market power analyses must address both horizontal and vertical market power.

Horizontal Market Power Analysis

To demonstrate a lack of horizontal market power, the Commission requires two indicative market power screens: the uncommitted pivotal supplier screen (which is based on the annual peak demand of the relevant market) and the uncommitted market share screen applied on a seasonal basis. The Commission presumes sellers that fail either screen to have market power and such sellers may submit a delivered price test analysis or alternative evidence to rebut the presumption of horizontal market power. If a seller fails to rebut the presumption of horizontal market power, the Commission sets the just and reasonable rate at the default cost-based rate unless it approves different mitigation based on case specific circumstances. When submitting horizontal market power analyses, a seller must submit the horizontal market power analysis into a relational database for it to be retrievable in conformance with the instructions posted on the Commission's website.[2] A seller must also include all supporting materials referenced in the indicative screens.

Vertical Market Power Analysis

To demonstrate a lack of vertical market power, if a public utility with market-based rates, or any of its affiliates, owns, operates or controls transmission facilities, that public utility must:

- Have on file a Commission-approved Open Access Transmission Tariff[3]
- Submit a description of its ownership or control of, or affiliation with an entity that owns or controls:
  - Intrastate natural gas transportation, intrastate natural gas storage or distribution facilities
  - Physical coal supply sources and ownership or control over who may access transportation of coal supplies
- Make an affirmative statement that it and its affiliates have not erected and will not erect barriers to entry into the relevant market

Asset Appendix

In addition to the market power analyses, a seller must submit information into the relational database in order to generate an asset appendix. A seller must then reference this asset appendix via serial number with its initial application for market-based rate authorization or updated market power analysis, and all relevant change in status filings. The asset appendix must:

- List, among other things, all affiliates that have market-based rate authority
- List all generation assets owned (clearly identifying which affiliate owns which asset) or controlled (clearly identifying which affiliate controls which asset) by the corporate family by balancing authority area, and by geographic region, and provide the in-service date and nameplate and/or seasonal ratings by unit
- Must reflect if electric transmissions and natural gas interstate pipelines and/or gas storage facilities are owned or controlled by the corporate family and the balancing authority areas of such facilities.
- List all long-term power purchases and sales agreements attributed to a seller and its affiliates by the corporate family by balancing authority area, and by geographic region, and provide the start date and end date.

Triennial Market Power Analysis

Sellers that own or control 500 megawatts or more of generation and/or that own, operate or control transmission facilities, are affiliated with any entity that owns, operates or controls transmission facilities in the same region as the seller's generation assets, or with a franchised public utility in the same region as the seller's generation assets are required to file updated market power analyses every three years. The updated market power analyses must demonstrate that a seller does not possess horizontal market power.

Change in Status Filings

Concerning changes in status filings, the Commission requires that sellers file notices of such changes no later than each quarter after the change in status occurs. The Commission also requires that each seller must include an appendix in the relational database identifying specified assets with each pertinent change in status notification filed.

Relational Database Updates

A Seller must report on a monthly basis changes to its previously-submitted relational database information, excluding updates to the horizontal market power screens. These submissions must be made by the 15th day of the month following the change. These submissions include the asset appendix information described above, as well as other market-based information concerning seller category, operating reserves authorization, identification of its ultimate upstream affiliate(s), mitigation, and other limitations.

Exemptions From Submitting Updated Market Power Analyses

Wholesale power marketers and wholesale power producers that are not affiliated with franchised public utilities or transmission owners, that do not own transmission, and that do not, together with all of their affiliates, own or control 500 megawatts or more of generation in a relevant region are not required to submit updated market power analyses. The Commission determines which sellers are in this category through information filed by the utility either when the seller files its initial application for market-based rate authorization or through a separate filing made to request such a determination.

Type of Respondents: Public utilities, wholesale electricity sellers.

Estimate of Annual Burden:[4] The Commission estimates the total annual burden and cost[5] for this information collection as follows.

[2] *See Data Collection for Analytics and Surveillance and Mkt.-Based Rate Purposes,* Order No. 860, 168 FERC ¶ 61,039 (2019), *order on reh'g,* Order No. 860–A, 170 FERC ¶ 61,129 (2020).

[3] A part of the associated burden is reported separately in information collections FERC–516 (OMB Control Number: 1902–0096).

[4] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to Title 5 CFR 1320.3.

[5] The estimated hourly cost (salary plus benefits) provided in this section is based on the salary figures for May 2021 posted by the Bureau of Labor Statistics for the Utilities sector (available at *http://www.bls.gov/oes/current/naics2_22.htm#13-0000*) and scaled to reflect benefits using the relative importance of employer costs in employee compensation from May 2021 (available at *https://www.bls.gov/oes/current/naics2_22.htm*). The hourly estimates for salary plus benefits are:

Economist (Occupation Code: 19–3011), $75.75

Electrical Engineer (Occupation Code: 17–2071), $72.15

Legal (Occupation Code: 23–0000), $142.25

The average hourly cost (salary plus benefits), weighting all of these skill sets evenly, is $96.72. The Commission rounds it to $97/hour.

FERC–919, REFINEMENTS TO POLICIES AND PROCEDURES FOR MARKET BASED RATES FOR WHOLESALE SALES OF ELECTRIC ENERGY

Requirement	Number of respondents (1)	Annual number of responses per respondent (2)	Total number of responses (1) * (2) = (3)	Average burden & cost per response (4)	Total annual burden hours & cost (3) * (4) = (5)[5]	Annual cost per respondent ($) (5) ÷ (1)
Market Power Analysis in New Applications for Market-based rates.	144	1	144	135 hrs.; $13,095 ..	19,440 hrs.; $1,885,680.	$13,095
Triennial market power analysis.	65	1	65	133.23 hrs.; $12,923.31.	8,659.95 hrs.; $840,015.15.	12,923.31
Asset appendix addition to change in status reports.	149	1	149	49 hrs.; $4,753	7,301 hrs.; $708,197.	4,753
FERC–919A Burden carried over from Order 860–A Category 1-(Ongoing).	1,000	.333	333	2.44 hrs;[6] $237.11	814 hrs.; $78,958 ..	237.11
FERC–919A Burden carried over from Order 860–A Category 2-(Ongoing).	1,500	1	1,500	4.10 hrs;[7] $397.96	6,154 hrs.; $596,938.	397.96
FERC–919A Burden Carried over from Order 860–A Upstream Affiliates.	440	1	440	46 hrs.; $4,462	20,240 hrs.; $1,963,280.	4,462
Total	3,298	.....	2,631	.....	62,608.95 hrs.; $6,073,068.15.	.....

Row 1 (Market Power Analysis in New Applications for Market-based rates) will have 144 filings. Row 2 (Triennial market power analysis) will have 65 filings. Row 3 (Asset appendix addition to change in status reports) will have 149 filings. There are a total of 358 filings in Rows 1 through 3.

Currently, there are 2,729 sellers that would submit information into the relational database. At the time of implementation of Order No. 860, there were 2,647 sellers that would submit information into the relational database in the first year of implementation. Six institutional investors had FPA section 203(a)(2) blanket authorizations, which collectively owned approximately 110 upstream affiliates that themselves owned sellers. In the March Notice,[8] the Commission estimated an average of four sellers affected for every upstream affiliate, equaling 440 total sellers during the first three years of implementation of Order No. 860.

FERC–919A Burden carryover explanation:

• RM16–17–000 Final Rule (Order No. 860) (Category 1, 2nd Year and Ongoing), as modified by Order of August 2021—to 814 hrs.)

• RM16–17–000 Final Rule (Order No. 860) (Category 2, 2nd Year and Ongoing) as modified by Order of August 2021—to 6,154 hrs.)

Comments: Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19404 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

[6] The number used to calculate the costs is 2.4444 and was rounded for the table.

[7] The number used to calculate the costs is 4.1026 and was rounded for the table.

[8] *Data Collection for Analytics & Surveillance & Mkt.-Based Rate Purposes,* 86 FR 17823 (Apr. 6, 2021), 174 FERC ¶ 61,214 (2021) (March Notice).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–18–000]

Commission Information Collection Activities (FERC–715); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection, FERC–715 (Annual Transmission Planning and Evaluation Report), which will be submitted to the Office of Management and Budget (OMB) for a review of the information collection requirements.

DATES: Comments on the collection of information are due October 11, 2022.

ADDRESSES: Send written comments on FERC–715 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0171) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC22–18–000) to the Commission as noted below. Electronic filing through *http://www.ferc.gov* is preferred.

• *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.

• For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service Only Addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions:

OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain.* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit,'' and select ''comment'' to the right of the subject collection.

FERC submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at: (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov* and telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–715, Annual Transmission Planning and Evaluation Report.

OMB Control No.: 1902–0171.

Abstract: Section 213(b) of the Federal Power Act [1] instructs the Commission to require transmitting utilities [2] to submit information annually about potentially available transmission capacity and known constraints. Such information must be available to potential transmission customers, State regulatory authorities, and the public.

The Commission implements section 213(b) in accordance with the regulation at 18 CFR 141.300, which provides that the information collection applies to each transmitting utility that operates integrated transmission system facilities rated above 100 kilovolts (kV), and lists the following information that must be included in the annual submission:

- Contact information;
- Base case power flow data (if the respondent does not participate in the development and use of regional power flow data);
- Transmission system maps and diagrams used by the respondent for transmission planning;
- A detailed description of the transmission planning reliability criteria used to evaluate system performance for time frames and planning horizons used in regional and corporate planning;
- A detailed description of the respondent's transmission planning assessment practices (including, but not limited to, how reliability criteria are applied and the steps taken in performing transmission planning studies); and
- A detailed evaluation of the respondent's anticipated system performance as measured against its stated reliability criteria using its stated assessment practices.

The information collected under FERC–715 assists the Commission in reviewing:

- Rates and charges;
- Disposition of jurisdictional facilities;
- Consolidations and mergers;
- Adequacy of supply; and
- Reliability and security of the nation's bulk power system.

Without the FERC–715 data, the Commission would be less able to evaluate planned projects or requests related to transmission.

Type of Respondent: Integrated transmission system facilities rated at or above 100 kilovolts (kV).

Estimate of Annual Burden: [3] The Commission estimates the total annual burden and cost [4] for this information collection as follows.

FERC–715, ANNUAL TRANSMISSION PLANNING AND EVALUATION REPORT

Type of response	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden & cost per response	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Annual Transmission Planning and Evaluation Report.	111	1	111	160 hrs.; $13,920 ..	17,760 hrs.; $1,545,120.	$13,920

Comments are invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19405 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–116–000.

Applicants: Evergy Missouri West, Inc., Persimmon Creek Wind Farm 1, LLC.

[1] 16 U.S.C. 824*l*(b)

[2] FPA section 3(23) (16 U.S.C. 796(23)) defines ''transmitting utility'' as an entity that owns, operates, or controls facilities used for the transmission of electric energy in interstate commerce for the sale of electric energy at wholesale.

[3] ''Burden'' is the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR 1320.3.

[4] The Commission staff estimates that the industry's hourly cost for wages plus benefits is similar to the Commission's $87.00 FY 2021 average hourly cost for wages and benefits.

Description: Joint Application for Authorization Under Section 203 of the Federal Power Act of Evergy Missouri West, Inc., et al.
Filed Date: 9/1/22.
Accession Number: 20220901–5174.
Comment Date: 5 p.m. ET 9/22/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–213–000.
Applicants: BT Cunningham Storage, LLC.
Description: BT Cunningham Storage, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.
Filed Date: 8/31/22.
Accession Number: 20220831–5157.
Comment Date: 5 p.m. ET 9/21/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2758–000.
Applicants: Duke Energy Florida, LLC.
Description: § 205(d) Rate Filing: DEF-Mt. Dora Reimbursement Agreement RS No. 366 to be effective 10/31/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5160.
Comment Date: 5 p.m. ET 9/21/22.

Docket Numbers: ER22–2759–000.
Applicants: Eastman Cogeneration LP.
Description: Market: Update of Market-Based Rate Tariff and Triennial Market Power Analysis to be effective 9/2/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5161.
Comment Date: 5 p.m. ET 9/21/22.

Docket Numbers: ER22–2760–000.
Applicants: Public Service Company of New Mexico.
Description: § 205(d) Rate Filing: Modifications P0695 and Operating Agreement to be effective 9/1/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5169.
Comment Date: 5 p.m. ET 9/21/22.

Docket Numbers: ER22–2761–000.
Applicants: Public Service Company of Colorado.
Description: § 205(d) Rate Filing: 2022–08–31 Grand Valley-SISA-(T–2022–3)–717–0.0.0 to be effective 9/1/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5184.
Comment Date: 5 p.m. ET 9/21/22.

Docket Numbers: ER22–2762–000.
Applicants: Northwest Power Pool.
Description: Baseline eTariff Filing: Western Power Pool Western Resource Adequacy Program Tariff to be effective 12/12/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5189.
Comment Date: 5 p.m. ET 9/30/22.

Docket Numbers: ER22–2763–000.
Applicants: Entergy Louisiana, LLC.
Description: § 205(d) Rate Filing: ELL LCPS Reactive to be effective 11/1/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5193.
Comment Date: 5 p.m. ET 9/21/22.

Docket Numbers: ER22–2764–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Revisions to Attachment X re to be effective 11/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5050.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2765–000.
Applicants: Avista Corporation.
Description: § 205(d) Rate Filing: Avista Corp FERC RS T1198 GB Energy Park LGIA Cert of Concurrence to be effective 8/22/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5076.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2766–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: ISA, SA No. 6578; Queue No. AD1–088/AE2–182 to be effective 8/3/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5093.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2767–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Original WMPA, SA No. 6580; Queue No. AE2–212 to be effective 8/3/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5096.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2768–000.
Applicants: Midcontinent Independent System Operator, Inc., Missouri Joint Municipal Electric Utility Commission.
Description: § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2022–09–01_Tariff Revisions to Incorporate Formula Rate for MJMEUC to be effective 12/31/9998.
Filed Date: 9/1/22.
Accession Number: 20220901–5097.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2770–000.
Applicants: Georgia Power Company, Mississippi Power Company, Alabama Power Company.
Description: § 205(d) Rate Filing: Georgia Power Company submits tariff filing per 35.13(a)(2)(iii: PEHA bn (Pepper Hammock II Solar) LGIA Filing to be effective 8/26/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5111.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2771–000.
Applicants: PacifiCorp.
Description: § 205(d) Rate Filing: City of Hurricane Load Service Contract to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5124.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2772–000.
Applicants: Consolidated Edison Company of New York, Inc.
Description: § 205(d) Rate Filing: RC CDG rule changes 9–1–2022 to be effective 9/1/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5127.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2773–000.
Applicants: Smoky Mountain Transmission LLC.
Description: § 205(d) Rate Filing: Amended Interconnection Agreement to be effective 9/2/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5163.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2774–000.
Applicants: Gibson City Energy Center, LLC.
Description: § 205(d) Rate Filing: Normal filing 2022 to be effective 10/31/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5187.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2775–000.
Applicants: PacifiCorp, Sierra Pacific Power Company, Nevada Power Company.
Description: Joint Petition for Limited Waiver of PacifiCorp, et al.
Filed Date: 9/1/22.
Accession Number: 20220901–5190.
Comment Date: 5 p.m. ET 9/8/22.

Docket Numbers: ER22–2776–000.
Applicants: Shelby County Energy Center, LLC.
Description: § 205(d) Rate Filing: Reactive rates Normal filing 2022 to be effective 10/31/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5197.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2777–000.
Applicants: Tilton Energy LLC.
Description: § 205(d) Rate Filing: Normal filing 2022 to be effective 10/31/2022.
Filed Date: 9/1/22.
Accession Number: 20220901–5201.
Comment Date: 5 p.m. ET 9/22/22.

Docket Numbers: ER22–2778–000.
Applicants: Puget Sound Energy, Inc.
Description: § 205(d) Rate Filing: Cert of Concurrence to the LGIA between

Northwestern Corp and others to be effective 8/18/2022.

Filed Date: 9/1/22.

Accession Number: 20220901–5214.

Comment Date: 5 p.m. ET 9/22/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–64–000.

Applicants: Evergy Missouri West, Inc.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of Evergy Missouri West, Inc.

Filed Date: 9/1/22.

Accession Number: 20220901–5162.

Comment Date: 5 p.m. ET 9/22/22.

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: September 1, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19389 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings in Existing Proceedings

Docket Numbers: RP22–265–001.

Applicants: Rockies Express Pipeline LLC.

Description: Compliance filing: 2022–08–31 REX NAESB 3.1 and 3.2 Compliance Filing to be effective 10/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5070.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–266–001.

Applicants: Tallgrass Interstate Gas Transmission, LLC.

Description: Compliance filing: TIGT 2022–08–31 NAESB 3.1 and 3.2 Compliance Filing to be effective 10/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5072.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–267–001.

Applicants: Trailblazer Pipeline Company LLC.

Description: Compliance filing: 2022–08–31 TPC NAESB 3.1 and 3.2 Compliance Filing to be effective 10/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5076.

Comment Date: 5 p.m. ET 9/12/22.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

Filings Instituting Proceedings

Docket Numbers: RP22–1150–000.

Applicants: Tampa Electric Company, Peoples Gas System.

Description: Joint Petition for Temporary Waivers of Capacity Release Regulations, et al. of Tampa Electric Company and Peoples Gas System.

Filed Date: 8/24/22.

Accession Number: 20220824–5175.

Comment Date: 5 p.m. ET 9/8/22.

Docket Numbers: RP22–1175–000.

Applicants: TransColorado Gas Transmission Company LLC.

Description: § 4(d) Rate Filing: TC Quarterly FL&U Update to be effective 10/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5043.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1176–000.

Applicants: Ruby Pipeline, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement (SWG) to be effective 9/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5079.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1177–000.

Applicants: Northern Natural Gas Company.

Description: § 4(d) Rate Filing: 20220831 Negotiated Rate to be effective 9/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5082.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1178–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing (MIECO) to be effective 9/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5084.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1179–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Non-Conforming Agreement Filing (CSU #2195431–TI1CIG) to be effective 10/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5089.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1180–000.

Applicants: Colorado Interstate Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Fuel_ Lost Unaccounted For Update to be effective 10/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5108.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1181–000.

Applicants: Tennessee Gas Pipeline Company, L.L.C.

Description: § 4(d) Rate Filing: PAL NRA Wells Fargo Commodities, LLC SP378905 Amendment Exhibit C to be effective 9/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5129.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1182–000.

Applicants: Millennium Pipeline Company, LLC.

Description: § 4(d) Rate Filing: ROFR Process for Expansion Capacity to be effective 10/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5131.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1183–000.

Applicants: Equitrans, L.P.

Description: § 4(d) Rate Filing: Non-Conforming Negotiated Rate Agreement—10/1/2022 to be effective 10/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5141.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1184–000.

Applicants: Transcontinental Gas Pipe Line Company, LLC.

Description: § 4(d) Rate Filing: Negotiated Rates—Cherokee AGL—Replacement Shippers—Sep 2022 to be effective 9/1/2022.

Filed Date: 8/31/22.

Accession Number: 20220831–5148.

Comment Date: 5 p.m. ET 9/12/22.

Docket Numbers: RP22–1185–000.

Applicants: El Paso Natural Gas Company, L.L.C.

Description: § 4(d) Rate Filing: Negotiated Rate Agmt Update (Conoco—Sep 22) to be effective 9/1/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5156.
Comment Date: 5 p.m. ET 9/12/22.
Docket Numbers: RP22–1186–000.
Applicants: Algonquin Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases eff 9–1–22 to be effective 9/1/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5162.
Comment Date: 5 p.m. ET 9/12/22.
Docket Numbers: RP22–1187–000.
Applicants: El Paso Natural Gas Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements Update (SRP Oct 2022) to be effective 10/1/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5170.
Comment Date: 5 p.m. ET 9/12/22.
Docket Numbers: RP22–1188–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates UGI to DTE Energy 8978239 eff 9–1–22 to be effective 9/1/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5179.
Comment Date: 5 p.m. ET 9/12/22.
Docket Numbers: RP22–1189–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Various Releases 9–1–2022 to be effective 9/1/2022.
Filed Date: 8/31/22.
Accession Number: 20220831–5192.
Comment Date: 5 p.m. ET 9/12/22.
Docket Numbers: RP22–472–000.
Applicants: Interstate Gas Supply, Inc., Dominion Energy Solutions, Inc.
Description: Interstate Gas Supply, Inc. and Dominion Energy Solutions, Inc. submit Third Status Report.
Filed Date: 8/31/22.
Accession Number: 20220831–5188.
Comment Date: 5 p.m. ET 9/12/22.

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: September 1, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–19390 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. AD22–14–000]

Commission Information Collection Activities (Proposed FERC–1001 and FERC–1002); Comment Request

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) staff is soliciting public comment on the proposed surveys FERC–1001 (Hotline and Helpline Survey) and FERC–1002 (Customer Engagement Management Survey).

DATES: Comments on the proposed collections of information are due November 7, 2022.

ADDRESSES: You may submit comments (identified by Docket No. AD22–14–000) by the following methods. Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery.

○ *Mail via U.S. Postal Service only, addressed to:* Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery to:* Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Please identify whether your comments relate to proposed collection FERC–1001 (Hotline and Helpline Survey) and/or FERC–1002 (Customer Engagement Management Survey).

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: Guides | Federal Energy Regulatory Commission (*ferc.gov*) (*https://www.ferc.gov/guides*). For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket may subscribe to the docket using eSubscription, FERC Online—Log In (*https://ferconline.ferc.gov/LogIn.aspx*). Users interested in viewing or downloading comments and issuances in this docket may do so using eLibrary, eLibrary | General search (*ferc.gov*) (*https://elibrary.ferc.gov/eLibrary/search*).

FOR FURTHER INFORMATION CONTACT: Melissa Lozano may be reached at *Melissa.Lozano@FERC.gov* by email or telephone at (202) 502–6267.

SUPPLEMENTARY INFORMATION:

Titles: Proposed FERC–1001 (Hotline and Helpline Survey) and FERC–1002 (Customer Engagement Management Survey).[1]

OMB Control Nos: 1902–TBD.[2]

Type of Request: Request for proposed new information collections.

Abstract:

Proposed FERC–1001

This proposed survey covers the Office of Public Participation (OPP) helpline, Customer Engagement helpline, Landowner helpline, Alternative Dispute Resolution helpline, Electric Quarterly Report (EQR) helpline, and the Enforcement hotline.[3] The contact information voluntarily provided and collected is listed in Attachment A to this notice. FERC collects contact information voluntarily

[1] The proposed surveys will not be published in the **Federal Register** but will be available as part of this notice in the Commission's eLibrary system.

[2] We anticipate having one OMB Control No. that would include both proposed FERC–1001 and proposed FERC–1002.

[3] Proposed FERC—1001 covers five helplines and one hotline: OPP Helpline: 202–502–6595; *OPP@ferc.gov;* Customer Engagement Helpline: 202–502–8004; 1–866–208–3372; *customer@ferc.gov;* Landowner Helpline: 1–877–337–2237; fax 202–219–2730; *landownerHelp@ferc.gov;* Alternative Dispute Resolution (ADR) Helpline: 1–844–238–1560; fax 202–219–2730; *ferc.adr@ferc.gov;* Electric Quarterly Report (EQR) Helpline: 202–502–8076; *eqr@ferc.gov.* Enforcement Hotline: 202–502–8390; 1–888–889–8030; fax 202–208–0057; *https://www.ferc.gov/enforcement-legal/enforcement-hotline/contract-hotline-staff-anonymously.hotline@ferc.gov; https://www.ferc.gov/enforcement-legal/enforcement/enforcement-hotline/contact-hotline-staff-anonymously.*

provided by members of the public who contact FERC to obtain assistance with navigating FERC matters. Members of the public typically contact FERC helplines and its Enforcement hotline seeking assistance with understanding specific issues that impact their property and communities, businesses, or marketplace. Other times, members of the public contact FERC seeking to understand how to express their opinions, views, and concerns regarding energy policy developments, energy infrastructure projects, or a specific case pending before FERC.

Members of the public, including company representatives, contact FERC to indicate their interest in obtaining information to facilitate fulfilling their compliance obligations under the Commission's Electric Quarterly Reports regulations or to seek support or guidance with filing their Electric Quarterly Reports. Further, FERC invites market participants and the general public to contact FERC to report market activities or transactions that may be market manipulation, fraud, an abuse of an affiliate relationship, a tariff violation, a violation of a Commission order, or other possible violation. FERC receives the contact information or specified data to provide customer service. Data is used to respond to the customer's question. Data is also used in an aggregated manner to identify areas that require additional explanations from FERC. Staff may use data from its helplines and its hotline to develop Frequently Asked Questions or other educational materials for posting on the FERC website.

Contact information is collected at several intake points including via email, telephone, fax, and/or webform. The FERC website provides a number of web-based forms for the public to request assistance related to specific subjects like landowner and energy company disputes, reporting possible violations of the Commission's regulations, energy infrastructure compliance concerns, general participation in Commission proceeding inquiries, matters that may benefit from alternative dispute resolution, press and media issues, and Electric Quarterly Reports.

Proposed FERC–1002

This survey covers outreach under Office of Public Participation, Office of External Affairs and Electric Quarterly Report administrators.[4] FERC proposes to voluntarily collect information on individual or stakeholder interests to engage with them by providing to the extent possible targeted information consistent with their expressed interest. The list of proposed questions is included in Attachment B of this notice. FERC proposes to voluntarily collect contact information and information about a participant's subject matter areas of interest, and to keep email distributions to be used to inform interested individuals of technical conferences, workshops, user group meetings, certain proceedings or of press releases or newsletters.

This information collection is needed to conduct customer engagement activities. Customer engagement is needed to further the Commission's goal of facilitating the public's understanding of FERC's work and encouraging their participation in FERC matters. This data will allow FERC to understand which areas of its work are of greater interest to the public and where additional public outreach and educational materials or other resources are needed the most.

Estimate of Annual Burden [5]

The following tables set forth the estimated annual burden and cost [6] for the information collections:

ESTIMATED ANNUAL AVERAGES FOR PROPOSED FERC–1001 AND FERC–1002
ESTIMATED ANNUAL BURDEN HOURS FOR FERC–1001

Line	Number of respondents (1)	Number of responses per respondent (2)	Total number of responses (1) × (2) = (3)	Average burden hours per response (4)	Total annual burden hours (3) × (4) = (5)
Landowner Helpline	350	1	350	0.17	59.5
Enforcement Hotline	175	1	175	0.25	43.75
ADR Helpline	75	1	75	0.5	37.5
OPP Helpline	400	1.5	600	0.35	210
Customer Engagement Helpline	7,300	1	7,300	0.17	1,241
EQR Helpline	380	2.5	950	0.75	712.5
Totals (Rounded)	.....	.....	9,450	.....	2304

ESTIMATED ANNUAL COST FOR FERC–1001

Line	Total number of responses (3)	Average burden hours per response (4)	Loaded cost per hour (6)	Average cost per response (4) × (6) = (7)	Total annual cost (3) × (7) = (8)
Landowner Helpline	350	0.17	$91	$15.47	$5,414.50
Enforcement Hotline	175	0.25	91	22.75	3,981.25
ADR Helpline	75	0.5	91	45.50	3,412.50
OPP Helpline	600	0.35	91	31.85	19,110.00
Customer Engagement Helpline	7,300	0.17	91	15.47	112,931.00
EQR Helpline	950	0.75	91	68.25	64,837.50

[4] Proposed FERC–1002 covers 3 areas of outreach for customer engagement (a) from the Office of Public Participation: Subscribe for Updates From the Office of Public Participation | Federal Energy Regulatory Commission (*ferc.gov*): FERC Insight Newsletter | Federal Energy Regulatory Commission (*https://www.ferc.gov/office-of-public-participation-subscribe*) and (b) for the Electric Quarterly Report users: Join Our EQR Contact List | Federal Energy Regulatory Commission (*ferc.gov*) *(https://www.ferc.gov/join-our-eqr-contact-list).*

[5] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, see 5 CFR 1320.3.

[6] Commission staff believes the FERC average wages plus benefits are a reasonable approximation of the cost for industry and public respondents. Therefore we are using the 2022 FERC average cost for wages plus benefits ($91.00 (rounded) per hour or $188,922 (rounded) per year).

ESTIMATED ANNUAL COST FOR FERC–1001—Continued

Line	Total number of responses	Average burden hours per response	Loaded cost per hour	Average cost per response	Total annual cost
	(3)	(4)	(6)	(4) × (6) = (7)	(3) × (7) = (8)
Totals (Rounded)	9,450				209,687

ESTIMATED ANNUAL BURDEN HOURS FOR FERC–1002

Subscriber type	Number of respondents	Number of responses per respondent	Total number of responses	Average burden hours per response	Total annual burden hours
	(1)	(2)	(1) × (2) = (3)	(4)	(3) × (4) = (5)
Customer Engagement	2,000	1	2,000	0.3	600
OPP	100	1	100	0.17	17
EQR	140	1	140	0.17	23.8
Totals (Rounded)			2,240		641

ESTIMATED ANNUAL COST FOR FERC–1002

Subscriber type	Total number of responses	Average burden hours per response	Loaded cost per hour	Average cost per response	Total annual cost
	(3)	(4)	(6)	(4) × (6) = (7)	(3) × (7) = (8)
Customer Engagement	2000	0.3	$91	$27.30	$54,600.00
OPP	100	0.17	91	15.47	1,547.00
EQR	140	0.17	91	15.47	2,165.80
Totals (Rounded)	2,240				58,313

COMBINED TOTAL FOR PROPOSED FERC–1001 AND FERC–1002

	Estimated hour burden	Estimated cost burden
Estimated Annual Combined Total for Proposed FERC–1001 and FERC–1002	2,945	$268,000

Comments: Comments are invited on: (1) whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimates of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19406 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2100–185]

California Department of Water Resources; Notice of Availability of Final Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380, the Office of Energy Projects has reviewed the application for an amendment of the license for the Feather River Hydroelectric Project, located on the Feather River in Butte County, and has prepared a final Environmental Assessment (FEA) for the project. The project occupies federal lands administered by the U.S. Forest Service and U.S. Bureau of Land Management.

The FEA contains the staff's analysis of the environmental effects of the proposed amendment and concludes that approving the amendment would not constitute a major federal action that would significantly affect the quality of the human environment.

The Commission provides all interested persons with an opportunity to view and/or print the EA via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field, to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at (866) 208–3676, or for TTY, (202) 502–8659.

You may also register online at *https://ferconline.ferc.gov/eSubscription.aspx* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

For further information, contact Alicia Burtner at (202) 502–8038 or *Alicia.Burtner@ferc.gov.*

Dated: September 1, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–19403 Filed 9–7–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0639; FRL–10198–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Friction Materials Manufacturing (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NESHAP for Friction Materials Manufacturing (EPA ICR Number 2025.10, OMB Control Number 2060–0481), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Public comments were previously requested, via the **Federal Register** on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently-valid OMB control number.

DATES: Additional comments may be submitted either on or before October 11, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0639, online using *https://www.regulations.gov/* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina, 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: Owners and operators of friction materials manufacturing facilities are required to comply with reporting and record keeping requirements for the General Provisions (40 CFR part 63, subpart A), as well as for the applicable specific standards in 40 CFR part 63 subpart QQQQQ. This includes submitting initial notifications, periodic reports and results, and maintaining records of any period during which the monitoring system is inoperative. These reports are used by the EPA to determine compliance with these standards.

Form Numbers: None.

Respondents/affected entities: Friction materials manufacturing facilities.

Respondent's obligation to respond: Mandatory (40 CFR part 63, subpart QQQQQ).

Estimated number of respondents: 2 (total).

Frequency of response: Semiannually.

Total estimated burden: 534 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $63,700 (per year), which includes $544 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is a decrease in burden from the most-recently approved ICR as currently identified in the OMB Inventory of Approved Burdens. The regulations were revised in 2019 (84 FR 2742) in the previous ICR (2025.09) to remove SSM plan and reporting requirements and revise reporting requirements for deviations. However, the reduction in burden in ICR 2025.09 is due to the removal of SSM requirements that were not calculated correctly. The frequency of recordkeeping for 'Copies of notifications/reports' and 'Time to transmit or disclose information' should have been reduced from five per year to three per year to reflect the removal of two submittals for the SSM plan. That error has been corrected in this ICR (2025.10). The growth rate for this industry is very low or non-existent. Since the changes in the regulatory requirements did not require new monitoring or equipment, and there is no significant industry growth, there are also no changes in the capital/startup or operation and maintenance (O&M) costs.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–19424 Filed 9–7–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OAR–2020–0665; FRL–10197–01–OMS]

Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Other Solid Waste Incineration Units (Renewal)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), NSPS for Other Solid Waste Incineration Units (EPA ICR Number 2163.08, OMB Control Number 2060–0563), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. Public comments were previously requested, via the **Federal Register** on February 8, 2021 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before October 11, 2022.

ADDRESSES: Submit your comments, referencing Docket ID Number EPA–HQ–OAR–2020–0665 online using *https://www.regulations.gov/* (our preferred method), or by email to *docket.oeca@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

The EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI), or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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: Muntasir Ali, Sector Policies and Program Division (D243–05), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711; telephone number: (919) 541–0833; email address: *ali.muntasir@epa.gov.*

SUPPLEMENTARY INFORMATION: Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *https://www.regulations.gov,* or in person at the EPA Docket Center, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1744. For additional information about EPA's public docket, visit: *http://www.epa.gov/dockets.*

Abstract: The New Source Performance Standards (NSPS) for Other Solid Waste Incineration (OSWI) Units (40 CFR part 60, subpart EEEE) apply to very small municipal waste combustion units and institutional waste incineration units. A new incineration unit subject to this subpart should meet either one of two criteria: (1) Commenced construction after December 9, 2004; or (2) commenced reconstruction or modification either on or after June 16, 2006. A very small municipal waste combustion unit is any municipal waste combustion unit that has the capacity to combust less than 35 tons per day of municipal solid waste or refuse-derived fuel. An institutional waste incineration unit is any combustion unit that combusts institutional waste and is a distinct operating unit of the institutional facility that generated the waste. Institutional waste is solid waste that is combusted at any institutional facility using controlled flame combustion in an enclosed, distinct operating unit with one of the following characteristics: (1) whose design does not provide for energy recovery; or (2) operated without energy recovery; or (3) operated with only waste heat recovery. Institutional waste also means solid waste combusted on site in an air curtain incinerator that is a distinct operating unit of any institutional facility. In general, all NSPS standards require initial notifications, performance tests, and periodic reports by the owners/operators of the affected facilities. They are also required to maintain records of the occurrence and duration of any startup, shutdown, or malfunction in the operation of an affected facility, or any period during which the monitoring system is inoperative. These notifications, reports, and records are essential in determining compliance with 40 CFR part 60, subpart EEEE.

Form Numbers: None.

Respondents/affected entities: OSWI units, which include two subcategories: VSMWC units that combust less than 35 tons per day of waste and IWI units.

Respondent's obligation to respond: Mandatory (40 CFR part 60, subpart EEEE).

Estimated number of respondents: 2 (total).

Frequency of response: Initially, semiannually, and annually.

Total estimated burden: 1,210 hours (per year). Burden is defined at 5 CFR 1320.3(b).

Total estimated cost: $153,000 (per year), which includes $10,000 in annualized capital/startup and/or operation & maintenance costs.

Changes in the Estimates: There is an adjustment decrease in the total estimated burden as currently identified in the OMB Inventory of Approved Burdens. This decrease is not due to any program changes. The adjustment decrease in burden from the most-recently approved ICR is primarily due to more accurate estimates of existing sources, which is based on the revised facility inventory developed in support of the August 2020 proposed revisions and discussed in the proposed supporting statement (EPA–HQ–OAR–2003–0156–0146). The decrease in operation and maintenance (O&M) costs, compared with the costs in the previous ICR, is due to the decrease in the estimate of existing sources. Additionally, this ICR corrects an error in the Agency's burden from the most-recently approved ICR. The most recently approved ICR applied estimated burden for preparation of annual summary reports and applied the burden to all affected facilities. However, the annual summary report is prepared by the Designated Administrator of a State or Federal Plan, which is not applicable to this NSPS. This ICR corrects the estimated burden by removing the annual summary report from the Agency's activities.

Courtney Kerwin,

Director, Regulatory Support Division.

[FR Doc. 2022–19425 Filed 9–7–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Termination of Receiverships

The Federal Deposit Insurance Corporation (FDIC or Receiver), as Receiver for each of the following insured depository institutions, was charged with the duty of winding up the affairs of the former institutions and liquidating all related assets. The Receiver has fulfilled its obligations and made all dividend distributions required by law.

NOTICE OF TERMINATION OF RECEIVERSHIPS

Fund	Receivership name	City	State	Termination date
10004	Hume Bank	Hume	MO	09/01/2022
10093	First State Bank of Altus	Altus	OK	09/01/2022
10202	Bank of Hiawassee	Hiawassee	GA	09/01/2022

NOTICE OF TERMINATION OF RECEIVERSHIPS—Continued

Fund	Receivership name	City	State	Termination date
10348	Legacy Bank	Milwaukee	WI	09/01/2022
10349	The First National Bank of Davis	Davis	OK	09/01/2022

The Receiver has further irrevocably authorized and appointed FDIC-Corporate as its attorney-in-fact to execute and file any and all documents that may be required to be executed by the Receiver which FDIC-Corporate, in its sole discretion, deems necessary, including but not limited to releases, discharges, satisfactions, endorsements, assignments, and deeds. Effective on the termination dates listed above, the Receiverships have been terminated, the Receiver has been discharged, and the Receiverships have ceased to exist as legal entities.

(Authority: 12 U.S.C. 1819.)

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on September 1, 2022.

Jamie P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–19398 Filed 9–7–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–NEW]

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 new information collection described below.

DATES: Comments must be submitted on or before November 7, 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 ''False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo.'' 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 establish a new collection of information:*

1. *Title:* False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo.

2. *OMB Number:* 3064–NEW

Affected Public: Non-bank entities that make statements regarding the extent or manner of deposit insurance provided.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN

[OMB No. 3064–NEW]

Information collection (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)
Implementation					
Insured Depository Institution Relationships (12 CFR part 328.102(b)(5)) (Mandatory).	Disclosure (Occasional) (Annual)	500	1	02:00	1,000
Implementation Total					1,000
Ongoing					
Insured Depository Institution Relationships (12 CFR part 328.102(b)(5)) (Mandatory).	Disclosure (Occasional) (Annual)	1,500	1	00:30	750
Ongoing Total				750	

Source: FDIC.

Note: Annual burden estimates for a given collection are calculated first by multiplying the number of respondents by the number of responses per respondent and rounded to the nearest whole number, which represents the total number of annual responses. This number is then multiplied by the time per response to obtain the estimated annual burden for that collection.

General Description of Collection:

The FDIC recently issued a final rule entitled ''False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo'' (The Final Rule) [1] that established the process by which the Federal Deposit Insurance Corporation (FDIC) will identify and investigate conduct that may violate section 18(a)(4) of the Federal Deposit Insurance Act, the standards under which such conduct will be evaluated, and the procedures which the Federal Deposit Insurance Corporation will follow when formally and informally enforcing the provisions of section 18(a)(4) of the Federal Deposit Insurance Act. The Final Rule amended FDIC regulations under 12 CFR part 328 (part 328). In particular, certain amendments to part 328 impose disclosure requirements for non-bank entities that make certain types of statements regarding deposit insurance.[2]

Section 18(a)(4) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1828(a)(4) (Section 18(a)(4)), prohibits any person from engaging in false advertising by misusing the name or logo of the FDIC or from making knowing misrepresentations about the existence of or the extent or manner of deposit insurance.[3] Section 18(a)(4) provides the FDIC independent authority to investigate and take administrative enforcement actions, including the power to issue cease and desist orders and impose civil money penalties, against any person who misuses the FDIC name or logo or makes misrepresentations about deposit insurance. Part 328 sets out the FDIC's signage and advertising rules.

The Final Rule established a new subpart B to part 328, entitled ''False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo'' containing the new regulations. Section 328.102 of subpart B sets forth the conduct that is prohibited by Section 18(a)(4). It further provides transparency by setting forth the FDIC's interpretation of the scope of prohibited conduct, including specific examples of conduct that the FDIC deems to violate Section 18(a)(4). The section further sets forth certain standards that the FDIC will use to determine if a statement violates Section 18(a)(4). Section 328.102 establishes that a statement regarding deposit insurance will be deemed to omit material information if it does not identify the insured depository institution(s) with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer's deposits may be placed. Thereby, the Final Rule establishes third-party disclosure requirements for non-bank entities that make statements regarding the extent or manner of deposit insurance provided. These disclosure requirements constitute an information collection under the Paperwork Reduction Act (PRA) of 1995. As such, the FDIC is required to obtain OMB approval of this new information collection. The PRA burdens imposed by § 328.102 can be categorized into two distinct burdens: (1) implementation burdens that are incurred once by each respondent to set up policies and procedures to ensure that its statements regarding deposit insurance comply with the requirements in § 328.102; and (2) ongoing burdens that are incurred every year by each respondent to maintain compliance with these requirements. Since these burdens have separate frequencies and times per response, the FDIC is listing and estimating these two burdens separately.

Potential respondents to this new information collection are non-bank entities that make statements regarding the extent or manner of deposit insurance provided. The FDIC does not have direct data on the number of non-bank entities that would be affected by this requirement upon implementation. FDIC believes that the non-bank entities affected by the requirement would generally be classified in the following North American Industry Classification System (NAICS) industries: Miscellaneous Financial Investment Activities (NAICS Code 523999), Financial Transaction Processing, Reserve & Clearinghouse Activities (NAICS Code 522320), Computer System Design and Related Services (NAICS Code 5415), and Investment Advice (NAICS Code 523930). According to recent Census data, there were 144,556 firms in these NAICS industries in 2019, the most recent year for which such data is available.[4] However, FDIC believes that the requirement will only affect approximately one percent of firms in these industries. Therefore, the FDIC estimates that approximately 1,500 non-bank entities will be affected by the third-party disclosure requirement.[5]

The 1,500 firms affected by this ICR are expected to implement policies and procedures to ensure that its statements regarding deposit insurance identify its partner insured depository institution(s), as described in § 328.102, in the year in which the adopted regulation becomes effective. Annualized over a 3-year approval period, the average annual number of affected firms is 370. FDIC is conservatively assuming approximately 500 annual respondents to the implementation burden.

In order to maintain compliance with the requirements of part 328, each of the 1,500 firms described above must regularly update its statements regarding deposit insurance to ensure that the statements continually identify the insured depository institution(s) described in § 328.102. As such, FDIC estimates 1,500 annual respondents to the ongoing burden.

The activities that respondents undergo to implement policies and procedures to comply with part 328 can all be considered part of a single response to the implementation requirement. Therefore, FDIC uses one as the number of annual responses per respondent for implementation. Similarly, activities throughout the year that are performed by respondents to maintain compliance with part 328 can all be considered as parts of a single annual response on an ongoing basis. FDIC uses one as the number of annual responses per respondent for the ongoing burden. Based on supervisory experience, FDIC estimates that the annual burden for each non-bank entities to disclose the Insured Depository Institution(s) with which the representing party has a direct or indirect business relationship for the placement of deposits and into which the consumer's deposits may be placed to be 2 hours per response for implementation and 0.5 hours per response on an ongoing basis.

[1] 87 FR 33415 (June 2, 2022).

[2] 12 CFR 328.102(b)(5).

[3] Under Federal law, it is also criminal offense to misuse the FDIC name or make false representations regarding deposit insurance. *See* 18 U.S.C. 709.

[4] (1,110 + 3,163 + 120,070 + 20,213 = 144,556) 2019 County Business Patterns. See number of firms at *https://www.census.gov/data/tables/2019/econ/susb/2019-susb-annual.html,* last retrieved on June 30, 2022.

[5] 0.01 * 144,556 ≈ 1,500.

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, on September 1, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–19356 Filed 9–7–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

TIME AND DATE: Tuesday, September 13, 2022, at 10:00 a.m. and its continuation at the conclusion of the open meeting on September 15, 2022.

PLACE: 1050 First Street NE, Washington, DC and virtual (this meeting will be a hybrid meeting).

STATUS: This meeting will be closed to the public.

MATTERS TO BE CONSIDERED: Compliance matters pursuant to 52 U.S.C. 30109.

Matters concerning participation in civil actions or proceedings or arbitration.

* * * * *

CONTACT PERSON FOR MORE INFORMATION: Judith Ingram, Press Officer, Telephone: (202) 694–1220.

Authority: Government in the Sunshine Act, 5 U.S.C. 552b.

Vicktoria J. Allen,

Acting Deputy Secretary of the Commission.

[FR Doc. 2022–19548 Filed 9–6–22; 4:15 pm]

BILLING CODE 6715–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Financial Statements for Holding Companies (FR Y–9 reports; OMB Control Number 7100–0128).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452–3829.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements, and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportforms/review.aspx* or may be requested from the agency clearance officer, whose name appears above.

Final Approval under OMB Delegated Authority of the Extension for Three Years, with Revision, of the Following Information Collection:

Collection title: Financial Statements for Holding Companies.

Collection identifier: FR Y–9C, FR Y–9LP, FR Y–9SP, FR Y–9ES, and FR Y–9CS.

OMB control number: 7100–0128.

Effective Date: September 30, 2022.

Frequency: Quarterly, semiannually, and annually.

Respondents: Bank holding companies (BHCs), savings and loan holding companies (SLHCs), securities holding companies, and U.S. intermediate holding companies (IHCs) (collectively, holding companies).[1]

Estimated number of respondents:

Reporting

FR Y–9C (non-advanced approaches holding companies with less than $5 billion in total assets): 119; FR Y–9C (non-advanced approaches holding companies with $5 billion or more in total assets): 221; FR Y–9C (advanced approaches holding companies): 9; FR Y–9LP: 412; FR Y–9SP: 3,708; FR Y–9ES: 78; FR Y–9CS: 236.

Recordkeeping

FR Y–9C: 349; FR Y–9LP: 412; FR Y–9SP: 3,708; FR Y–9ES: 78; FR Y–9CS: 236.

Estimated average hours per response:

Reporting

FR Y–9C (non-advanced approaches holding companies with less than $5 billion in total assets): 35.74; FR Y–9C (non-advanced approaches holding companies with $5 billion or more in total assets): 44.94; FR Y–9C (advanced approaches holding companies): 50.16; FR Y–9LP: 5.27; FR Y–9SP: 5.45; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Recordkeeping

FR Y–9C: 1; FR Y–9LP: 1; FR Y–9SP: 0.50; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Estimated annual burden hours:

Reporting

FR Y–9C (non-advanced approaches holding companies with less than $5 billion in total assets): 17,012; FR Y–9C (non-advanced approaches holding companies with $5 billion or more in total assets): 39,727; FR Y–9C (advanced approaches holding companies): 1,806; FR Y–9LP: 8,685; FR Y–9SP: 40,417; FR Y–9ES: 39; FR Y–9CS: 472.

Recordkeeping

FR Y–9C: 1,396; FR Y–9LP: 1,648; FR Y–9SP: 3,708; FR Y–9ES: 39; FR Y–9CS: 472.

General description of collection: The FR Y–9 family of reporting forms continues to be the primary source of financial data on holding companies that examiners rely on in the intervals between on-site inspections. The Board requires holding companies to provide standardized financial statements to fulfill the Board's statutory obligation to supervise these organizations. Financial data from these reporting forms are used to detect emerging financial problems,

[1] The following depository institution holding companies are exempt: (1) a unitary savings and loan holding company with primarily commercial assets that meets the requirements of section 10(c)(9)(c) of the Home Owners' Loan Act, for which thrifts make up less than 5 percent of its consolidated assets; and (2) a SLHC that primarily holds insurance-related assets and does not otherwise submit financial reports with the Securities and Exchange Commission pursuant to sections 13 or 15(d) of the Securities Exchange Act of 1934.

to review performance and conduct pre-inspection analysis, to monitor and evaluate capital adequacy, to evaluate holding company mergers and acquisitions, and to analyze a holding company's overall financial condition to ensure the safety and soundness of its operations. The FR Y–9C, FR Y–9LP, and FR Y–9SP serve as standardized financial statements for the holding companies. The FR Y–9ES is a financial statement for holding companies that are Employee Stock Ownership Plans. The Board uses the voluntary FR Y–9CS (a free-form supplement) to collect additional information deemed to be critical and needed in an expedited manner. Holding companies file the FR Y–9C on a quarterly basis, the FR Y–9LP quarterly, the FR Y–9SP semiannually, the FR Y–9ES annually, and the FR Y–9CS on a schedule that is determined when this supplement is used.

Legal authorization and confidentiality: The reporting and recordkeeping requirements associated with the Y–9 series of reports are authorized for BHCs pursuant to section 5 of the Bank Holding Company Act (BHC Act); [2] for SLHCs pursuant to section 10(b)(2) and (3) of the Home Owners' Loan Act; [3] for IHCs pursuant to section 5 of the BHC Act, as well as pursuant to sections 102(a)(1) and 165 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act); [4] and for securities holding companies pursuant to section 618 of the Dodd-Frank Act.[5]

Except for the FR Y–9CS report, which is collected on a voluntary basis, the obligation to submit the remaining reports in the FR Y–9 series of reports and to comply with the recordkeeping requirements set forth in the respective instructions to each of the other reports is mandatory.

Certain information collected on the FR Y–9C and FR Y–9SP Reports is kept confidential by the Board. The following items are kept confidential under exemption 4 of the Freedom of Information Act (FOIA) because these data items reflect commercial and financial information that is both customarily and actually treated as private by the respondent: [6]

- FR Y–9C, Schedule HI, memoranda item 7(g), ''FDIC deposit insurance assessments;''
- FR Y–9C, Schedule HC–P, item 7(a) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to U.S. government agencies and government sponsored agencies;''
- FR Y–9C, Schedule HC–P, item 7(b) ''Representation and warranty reserves for 1–4 family residential mortgage loans sold to other parties;''
- FR Y–9C, Schedule HC–C, Part I, Memorandum items 16.a and 16.b, for eligible loan modifications under Section 4013 of the 2020 Coronavirus Aid, Relief, and Economic Security Act; and
- FR Y–9C, Schedule HC and FR Y–9SP, Schedule SC, Memoranda item 2.b., the name and email address of the external auditing firm's engagement partner.[7]

In some circumstances, disclosing these data items may also reveal confidential examination and supervisory information protected from disclosure under exemption 8 of the FOIA.[8] The Board has previously assured submitters that these data items will be treated as confidential.

In addition, the Chief Executive Officer Contact Information section of both the FR Y–9C and FR Y–9SP is kept confidential pursuant to exemption 6 of the FOIA, which applies to personnel and medical files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy,[9] and exemption 8, which applies to information contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.[10]

Aside from the data items described above, data collected by the FR Y–9 reports generally are not accorded confidential treatment. As provided in the Board's Rules Regarding Availability of Information,[11] however, a respondent may request confidential treatment for any data items the respondent believes should be withheld pursuant to a FOIA exemption. The Board will review any such request to determine if confidential treatment is appropriate and will inform the respondent if the request for confidential treatment has been granted or denied.

To the extent that the instructions to the FR Y–9 reports direct the financial institution to retain the workpapers and related materials used in preparation of each report, such material would only be obtained by the Board as part of the examination or supervision of the financial institution. Accordingly, such information is considered confidential pursuant to exemption 8 of the FOIA.[12] In addition, the workpapers and related materials may also be protected by exemption 4 of the FOIA, to the extent such financial information is customarily and actually treated as private by the respondent.[13]

Current actions: On October 8, 2020, the Board published a notice in the **Federal Register** (85 FR 63553) requesting public comment for 60 days on the extension, with revision, of the FR Y–9 reports. The comment period for this notice expired on December 7, 2020. On January 4, 2021, the Board published a final **Federal Register** (86 FR 92) notice addressing the public comments received and finalizing all proposed changes except those related to last-of-layer hedging, discussed below. There were no comments received on the initial **Federal Register** notice (85 FR 63553) on the proposed changes related to last-of-layer hedging.

In accounting standards update (ASU) No. 2017–12, Derivatives and Hedging (Topic 815)—Targeted Improvements to Accounting for Hedging Activities, the Financial Standards Accounting Board (FASB) added the last-of-layer method to its hedge accounting standards to lessen the difficulties institutions encountered under existing accounting rules when seeking to enter into a fair value hedge of the interest rate risk of a closed portfolio of prepayable financial assets or one or more beneficial interests secured by a portfolio of prepayable financial instruments. Typically, prepayable financial assets would be loans and available-for-sale debt securities. Under ASU 2017–12, there are no limitations on the types of qualifying assets that

[2] 12 U.S.C. 1844.

[3] 12 U.S.C. 1467a(b)(2) and (3).

[4] 12 U.S.C. 5311(a)(1) and 5365; Section 165(b)(2) of Title I of the Dodd-Frank Act, 12 U.S.C. 5365(b)(2), refers to ''foreign-based bank holding company.'' Section 102(a)(1) of the Dodd-Frank Act, 12 U.S.C. 5311(a)(1), defines ''bank holding company'' for purposes of Title I of the Dodd-Frank Act to include foreign banking organizations that are treated as bank holding companies under section 8(a) of the International Banking Act, 12 U.S.C. 3106(a). The Board has required, pursuant to section 165(b)(1)(B)(iv) of the Dodd-Frank Act, 12 U.S.C. 5365(b)(1)(B)(iv), certain foreign banking organizations subject to section 165 of the Dodd-Frank Act to form U.S. intermediate holding companies. Accordingly, the parent foreign-based organization of a U.S. IHC is treated as a BHC for purposes of the BHC Act and section 165 of the Dodd-Frank Act. Because Section 5(c) of the BHC Act authorizes the Board to require reports from subsidiaries of BHCs, section 5(c) provides additional authority to require U.S. IHCs to report the information contained in the FR Y–9 series of reports.

[5] 12 U.S.C. 1850a(c)(1)(A).

[6] 12 U.S.C. 552(b)(4).

[7] The Board has assured respondents that this information will be treated as confidential since the collection of this data item was proposed in 2004, under the assumption that the identity of the engagement partner is treated as private information by HCs.

[8] 12 U.S.C. 552(b)(8).

[9] 5 U.S.C. 552(b)(6).

[10] 5 U.S.C. 552(b)(8).

[11] 12 CFR part 261.

[12] 5 U.S.C. 552(b)(8).

[13] 5 U.S.C. 552(b)(4).

could be grouped together in a last-of-layer hedge other than meeting the following two criteria: (1) They must be prepayable financial assets that have a contractual maturity date beyond the period being hedged and (2) they must be eligible for fair value hedge accounting of interest rate risk (for example, fixed-rate instruments). For example, fixed-rate residential mortgages, auto loans, and collateralized mortgage obligations could all be grouped and hedged together in a single last-of-layer closed portfolio. For a last-of-layer hedge, ASC paragraph 815–10–50–5B states that an institution may need to allocate the related fair value hedge basis adjustment (FVHBA) ''to meet the objectives of disclosure requirements in other Topics.'' This ASC paragraph then explains that the institution ''may allocate the basis adjustment on an individual asset basis or on a portfolio basis using a systematic and rational method.'' Due to the aggregation of assets in a last-of-layer closed portfolio, institutions may find it challenging to allocate the related FVHBA to the individual loan or AFS debt security level when necessary for financial reporting purposes.

In March 2018, the FASB added a project to its agenda to expand last-of-layer hedging to multiple layers, thereby providing more flexibility to entities when applying hedge accounting to a closed portfolio of prepayable assets. In connection with this project, the FASB anticipated that there would be diversity in practice if entities were required to allocate portfolio-level, last-of-layer FVHBAs to more granular levels, which in turn could potentially hamper data quality and comparability. In addition, the allocation would increase operational burden on institutions with little, if any, added value to risk management or to users of the financial statements. Therefore, for financial reporting purposes, the FASB tentatively decided that it would require these FVHBAs to be presented as a reconciling item, *i.e.,* in the aggregate for loans and AFS debt securities, in disclosures required by other areas of United States generally accepted accounting principles (U.S. GAAP).

As a result, in the October 2020 notice, the Board proposed to implement changes to the FR Y–9C related to the FASB's expected expansion of last-of-layer hedging to multiple layers, providing more flexibility to entities when applying hedge accounting to a closed portfolio of prepayable assets. Specifically, the Board proposed changes to FR Y–9C, Schedules HC–C, Loans and Lease Financing Receivables and HC–B, Securities. Following the FASB's expected adoption of a final last-of-layer hedge accounting standard, the instructions for Schedule HC–C, item 11, ''LESS: Any unearned income on loans reflected in items 1–9 above,'' would have been revised to explicitly state that last-of-layer FVHBAs associated with the loans reported in Schedule HC–C, should be included in this item. In addition, the Board proposed to rename existing item 7 for Schedule HC–B, ''Investments in mutual funds and other equity securities with readily determinable fair values,'' to ''Unallocated last-of-layer fair value hedge basis adjustments.'' Holding companies would have reported amounts for last-of-layer FVHBAs on AFS debt securities only in item 7, column C, ''Available-for-sale: Amortized Cost''.

However, the FASB had not adopted the expected expansion of last-of-layer hedging by January 2021, when the Board approved the other revisions to the FR Y–9 reports that had been proposed in the October 2020 notice. Therefore, the Board did not adopt the proposed revisions relating to last-of-layer hedging in the January 2021 notice and instead noted that it would consider whether to finalize the proposed revisions when the FASB adopted a final standard.

On March 28, 2022, the FASB issued ASU 2022–01, to implement last-of-layer hedging.[14] The ASU is considered to be a modification of U.S. GAAP. This ASU expands the current single-layer method and allows for multiple hedged layers of a single closed portfolio, as anticipated by the October 2020 notice. Additionally, ASU 2022–01:

- Expands the scope of the portfolio layer method from prepayable assets to also include nonprepayable assets;
- Specifies eligible hedging instruments in a single-layer hedge;
- Provides additional guidance on the accounting for and disclosure of FVHBA under the portfolio layer method; and
- Specifies how hedge basis adjustments should be considered when determining credit losses for the assets included in the closed portfolio.

The ASU 2022–01 applies to all entities that elect to apply the portfolio layer method of hedge accounting. For public business entities, this ASU is effective for fiscal years beginning after December 15, 2022, and interim periods within those fiscal years. For all other entities, the ASU is effective for fiscal years beginning after December 15, 2023, and interim periods within those fiscal years. Early adoption is permitted.

In light of the issuance of ASU 2022–01 by the FASB, the Board has adopted the revisions to the FR Y–9C related to the expansion of last-of-layer hedging proposed in October 2020, with certain modifications to account for the specific content of ASU 2022–01. Specifically, the Board has renamed HC–B, line item 7 to ''Unallocated portfolio layer fair value hedge basis adjustments'' instead of '' Unallocated last-of-layer fair value hedge basis adjustments'' to align with the scope of ASU 2022–01. Additionally, the Board is updating the FR Y–9C instructions for Schedules HC–B, Securities, and HC–C, Loans and Leases, to fully align with U.S. GAAP as detailed in ASU 2022–01.

Board of Governors of the Federal Reserve System, September 1, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–19324 Filed 9–7–22; 8:45 am]

BILLING CODE 6210–01–P

[14] ASU 2022–01—Derivatives and Hedging (Topic 815): Fair Value Hedging—Portfolio Layer Method (*fasb.org*).

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0320; Docket No. 2022–0001; Sequence No. 15]

Information Collection; General Services Administration Acquisition Regulation; Construction Manager as Constructor (CMc)

AGENCY: Office of Acquisition Policy, General Services Administration (GSA).

ACTION: Notice of request for public 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 of a previously approved information collection requirement regarding information collection 3090–0320 Construction Manager as Constructor (CMc).

DATES: Submit comments on or before: November 7, 2022.

ADDRESSES: Submit comments identified by Information Collection 3090–0320 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 ''3090–0320, Construction Manager as Constructor''. Follow the instructions provided on the

screen. Please include your name, company name (if any), and ''Information Collection 3090–0320, Construction Manager as Constructor'' 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 3090–0320, Construction Manager as Constructor, in all correspondence related to this collection. Comments received generally 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. Marten Wallace, General Services Acquisition Policy Division, GSA, by phone at 202–286–5807 or by email at *marten.wallace@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration Acquisition Regulation (GSAR) 552.236–79, Construction-Contractor-as-Constructor, requires the contractor to submit proposals to establish the final estimated cost of the work, to convert the contract to a firm-fixed-price, and to determine the final settlement.

The GSAR coverage on construction contracts, including clauses for solicitations and resultant contracts, clarifies, updates, and incorporates existing guidance on the construction-manager-as-constructor (CMc) project delivery method.

The CMc refers to a project management and contracting technique that is one of three predominant methods used for acquiring construction services by GSA. The other two methods are design-bid-build and design-build.

The information is used by leasing contracting officers to evaluate lease proposals and negotiate lease contract terms and conditions in a competitive or non-competitive environment. GSA would be unable to assess readily and equitably offers fairly and competitively if they were not allowed to collect data required in the information collection.

B. Annual Reporting Burden

Total public reporting burden for this collection of information is estimated to average 400 total hours ($33,004) annually, including the time for reviewing instructions, searching existing data sources, gathering, and maintaining the data needed, and completing and reviewing the collection of information. The estimated burden hours to the public for the below clauses are as follows:

GSAR 552.236–79, Construction-Contractor-as-Constructor, requires the contractor to submit proposals to establish the final estimated cost of the work, to convert the contract to a firm-fixed-price, and to determine the final settlement.

Respondents: 5.

Responses per Respondent: 1.

Total Annual Responses: 10.

Hours per Response: 40.

Total Response Burden Hours: 400.

Cost per Hour: $82.51.

Estimated Cost Burden to the Public: $33,004.

GSAR 552.236–80, Accounting Records, contains a recordkeeping requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). The clause requires the contractor to keep all relevant documents for a period of three years after the final payment. However, the clause does not add burden to what is already estimated for the existing FAR clause at 52.215–2, Audit and Records by a previous information collection (see OMB Control Number 9000–0034).

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; 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 OMB Control No. 3090–0320, Construction Manager as Constructor, in all correspondence.

Jeffrey A. Koses,

Senior Procurement Executive, Office of Acquisition Policy, Office of Government-wide Policy.

[FR Doc. 2022–19377 Filed 9–7–22; 8:45 am]

BILLING CODE 6820–14–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2107]

Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Pulmonary-Allergy Drugs Advisory Committee. The general function of the committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held virtually on October 6, 2022, from 9 a.m. to 5 p.m. Eastern Time.

ADDRESSES: Please note that due to the impact of this COVID–19 pandemic, all meeting participants will be joining this advisory committee meeting via an online teleconferencing platform. Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–2107. The docket will close on October 5, 2022. Either electronic or written comments on this public meeting must be submitted by October 5, 2022. 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 5, 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.

Comments received on or before September 29, 2022, will be provided to the committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

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–2022–N–2107 for ''Pulmonary-Allergy Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments.'' 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.'' FDA 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 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 the 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: Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, email: *PADAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). A notice in the **Federal Register** about last minute modifications that impact a previously announced advisory committee meeting cannot always be published quickly enough to provide timely notice. Therefore, you should always check the FDA's website at *https://www.fda.gov/AdvisoryCommittees/default.htm* and scroll down to the appropriate advisory committee meeting link, or call the advisory committee information line to learn about possible modifications before coming to the meeting.

SUPPLEMENTARY INFORMATION:

Agenda: The meeting presentations will be heard, viewed, captioned, and recorded through an online teleconferencing platform. The committee will discuss the request for Emergency Use Authorization 113, for sabizabulin oral capsule, a tubulin polymerization inhibitor, submitted by Veru Inc., for the treatment of SARS–CoV–2 infection in moderate to severe COVID–19 infections at high risk of acute respiratory distress syndrome. A focus of the discussion will include the treatment effect size in the context of the high placebo mortality rate, the limited size of the safety database, and identifying the proposed population.

FDA intends to make background material available to the public no later than 2 business days before the meeting. If FDA is unable to post the background material on its website prior to the meeting, the background material will be made publicly available on FDA's website at the time of the advisory committee meeting. Background material and the link to the online teleconference meeting room will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio components to allow the presentation of materials in a manner that most closely resembles an in-person advisory committee meeting.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before September 29, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before September 22, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by September 23, 2022.

For press inquiries, please contact the Office of Media Affairs at *fdaoma@fda.hhs.gov* or 301–796–4540.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with disabilities. If you require accommodations due to a disability, please contact Takyiah Stevenson (see **FOR FURTHER INFORMATION CONTACT**) at least 7 days in advance of the meeting.

FDA is committed to the orderly conduct of its advisory committee meetings. Please visit our website at *https://www.fda.gov/AdvisoryCommittees/AboutAdvisoryCommittees/ucm111462.htm* for procedures on public conduct during advisory committee meetings.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: September 1, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19385 Filed 9–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2013–D–1275]

General Clinical Pharmacology Considerations for Pediatric Studies of Drugs, Including Biological Products; Draft Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a revised draft guidance for industry entitled ''General Clinical Pharmacology Considerations for Pediatric Studies of Drugs, Including Biological Products,'' replacing the December 2014 draft guidance of the same name. This draft guidance, once finalized, will assist sponsors of investigational new drug applications (INDs) and applicants of new drug applications (NDAs), biologics license applications (BLAs), and supplements to such applications, who are planning to conduct clinical studies in pediatric populations. In addition, this draft guidance, once finalized, will assist investigators in the design and planning of, and Institutional Review Boards in the assessment of, clinical studies in pediatric populations.

DATES: Submit either electronic or written comments on the draft guidance by December 7, 2022 to ensure that the Agency considers your comment on this draft guidance before it begins work on the final version of the guidance.

ADDRESSES: You may submit comments on any guidance at any time as follows:

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–2013–D–1275 for ''General Clinical Pharmacology Considerations for Pediatric Studies of Drugs and Biological Products.'' Received comments 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.

- 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.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the draft guidance to the Division of Drug Information, Center for Drug Evaluation and Research, Food and Drug Administration, 10001 New Hampshire Ave., Hillandale Building, 4th Floor, Silver Spring, MD 20993–0002. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

FOR FURTHER INFORMATION CONTACT: Elimika Pfuma Fletcher, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 2162,

Silver Spring, MD 20993, 301–796–3473, *Elimika.Fletcher@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a revised draft guidance for industry entitled ''General Clinical Pharmacology Considerations for Pediatric Studies of Drugs, Including Biological Products.'' Effectiveness, safety, or dose-finding studies in pediatric patients involve gathering clinical pharmacology information, such as information regarding a product's pharmacokinetics and pharmacodynamics, to inform dose selection and individualization. This draft guidance addresses general clinical pharmacology considerations for conducting studies so that the dosing and safety information for drugs and biological products in pediatric populations can be sufficiently characterized, leading to well-designed trials to evaluate effectiveness.

In general, this draft guidance focuses on the clinical pharmacology information (*e.g.,* exposure-response, pharmacokinetics, and pharmacodynamics) that supports findings of effectiveness and safety and helps identify appropriate doses in pediatric populations. This draft guidance also describes how quantitative approaches (*i.e.,* pharmacometrics) can use disease and exposure-response knowledge from relevant prior clinical studies to help design and evaluate future pediatric studies.

This draft guidance revises the draft guidance, ''General Clinical Pharmacology Considerations for Pediatric Studies of Drugs and Biological Products,'' issued on December 9, 2014 (79 FR 73079). This draft guidance provides clarification on clinical pharmacology studies in pediatric patients from the 2014 draft guidance in response to public comments.

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the current thinking of FDA on ''General Clinical Pharmacology Considerations for Pediatric Studies of Drugs and Biological Products.'' It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

This draft guidance refers to previously approved FDA collections of information. These collections of information are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The collections of information for the submission of new drug applications in 21 CFR part 314 have been approved under OMB control number 0910–0001. The collections of information for the submission of biologics license applications in 21 CFR part 601 have been approved under OMB control number 0910–0338. The collections of information for the submission of investigational new drug applications in 21 CFR part 312 have been approved under OMB control number 0910–0014. The collections of information for the protection of human subjects and institutional review boards in parts 21 CFR parts 50 and 56 have been approved under OMB control number 0910–0130. The collections of information for the submission of prescription drug product labeling in 21 CFR 201.56 and 201.57 have been approved under OMB control number 0910–0572. The collections of information in 21 CFR 312.47 and 312.82 for requesting meetings with FDA about drug development programs have been approved under OMB control number 0910–0429.

III. Electronic Access

Persons with access to the internet may obtain the draft guidance at *https://www.fda.gov/Drugs/GuidanceComplianceRegulatoryInformation/Guidances/default.htm*, *https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: September 2, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19410 Filed 9–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–1262]

Notice of Approval of Product Under Voucher: Rare Pediatric Disease Priority Review Voucher

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the issuance of approval of product redeeming a priority review voucher. The Federal Food, Drug, and Cosmetic Act (the FD&C Act), as amended by the Food and Drug Administration Safety and Innovation Act (FDASIA), authorizes FDA to award priority review vouchers to sponsors of approved rare pediatric disease product applications that meet certain criteria. FDA is required to publish notice of the issuance of priority review vouchers as well as the approval of products redeeming a priority review voucher. FDA has determined that VABYSMO (faricimab-svoa), for which a priority review voucher was redeemed, was approved January 28, 2022.

FOR FURTHER INFORMATION CONTACT: Cathryn Lee, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993–0002, 301–796–1394, email: *Cathryn.Lee@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: FDA is announcing the approval of product redeeming a rare pediatric disease priority review voucher. Under section 529 of the FD&C Act (21 U.S.C. 360ff), which was added by FDASIA, FDA will report the issuance of rare pediatric disease priority review vouchers and the approval of products for which a voucher was redeemed. FDA has determined that VABYSMO (faricimab-svoa), approved January 28, 2022, meets the redemption criteria.

For further information about the Rare Pediatric Disease Priority Review Voucher Program and for a link to the full text of section 529 of the FD&C Act, go to *https://www.fda.gov/ForIndustry/DevelopingProductsforRareDiseasesConditions/RarePediatricDiseasePriorityVoucherProgram/default.htm.* For further information about VABYSMO (faricimab-svoa), go to the ''Drugs@FDA'' website at *https://www.accessdata.fda.gov/scripts/cder/daf/.*

Dated: August 31, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–19384 Filed 9–7–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Secretary; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended, notice is hereby given of a meeting of the Muscular Dystrophy Coordinating Committee (MDCC).

The meeting will be open to the public. Individuals who plan to participate and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Muscular Dystrophy Coordinating Committee.

Date: October 3, 2022.

Time: 1:00 p.m. to 5:00 p.m. EDT.

Agenda: The purpose of this meeting is to bring together committee members, representing government agencies, patient advocacy groups, other voluntary health organizations, and patients and their families to update one another on progress relevant to the Action Plan for the Muscular Dystrophies and to coordinate activities and discuss gaps and opportunities leading to better understanding of the muscular dystrophies, advances in treatments, and improvements in patients' and their families' lives. The agenda for this meeting will be available on the MDCC website: *https://www.mdcc.nih.gov/.*

Registration: To register, please go to: *https://roseliassociates.zoomgov.com/webinar/register/WN_ZAC101DzRVy7jcFHmIIIJw.*

Webcast Live: https://videocast.nih.gov/.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Blvd., Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Glen Nuckolls, Ph.D., Program Director, National Institute of Neurological, Disorders and Stroke (NINDS), NIH, 6001 Executive Blvd., Rm 2203, Bethesda, MD 20892, 301–496–5876, *MDCC@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.

More information can be found on the Muscular Dystrophy Coordinating Committee home page: *https://mdcc.nih.gov/.*

Dated: September 1, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19381 Filed 9–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel; NIA Multi-site Clinical Trial Implementation.

Date: October 11, 2022.

Time: 12:00 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Isis S. Mikhail, MD, MPH, DRPH, National Institute on Aging, Gateway Building, 7201 Wisconsin Avenue, Suite 2C212, Bethesda, MD 20892, 301–402–7704, *MIKHAILI@MAIL.NIH.GOV.*

Information is also available on the Institute's/Center's home page: *www.nia.nih.gov/,* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: September 1, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19380 Filed 9–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel; NIGMS Review of SuRE applications.

Date: November 4, 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 Science, Natcher Bldg. 45, 45 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Saraswathy Seetharam, Ph.D., Scientific Review Officer, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, 45 Center Drive, Room 3AN12C, Bethesda, MD 20892, 301–594–2763, *seetharams@nigms.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)

Dated: September 1, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19379 Filed 9–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; PPG Review SEP.

Date: October 11, 2022.

Time: 11:00 a.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Kristen Page, MD, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, 6701 Rockledge Drive, Room 7185, Bethesda, MD 20892, 301–435–0725, *kristen.page@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Early Phase Clinical Trials (R61, R33).

Date: October 13, 2022.

Time: 12:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Manoj K. Valiyaveettil, Ph.D., Scientific Review Officer, Blood & Vascular Branch, Office of Scientific Review, Division of Extramural Research Activities (DERA), National Institutes of Health, National Heart, Lung, and Blood Institute, Bethesda, MD 20817, (301) 402–1616, *manoj.valiyaveettil@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; Stress, immune reprogramming, and CVD.

Date: October 24, 2022.

Time: 1:00 p.m. to 4:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Sun Saret, Ph.D., Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 208–S, Bethesda, MD 20892, (301) 435–0270, *sun.saret@nih.gov*.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Mentored Career Development K-Awards.

Date: October 28, 2022.

Time: 1:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, RKLI 6705 Rockledge Drive, Bethesda, MD 20852 (Virtual Meeting).

Contact Person: Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20817, (301) 402–9394, *fungai.chanetsa@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: September 2, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19444 Filed 9–7–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

Notice of Issuance of Final Determination Concerning Certain Score®7t Tablets

AGENCY: U.S. Customs and Border Protection, Department of Homeland Security.

ACTION: Notice of final determination.

SUMMARY: This document provides notice that U.S. Customs and Border Protection (CBP) has issued a final determination concerning the country of origin of certain SCORE®7T tablets. Based upon the facts presented, CBP has concluded that the country of origin of the SCORE®7T tablets in question is Taiwan for purposes of U.S. Government procurement.

DATES: The final determination was issued on September 1, 2022. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Albena Peters, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0321.

SUPPLEMENTARY INFORMATION: Notice is hereby given that on September 1, 2022, U.S. Customs and Border Protection (CBP) issued a final determination concerning the country of origin of certain SCORE®7T tablets for purposes of Title III of the Trade Agreements Act of 1979. This final determination, HQ H325833, was issued at the request of Advanced Technologies Group, LLC (ATG), under procedures set forth at 19 CFR part 177, subpart B, which implements Title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that, based upon the facts presented, the country of origin of the tablets is Taiwan for purposes of U.S. Government procurement.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determination shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of publication of such determination in the **Federal Register**.

Dated: September 1, 2022.

Alice A. Kipel,

Executive Director, Regulations and Rulings, Office of Trade.

HQ H325833

September 1, 2022

OT:RR:CTF:VS H325833 AP

Category: Origin

Charles Weiss, Partner, Bryan Cave Leighton Paisner LLP, One Metropolitan Square, 211 North Broadway Suite 3600, St. Louis, MO 63102–2750

RE: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of SCORE®7T tablets

Dear Mr. Weiss:

This is in response to your June 17, 2022 request, on behalf of Advanced Technologies Group, LLC (''ATG''), for a final determination [1] concerning the country of origin of SCORE®7T tablets used in U.S. correctional institutions. This request is being sought because ATG wants to confirm eligibility of the merchandise for U.S. Government procurement purposes pursuant to Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of part 177, U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21, *et seq.*). ATG is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a), and is therefore entitled to request this final determination. On August 24, 2022, we held a meeting with you and your client representatives.

Facts

The SCORE®7T tablet at issue is a custom-designed tablet assembled in China and shipped to the United States. The chipset powering the tablet is manufactured in Taiwan and represents approximately 60 percent of the cost of the tablet's hardware. The circuit and component layout for the motherboard is also made in Taiwan. The tablet uses a system on a chip (''SOC'') design. The SOC is an integrated circuit that

[1] ATG previously submitted a request for an advisory ruling dated March 7, 2022. Under the facts presented in the advisory ruling request, the imported tablets arrived with installed manufacturer's generic Android firmware, which ATG states is no longer the case. On April 20, 2022, we issued advisory ruling HQ H324386 concluding that the removal of the installed manufacturer's firmware from the imported functioning tablet and the installation of the U.S.-designed and developed firmware did not constitute a substantial transformation. The merchandise was a functioning tablet upon importation and remained a functioning tablet, just with limited and specialized functions.

includes the central processing unit, memory, input/output logic, secondary storage, graphics processing unit, radio frequency signal processing functions, and communication controller on a single microchip. You explain that the chipset does all computing on the tablet. The hardware tablet is assembled in China. The assembly process involves combining the components manufactured in Taiwan with a screen to make the finished tablet. You describe the assembly operations in China as ''simple and repetitive'' and requiring ''little worker skill.'' Upon importation into the United States, the tablet does not have the manufacturer's generic Android firmware or other firmware installed.

ATG designs, develops, writes, and installs the tablet's operating system (''OS''), known as SCORE® firmware, in the United States at ''a substantial effort and cost to ATG.'' ATG's firmware is an ATG proprietary custom-built version of the Android system, which ''reflects over 20,000 hours of software development by ATG personnel.'' ATG uses Google-provided (not manufacturer's) Android OS as a starting point to design and develop its own firmware. ATG's firmware contains security protections that control the tablet's functionality, communication capabilities, applications allowed to be installed or run, and enforces rules that users in correctional institutions must follow. ATG removes all Android functions, features, and drivers that are not needed at correctional institutions and reprograms the remaining Android functions and applications to impose new security rules and adds new security features.

Once ATG's firmware is installed, the tablet cannot run regular Android applications. The firmware transforms the tablet into a highly secure tablet specifically designed to meet Federal Bureau of Prisons security requirements. When the tablet connects to ATG's network implemented in correctional institutions, ATG's SCORE® servers automatically update the firmware to the most current version. The firmware only allows ATG-signed applications to run. You state that only select ATG personnel can modify or remove ATG's firmware.

Issue

What is the country of origin of the subject tablet for purposes of U.S. Government procurement?

Law and Analysis

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of part 177, 19 CFR 177.21–177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511–2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

> For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of part 177 consistent with the Federal Procurement Regulation (''FAR''). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The FAR, 48 CFR 25.003, defines ''U.S.-made end product'' as:

> . . . an article that is mined, produced, or manufactured in the United States or that is substantially transformed in the United States into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed.

Section 25.003 defines ''designated country end product'' as:

> a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines ''WTO GPA country end product'' as an article that:

> (1) Is wholly the growth, product, or manufacture of a WTO GPA country; or
>
> (2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

Taiwan is a WTO GPA country. China is not.

ATG asserts that the subject tablet is substantially transformed in the United States because its firmware is entirely developed, written and installed in the United States, and without ATG's firmware the tablet is non-functional. ATG maintains that the use of the SCORE®7T tablet ''is solely dictated by the firmware and it otherwise has no use.''

The issue of substantial transformation is a ''mixed question of technology and customs law, mostly the latter.'' *Texas Instruments, Inc.* v. *United States,* 681 F.2d 778, 783 (CCPA 1982). The substantial transformation test is whether an article emerges from a process with a new name, character, or use, different from that possessed by the article prior to processing. *See Texas Instruments,* 681 F.2d at 778. CBP considers the totality of the circumstances and makes substantial transformation determinations on a case-by-case basis. The country of origin of the item's components, the extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, or use are primary considerations. *See* Headquarters Ruling Letter (''HQ'') H311606, dated June 16, 2021. No one factor is determinative.

A new and different article of commerce is an article that has undergone a change in commercial designation or identity, fundamental character, or commercial use. A determinative issue is the extent of the operations performed and whether the materials lose their identity and become an integral part of the new article. *See Nat'l Hand Tool Corp.* v. *United States,* 16 CIT 308 (1992), *aff'd,* 989 F.2d 1201 (Fed. Cir. 1993). ''For courts to find a change in character, there often needs to be a substantial alteration in the characteristics of the article or components.'' *Energizer Battery, Inc.* v. *United States,* 190 F. Supp. 3d 1308, 1318 (Ct. Int'l Trade 2016) (citations omitted). Courts have looked to ''the essence'' of the completed article ''to

determine whether it has undergone a change in character as a result of post-importation processing.'' *Id.* (citing *Uniroyal, Inc.* v. *United States,* 542 F. Supp. 1026 (Ct. Int'l Trade 1982), *aff'd,* 702 F.2d 1022 (Fed. Cir. 1983)). In *Uniroyal,* 542 F. Supp. at 1030, the U.S. Court of International Trade (''CIT'') held that ''it would be misleading to allow the public to believe that a shoe is made in the United States when the entire upper—which is the very essence of the completed shoe—is made in Indonesia and the only step in the manufacturing process performed in the United States is the attachment of an outsole.''

In *Data General Corp.* v. *United States,* 4 CIT 182 (1982), the programming in the United States of a read-only memory chip (''PROM'') fabricated in a foreign country for use in a computer circuit board assembly substantially transformed the PROM into a U.S. article. After the programming, the PROM was exported for incorporation into a finished circuit board that was then imported into the United States. The programming bestowed upon each circuit its electronic function. The court concluded that the programming altered the character of the PROM and that altering the non-functioning circuitry comprising the PROM through technological expertise in order to produce a functioning read only memory device, possessing a desired distinctive circuit pattern, was no less a ''substantial transformation'' than the manual interconnection of transistors, resistors and diodes upon a circuit board creating a similar pattern. The programming established the ''essence'' of the PROM, its pattern of interconnections, or stored memory.

CBP has issued a number of rulings and final determinations regarding the origin of tablets and smartphones. In HQ H322417, dated Feb. 23, 2022, CBP concluded that a smartwatch originated from Taiwan for purposes of Section 301 trade remedies because Taiwan was the country where the two printed circuit board assemblies (''PCBAs''), which were the ''essence'' of the smartwatch, were manufactured by means of surface-mount technology (''SMT''). The final assembly and firmware upload in China did not result in another substantial transformation in China because it was not a complex or time-intensive process compared to the SMT operations in Taiwan and did not substantially transform the PCBAs. The firmware for the smartwatch was developed in third countries outside of China, including in the United States, and in some cases the firmware uploaded in China was an intermediate OS and the end user in the United States would need to download the final OS after importation into the United States. CBP's reasoning was that the PCBAs allowed the device to process information, communicate wirelessly, utilize global positioning system (''GPS'') functionality, play music and other audio, send, and receive text and email messages, and gather information on a user's fitness. In sum, the functionality of the smartwatch was dependent on the collective capabilities of the PCBA.

In HQ H284834, dated Feb. 21, 2018, a tablet and a smartphone were produced in South Korea and China, respectively. Both were intended for purchase by the Veterans Health Administration for use by patients at home. In the United States, the tablet and smartphone went through a number of software uninstallations and installations. The generic Android functions originally included on the devices, such as alarms, calculators and text messaging, were removed. Other functions, such as Bluetooth capability, were modified and additional software was added. Mobile application software developed entirely in the United States was installed to enable patients to provide vital sign data by connecting to the peripheral devices via Bluetooth. When the preprogrammed tablets and smartphones were imported, they could perform their standard functions of an Android tablet or smartphone, and could be used for their intended purpose, and their name, character, and use remained the same. They were not substantially transformed in the United States by the downloading of the proprietary software, which allowed them to function with the Department of Veterans Affairs healthcare network. The country of origin of the imported tablets and smartphones for purposes of U.S. Government procurement remained the country where they were originally manufactured. *See also* HQ H284617, dated Feb. 21, 2018 (concluding that the downloading of proprietary software after importation into the United States, which allowed tablets preprogrammed with a generic program to function within the Department of Veterans Affairs healthcare network, did not substantially transform the tablets; after the software was downloaded, the country of origin of the imported tablets for purposes of U.S. Government procurement remained the country where they were manufactured because their name, character, and use remained the same).

In HQ H284523, dated Aug. 22, 2017, software was installed onto tablets in the United States to limit the original capacity of the imported tablets for the purpose of facilitating the reception, collection and transmission of a patient's medical data to Department of Veterans Affairs clinicians for their review. The general functionality of the tablet was removed and replaced so that it was easier for patients to use the device and access the system, and to better protect the security of the patient's medical data. The loading of specialized software onto the tablet and the disabling of the pre-programmed general applications were insufficient to create a new and different article of commerce, since all of the functionality of the original computer was retained. The imported tablets were not substantially transformed in the United States by the downloading of the proprietary software, which allowed them to function with the Department of Veterans Affairs healthcare network. After the software was downloaded, the country of origin of the tablets for purposes of U.S. Government procurement remained the country where they were originally manufactured.

In HQ H261623, dated Nov. 22, 2016, for purposes of U.S. Government procurement, in the first scenario, the country of origin of computer notebook hard disk drives (''HDDs'') was the country where the majority of the manufacturing operations occurred and where the firmware was written and installed onto the HDDs. In the second scenario, where the firmware was written in a different country from where it was downloaded onto the HDDs, for purposes of U.S. Government procurement and country of origin marking, the country of origin of the notebook was the country where the last substantial transformation took place.

The subject tablets are distinguishable from the PROM in *Data General Corp., supra.,* and from the HDDs in H261623. The PROM has no function or use until it is programmed. The programming establishes the pattern of interconnections within the PROM, which is its ''essence.'' After the PROM is programmed, it is no longer a PROM. Furthermore, the programming transforms the HDDs into digital storage devices that store or retrieve data. The tablet, on the other hand, remains a completed notebook after the OS is installed. The tablet has an integrated circuit that includes the central processing unit, memory, input/output logic, secondary storage, graphics processing unit, radio frequency signal processing functions, and communication controller. The chipset powering the tablet and the circuit and

component layout for the motherboard manufactured in Taiwan determine the tablet's functionality. The chipset enables the central processing unit to communicate with the other components of the tablet. You advise that the operations in China are ''simple'' and involve attaching all the parts together into the final tablet and adding a screen. Thus, consistent with our previous rulings and decisions above, we find that the last substantial transformation takes place in Taiwan where the chipset and the circuit and component layout for the motherboard are manufactured. After the final assembly in China, the tablet will undergo a firmware upload in the United States. The imported tablet already has the system requirements, which make it possible to install the firmware. The installation of the U.S.-developed firmware in the United States does not transform the Taiwan-manufactured tablet into another product with a new name, character or use. The country of origin of the tablet remains the country where the last substantial transformation occurred, which is Taiwan.

Therefore, the SCORE®7T tablets programmed with ATG's U.S.-developed firmware in the United States would be products of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1).

Holding

Based on the facts and analysis set forth above, the country of origin of the instant SCORE®7T tablets will be Taiwan.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Alice A. Kipel,
Executive Director, Regulations and Rulings Office of Trade.

[FR Doc. 2022–19358 Filed 9–7–22; 8:45 am]

BILLING CODE 9111–14–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

[1651–0NEW]

Death Gratuity Information Sheet

AGENCY: U.S. Customs and Border Protection (CBP), Department of Homeland Security.

ACTION: 60-Day notice and request for comments; 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 November 7, 2022 to be assured of consideration.

ADDRESSES: Written comments and/or suggestions regarding the item(s) contained in this notice must include the OMB Control Number 1651–0NEW in the subject line and the agency name. Please use the following method to submit comments:

Email. Submit comments to: *CBP_PRA@cbp.dhs.gov.*

Due to COVID–19-related restrictions, CBP has temporarily suspended its ability to receive public comments by mail.

FOR FURTHER INFORMATION CONTACT: Requests for additional PRA information should be directed to Seth Renkema, Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection, Office of Trade, Regulations and Rulings, 90 K Street NE, 10th Floor, Washington, DC 20229–1177 or via email *CBP_PRA@cbp.dhs.gov.* Please note that the contact information provided here is solely for questions regarding this notice. Individuals seeking information about other CBP programs should contact the CBP National Customer Service Center at 877–227–5511, (TTY) 1–800–877–8339, or CBP website at *https://www.cbp.gov/.*

SUPPLEMENTARY INFORMATION: CBP invites the general public and other Federal agencies to comment on the proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This process is conducted in accordance with 5 CFR 1320.8. Written comments and suggestions from the public and affected agencies should address one or more of the following four points: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) suggestions to enhance the quality, utility, and clarity of the information to be collected; and (4) suggestions to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. The comments that are submitted will be summarized and included in the request for approval. All comments will become a matter of public record.

Overview of This Information Collection

Title: Death Gratuity Information Sheet.

OMB Number: 1651–0NEW.

Form Number: N/A.

Current Actions: New collection of information.

Type of Review: New collection of information.

Affected Public: Individuals/Households.

Abstract: When the U.S. Customs and Border Protection (CBP) Commissioner has made the determination that the death of a CBP employee is to be classified as a line-of-duty death (LODD), a Death Gratuity (DG) may become payable to the personal representative of the deceased. After the LODD determination is made, CBP will send the potential personal representative of the deceased a DG Information Sheet. This information sheet aids the involved CBP offices in establishing who the personal representative of the deceased is, approving DG, and subsequently, getting the payment paid to the correct person after CBP Commissioner approval.

Potential personal representatives are provided by/from the deceased CBP employee, through their executed beneficiary forms. However, if there are no beneficiary forms on file, next of kin will be identified via the emergency contact information listed with the agency for that employee in WebTele. Potential personal representatives will be required to provide the following

data elements on the DG information sheet:

- Name of Deceased CBP Employee
- Date of Death
- Location of Death
- Name of Claimant/personal representative
- Address of Claimant/personal representative (for payment)
- Phone Number and Email Address of Claimant/personal representative
- Relationship to Employee (*i.e.,* spouse, child, parent, etc.)
- If spouse, date of marriage
- If child or parent, date of birth
- First page of will, if applicable
- Contact information for Executor of Estate, if applicable
- Copy of Marriage Certificate, if applicable
- Copy of Letters of Administration, if applicable

CBP is authorized to collect the information requested on this form pursuant to Public Law 104–208 which allows the agency to pay a death gratuity in some situations of LODD. 110 Stat. 3009–368, Sept. 30, 1996; 5 U.S.C. 8133 note. In order to make this payment, CBP must first identify and obtain the information from the personal representative so it can be known where and to whom the payment should be sent. CBP Retirement and Benefits Advisory Services (RABAS) has the authority designated by the Office of Personnel Management (OPM) to provide retirement, benefits, and survivor counselling and processing. This authority is outlined in detail in the Civil Service Retirement System/ Federal Employee Retirement System (CSRS/FERS) Handbook, Federal Employees Group Life Insurance (FEGLI) Handbook, and Federal Employee Health Benefits (FEHB) Handbook.

Type of Information Collection: Death Gratuity Information Sheet.

Estimated Number of Respondents: 33.

Estimated Number of Annual Responses per Respondent: 1.

Estimated Number of Total Annual Responses: 33.

Estimated Time per Response: 15 minutes.

Estimated Total Annual Burden Hours: 8.25.

Dated: September 1, 2022.

Seth D. Renkema,

Branch Chief, Economic Impact Analysis Branch, U.S. Customs and Border Protection.

[FR Doc. 2022–19328 Filed 9–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF HOMELAND SECURITY

U.S. Immigration and Customs Enforcement

[Docket No. ICEB–2022–0010]

RIN 1653–ZA30

Employment Authorization for Venezuelan F–1 Nonimmigrant Students Experiencing Severe Economic Hardship as a Direct Result of the Humanitarian Crisis in Venezuela

AGENCY: U.S. Immigration and Customs Enforcement, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice announces that the Secretary of Homeland Security (Secretary) is suspending certain regulatory requirements for F–1 nonimmigrant students whose country of citizenship is Venezuela, regardless of country of birth (or individuals having no nationality who last habitually resided in Venezuela), and who are experiencing severe economic hardship as a direct result of the humanitarian crisis in Venezuela. The Secretary is taking action to provide relief to those Venezuelan students who were in lawful F–1 nonimmigrant student status on April 22, 2021, and are currently maintaining F–1 nonimmigrant student status, so the students may request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain their F–1 nonimmigrant student status. The U.S. Department of Homeland Security (DHS) will deem an F–1 nonimmigrant student who receives employment authorization by means of this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the nonimmigrant student satisfies the minimum course load requirement described in this notice.

DATES: This F–1 visa action is effective from September 10, 2022, through March 10, 2024.

FOR FURTHER INFORMATION CONTACT: Sharon Snyder, Unit Chief, Policy and Response Unit, Student and Exchange Visitor Program, MS 5600, U.S. Immigration and Customs Enforcement, 500 12th Street SW, Washington, DC 20536–5600; email: *sevp@ice.dhs.gov,* telephone: (703) 603–3400. This is not a toll-free number. Program information can be found at *https://www.ice.gov/sevis/.*

SUPPLEMENTARY INFORMATION:

What action is DHS taking under this notice?

The Secretary is exercising the authority under 8 CFR 214.2(f)(9) to temporarily suspend the applicability of certain requirements governing on-campus and off-campus employment for F–1 nonimmigrant students whose country of citizenship is Venezuela regardless of country of birth (or individuals having no nationality who last habitually resided in Venezuela), who were lawfully present in the United States in F–1 nonimmigrant student status on April 22, 2021 and continue to be lawfully present in F–1 nonimmigrant student status, and who are experiencing severe economic hardship as a direct result of the humanitarian crisis in Venezuela. The original notice, which applied to F–1 nonimmigrant students who met certain criteria, including having been lawfully present in the United States in F–1 nonimmigrant status on April 22, 2021, was effective from April 22, 2021, until September 9, 2022. *See* 86 FR 21328 (Apr. 22, 2021). Effective with this publication, suspension of the employment limitations is available through March 10, 2024, for those who were in lawful F–1 nonimmigrant status as of April 22, 2021, and are currently maintaining F–1 nonimmigrant status. DHS will deem an F–1 nonimmigrant student granted employment authorization through this notice to be engaged in a ''full course of study'' for the duration of the employment authorization, if the student satisfies the minimum course load set forth in this notice.[1] *See* 8 CFR 214.2(f)(6)(i)(F).

Who is covered by this notice?

This notice applies exclusively to F–1 nonimmigrant students who meet all of the following conditions:

[1] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of March 10, 2024, provided the student satisfies the minimum course load requirements in this notice. DHS also considers students who engage in online coursework pursuant to U.S. Immigration and Customs Enforcement (ICE) Coronavirus Disease 2019 (COVID–19) guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited July 8, 2022).

(1) Are a citizen of Venezuela regardless of country of birth (or an individual having no nationality who last habitually resided in Venezuela

(2) Were lawfully present in the United States in F–1 nonimmigrant status under section 101(a)(15)(F)(i) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(15)(F)(i), on April 22, 2021;

(3) Are enrolled in an academic institution that is Student and Exchange Visitor Program (SEVP)-certified for enrollment for F–1 nonimmigrant students;

(4) Are currently maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the humanitarian crisis in Venezuela.

This notice applies to F–1 nonimmigrant students in an approved private school in kindergarten through grade 12, public school grades 9 through 12, and undergraduate and graduate education. An F–1 nonimmigrant student covered by this notice who transfers to another SEVP-certified academic institution remains eligible for the relief provided by means of this notice.

Why is DHS taking this action?

DHS is taking action to provide relief to Venezuelan F–1 nonimmigrant students experiencing severe economic hardship due to the ongoing humanitarian crisis in Venezuela. Based on its review of country conditions in Venezuela and input received from the U.S. Department of State, DHS is taking action to allow eligible F–1 nonimmigrant students from Venezuela (or individuals having no nationality who last habitually resided in Venezuela) to request employment authorization, work an increased number of hours while school is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

Previously DHS took action to provide temporary relief to F–1 nonimmigrant students whose country of citizenship is Venezuela regardless of country of birth (or individuals having no nationality who last habitually resided in Venezuela) and who experienced severe economic hardship because of the humanitarian crisis in Venezuela. *See* 86 FR 21328 (Apr. 22, 2021). It enabled these F–1 nonimmigrant students to request and obtain employment authorization, work an increased number of hours while school was in session, and reduce their course load, while continuing to maintain their F–1 nonimmigrant student status.

DHS reviewed conditions in Venezuela and determined that suspending certain employment authorization requirements for eligible nonimmigrant students is again warranted due to the ongoing humanitarian crisis. Venezuela ''remains in the throes of a prolonged humanitarian emergency.'' [2] Under Nicolás Maduro's regime,[3] the country ''has been in the midst of a severe political and economic crisis for several years.'' [4] As of February 2022, the country remained ''politically deadlocked and mired in humanitarian emergency.'' [5] A wide range of factors have marked Venezuela's crisis, including: an economic crisis; inflation and hyperinflation; ''massive poverty''; [6] a ''collapsed health system''; [7] the impact of the COVID–19 pandemic; food insecurity, including child malnutrition; the collapse and deprivation of basic services; power outages; water and fuel shortages; political polarization and dispute between the regime and the opposition; repression of perceived regime opponents and dissidents; human rights abuses, including allegations of crimes against humanity; high rates of homicide and crime; the operation of non-state armed groups; corruption; and killings by security forces, among other factors.[8] The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) has reported that ''[s]even million people require some form of humanitarian or protection assistance in Venezuela.'' [9]

Economic Crisis

Venezuela continues to be impacted by a severe economic crisis.[10] The Congressional Research Service (CRS) reported in April 2021 that ''Venezuela's economy has collapsed'',[11] Venezuela was ''plagued by hyperinflation'' [12] and ''[a]ccording to household surveys, the percentage of Venezuelans living in poverty increased from 48.4% in 2014 to 96% in 2019 (with 80% in extreme poverty).'' [13] According to ACAPS, ''multidimensional poverty'' in Venezuela ''has led to the deprivation or deterioration of education, housing, overall access to public services, income, and employment.'' [14]

Health Crisis & COVID–19 Pandemic

Sources have described Venezuela's healthcare system as ''run-down,'' [15] ''overloaded and crumbling,'' [16] and ''collapsed.'' [17] Moreover, in its 2021

[2] *Overcoming the Global Rift on Venezuela,* International Crisis Group, p.3, Feb. 17, 2022.

[3] Ribando Seelke, Clare, Nelson, Rebecca M, Margesson, Rhoda, Brown, Phillip, *Venezuela: Background and U.S. Relations,* Congressional Research Service (CRS), Summary, Apr. 28, 2021.

[4] *Venezuelan Humanitarian and Refugee Crisis,* Center for Disaster Philanthropy, Jan. 25, 2022.

[5] *Overcoming the Global Rift on Venezuela,* International Crisis Group, p. I, Feb. 17, 2022.

[6] *Why the kids of Venezuela aren't getting enough to eat,* NPR, Jan. 11, 2022.

[7] *World Report 2022—Venezuela,* Human Rights Watch, Jan. 2022.

[8] *Venezuelan Humanitarian and Refugee Crisis,* Center for Disaster Philanthropy, Jan. 25, 2022; Ribando Seelke, Clare, Nelson, Rebecca M., Brown, Phillip, Margesson, Rhoda, *Venezuela: Background and U.S. Relations,* Congressional Research Service (CRS), p.6, 8–9, 11, Summary, Apr. 28, 2021; *Venezuela creeps out of hyperinflation, but no one feels it,* Agence France-Presse (AFP), Jan. 15, 2022; *World Report 2022—Venezuela,* Human Rights Watch, Jan. 2022; *Situation of human rights and technical assistance in the Bolivarian Republic of Venezuela,* Office of the United Nations High Commissioner for Human Rights (OHCHR), p.4–5, Sep. 10, 2021; *Why the kids of Venezuela aren't getting enough to eat,* NPR, Jan. 11, 2022; *Venezuela: Complex Crisis—Overview,* ACAPS, Oct. 14, 2021, *https://www.acaps.org/country/venezuela/crisis/complex-crisis* (last visited Feb. 17, 2022); *Follow-up Report on the Impacts of the Complex Humanitarian Emergency in Venezuela with the COVID pandemic. Update as of June 2021,* HumVenezuela, p.14, Jun. 2021; *Venezuelan Migration and Refugee Crisis,* Working Group of the Organization of American States (OAS) on the Crisis of Venezuelan Migrants and Refugees in the Region, p. 12–22, Jun. 2021; Delgado, Antonio Maria, and Rodríguez Montilla, Camille, *'The country's whole food supply is at risk.' Diesel shortages hit Venezuela's truckers.,* Miami Herald, Mar. 11, 2021; *Venezuela: Country Focus,* European Asylum Support Office (EASO), p.21, Aug. 2020; *Overcoming the Global Rift on Venezuela,* International Crisis Group, p. i, Feb. 17, 2022; *Situation of human rights in the Bolivarian Republic of Venezuela,* Office of the United Nations High Commissioner for Human Rights (OHCHR), p.4, Jun. 16, 2021; *Venezuela 2020 Crime & Safety Report,* Overseas Security Advisory Council (OSAC), U.S. Department of State, July 21, 2020; *InSight Crime's 2021 Homicide Round-Up,* InSight Crime, Feb. 1, 2022; Gorder, Gabrielle, and Robbins, Seth, *What are the Most Corrupt Countries in Latin America?,* InSight Crime, Feb. 11, 2022; *Venezuela: Calculated repression: Correlation between stigmatization and politically motivated arbitrary detentions,* Amnesty International, p.11, 52, Feb. 10, 2022.

[9] *Venezuela,* United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), *https://www.unocha.org/venezuela* (last visited Mar. 11, 2022).

[10] *Venezuelan Humanitarian and Refugee Crisis,* Center for Disaster Philanthropy, Jan. 25, 2022.

[11] Ribando Seelke, Clare, Nelson, Rebecca M, Margesson, Rhoda, Brown, Phillip, *Venezuela: Background and U.S. Relations,* Congressional Research Service (CRS), Summary, Apr. 28, 2021.

[12] Ribando Seelke, Clare, Nelson, Rebecca M., Brown, Phillip, Margesson, Rhoda, *Venezuela: Background and U.S. Relations,* Congressional Research Service (CRS), Summary, Apr. 28, 2021.

[13] Ribando Seelke, Clare, Nelson, Rebecca M., Brown, Phillip, Margesson, Rhoda, *Venezuela: Background and U.S. Relations,* Congressional Research Service (CRS), p.11, Apr. 28, 2021.

[14] *Venezuela: Complex Crisis—Overview,* ACAPS, Oct. 14, 2021, *https://www.acaps.org/country/venezuela/crisis/complex-crisis* (last visited Feb. 17, 2022).

[15] Sequera, Vivian, *Venezuela COVID patients, exhausted doctors get mental health help from medical charity,* Reuters, Feb. 2, 2022.

[16] *Venezuelans rely on the kindness of strangers to pay for COVID–19 treatment,* Reuters, Oct. 4, 2021.

[17] Ribando Seelke, Clare, Nelson, Rebecca M., Brown, Phillip, Margesson, Rhoda, *Venezuela: Background and U.S. Relations,* Congressional

annual report (published in January 2022), Human Rights Watch (HRW) stated that Venezuela's ''collapsed health system'' has led to the resurgence of vaccine preventable and infectious diseases.[18] HRW reported in January 2022 that—according to a local non-governmental organization—''83 percent of hospitals have insufficient or no access to personal protective equipment such as masks and gloves, and 95 percent similarly lack sufficient cleaning supplies, including soap and disinfectant.'' [19]

COVID–19 was first detected in Venezuela in March 2020.[20] Since then, the regime has ''declared a national 'state of alarm', enforced preventive sanitary measures, and redirected the national health system toward treatment of COVID–19 patients.'' [21] However, as the Office of the United Nations High Commissioner for Human Rights also noted in a September 2021 report, the pandemic compounded preexisting challenges such as lack of equipment and medicines, loss of qualified health personnel, and insufficient maintenance of infrastructure.[22] Moreover, in January 2022, HRW reported that ''Venezuela's C[OVID]–19 vaccination has been marred by corruption allegations and opacity regarding the acquisition and distribution of vaccines and other medical supplies.'' [23]

Food Security

In April 2021, CRS reported that food insecurity in Venezuela is ''a significant issue, mainly due to the price of food rather than its lack of availability.'' [24] In its annual report on Venezuela, HRW noted that the ''WFP [World Food Program] estimates that one in three Venezuelans is food insecure and in need of assistance.[25] Moreover, *National Public Radio* (*NPR*) reported in January 2022 that ''Venezuela now faces a catastrophe of its own making—widespread malnutrition among the country's children.'' [26] The media outlet also noted that ''[i]n a survey last year, the development group Caritas found that 42% of children in the country's poorest neighborhoods suffered from stunting or wasting. That means they're too short or underweight for their ages.'' [27]

Access to Basic Services (Electricity, Water, and Gas)

Venezuela has experienced a ''collapse of basic services.'' [28] In a June 2021 report, the Working Group of the Organization of American States (OAS) on the Crisis of Venezuelan Migrants and Refugees in the Region noted that Venezuelans face daily power outages and face water shortages.[29] *Reuters* noted in February 2021 that ''[p]rovincial cities have suffered frequent blackouts since a 2019 power outage paralyzed the country for nearly a month.'' [30] In mid-December 2021, Venezuela experienced blackouts in Caracas and at least 15 of 23 states.[31] ACAPS has noted that ''[a]ccess to clean water is increasingly difficult after the collapse of basic services, aggravating water and sanitation problems.'' [32] Exposure to unsafe water puts people's lives and health at risk. By 2021, 76% of the population was affected by deficient sewage collection services and some 15.9% remained unconnected to the sewage network.[33] *NPR* reported that many in Venezuela have fallen back on using fire to cook because normally 90% of the population cooks with propane stoves, but there is a severe propane shortage and those with electric stoves cannot use them with the frequent power outages.[34]

Political Crisis

Moreover, Venezuela has experienced over ''two decades of political tumult'' amidst a between self-proclaimed socialist Hugo Chávez (1999–2013) and his successor Nicolás Maduro, on one side, and the Government of Juan Guaido and an opposition alliance on the other.[35] The European Asylum Support Office (EASO) reported that this political polarization contributed to the emergence of institutional duality in Venezuela, in which each side does not recognize the validity of the other's institutions.[36]

Political Repression & Human Rights

According to CRS, international organizations have expressed concerned about the deterioration of democratic institutions and threats to freedom of speech and press in Venezuela.[37] In a February 2022 report, Amnesty International noted that ''[c]rimes under international law and human rights violations, including politically motivated arbitrary detentions, torture, extrajudicial executions and excessive use of force have been systematic and widespread, and could constitute crimes against humanity.'' [38] In its annual report covering 2021, HRW stated that the regime ''and its security forces are responsible for extrajudicial executions and short-term forced disappearances and have jailed opponents, prosecuted civilians in military courts, tortured detainees, and cracked down on protesters. [The regime] used a state of emergency implemented in response to C[OVID]–19 as a pretext to intensify their control over the population. The lack of judicial independence contributed to impunity for these crimes.'' [39]

Crime & Insecurity

CRS reported in April 2021 that Venezuela has ''among the highest

Research Service (CRS), p.11, Apr. 28, 2021; *World Report 2022—Venezuela,* Human Rights Watch, Jan. 2022.

[18] *World Report 2022—Venezuela,* Human Rights Watch, Jan. 2022.

[19] *World Report 2022—Venezuela,* Human Rights Watch, Jan. 2022.

[20] *Situation of human rights and technical assistance in the Bolivarian Republic of Venezuela,* Office of the United Nations High Commissioner for Human Rights (OHCHR), p.4, Sep. 10, 2021.

[21] *Situation of human rights and technical assistance in the Bolivarian Republic of Venezuela,* Office of the United Nations High Commissioner for Human Rights (OHCHR), p.4, Sep. 10, 2021.

[22] *Situation of human rights and technical assistance in the Bolivarian Republic of Venezuela,* Office of the United Nations High Commissioner for Human Rights (OHCHR), p.4, Sep. 10, 2021.

[23] World Report 2022—Venezuela, Human Rights Watch, Jan. 2022.

[24] Ribando Seelke, Clare, Nelson, Rebecca M., Brown, Phillip, Margesson, Rhoda, Venezuela: Background and U.S. Relations, Congressional Research Service (CRS), p.11, Apr. 28, 2021.

[25] *World Report 2022—Venezuela,* Human Rights Watch, Jan. 2022.

[26] Why the kids of Venezuela aren't getting enough to eat, NPR, Jan. 11, 2022.

[27] Why the kids of Venezuela aren't getting enough to eat, NPR, Jan. 11, 2022.

[28] Venezuela: Complex Crisis—Overview, ACAPS, Oct. 14, 2021, *https://www.acaps.org/country/venezuela/crisis/complex-crisis* (last visited Feb. 17, 2022).

[29] Venezuelan Migration and Refugee Crisis, Working Group of the Organization of American States (OAS) on the Crisis of Venezuelan Migrants and Refugees in the Region, p. 20, Jun. 2021.

[30] Ellsworth, Brian, and Sequera, Vivian, Analysis: Collapsed health system makes Venezuela vaccination campaign an uphill battle, Reuters, Feb. 12, 2021.

[31] Venezuela experiences blackouts in capital and at least 15 states, Reuters, Dec. 17, 2021.

[32] Venezuela: Complex Crisis—Overview, ACAPS, Oct. 14, 2021, *https://www.acaps.org/country/venezuela/crisis/complex-crisis* (last visited Feb. 24, 2022).

[33] Follow-up Report on the Impacts of the Complex Humanitarian Emergency in Venezuela with the COVID pandemic. Update as of June 2021, HumVenezuela, p.26, Jun. 2021.

[34] Otis, John, Venezuelans are cooking over wood fires because of a shortage of propane, NPR, Jan. 8, 2022.

[35] Overcoming the Global Rift on Venezuela, International Crisis Group, p.i, Feb. 17, 2022.

[36] Venezuela: Country Focus, European Asylum Support Office (EASO), p.21, Aug. 2020.

[37] Ribando Seelke, Clare, Nelson, Rebecca M., Brown, Phillip, Margesson, Rhoda, Venezuela: Background and U.S. Relations, Congressional Research Service (CRS), p.6, Apr. 28, 2021.

[38] Venezuela: Calculated repression: Correlation between stigmatization and politically motivated arbitrary detentions, Amnesty International, p.11, Feb. 10, 2022.

[39] World Report 2022—Venezuela, Human Rights Watch, Jan. 2022.

homicide and crime victimization rates in Latin America and the Caribbean.'' [40] Similarly, the U.S. Department of State's Overseas Security Advisory Council (OSAC) reported in July 2020 that Venezuela has ''one of the highest number [*sic*] of violent deaths in the region and in the world.'' [41] In a report dated August 2020, EASO reported that as political conflict has intensified, armed groups operating in Venezuela have increasingly preyed on the state's absence, fissures or weakness, providing them with the sort of power and economic stakes which directly threaten the country's long-term stability and giving them effective territorial control in their areas of influence.[42] Reporting on Transparency International's 2021 Corruption Perceptions Index (CPI), InSight Crime noted in February 2022 that Venezuela ''held the title for the seventh consecutive year as the most corrupt country in the Western Hemisphere with a score of 14, an all-time low for the country.'' [43]

Migration

More than six million refugees and migrants from Venezuela have left their country of origin, with more than five million being hosted in the region.'' [44] In June 2021, the Working Group of the OAS on the Crisis of Venezuelan Migrants and Refugees in the Region identified five main reasons that Venezuelans have been forced to flee their country: (1) ''Complex Humanitarian Emergency''; (2) ''Human Rights Violations''; (3) ''Widespread Violence''; (4) ''Collapse of Public Services''; (5) ''Economic Collapse.'' [45]

As of July 11, 2022, approximately 3,920 F–1 nonimmigrant students from Venezuela (or individuals having no nationality who last habitually resided in Venezuela) are enrolled at SEVP-certified academic institutions in the United States. Given the extent of the ongoing humanitarian crisis in Venezuela, affected students whose primary means of financial support comes from Venezuela may need to be exempt from the normal student employment requirements to continue their studies in the United States. The ongoing humanitarian crisis has made it unfeasible for many students to safely return to Venezuela for the foreseeable future. Without employment authorization, these students may lack the means to meet basic living expenses.

What is the minimum course load requirement to maintain valid F–1 nonimmigrant status under this notice?

Undergraduate F–1 nonimmigrant students who receive on-campus or off-campus employment authorization under this notice must remain registered for a minimum of six semester or quarter hours of instruction per academic term. Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). A graduate-level F–1 nonimmigrant student who receives on-campus- or off-campus employment authorization under this notice must remain registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v). Nothing in this notice affects the applicability of other minimum course load requirements set by the academic institution.

In addition, an F–1 nonimmigrant student (either undergraduate or graduate) granted on-campus or off-campus employment authorization under this notice may count up- to the equivalent of one class or three credits per session, term, semester, trimester, or quarter of online or distance education toward satisfying this minimum course load requirement, unless their course of study is in an English language study program.[46] *See* 8 CFR 214.2(f)(6)(i)(G). An F–1 nonimmigrant student attending an approved private school in kindergarten through grade 12 or public school in grades 9 through 12 must maintain ''class attendance for not less than the minimum number of hours a week prescribed by the school for normal progress toward graduation,'' as required under 8 CFR 214.2(f)(6)(i)(E). Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

May an eligible F–1 nonimmigrant student who already has on-campus or off-campus employment authorization benefit from the suspension of regulatory requirements under this notice?

Yes. An F–1 nonimmigrant student who is a Venezuela citizen, regardless of country of birth (or an individual having no nationality who last habitually resided in Venezuela), who already has on-campus or off-campus employment authorization and is otherwise eligible may benefit under this notice, which suspends certain regulatory requirements relating to the minimum course load requirement under 8 CFR 214.2(f)(6)(i) and certain employment eligibility requirements under 8 CFR 214.2(f)(9). Such an eligible F–1 nonimmigrant student may benefit without having to apply for a new Form I–766, Employment Authorization Document (EAD). To benefit from this notice, the F–1 nonimmigrant student must request that their designated school official (DSO) enter the following statement in the remarks field of the student's Student and Exchange Visitor Information System (SEVIS) record, which the student's Form I–20, Certificate of Eligibility for Nonimmigrant (F–1) Student Status, will reflect:

Approved for more than 20 hours per week of [DSO must insert ''on-campus'' or ''off-campus,'' depending upon the type of employment authorization the student already has] employment authorization and reduced course load under the Special Student Relief authorization from [DSO must insert the beginning date of the notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert either the student's program end date, the current EAD expiration date (if the student is currently authorized for off-campus employment), or the end date of this notice, whichever date comes first].[47]

[40] Ribando Seelke, Clare, Nelson, Rebecca M., Brown, Phillip, Margesson, Rhoda, Venezuela: Background and U.S. Relations, Congressional Research Service (CRS), p.6, Apr. 28, 2021.

[41] Venezuela 2020 Crime & Safety Report, Overseas Security Advisory Council (OSAC), U.S. Department of State, July 21, 2020.

[42] Venezuela: Country Focus, European Asylum Support Office (EASO), p.21, Aug. 2020.

[43] Gorder, Gabrielle, and Robbins, Seth, What are the Most Corrupt Countries in Latin America?, InSight Crime, Feb. 11, 2022.

[44] RMRP 2022—Regional Refugee and Migrant Response Plan (RMRP)—January-December 2022, Inter-Agency Coordination Platform for Refugees and Migrants from Venezuela (R4V), p.6, Dec. 7, 2021.

[45] Venezuelan Migration and Refugee Crisis, Working Group of the Organization of American States (OAS) on the Crisis of Venezuelan Migrants and Refugees in the Region, p. 12–22, Jun. 2021.

[46] DHS considers students who are compliant with ICE COVID–19 guidance for nonimmigrant students to be in compliance with regulations while such COVID–19 guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, *https://www.ice.gov/coronavirus* (last visited July 8, 2022).

[47] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of March 10, 2024, provided the student satisfies the minimum course load requirements in this notice.

Must the F–1 nonimmigrant student apply for reinstatement after expiration of this special employment authorization if the student reduces his or her ''full course of study''?

No. DHS will deem an F–1 nonimmigrant student who receives and comports with the employment authorization permitted under this notice to be engaged in a ''full course of study'' [48] for the duration of the student's employment authorization, provided that a qualifying undergraduate level F–1 nonimmigrant student remains registered for a minimum of six semester or quarter hours of instruction per academic term, and a qualifying graduate level F–1 nonimmigrant student remains registered for a minimum of three semester or quarter hours of instruction per academic term. *See* 8 CFR 214.2(f)(5)(v) and (f)(6)(i)(F). Undergraduate F–1 nonimmigrant students enrolled in a term of different duration must register for at least one half of the credit hours normally required under a ''full course of study.'' *See* 8 CFR 214.2(f)(6)(i)(B) and (F). DHS will not require such students to apply for reinstatement under 8 CFR 214.2(f)(16) if they are otherwise maintaining F–1 nonimmigrant status.

Will an F–2 dependent (spouse or minor child) of an F–1 nonimmigrant student covered by this notice be eligible for employment authorization?

No. An F–2 spouse or minor child of an F–1 nonimmigrant student is not authorized to work in the United States and, therefore, may not accept employment under the F–2 nonimmigrant status, consistent with 8 CFR 214.2(f)(15)(i).

Will the suspension of the applicability of the standard student employment requirements apply to an individual who received an initial F–1 visa and made an initial entry into the United States after April 22, 2021?

No. The suspension of the applicability of the standard regulatory requirements only applies to certain F–1 nonimmigrant students who meet the following conditions:

(1) Are a citizen of Venezuela regardless of country of birth (or an individual having no nationality who last habitually resided in Venezuela);

(2) Were lawfully present in the United States in F–1 nonimmigrant status, under section 101(a)(15)(F)(i) of the INA, 8 U.S.C. 1101(a)(15)(F)(i) on April 22, 2021;

(3) Are enrolled in an academic institution that is SEVP-certified for enrollment of F–1 nonimmigrant students;

(4) Are maintaining F–1 nonimmigrant status; and

(5) Are experiencing severe economic hardship as a direct result of the humanitarian crisis in Venezuela.

An F–1 nonimmigrant student who does not meet all these requirements is ineligible for the suspension of the applicability of the standard regulatory requirements (even if experiencing severe economic hardship as a direct result of the ongoing humanitarian crisis in Venezuela).

Does this notice apply to a continuing F–1 nonimmigrant student who departs the United States after the effective date of this notice in the Federal Register and who needs to obtain a new F–1 visa before returning to the United States to continue an educational program?

Yes. This notice applies to such an F–1 nonimmigrant student, but only if the DSO has properly notated the student's SEVIS record, which will then appear on the student's Form I–20. The normal rules for visa issuance remain applicable to a nonimmigrant who needs to apply for a new F–1 visa to continue an educational program in the United States.

Does this notice apply to elementary school, middle school, and high school students in F–1 status?

Yes. However, this notice does not by itself reduce the required course load for F–1 nonimmigrant students from Venezuela (or individuals having no nationality who last habitually resided in Venezuela) enrolled in kindergarten through grade 12 at a private school, or grades 9 through 12 at a public high school. Such students must maintain the minimum number of hours of class attendance per week prescribed by the academic institution for normal progress toward graduation, as required under 8 CFR 214.2(f)(6)(i)(E). The suspension of certain regulatory requirements related to employment through this notice is applicable to all eligible F–1 nonimmigrant students regardless of educational level. Eligible F–1 nonimmigrant students from Venezuela (or individuals having no nationality who last habitually resided in Venezuela) enrolled in an elementary school, middle school, or high school may benefit from the suspension of the requirement in 8 CFR 214.2(f)(9)(i) that limits on-campus employment to 20 hours per week while school is in session. Nothing in this notice affects the applicability of federal and state labor laws limiting the employment of minors.

On-Campus Employment Authorization

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice be authorized to work more than 20 hours per week while school is in session?

Yes. For an F–1 nonimmigrant student covered in this notice, the Secretary is suspending the applicability of the requirement in 8 CFR 214.2(f)(9)(i) that limits an F–1 nonimmigrant student's on-campus employment to 20 hours per week while school is in session. An eligible F–1 nonimmigrant student has authorization to work more than 20 hours per week while school is in session if the DSO has entered the following statement in the remarks field of the student's SEVIS record, which will be reflected on the student's Form I–20:

> Approved for more than 20 hours per week of on-campus employment and reduced course load, under the Special Student Relief authorization from [DSO must insert the beginning date of this notice or the beginning date of the student's employment, whichever date is later] until [DSO must insert the student's program end date or the end date of this notice, whichever date comes first].[49]

To obtain on-campus employment authorization, the F–1 nonimmigrant student must demonstrate to the DSO that the employment is necessary to avoid severe economic hardship directly resulting from the humanitarian crisis in Venezuela. An F–1 nonimmigrant student authorized by the DSO to engage in on-campus employment by means of this notice does not need to file any applications with U.S. Citizenship and Immigration Services (USCIS). The standard rules permitting full-time employment on-campus when school is not in session or during school vacations apply, as described in 8 CFR 214.2(f)(9)(i).

[48] *See* 8 CFR 214.2(f)(6).

[49] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of March 10, 2024, provided the student satisfies the minimum course load requirements in this notice.

Will an F–1 nonimmigrant student who receives on-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain his or her F–1 nonimmigrant student status?

Yes. DHS will deem an F–1 nonimmigrant student who receives on-campus employment authorization under this notice to be engaged in a ''full course of study'' [50] for the purpose of maintaining their F–1 nonimmigrant student status for the duration of the on-campus employment, if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization to reduce the normal course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if the reduction would not meet the academic institution's minimum course load requirement for continued enrollment.[51]

Off-Campus Employment Authorization

What regulatory requirements does this notice temporarily suspend relating to off-campus employment?

For an F–1 nonimmigrant student covered by this notice, as provided under 8 CFR 214.2(f)(9)(ii)(A), the Secretary is suspending the following regulatory requirements relating to off-campus employment:

(a) The requirement that a student must have been in F–1 nonimmigrant student status for one full academic year to be eligible for off-campus employment;

(b) The requirement that an F–1 nonimmigrant student must demonstrate that acceptance of employment will not interfere with the student's carrying a full course of study;

(c) The requirement that limits an F–1 nonimmigrant student's employment authorization to no more than 20 hours per week of off-campus employment while the school is in session; and

(d) The requirement that the student demonstrate that employment under 8 CFR 214.2(f)(9)(i) is unavailable or otherwise insufficient to meet the needs that have arisen as a result of the unforeseen circumstances.

Will an F–1 nonimmigrant student who receives off-campus employment authorization under this notice have authorization to reduce the normal course load and still maintain F–1 nonimmigrant status?

Yes. DHS will deem an F–1 nonimmigrant student who receives off-campus employment authorization by means of this notice to be engaged in a ''full course of study'' [52] for the purpose of maintaining F–1 nonimmigrant student status for the duration of the student's employment authorization if the student satisfies the minimum course load requirement described in this notice, consistent with 8 CFR 214.2(f)(6)(i)(F). However, the authorization for a reduced course load is solely for DHS purposes of determining valid F–1 nonimmigrant student status. Nothing in this notice mandates that school officials allow an F–1 nonimmigrant student to take a reduced course load if such reduced course load would not meet the school's minimum course load requirement.[53]

How may an eligible F–1 nonimmigrant student obtain employment authorization for off-campus employment with a reduced course load under this notice?

An F–1 nonimmigrant student must file a Form I–765, Application for Employment Authorization, with USCIS to apply for off-campus employment authorization based on severe economic hardship directly resulting from the humanitarian crisis in Venezuela. Filing instructions are located at *https://www.uscis.gov/i-765.*

Fee considerations. Submission of a Form I–765 currently requires payment of a $410 fee. An applicant who is unable to pay the fee may submit a completed Form I–912, Request for Fee Waiver, along with the Form I–765, Application for Employment Authorization. *See www.uscis.gov/feewaiver.* The submission must include an explanation about why USCIS should grant the fee waiver and the reason(s) for the inability to pay, and any evidence to support the reason(s). *See* 8 CFR 103.7(c).

Supporting documentation. An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship must demonstrate the following to their DSO:

(1) This employment is necessary to avoid severe economic hardship; and

(2) The hardship is a direct result of the humanitarian crisis in Venezuela.

If the DSO agrees that the F–1 nonimmigrant student is entitled to receive such employment authorization, the DSO must recommend application approval to USCIS by entering the following statement in the remarks field of the student's SEVIS record, which will then appear on that student's Form I–20:

> Recommended for off-campus employment authorization in excess of 20 hours per week and reduced course load under the Special Student Relief authorization from the date of the USCIS authorization noted on Form I–766 until [DSO must insert the program end date or the end date of this notice, whichever date comes first].[54]

The F–1 nonimmigrant student must then file the properly endorsed Form I–20 and Form I–765 according to the instructions for the Form I–765. The F–1 nonimmigrant student may begin working off-campus only upon receipt of the EAD from USCIS.

DSO recommendation. In making a recommendation that an F–1 nonimmigrant student be approved for Special Student Relief, the DSO certifies that:

(a) The F–1 nonimmigrant student is in good academic standing and is carrying a ''full course of study'' [55] at the time of the request for employment authorization;

(b) The F–1 nonimmigrant student is a citizen of Venezuela, regardless of country of birth (or an individual having no nationality who last habitually resided in Venezuela), and is experiencing severe economic hardship as a direct result of the humanitarian crisis in Venezuela, as documented on the Form I–20;

(c) The F–1 nonimmigrant student has confirmed that the student will comply with the reduced course load requirements of this notice and register for the duration of the authorized employment for a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of

[50] *See* 8 CFR 214.2(f)(6).

[51] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[52] *See* 8 CFR 214.2(f)(6).

[53] Minimum course load requirement for enrollment in a school must be established in a publicly available document (*e.g.,* catalog, website, or operating procedure), and it must be a standard applicable to all students (U.S. citizens and foreign students) enrolled at the school.

[54] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of March 10, 2024, provided the student satisfies the minimum course load requirements in this notice.

[55] *See* 8 CFR 214.2(f)(6).

instruction per academic term if the student is at the graduate level; [56] and

(d) The off-campus employment is necessary to alleviate severe economic hardship to the individual as a direct result of the humanitarian crisis in Venezuela.

Processing. To facilitate prompt adjudication of the student's application for off-campus-employment authorization under 8 CFR 214.2(f)(9)(ii)(C), the F–1 nonimmigrant student should do both of the following:

(a) Ensure that the application package includes all of the following documents:

(1) A completed Form I–765;

(2) The required fee or properly documented fee waiver request as defined in 8 CFR 103.7(c); and

(3) A signed and dated copy of the student's Form I–20 with the appropriate DSO recommendation, as previously described in this notice; and

(b) Send the application in an envelope which is clearly marked on the front of the envelope, bottom right-hand side, with the phrase ''SPECIAL STUDENT RELIEF.'' Failure to include this notation may result in significant processing delays.

If USCIS approves the student's Form I–765, USCIS will send the student a Form I–766 EAD as evidence of employment authorization. The EAD will contain an expiration date that does not exceed the end of the granted temporary relief.

Temporary Protected Status (TPS) Considerations

Can an F–1 nonimmigrant student apply for TPS and for benefits under this notice at the same time?

Yes. An F–1 nonimmigrant student who has not yet applied for TPS or for other relief that reduces the student's course load per term and permits an increased number of work hours per week, such as Special Student Relief,[57] under this notice has two options.

Under the first option, the nonimmigrant student may apply for TPS according to the instructions in the USCIS notice designating Venezuela for TPS elsewhere in this issue of the **Federal Register**.[58] All TPS applicants must file a Form I–821, Application for Temporary Protected Status with the appropriate fee (or request a fee waiver). Although not required to do so, if F–1 nonimmigrant students want to obtain a new TPS-related EAD that is valid through March 10, 2024, they must file Form I–765 and pay the Form I–765 fee (or submit a Request for Fee Waiver (Form I–912)). An F–1 student who already has a TPS-related EAD will benefit from an automatic extension of the EAD through September 9, 2023, through the **Federal Register** notice extending the designation of Venezuela for TPS. A Venezuela TPS-related EAD can also be automatically extended for up to 540 days [59] if an F–1 nonimmigrant student who is a TPS beneficiary properly files a renewal Form I–765 application and pays the Form I–765 fee (or submit a Request for Fee Waiver (Form I–912)) during the filing period described in the **Federal Register** notice extending the designation of Venezuela for TPS. After receiving the TPS-related EAD, an F–1 nonimmigrant student may request that their DSO make the required entry in SEVIS, issue an updated Form I–20, as described in this notice, and notate that the nonimmigrant student has been authorized to carry a reduced course load and is working pursuant to a TPS-related EAD. So long as the nonimmigrant student maintains the minimum course load described in this notice, does not otherwise violate their nonimmigrant status, including as provided under 8 CFR 214.1(g), and maintains TPS, then the student maintains F–1 status and TPS concurrently.

Under the second option, the nonimmigrant student may apply for an EAD under Special Student Relief by filing Form I–765 with the location specified in the filing instructions. At the same time, the F–1 nonimmigrant student may file a separate TPS application but must submit the Form I–821 according to the instructions provided in the **Federal Register** notice designating Venezuela for TPS. If the F–1 nonimmigrant student has already applied for employment authorization under Special Student Relief they are not required to submit the Form I–765 as part of the TPS application. However, some nonimmigrant students may wish to obtain a TPS EAD in light of certain extensions that may be available to EADs with an A–12 or C–19 category code. The nonimmigrant student should check the appropriate box when filling out Form I–821 to indicate whether a TPS-related EAD is being requested. Again, so long as the nonimmigrant student maintains the minimum course load described in this notice and does not otherwise violate the student's nonimmigrant status, included as provided under 8 CFR 214.1(g), the nonimmigrant will be able to maintain compliance requirements for F–1 nonimmigrant student status while having TPS.

When a student applies simultaneously for TPS and benefits under this notice, what is the minimum course load requirement while an application for employment authorization is pending?

The F–1 nonimmigrant student must maintain normal course load requirements for a ''full course of study'' [60] unless or until the nonimmigrant student receives employment authorization under this notice. TPS-related employment authorization, by itself, does not authorize a nonimmigrant student to drop below twelve credit hours, or otherwise applicable minimum requirements (*e.g.,* clock hours for non-traditional academic programs). Once approved for Special Student Relief employment authorization, the F–1 nonimmigrant student may drop below twelve credit hours, or otherwise applicable minimum requirements (with a minimum of six semester or quarter hours of instruction per academic term if at the undergraduate level, or for a minimum of three semester or quarter hours of instruction per academic term if at the graduate level). *See* 8 CFR 214.2(f)(5)(v), (f)(6), and (f)(9)(i) and (ii).

How does a student who has received a TPS-related EAD then apply for authorization to take a reduced course load under this notice?

There is no further application process with USCIS if a student has been approved for a TPS-related EAD. The F–1 nonimmigrant student must demonstrate and provide documentation to the DSO of the direct economic hardship resulting from the humanitarian crisis in Venezuela. The DSO will then verify and update the student's record in SEVIS to enable the F–1 nonimmigrant student with TPS to reduce the course load without any further action or application. No other EAD needs to be issued for the F–1 nonimmigrant student to have employment authorization.

[56] 8 CFR 214.2(f)(5)(v).

[57] *See* DHS Study in the States, Special Student Relief, *https://studyinthestates.dhs.gov/students/special-student-relief* (last visited June 3, 2022).

[58] Only those Venezuelan nationals (and noncitizens having no nationality who last habitually resided in Venezuela) who have continuously resided in the United States since March 8, 2021, and have been continuously physically present in the United States since March 10, 2021, are eligible to apply for TPS under this notice.

[59] 8 CFR 274a.13(d)(5).

[60] *See* 8 CFR 214.2(f)(6).

Can a noncitizen who has been granted TPS apply for reinstatement of F–1 nonimmigrant student status after the noncitizen's F–1 nonimmigrant student status has lapsed?

Yes. Regulations permit certain students who fall out of F–1 nonimmigrant student status to apply for reinstatement. *See* 8 CFR 214.2(f)(16). This provision might apply to students who worked on a TPS-related EAD or dropped their course load before publication of this notice, and therefore fell out of student status. These students must satisfy the criteria set forth in the F–1 nonimmigrant student status reinstatement regulations.

How long will this notice remain in effect?

This notice grants temporary relief through March 10, 2024,[61] to eligible F–1 nonimmigrant students. DHS will continue to monitor the situation in Venezuela. Should the special provisions authorized by this notice need modification or extension, DHS will announce such changes in the **Federal Register**.

Paperwork Reduction Act (PRA)

An F–1 nonimmigrant student seeking off-campus employment authorization due to severe economic hardship resulting from the humanitarian crisis in Venezuela must demonstrate to the DSO that this employment is necessary to avoid severe economic hardship. A DSO who agrees that a nonimmigrant student should receive such employment authorization must recommend an application approval to USCIS by entering information in the remarks field of the student's SEVIS record. The authority to collect this information is in the SEVIS collection of information currently approved by the Office of Management and Budget (OMB) under OMB Control Number 1653–0038.

This notice also allows an eligible F–1 nonimmigrant student to request employment authorization, work an increased number of hours while the academic institution is in session, and reduce their course load while continuing to maintain F–1 nonimmigrant student status.

To apply for employment authorization, certain F–1 nonimmigrant students must complete and submit a currently approved Form I–765 according to the instructions on the form. OMB has previously approved the collection of information contained on the current Form I–765, consistent with the PRA (OMB Control No. 1615–0040). Although there will be a slight increase in the number of Form I–765 filings because of this notice, the number of filings currently contained in the OMB annual inventory for Form I–765 is sufficient to cover the additional filings. Accordingly, there is no further action required under the PRA.

Alejandro Mayorkas,

Secretary, U.S. Department of Homeland Security.

[FR Doc. 2022–19542 Filed 9–7–22; 8:45 am]

BILLING CODE 9111–28–P

[61] Because the suspension of requirements under this notice applies throughout an academic term during which the suspension is in effect, DHS considers an F–1 nonimmigrant student who engages in a reduced course load or employment (or both) after this notice is effective to be engaging in a ''full course of study,'' *see* 8 CFR 214.2(f)(6), and eligible for employment authorization, through the end of any academic term for which such student is matriculated as of March 10, 2024, provided the student satisfies the minimum course load requirement in this notice. DHS also considers students who engage in online coursework pursuant to ICE COVID–19 guidance for nonimmigrant students to be in compliance with regulations while such guidance remains in effect. *See* ICE Guidance and Frequently Asked Questions on COVID–19, Nonimmigrant Students & SEVP-Certified Schools: Frequently Asked Questions, *https://www.ice.gov/coronavirus* (last visited July 8, 2022).

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[CIS No. 2682–21; DHS Docket No. USCIS–2021–0003]

RIN 1615–ZB86

Extension of the Designation of Venezuela for Temporary Protected Status

AGENCY: U.S. Citizenship and Immigration Services (USCIS), Department of Homeland Security (DHS).

ACTION: Notice of Temporary Protected Status (TPS) extension.

SUMMARY: Through this notice, the Department of Homeland Security (DHS) announces that the Secretary of Homeland Security (Secretary) is extending the designation of Venezuela for Temporary Protected Status (TPS) for 18 months, effective September 10, 2022 through March 10, 2024. This extension allows currently eligible TPS beneficiaries to retain TPS through March 10, 2024, so long as they otherwise continue to meet the eligibility requirements for TPS. Existing TPS beneficiaries who wish to extend their status through March 10, 2024 must re-register during the re-registration period. This notice sets forth procedures necessary for Venezuelan nationals (and individuals having no nationality who last habitually resided in Venezuela) to re-register for TPS and to apply for Employment Authorization Documents (EADs) with U.S Citizenship and Immigration Services (USCIS). USCIS will issue new EADs with a March 10, 2024 expiration date to eligible beneficiaries under Venezuela's TPS designation who timely re-register and apply for EADs under this extension.

DATES: *Extension of Designation of Venezuela for TPS:* The 18-month extension of the TPS designation of Venezuela for TPS is effective on September 10, 2022, and will remain in effect for 18 months, through March 10, 2024. The 60-day re-registration period for existing TPS beneficiaries runs from September 8, 2022 through November 7, 2022. (Note: It is important for re-registrants to timely re-register during the 60-day registration period and not to wait until their EADs expire, as delaying reregistration could result in gaps in their employment authorization documentation.)

FOR FURTHER INFORMATION CONTACT: You may contact Rená Cutlip-Mason, Chief, Humanitarian Affairs Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by mail at 5900 Capital Gateway Drive, Camp Springs, MD 20746, or by phone at 800–375–5283.

For further information on TPS, including guidance on the re-registration process and additional information on eligibility, please visit the USCIS TPS web page at *uscis.gov/tps.* You can find specific information about this extension of Venezuela's TPS designation by selecting ''Venezuela'' from the menu on the left side of the TPS web page.

If you have additional questions about TPS, please visit *uscis.gov/tools.* Our online virtual assistant, Emma, can answer many of your questions and point you to additional information on our website. If you are unable to find your answers there, you may also call our USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Applicants seeking information about the status of their individual cases may check Case Status Online, available on the USCIS website at *uscis.gov*, or visit the USCIS Contact Center at *uscis.gov/contactcenter.*

Further information will also be available at local USCIS offices upon publication of this notice.

SUPPLEMENTARY INFORMATION:

Table of Abbreviations

BIA—Board of Immigration Appeals
CFR—Code of Federal Regulations
DHS—U.S. Department of Homeland Security
DOS—U.S. Department of State
EAD—Employment Authorization Document
FNC—Final Nonconfirmation
Form I–765—Application for Employment Authorization
Form I–797—Notice of Action (Approval Notice)
Form I–821—Application for Temporary Protected Status
Form I–9—Employment Eligibility Verification
Form I–912—Request for Fee Waiver
Form I–94—Arrival/Departure Record
FR—Federal Register
Government—U.S. Government
IER—U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section
IJ—Immigration Judge
INA—Immigration and Nationality Act
SAVE—USCIS Systematic Alien Verification for Entitlements Program
Secretary—Secretary of Homeland Security
TNC—Tentative Nonconfirmation
TPS—Temporary Protected Status
TTY—Text Telephone
USCIS—U.S. Citizenship and Immigration Services
U.S.C.—United States Code

Purpose of This Action (TPS)

Through this notice, DHS sets forth procedures necessary for nationals of Venezuela (or individuals having no nationality who last habitually resided in Venezuela) to re-register for TPS and to apply for renewal of their EADs with USCIS. Re-registration is limited to individuals who have previously registered for TPS under the designation of Venezuela and whose applications have been granted. Failure to re-register properly within the 60-day re-registration period may result in the withdrawal of your TPS following appropriate procedures. *See* 8 CFR 244.14. Individuals who have a Venezuelan TPS application (Form I–821) pending as of September 8, 2022 do not need to file to re-register. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through March 10, 2024. Certain nationals of Venezuela (or individuals having no nationality who last habitually resided in Venezuela) who have not previously applied for TPS may be eligible to apply under the late initial registration provisions, if they meet: (1) At least one of the late initial filing criteria; and, (2) all TPS eligibility criteria (including continuous residence in the United States since March 8, 2021, and continuous physical presence in the United States since March 9, 2021). For more information on late initial filing please see 8 CFR 244.2(f) and (g); and *https://www.uscis.gov/humanitarian/temporary-protected-status* under Late Filing.

For individuals who have already been granted TPS under Venezuela's designation, the 60-day re-registration period runs from September 8, 2022 through November 7, 2022. USCIS will issue new EADs with a March 10, 2024 expiration date to eligible Venezuelan TPS beneficiaries who timely re-register and apply for EADs. Given the time frames involved with processing TPS re-registration applications, DHS recognizes that not all re-registrants may receive new EADs before their current EADs expire on September 9, 2022. Accordingly, through this **Federal Register** notice, DHS automatically extends the validity of these EADs previously issued under the TPS designation of Venezuela through September 9, 2023.

Therefore, as proof of continued employment authorization through September 9, 2023, TPS beneficiaries can show their EADs that have the notation A–12 or C–19 under Category and a ''Card Expires'' date of September 9, 2022. This notice explains how TPS beneficiaries and their employers may determine which EADs are automatically extended and how this affects the Form I–9, Employment Eligibility Verification, E-Verify, and USCIS Systematic Alien Verification for Entitlements (SAVE) processes.

Individuals who have a Venezuelan TPS application (Form I–821) and/or Application for Employment Authorization (Form I–765) that was still pending as of September 8, 2022 do not need to file either application again. If USCIS approves an individual's pending Form I–821, USCIS will grant the individual TPS through March 10, 2024. Similarly, if USCIS approves a pending TPS-related Form I–765, USCIS will issue the individual a new EAD that will be valid through the same date.

What is temporary protected status (TPS)?

- TPS is a temporary immigration status granted to eligible nationals of a foreign state designated for TPS under the INA, or to eligible individuals without nationality who last habitually resided in the designated foreign state, regardless of their country of birth.
- During the TPS designation period, TPS beneficiaries are eligible to remain in the United States, may not be removed, and are authorized to work so long as they continue to meet the requirements of TPS. They may apply for and receive EADs as evidence of employment authorization.
- TPS beneficiaries may also apply for and be granted travel authorization as a matter of DHS discretion.
- To qualify for TPS, beneficiaries must meet the eligibility standards at INA section 244(c)(1)–(2), 8 U.S.C. 1254a(c)(1)–(2).
- When the Secretary terminates a foreign state's TPS designation, beneficiaries return to one of the following:
  - The same immigration status or category that they maintained before TPS, if any (unless that status or category has since expired or terminated); or
  - Any other lawfully obtained immigration status or category they received while registered for TPS, as long as it is still valid beyond the date TPS terminates.

When was Venezuela designated for TPS?

Secretary of Homeland Security, Alejandro N. Mayorkas, initially designated Venezuela for TPS on March 9, 2021, on the basis of extraordinary and temporary conditions that prevented nationals of Venezuela from returning in safety. *See Designation of Venezuela for Temporary Protected Status and Implementation of Employment Authorization for Venezuelans Covered by Deferred Enforced Departure,* 86 FR 13574 (Mar. 9, 2021).

What authority does the Secretary have to extend the designation of Venezuela for TPS?

Section 244(b)(1) of the INA, 8 U.S.C. 1254a(b)(1), authorizes the Secretary, after consultation with appropriate agencies of the U.S. Government, to designate a foreign state (or part thereof) for TPS if the Secretary determines that certain country conditions exist.[1] The decision to designate any foreign state (or part thereof) is a discretionary

[1] INA section 244(b)(1) ascribes this power to the Attorney General. Congress transferred this authority from the Attorney General to the Secretary of Homeland Security. *See* Homeland Security Act of 2002, Public Law 107–296, 116 Stat. 2135. The Secretary may designate a country (or part of a country) for TPS on the basis of ongoing armed conflict such that returning would pose a serious threat to the personal safety of the country's nationals and habitual residents, environmental disaster (including an epidemic), or extraordinary and temporary conditions in the country that prevent the safe return of the country's nationals. For environmental disaster-based designations, certain other statutory requirements must be met, including that the foreign government must request TPS. A designation based on extraordinary and temporary conditions cannot be made if the Secretary finds that allowing the country's nationals to remain temporarily in the United States is contrary to the U.S. national interest. *Id.,* at § 244(b)(1).

decision, and there is no judicial review of any determination with respect to the designation, termination, or extension of a designation. *See* INA section 244(b)(5)(A); 8 U.S.C. 1254a(b)(5)(A).[2] The Secretary, in his or her discretion, may then grant TPS to eligible nationals of that foreign state (or individuals having no nationality who last habitually resided in the designated foreign state). *See* INA section 244(a)(1)(A), 8 U.S.C. 1254a(a)(1)(A).

At least 60 days before the expiration of a foreign state's TPS designation or extension, the Secretary, after consultation with appropriate U.S. Government agencies, must review the conditions in the foreign state designated for TPS to determine whether they continue to meet the conditions for the TPS designation. *See* INA section 244(b)(3)(A), 8 U.S.C. 1254a(b)(3)(A). If the Secretary determines that the foreign state continues to meet the conditions for TPS designation, the designation will be extended for an additional period of 6 months or, in the Secretary's discretion, 12 or 18 months. *See* INA section 244(b)(3)(A), (C), 8 U.S.C. 1254a(b)(3)(A), (C). If the Secretary determines that the foreign state no longer meets the conditions for TPS designation, the Secretary must terminate the designation. *See* INA section 244(b)(3)(B), 8 U.S.C. 1254a(b)(3)(B).

Why is the Secretary extending the TPS designation for Venezuela through March 10, 2024?

The Secretary has determined that an 18-month TPS extension is warranted because the extraordinary and temporary conditions supporting TPS designation remain based on DHS's review of country conditions in Venezuela, including input received from the Department of State (DOS) and other U.S. Government agencies.

Overview

Extraordinary and temporary conditions that prevent Venezuelan nationals from returning in safety include severe economic and political crises ongoing within Venezuela, which have an impact across sectors, including limited access to food, basic services, and adequate healthcare, and the deterioration of the rule of law and protection of human rights.

Venezuela remains in a humanitarian emergency due to economic and political crises. The Congressional Research Service (CRS) reported in April 2021 that ''Venezuela's economy has collapsed'' [3] and noted that Venezuela was ''in the throes of a multiyear economic crisis, one of the worst economic crises in the world since World War II,'' with its economy contracting by ''more than 75% since 2014 [. . .], estimated as the single largest economic collapse outside of war in at least 45 years and more than twice the magnitude of the Great Depression in the United States.'' [4] More recently, the CRS reported, ''Between 2014 and 2021, Venezuela's economy contracted by 80%.'' [5] Though the CRS indicates that ''hyperinflation has abated and higher oil prices driven by Russia's invasion of Ukraine appear to be driving a nascent economic recovery,'' the economic situation, which negatively impacts access to food, purchasing power, and social services, has created a humanitarian crisis.[6]

Moreover, Venezuela has experienced more than ''two decades of political tumult.'' [7] The European Asylum Support Office (EASO) also reported that this political polarization contributed to the emergence of institutional duality in Venezuela, in which neither side, those allied with Nicolas Maduro and those allied with Juan Guaidó, recognizes the validity of the other's institutions.[8] Though the Venezuelan constitution provides citizens the ability to change their government through free and fair elections, the Maduro regime has restricted the exercise of this right and arbitrarily banned key opposition figures from participating, maintained hundreds of political prisoners, used judicial processes to steal the legal personages of political parties, and denied opposition political representatives equal access to media coverage and freedom of movement in the country.[9]

The resulting impact of the economic and political crises spreads across various sectors in Venezuela. Reuters reported on a 2020–2021 National Survey of Living Conditions (ENCOVI) that found that of the country's 28 million residents, 76.6% live in extreme poverty, which was an almost 10% increase from the previous year.[10]

Moreover, Human Rights Watch reports that one out of three Venezuelans is food insecure and in need of assistance.[11] Based on data collected prior to the pandemic, 8 percent of children under age 5 were acutely malnourished and 30 percent chronically malnourished or stunted.[12] The United Nations Children's Fund (UNICEF) estimates that 116,596 Venezuelan children could suffer from global acute malnutrition in 2022.[13] Estimates suggest that Venezuelans would require 136 times the minimum wage of $1.71 per month to access a basic food basket.[14]

[2] This issue of judicial review is the subject of litigation. *See, e.g., Ramos* v. *Wolf,* 975 F.3d 872 (9th Cir. 2020), *petition for en banc rehearing* filed Nov. 30, 2020 (No. 18–16981); *Saget* v. *Trump,* 375 F. Supp. 3d 280 (E.D.N.Y. 2019).

[3] Clare Ribando Seelke, Rebecca M. Nelson, Rhoda Margesson, Phillip Brown, Venezuela: Background and U.S. Relations, Congressional Research Service (CRS), Summary, Apr. 28, 2021, *https://sgp.fas.org/crs/row/R44841.pdf* (last visited: Aug. 18, 2022).

[4] *Id.*

[5] *Id.*

[6] Clare Ribando Seelke, Venezuela: Political Crisis and U.S. Policy, CRS, p. 1, Aug. 1, 2022, chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/ *https://sgp.fas.org/crs/row/IF10230.pdf* (last visited Aug. 18, 2022).

[7] Overcoming the Global Rift on Venezuela, International Crisis Group, p. i, Feb. 17, 2022, *https://d2071andvip0wj.cloudfront.net/093-overcoming-the-global-rift-on-venezuela.pdf* (last visited Aug. 18, 2022).

[8] Venezuela: Country Focus, European Asylum Support Office (EASO), p.21, Aug. 2020, *https://coi.easo.europa.eu/administration/easo/PLib/2020_08_EASO_COI_Report_Venezuela.pdf* (last visited Aug. 18, 2022).

[9] 2021 Country Reports of Human Rights Practices: Venezuela, U.S. Department of State, Apr. 12, 2022, available at: *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/venezuela/* (last visited: Aug. 18, 2022).

[10] Reuters, Extreme Poverty in Venezuela Rises to 76.6%—study, Sept. 29, 2021, *https://www.reuters.com/world/americas/extreme-poverty-venezuela-rises-766-study-2021-09-29/* (last visited Aug. 18, 2022).

[11] Human Rights Watch, World Report 2021, Venezuela, *https://www.hrw.org/world-report/2021/country-chapters/venezuela* (last visited Aug. 18, 2022).

[12] *Id.*

[13] UNICEF, Humanitarian Action for Children 2022—Venezuela, (Dec. 7, 2021), *https://reliefweb.int/report/venezuela-bolivarian-republic/humanitarian-action-children-2022-venezuela* (last visited Aug. 18, 2022).

[14] *Id.* The UN's Food and Agriculture Organization (FAO) issues a monthly food price index, a measure of change in international prices of a basket of food commodities. See United Nations, ''Global Issues: Food'' (last visited 7/25/2022), *https://www.un.org/en/global-issues/food.* A national food basket is a group of essential food commodities.

Additionally, sources have described Venezuela's health system as ''run-down,'' [15] ''overloaded and crumbling,'' [16] and ''collapsed.'' [17] Human Rights Watch noted that millions of Venezuelans are unable to access basic healthcare.[18] Moreover, Venezuela's ''collapsed health system has led to the resurgence of vaccine-preventable and infectious diseases. Shortages of medications and supplies, interruptions of utilities at healthcare centers, and the emigration of healthcare workers have led to a decline in operational capacity.'' [19] Venezuela is currently experiencing an outbreak of yellow fever, and other vaccine-preventable diseases such as measles and polio are at risk of re-emerging.[20] Three quarters of households experience irregular water service provision, while 8.4% do not have access, factors which exacerbate health and nutrition problems.[21]

Human Rights Watch reports that ''As of October 28 [2021], Venezuela has confirmed 403,318 cases of COVID–19 and 4,848 deaths. Given limited availability of reliable testing, lack of government transparency, and persecution of medical professionals and journalists who report on the pandemic, the actual numbers are probably much higher.'' [22] Reports further indicate that ''Venezuela's COVID–19 vaccination has been marred by corruption allegations and opacity regarding the acquisition and distribution of vaccines and other medical supplies.'' [23] Human Rights Watch reports that ''. . . only 21.6 percent of Venezuelans were fully vaccinated as of that date [October 27, 2021], according to the Pan American Health Organization, and 25 to 28 percent of health professionals were still waiting for their second vaccine shot in August.'' [24]

The political and economic crises also impact respect for human rights in Venezuela. In a February 2022 report, Amnesty International noted that ''[c]rimes under international law and human rights violations, including politically motivated arbitrary detentions, torture, extrajudicial executions and excessive use of force have been systematic and widespread, and could constitute crimes against humanity.'' [25] Amnesty International further reported that ''trends of repression in Venezuela have been directed against a specific group of people: those perceived as dissidents or opponents'' of Nicolás Maduro.[26] While the ''people belonging to this group are all different,'' Amnesty International noted that it is nevertheless ''possible to identify particular groups that have been especially targeted by the policy of repression, namely students, political activists, and human rights defenders.'' [27]

It is estimated that ''more than 6 million refugees and migrants have left Venezuela as a result of the political turmoil, socio-economic instability, and the ongoing humanitarian crisis.'' [28] The New Humanitarian reports that ''The vast majority of the 6 million Venezuelans who have escaped poverty, insecurity, and economic collapse . . . have tried to start new lives in South America. But two years after COVID–19 led governments to close borders and enforce quarantines, many are discovering that the region is becoming a less welcoming place.'' [29]

In summary, Venezuela continues to be in a humanitarian emergency. Venezuela continues to face economic contraction, poverty, high levels of unemployment, reduced access to and shortages of food and medicine, a severely weakened medical system, a collapse in basic services, political polarization, institutional and political tensions, human rights abuses and repression, crime and violence, corruption, and increased human mobility and displacement. The continuing extraordinary and temporary conditions supporting Venezuela's TPS designation remain.

Based upon this review and after consultation with appropriate U.S. Government agencies, the Secretary has determined that:

- The conditions supporting Venezuela's designation for TPS continue to be met. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- There continue to be extraordinary and temporary conditions in Venezuela that prevent Venezuelan nationals (or individuals having no nationality who last habitually resided in Venezuela) from returning to Venezuela in safety, and it is not contrary to the national interest of the United States to permit Venezuelan TPS beneficiaries to remain in the United States temporarily. *See* INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C).
- The designation of Venezuela for TPS should be extended for an 18-month period, from September 10, 2022, through March 10, 2024. *See* INA section 244(b)(3)(C), 8 U.S.C. 1254a(b)(3)(C).

[15] Vivian Sequera, Venezuela COVID patients, exhausted doctors get mental health help from medical charity, Reuters, Feb. 2, 2022, *https://web.archive.org/web/20220217023626/https://www.reuters.com/world/asia-pacific/venezuela-covid-patients-exhausted-doctors-get-mental-health-help-medical-2022-02-02/* (last visited Aug. 18, 2022).

[16] Venezuelans rely on the kindness of strangers to pay for COVID–19 treatment, Reuters, Oct. 4, 2021, *https://web.archive.org/web/20211004193653/https:/www.reuters.com/world/americas/venezuelans-rely-kindness-strangers-pay-covid-19-treatment-2021-10-04/* (last visited Aug. 18, 2022).

[17] Ribando Seelke, Clare, Nelson, Rebecca M., Brown, Phillip, Margesson, Rhoda, Venezuela: Background and U.S. Relations, CRS, p.11, Apr. 28, 2021, *https://sgp.fas.org/crs/row/R44841.pdf;* World Report 2022—Venezuela, Human Rights Watch, Jan. 2022, *https://www.hrw.org/world-report/2022/country-chapters/venezuela* (last visited Aug. 18, 2022).

[18] Human Rights Watch, World Report 2021, Venezuela, *https://www.hrw.org/world-report/2021/country-chapters/venezuela* (last visited Aug. 18, 2022).

[19] World Report 2022—Venezuela, Human Rights Watch, Jan. 2022, *https://www.hrw.org/world-report/2022/country-chapters/venezuela* (last visited Aug. 18, 2022).

[20] UNICEF, Humanitarian Action for Children 2022—Venezuela (Dec. 7, 2021), *https://reliefweb.int/report/venezuela-bolivarian-republic/humanitarian-action-children-2022-venezuela* (last visited Aug. 18, 2022).

[21] *Id.*

[22] Human Rights Watch, World Report 2022, Venezuela, *https://www.hrw.org/world-report/2022/country-chapters/venezuela* (last visited Aug. 18, 2022).

[23] *Id.*

[24] *Id.*

[25] Venezuela: Calculated repression: Correlation between stigmatization and politically motivated arbitrary detentions, Amnesty International, p.11, Feb. 10, 2022, *https://www.amnesty.org/en/documents/amr53/5133/2022/en/* (last visited Aug. 18, 2022).

[26] Venezuela: Calculated repression: Correlation between stigmatization and politically motivated arbitrary detentions, Amnesty International, p.52, Feb. 10, 2022, *https://www.amnesty.org/en/documents/amr53/5133/2022/en/* (last visited Aug. 18, 2022).

[27] *Id.*

[28] International Organization for Migration, UN Migration, Venezuelan Refugee and Migrant Crisis, *https://www.iom.int/venezuelan-refugee-and-migrant-crisis* (last visited Aug. 15, 2022).

[29] Paula Dupraz-Dobias, The New Humanitarian, Nowhere left to turn, part 2: In a region hit hard by COVID, the welcome for Venezuelan migrants wears thin, July 12, 2022, *https://www.thenewhumanitarian.org/analysis/2022/07/14/South-America-Venezuelan-migrants-COVID* (last visited Aug. 18, 2022).

Notice of the Extension of the TPS Designation of Venezuela

By the authority vested in me as Secretary under INA section 244, 8 U.S.C. 1254a, I have determined, after consultation with the appropriate U.S. Government agencies, the statutory conditions supporting Venezuela's designation for TPS on the basis of extraordinary and temporary conditions continue to be met. *See* INA section INA section 244(b)(1)(C), 8 U.S.C. 1254a(b)(1)(C). On the basis of this determination, I am extending the existing designation of TPS for Venezuela for 18 months, from September 10, 2022, through March 10, 2024. *See* INA section 244(b)(1)(C) and (b)(2); 8 U.S.C. 1254a(b)(1)(C), and (b)(2).

Alejandro N. Mayorkas

Secretary, U.S. Department of Homeland Security.

Eligibility and Employment Authorization for TPS

Required Application Forms and Application Fees To Re-Register for TPS

To re-register for TPS based on the designation of Venezuela, you must submit an Application for Temporary Protected Status (Form I–821). There is no Form I–821 fee for re-registration. *See* 8 CFR 244.17. You may be required to pay the biometric services fee. If you can demonstrate an inability to pay the biometric services fee, you may request to have the fee waived. Please see additional information under the ''Biometric Services Fee'' section of this notice.

Through this **Federal Register** notice, your existing EAD issued under the TPS designation of Venezuela with the expiration date of September 9, 2022, is automatically extended through September 9, 2023. Although not required to do so, if you want to obtain a new EAD valid through March 10, 2024, you must file an Application for Employment Authorization (Form I–765) and pay the Form I–765 fee (or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver). If you do not want a new EAD, you do not have to file Form I–765 and pay the Form I–765 fee. If you do not want to request a new EAD now, you may file Form I–765 at a later date and pay the fee (or request a fee waiver) at that time, provided that you still have TPS or a pending TPS application.

If you have a Form I–821 and/or Form I–765 that was still pending as of September 8, 2022, then you do not need to file either application again. If USCIS approves your pending TPS application, USCIS will grant you TPS through March 10, 2024. Similarly, if USCIS approves your pending TPS-related Form I–765, it will be valid through the same date.

You may file the application for a new EAD either prior to or after your current EAD has expired. However, you are strongly encouraged to file your application for a new EAD as early as possible to avoid gaps in the validity of your employment authorization documentation.

For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *www.uscis.gov/tps.* Fees for the Form I–821, the Form I–765, and biometric services are also described in 8 CFR 103.7(b)(1)(i).

Refiling a TPS Re-Registration Application After Receiving a Denial of a Fee Waiver Request

You should file as soon as possible within the 60-day re-registration period so USCIS can process your application and issue your EAD promptly. Properly filing early will also allow you to have time to refile your application before the deadline, should USCIS deny your fee waiver request. If, however, you receive a denial of your fee waiver request and are unable to refile by the re-registration deadline, you may still refile your Form I–821 with the biometrics fee. USCIS will review this situation to determine whether you established good cause for late TPS re-registration. However, you are urged to refile within 45 days of the date on any USCIS fee waiver denial notice, if possible. *See* INA section 244(c)(3)(C); 8 U.S.C. 1254a(c)(3)(C); 8 CFR 244.17(b). For more information on good cause for late re-registration, visit the USCIS TPS web page at *www.uscis.gov/tps.* Following denial of your fee waiver request, you may also refile your Form I–765 with fee either with your Form I–821 or at a later time, if you choose.

Note: A re-registering TPS beneficiary age 14 and older must pay the biometric services fee (but not the Form I–821 fee), or request a fee waiver, when filing a TPS re-registration application. However, if you decide to wait to request an EAD, you do not have to file the Form I–765 or pay the associated Form I–765 fee (or request a fee waiver) at the time of re-registration. You may wait to seek an EAD until after USCIS has approved your TPS re-registration application or at any later date you decide you want to request an EAD. To re-register for TPS, you only need to file the Form I–821 with the biometrics services fee, if applicable, (or request a fee waiver).

Filing Information

USCIS offers the option to re-registrants for TPS under the extension of Venezuela's designation to file Form I–821 and related requests for EADs online or by mail. When filing a TPS application, applicants can also request an EAD by submitting a completed Form I–765, Request for Employment Authorization, with their Form I–821.

Online filing: Form I–821 and I–765 are available for concurrent filing online.[30] To file these forms online, you must first create a USCIS online account.[31]

Mail filing: Mail your application for TPS to the proper address in Table 1.

Table 1—Mailing Addresses

Mail your completed Form I–821, Application for Temporary Protected Status; Form I–765, Application for Employment Authorization; Form I–912, Request for Fee Waiver (if applicable); and supporting documentation to the proper address in Table 1.

TABLE 1—MAILING ADDRESSES

If . . .	Mail to . . .
You are a beneficiary re-registering under the TPS designation for Venezuela and you live in Florida.	*U.S. Postal Service (USPS):* USCIS, Attn: TPS Venezuela, P.O. Box 20300, Phoenix, AZ 85036–0300. *FedEx, UPS, and DHL deliveries:* USCIS, Attn: TPS Venezuela (Box 20300), 1820 E Skyharbor Circle S, Suite 100, Phoenix, AZ 85034–4850.
You are a beneficiary re-registering under the TPS designation for Venezuela and you live in any other state.	*U.S. Postal Service (USPS):* USCIS, Attn: TPS Venezuela, P.O. Box 805282, Chicago, IL 60680–5285. *FedEx, UPS, and DHL deliveries:* USCIS, Attn: TPS Venezuela (Box 805282), 131 South Dearborn—3rd Floor, Chicago, IL 60603–5517.

[30] Find information about online filing at ''Forms Available to File Online,'' *https://www.uscis.gov/file-online/forms-available-to-file-online.*

[31] *https://myaccount.uscis.gov/users/sign_up.*

If you were granted TPS by an immigration judge (IJ) or the Board of Immigration Appeals (BIA) and you wish to request an EAD, please mail your Form I–765 application to the appropriate mailing address in Table 1. When you are requesting an EAD based on an IJ/BIA grant of TPS, please include a copy of the IJ or BIA order granting you TPS with your application. This will help us verify your grant of TPS and process your application.

Supporting Documents

The filing instructions on the Form I–821 list all the documents needed to establish eligibility for TPS. You may also find information on the acceptable documentation and other requirements for applying (that is, registering) for TPS on the USCIS website at *uscis.gov/tps* under ''Venezuela.''

Travel

TPS beneficiaries may also apply for and be granted travel authorization as a matter of discretion. You must file for travel authorization if you wish to travel outside of the United States. If granted, travel authorization gives you permission to leave the United States and return during a specific period. To request travel authorization, you must file Form I–131, Application for Travel Document, available at *www.uscis.gov/i-131.* You may file Form I–131 together with your Form I–821 or separately. When filing the Form I–131, you must:

- Select Item Number 1.d. in Part 2 on the Form I–131; and
- Submit the fee for the Form I–131, or request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver.

If you are filing Form I–131 together with Form I–821, send your forms to the address listed in Table 1. If you are filing Form I–131 separately based on a pending or approved Form I–821, send your form to the address listed in Table 2 and include a copy of Form I–797 for the approved or pending Form I–821.

TABLE 2—MAILING ADDRESSES

If you are . . .	Mail to . . .
Filing Form I–131 together with a Form I–821, Application for Temporary Protected Status.	The address provided in Table 1.
Filing Form I–131 based on a pending or approved Form I–821, and you are using the U.S. Postal Service (USPS): You must include a copy of the receipt notice (Form I–797C) showing we accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, P.O. Box 660167, Dallas, TX 75266–0867.
Filing Form I–131 based on a pending or approved Form I–821, and you are using FedEx, UPS, or DHL: You must include a copy of the receipt notice (Form I–797C) showing we accepted or approved your Form I–821.	USCIS, Attn: I–131 TPS, 2501 S State Hwy. 121 Business, Ste. 400, Lewisville, TX 75067.

Biometric Services Fee

Biometrics (such as fingerprints) are required for all applicants 14 years of age and older. Those applicants must submit a biometric services fee. As previously stated, if you are unable to pay the biometric services fee, you may request a fee waiver, which you may submit on Form I–912, Request for Fee Waiver. For more information on the application forms and fees for TPS, please visit the USCIS TPS web page at *www.uscis.gov/tps.* If necessary, you may be required to visit an Application Support Center to have your biometrics captured. For additional information on the USCIS biometrics screening process, please see the USCIS Customer Profile Management Service Privacy Impact Assessment, available at *www.dhs.gov/privacy.*

General Employment-Related Information for TPS Applicants and Their Employers

How can I obtain information on the status of my TPS application and EAD request?

To get case status information about your TPS application, as well as the status of your TPS-based EAD request, you can check Case Status Online at uscis.gov, or visit the USCIS Contact Center at *uscis.gov/contactcenter.* If your Form I–765 has been pending for more than 90 days, and you still need assistance, you may ask a question about your case online at *egov.uscis.gov/e-request/Intro.do* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

Am I eligible to receive an automatic extension of my current EAD through September 9, 2023, using this ***Federal Register*** *notice?*

Yes. Regardless of your country of birth, provided that you currently have a Venezuela TPS-based EAD that has the notation A–12 or C–19 under Category and a ''Card Expires'' date of September 9, 2022, this **Federal Register** notice automatically extends your EAD through September 9, 2023. Although this **Federal Register** notice automatically extends your EAD through September 9, 2023, you must re-register timely for TPS in accordance with the procedures described in this **Federal Register** notice to maintain your TPS and employment authorization.

When hired, what documentation may I show to my employer as evidence of identity and employment authorization when completing Form I–9?

You can find the Lists of Acceptable Documents on the Form I–9, Employment Eligibility Verification, as well as the Acceptable Documents web page at *uscis.gov/i-9-central/acceptable-documents.* Employers must complete Form I–9 to verify the identity and employment authorization of all new employees. Within three days of hire, employees must present acceptable documents to their employers as evidence of identity and employment authorization to satisfy Form I–9 requirements.

You may present any document from List A (which provides evidence of both identity and employment authorization) or one document from List B (which provides evidence of your identity) together with one document from List C (which provides evidence of employment authorization), or you may present an acceptable receipt as described in the Form I–9 Instructions. Employers may not reject a document based on a future expiration date. You can find additional information about Form I–9 on the I–9 Central web page at *uscis.gov/I-9Central.* An EAD is an acceptable document under List A. See the section ''How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?'' of this **Federal Register** notice for further information. If your EAD states A–12 or C–19 under Category and has a Card Expires date of September 9, 2022, it has been extended

automatically by virtue of this **Federal Register** notice and you may choose to present your EAD to your employer as proof of identity and employment eligibility for Form I–9 through September 9, 2023, unless your TPS has been withdrawn or your request for TPS has been denied. Your country of birth notated on the EAD does not have to reflect the TPS designated country of Venezuela for you to be eligible for this extension.

What documentation may I present to my employer for Form I–9 if I am already employed but my current TPS-related EAD is set to expire?

Even though we have automatically extended your EAD, your employer is required by law to ask you about your continued employment authorization. Your employer may need to re-inspect your automatically extended EAD to check the ''Card Expires'' date and Category code if your employer did not keep a copy of your EAD when you initially presented it. Once your employer has reviewed the ''Card Expires'' date and Category code, your employer should update the EAD expiration date in Section 2 of Form I–9. See the section ''What updates should my current employer make to Form I–9 if my EAD has been automatically extended?'' of this **Federal Register** notice for further information. You may show this **Federal Register** notice to your employer to explain what to do for Form I–9 and to show that USCIS has automatically extended your EAD through September 9, 2023, but you are not required to do so. The last day of the automatic EAD extension is September 9, 2023. Before you start work on September 10, 2023, your employer is required by law to reverify your employment authorization on Form I–9. By that time, you must present any document from List A or any document from List C on Form I–9 Lists of Acceptable Documents, or an acceptable List A or List C receipt described in the Form I–9 instructions to reverify employment authorization.

Your employer may not specify which List A or List C document you must present and cannot reject an acceptable receipt.

If I have an EAD based on another immigration status, can I obtain a new TPS-based EAD?

Yes, if you are eligible for TPS, you can obtain a new TPS-based EAD, regardless of whether you have an EAD or work authorization based on another immigration status. If you want to obtain a new TPS-based EAD valid through March 10, 2024, then you must file Form I–765, Application for Employment Authorization, and pay the associated fee (unless USCIS grants your fee waiver request).

Can my employer require that I provide any other documentation such as evidence of my status or proof of my Venezuelan citizenship or a Form I–797C showing that I registered or re-registered for TPS for Form I–9 completion?

No. When completing Form I–9, employers must accept any documentation you choose to present from the Form I–9 Lists of Acceptable Documents that reasonably appears to be genuine and that relates to you, or an acceptable List A, List B, or List C receipt. Employers need not reverify List B identity documents. Employers may not request proof of Venezuelan citizenship or proof of registration or re-registration for TPS when completing Form I–9 for new hires or reverifying the employment authorization of current employees. If you present an EAD that USCIS has automatically extended, employers should accept it as a valid List A document so long as the EAD reasonably appears to be genuine and to relate to you. Refer to the ''Note to Employees'' section of this **Federal Register** notice for important information about your rights if your employer rejects lawful documentation, requires additional documentation, or otherwise discriminates against you based on your citizenship or immigration status, or your national origin.

How do my employer and I complete Form I–9 using my automatically extended EAD for a new job?

When using an automatically extended EAD to complete Form I–9 for a new job before September 10, 2023:

1. For Section 1, you should:

a. Check ''An alien authorized to work until'' and enter September 9, 2023, as the ''expiration date''; and

b. Enter your USCIS number or A-Number where indicated. (Your EAD or other document from DHS will have your USCIS number or A-Number printed on it; the USCIS number is the same as your A-Number without the A prefix.)

2. For Section 2, employers should:

a. Determine if the EAD is auto-extended by ensuring it is in category A–12 or C–19 and has a ''Card Expires'' date of September 9, 2022;

b. Write in the document title;

c. Enter the issuing authority;

d. Provide the document number; and

e. Write September 9, 2023, as the expiration date.

Before the start of work on September 10, 2023, employers must reverify the employee's employment authorization on Form I–9.

What updates should my current employer make to Form I–9 if my EAD has been automatically extended?

If you presented a TPS-related EAD that was valid when you first started your job and USCIS has now automatically extended your EAD, your employer may need to re-inspect your current EAD if they do not have a copy of the EAD on file. Your employer should determine if your EAD is automatically extended by ensuring that it contains Category A–12 or C–19 on the front of the card and has a ''Card Expires'' date of September 9, 2022. The employer may not rely on the country of birth listed on the card to determine whether you are eligible for this extension.

If your employer determines that USCIS has automatically extended your EAD, your employer should update Section 2 of your previously completed Form I–9 as follows:

1. Write EAD EXT and September 9, 2023, as the last day of the automatic extension in the Additional Information field; and

2. Initial and date the correction.

Note: This is not considered a reverification. Employers do not reverify the employee until either the one-year automatic extension has ended, or the employee presents a new document to show continued employment authorization, whichever is sooner. By September 10, 2023, when the employee's automatically extended EAD has expired, employers are required by law to reverify the employee's employment authorization on Form I–9.

If I am an employer enrolled in E-Verify, how do I verify a new employee whose EAD has been automatically extended?

Employers may create a case in E-Verify for a new employee by entering the number from the Document Number field on Form I–9 into the document number field in E-Verify. Employers should enter September 9, 2023, as the expiration date for an EAD that has been extended under this **Federal Register** notice.

If I am an employer enrolled in E-Verify, what do I do when I receive a ''Work Authorization Documents Expiring'' alert for an automatically extended EAD?

E-Verify automated the verification process for TPS-related EADs that are automatically extended. If you have employees who provided a TPS-related

EAD when they first started working for you, you will receive a ''Work Authorization Documents Expiring'' case alert when the auto-extension period for this EAD is about to expire. Before this employee starts work on September 10, 2023, you must reverify their employment authorization on Form I–9. Employers may not use E-Verify for reverification.

Note to All Employers

Employers are reminded that the laws requiring proper employment eligibility verification and prohibiting unfair immigration-related employment practices remain in full force. This **Federal Register** notice does not supersede or in any way limit applicable employment verification rules and policy guidance, including those rules setting forth reverification requirements. For general questions about the employment eligibility verification process, employers may call USCIS at 888–464–4218 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls and emails in English and many other languages. For questions about avoiding discrimination during the employment eligibility verification process (Form I–9 and E-Verify), employers may call the U.S. Department of Justice, Civil Rights Division, Immigrant and Employee Rights Section (IER) Employer Hotline at 800–255–8155 (TTY 800–237–2515). IER offers language interpretation in numerous languages. Employers may also email IER at *IER@usdoj.gov.*

Note to Employees

For general questions about the employment eligibility verification process, employees may call USCIS at 888–897–7781 (TTY 877–875–6028) or email USCIS at *I-9Central@uscis.dhs.gov.* USCIS accepts calls in English, Spanish and many other languages. Employees or job applicants may also call the IER Worker Hotline at 800–255–7688 (TTY 800–237–2515) for information regarding employment discrimination based on citizenship, immigration status, or national origin, including discrimination related to Form I–9 and E-Verify. The IER Worker Hotline provides language interpretation in numerous languages.

To comply with the law, employers must accept any document or combination of documents from the Lists of Acceptable Documents if the documentation reasonably appears to be genuine and to relate to the employee, or an acceptable List A, List B, or List C receipt as described in the Form I–9 Instructions. Employers may not require extra or additional documentation beyond what is required for Form I–9 completion. Further, employers participating in E-Verify who receive an E-Verify case result of ''Tentative Nonconfirmation'' (TNC) must promptly inform employees of the TNC and give such employees an opportunity to contest the TNC. A TNC case result means that the information entered into E-Verify from Form I–9 differs from records available to DHS.

Employers may not terminate, suspend, delay training, withhold or lower pay, or take any adverse action against an employee because of a TNC while the case is still pending with E-Verify. A Final Nonconfirmation (FNC) case result is received when E-Verify cannot confirm an employee's employment eligibility. An employer may terminate employment based on a case result of FNC. Work-authorized employees who receive an FNC may call USCIS for assistance at 888–897–7781 (TTY 877–875–6028). For more information about E-Verify-related discrimination or to report an employer for discrimination in the E-Verify process based on citizenship, immigration status, or national origin, contact IER's Worker Hotline at 800–255–7688 (TTY 800–237–2515). Additional information about proper nondiscriminatory Form I–9 and E-Verify procedures is available on the IER website at *justice.gov/ierandtheUSCISandE-Verifywebsitesatuscis.gov/i-9-central* and e-verify.gov.

Note Regarding Federal, State, and Local Government Agencies (Such as Departments of Motor Vehicles)

For Federal purposes, TPS beneficiaries presenting an automatically extended EAD referenced in this **Federal Register** notice do not need to show any other document, such as an I–797C Notice of Action or this **Federal Register** notice, to prove that they qualify for this extension. While Federal Government agencies must follow the guidelines laid out by the Federal Government, State and local government agencies establish their own rules and guidelines when granting certain benefits. Each state may have different laws, requirements, and determinations about what documents you need to provide to prove eligibility for certain benefits. Whether you are applying for a Federal, State, or local government benefit, you may need to provide the government agency with documents that show you are a TPS beneficiary, show you are authorized to work based on TPS or other status, or may be used by DHS to determine if you have TPS or another immigration status. Examples of such documents are:

- Your current EAD with a TPS category code of A12 or C19, even if your country of birth noted on the EAD does not reflect the TPS designated country of Venezuela;
- Your Form I–94, Arrival/Departure Record;
- Your Form I–797, Notice of Action, reflecting approval of your Form I–765; or
- Form I–797, Notice of Action, reflecting approval or receipt of a past or current Form I–821.

Check with the government agency regarding which document(s) the agency will accept. Some benefit-granting agencies use the SAVE program to confirm the current immigration status of applicants for public benefits.

While SAVE can verify when an individual has TPS, each agency's procedures govern whether they will accept an unexpired EAD, Form I–797, or Form I–94, Arrival/Departure Record. If an agency accepts the type of TPS-related document you are presenting, such as an EAD, the agency should accept your automatically extended EAD, regardless of the country of birth listed on the EAD. It may assist the agency if you:

a. Present the agency with a copy of the relevant **Federal Register** notice showing the extension of your EAD in addition to your recent TPS-related document with your A-Number, or USCIS number;

b. Explain that SAVE will be able to verify the continuation of your TPS using this information; and

c. Ask the agency to initiate a SAVE query with your information and follow through with additional verification steps, if necessary, to get a final SAVE response verifying your TPS.

You can also ask the agency to look for SAVE notices or contact SAVE if they have any questions about your immigration status or automatic extension of TPS-related documentation. In most cases, SAVE provides an automated electronic response to benefit-granting agencies within seconds, but occasionally verification can be delayed. You can check the status of your SAVE verification by using CaseCheck at *save.uscis.gov/casecheck/.* CaseCheck is a free service that lets you follow the progress of your SAVE verification case using your date of birth and one immigration identifier number (A-Number, USCIS number, or Form I–94 number) or Verification Case Number. If an agency has denied your application based solely or in part on a SAVE

response, the agency must offer you the opportunity to appeal the decision in accordance with the agency's procedures. If the agency has received and acted on or will act on a SAVE verification and you do not believe the SAVE response is correct, the SAVE website, *www.uscis.gov/save,* has detailed information on how to make corrections or update your immigration record, make an appointment, or submit a written request to correct records.

[FR Doc. 2022–19527 Filed 9–7–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[Docket No. FWS–HQ–IA–2022–0120; FXIA16710900000–223–FF09A30000]

Foreign Endangered Species; Receipt of Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications to conduct certain activities with foreign species that are listed as endangered under the Endangered Species Act (ESA). With some exceptions, the ESA prohibits activities with listed species unless Federal authorization is issued that allows such activities. The ESA also requires that we invite public comment before issuing permits for any activity otherwise prohibited by the ESA with respect to any endangered species.

DATES: We must receive comments by October 11, 2022.

ADDRESSES:

Obtaining Documents: The applications, application supporting materials, and any comments and other materials that we receive will be available for public inspection at *https://www.regulations.gov* in Docket No. FWS–HQ–IA–2022–0120.

Submitting Comments: When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. You may submit comments by one of the following methods:

- *Internet: https://www.regulations.gov.* Search for and submit comments on Docket No. FWS–HQ–IA–2022–0120.
- *U.S. mail:* Public Comments Processing, Attn: Docket No. FWS–HQ–IA–2022–0120; U.S. Fish and Wildlife Service Headquarters, MS: PRB/3W; 5275 Leesburg Pike; Falls Church, VA 22041–3803.

For more information, see Public Comment Procedures under **SUPPLEMENTARY INFORMATION**.

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:

I. Public Comment Procedures

A. How do I comment on submitted applications?

We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

You may submit your comments and materials by one of the methods in **ADDRESSES**. We will not consider comments sent by email, or to an address not in **ADDRESSES**. We will not consider or include in our administrative record comments we receive after the close of the comment period (see **DATES**).

When submitting comments, please specify the name of the applicant and the permit number at the beginning of your comment. Provide sufficient information to allow us to authenticate any scientific or commercial data you include. The comments and recommendations that will be most useful and likely to influence agency decisions are: (1) Those supported by quantitative information or studies; and (2) those that include citations to, and analyses of, the applicable laws and regulations.

B. May I review comments submitted by others?

You may view and comment on others' public comments at *https://www.regulations.gov,* unless our allowing so would violate the Privacy Act (5 U.S.C. 552a) or Freedom of Information Act (5 U.S.C. 552).

C. Who will see my comments?

If you submit a comment at *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, such as your address, phone number, or email address, 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. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

II. Background

To help us carry out our conservation responsibilities for affected species, and in consideration of section 10(c) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), we invite public comments on permit applications before final action is taken. With some exceptions, the ESA prohibits certain activities with listed species unless Federal authorization is issued that allows such activities. Permits issued under section 10(a)(1)(A) of the ESA allow otherwise prohibited activities for scientific purposes or to enhance the propagation or survival of the affected species. Service regulations regarding prohibited activities with endangered species, captive-bred wildlife registrations, and permits for any activity otherwise prohibited by the ESA with respect to any endangered species are available in title 50 of the Code of Federal Regulations in part 17.

III. Permit Applications

We invite comments on the following applications.

Applicant: Florida State University Robert K. Godfrey Herbarium, Tallahassee, FL; Permit No. PER0050556

The applicant requests the renewal of their permit to export and re-import herbarium specimens of endangered and threatened species (excluding animals) previously legally accessioned into the permittee's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Applicant: Duke University, Durham, NC; Permit No. PER0050971

The applicant requests authorization to export and reimport nonliving museum specimens of endangered animal species previously accessioned into the applicant's collection for scientific research. This notification

covers activities to be conducted by the applicant over a 5-year period.

Applicant: Harvard University Museum of Comparative Zoology, Cambridge, MA; Permit No. PER0050974

The applicant requests the renewal of their permit to export and re-import non-living museum specimens of endangered and threatened species previously legally accessioned into the permittee's collection for scientific research. This notification covers activities to be conducted by the applicant over a 5-year period.

Trophy Applicant

Applicant: Michael Stein, Francisco, IN; Permit No. 97800C

The following applicant requests a permit to import a sport-hunted trophy of male bontebok (*Damaliscus pygargus pygargus*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancing the propagation or survival of the species.

IV. Next Steps

After the comment period closes, we will make decisions regarding permit issuance. If we issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**. You may locate the notice announcing the permit issuance by searching *https://www.regulations.gov* for the permit number listed above in this document. For example, to find information about the potential issuance of Permit No. 12345A, you would go to regulations.gov and search for ''12345A''.

V. Authority

We issue this notice under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and its implementing regulations.

Brenda Tapia,

Supervisory Program Analyst/Data Administrator, Branch of Permits, Division of Management Authority.

[FR Doc. 2022–19362 Filed 9–7–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Geological Survey

[GX22LR000F60100; OMB Control Number 1028–0070/Renewal]

Agency Information Collection Activities; Consolidated Consumers' Report

AGENCY: Geological Survey, Interior.

ACTION: Notice of Information Collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (PRA), the U.S. Geological Survey (USGS) is proposing to renew an Information Collection.

DATES: Interested persons are invited to submit comments on or before November 7, 2022.

ADDRESSES: Send your comments on this Information Collection Request (ICR) by mail to U.S. Geological Survey, Information Collections Officer, 12201 Sunrise Valley Drive MS 159, Reston, VA 20192; or by email to *gs-info_collections@usgs.gov.* Please reference OMB Control Number 1028–0070 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Elizabeth S. Sangine by email at *escottsangine@usgs.gov,* or by telephone at 703–648–7720. 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. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the PRA, we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are soliciting comments on the proposed ICR that is described below. We are especially interested in public comments addressing the following issues: (1) is the collection necessary to the proper functions of the USGS minerals information mission; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the USGS enhance the quality, utility, and clarity of the information to be collected; and (5) how might the USGS minimize the burden of this collection on the respondents, including through the use of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personally identifying information (PII) in your comment, you should be aware that your entire comment—including your PII—may be made publicly available at any time. While you can ask us in your comment to withhold your PII from public review, we cannot guarantee that we will be able to do so.

Abstract: Respondents to this form supply the USGS with domestic consumption data for 12 metals and ferroalloys, some of which are considered strategic and critical, to assist in determining Defense National Stockpile Center goals. These data and derived information will be published as chapters in Minerals Yearbooks, monthly Mineral Industry Surveys, annual Mineral Commodity Summaries, and special publications for use by Government agencies, industry education programs, and the general public.

Title of Collection: Consolidated Consumers' Report.

OMB Control Number: 1028–0070.

Form Number: USGS Form 9–4117–MA.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or Other For-Profit Institutions: U.S. nonfuel minerals consumers.

Total Estimated Number of Annual Respondents: 259.

Total Estimated Number of Annual Responses: 1,425.

Estimated Completion Time per Response: 45 minutes.

Total Estimated Number of Annual Burden Hours: 1,069.

Respondent's Obligation: Voluntary.

Frequency of Collection: Annually.

Total Estimated Annual Non-hour Burden Cost: There are no ''non-hour cost'' burdens associated with this ICR.

An agency may not conduct or sponsor, nor is a person required to respond to, a collection of information unless it displays a currently valid OMB control number.

The authorities for this action are the PRA of 1995 (44 U.S.C. 3501 *et seq.*), the National Materials and Minerals Policy, Research and Development Act of 1980 (30 U.S.C. 1601 *et seq.*), the National Mining and Minerals Policy Act of 1970 (30 U.S.C. 21(a)), and the Strategic and

Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*).

Steven Fortier,

Director, National Minerals Information Center, U.S. Geological Survey.

[FR Doc. 2022–19371 Filed 9–7–22; 8:45 am]

BILLING CODE 4338–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/A0A501010.999900]

HEARTH Act Approval of Nisqually Indian Tribe Leasing Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Indian Affairs (BIA) approved the Nisqually Indian Tribe Leasing Ordinance under the Helping Expedite and Advance Responsible Tribal Homeownership Act of 2012 (HEARTH Act). With this approval, the Tribe is authorized to enter into business, religious, educational, recreational, cultural, and public purpose leases without further BIA approval.

DATES: BIA issued the approval on August 30, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Carla Clark, Bureau of Indian Affairs, Division of Real Estate Services, 1001 Indian School Road NW, Albuquerque, NM 87104, *carla.clark@bia.gov,* (702) 484–3233.

SUPPLEMENTARY INFORMATION:

I. Summary of the HEARTH Act

The HEARTH Act makes a voluntary, alternative land leasing process available to Tribes, by amending the Indian Long-Term Leasing Act of 1955, 25 U.S.C. 415. The HEARTH Act authorizes Tribes to negotiate and enter into business leases of Tribal trust lands with a primary term of 25 years, and up to two renewal terms of 25 years each, without the approval of the Secretary of the Interior (Secretary). The HEARTH Act also authorizes Tribes to enter into leases for residential, recreational, religious or educational purposes for a primary term of up to 75 years without the approval of the Secretary. Participating Tribes develop Tribal Leasing regulations, including an environmental review process, and then must obtain the Secretary's approval of those regulations prior to entering into leases. The HEARTH Act requires the Secretary to approve Tribal regulations if the Tribal regulations are consistent with the Department of the Interior's (Department) leasing regulations at 25 CFR part 162 and provide for an environmental review process that meets requirements set forth in the HEARTH Act. This notice announces that the Secretary, through the Assistant Secretary—Indian Affairs, has approved the Tribal regulations for the Nisqually Indian Tribe.

II. Federal Preemption of State and Local Taxes

The Department's regulations governing the surface leasing of trust and restricted Indian lands specify that, subject to applicable Federal law, permanent improvements on leased land, leasehold or possessory interests, and activities under the lease are not subject to State and local taxation and may be subject to taxation by the Indian Tribe with jurisdiction. See 25 CFR 162.017. As explained further in the preamble to the final regulations, the Federal government has a strong interest in promoting economic development, self-determination, and Tribal sovereignty. 77 FR 72440, 72447–48 (December 5, 2012). The principles supporting the Federal preemption of State law in the field of Indian leasing and the taxation of lease-related interests and activities applies with equal force to leases entered into under Tribal leasing regulations approved by the Federal government pursuant to the HEARTH Act.

Section 5 of the Indian Reorganization Act, 25 U.S.C. 5108, preempts State and local taxation of permanent improvements on trust land. *Confederated Tribes of the Chehalis Reservation* v. *Thurston County,* 724 F.3d 1153, 1157 (9th Cir. 2013) (citing *Mescalero Apache Tribe* v. *Jones,* 411 U.S. 145 (1973)). Similarly, section 5108 preempts State taxation of rent payments by a lessee for leased trust lands, because ''tax on the payment of rent is indistinguishable from an impermissible tax on the land.'' *See Seminole Tribe of Florida* v. *Stranburg,* 799 F.3d 1324, 1331, n.8 (11th Cir. 2015). In addition, as explained in the preamble to the revised leasing regulations at 25 CFR part 162, Federal courts have applied a balancing test to determine whether State and local taxation of non-Indians on the reservation is preempted. *White Mountain Apache Tribe* v. *Bracker,* 448 U.S. 136, 143 (1980). The *Bracker* balancing test, which is conducted against a backdrop of ''traditional notions of Indian self-government,'' requires a particularized examination of the relevant State, Federal, and Tribal interests. We hereby adopt the *Bracker* analysis from the preamble to the surface leasing regulations, 77 FR at 72447–48, as supplemented by the analysis below.

The strong Federal and Tribal interests against State and local taxation of improvements, leaseholds, and activities on land leased under the Department's leasing regulations apply equally to improvements, leaseholds, and activities on land leased pursuant to Tribal leasing regulations approved under the HEARTH Act. Congress's overarching intent was to ''allow Tribes to exercise greater control over their own land, support self-determination, and eliminate bureaucratic delays that stand in the way of homeownership and economic development in Tribal communities.'' 158 Cong. Rec. H. 2682 (May 15, 2012). The HEARTH Act was intended to afford Tribes ''flexibility to adapt lease terms to suit [their] business and cultural needs'' and to ''enable [Tribes] to approve leases quickly and efficiently.'' H. Rep. 112–427 at 6 (2012).

Assessment of State and local taxes would obstruct these express Federal policies supporting Tribal economic development and self-determination, and also threaten substantial Tribal interests in effective Tribal government, economic self-sufficiency, and territorial autonomy. *See Michigan* v. *Bay Mills Indian Community,* 572 U.S. 782, 810 (2014) (Sotomayor, J., concurring) (determining that ''[a] key goal of the Federal Government is to render Tribes more self-sufficient, and better positioned to fund their own sovereign functions, rather than relying on Federal funding''). The additional costs of State and local taxation have a chilling effect on potential lessees, as well as on a Tribe that, as a result, might refrain from exercising its own sovereign right to impose a Tribal tax to support its infrastructure needs. *See id.* at 810–11 (finding that State and local taxes greatly discourage Tribes from raising tax revenue from the same sources because the imposition of double taxation would impede Tribal economic growth).

Similar to BIA's surface leasing regulations, Tribal regulations under the HEARTH Act pervasively cover all aspects of leasing. *See* 25 U.S.C. 415(h)(3)(B)(i) (requiring Tribal regulations be consistent with BIA surface leasing regulations). Furthermore, the Federal government remains involved in the Tribal land leasing process by approving the Tribal leasing regulations in the first instance and providing technical assistance, upon request by a Tribe, for the development of an environmental

review process. The Secretary also retains authority to take any necessary actions to remedy violations of a lease or of the Tribal regulations, including terminating the lease or rescinding approval of the Tribal regulations and reassuming lease approval responsibilities. Moreover, the Secretary continues to review, approve, and monitor individual Indian land leases and other types of leases not covered under the Tribal regulations according to the part 162 regulations.

Accordingly, the Federal and Tribal interests weigh heavily in favor of preemption of State and local taxes on lease-related activities and interests, regardless of whether the lease is governed by Tribal leasing regulations or part 162. Improvements, activities, and leasehold or possessory interests may be subject to taxation by the Nisqually Indian Tribe.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–19431 Filed 9–7–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[223A2100DD/AAKC001030/ A0A501010.999900]

Land Acquisitions; Oneida Nation, West Mason Site, Brown County, Wisconsin

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: The Assistant Secretary—Indian Affairs made a final agency determination to acquire in trust 1.411 acres, more or less, of land known as the West Mason Site in Green Bay, Brown County, Wisconsin, (Site) for the Oneida Nation, (Nation) for gaming and other purposes.

DATES: This final determination was made on September 1, 2022.

FOR FURTHER INFORMATION CONTACT: Ms. Paula L. Hart, Director, Office of Indian Gaming, Mailstop 3543, 1849 C Street NW, Washington, DC 20240, *paula.hart@bia.gov,* (202) 219–4066.

SUPPLEMENTARY INFORMATION: On the date listed in the **DATES** section of this notice, the Assistant Secretary—Indian Affairs made a final agency determination to acquire the Site, consisting of 1.411 acres, more or less, in trust for the Nation under the authority of the Indian Reorganization Act of June 18, 1934, 25 U.S.C. 5108.

The Assistant Secretary—Indian Affairs, on behalf of the Secretary of the Interior, will immediately acquire title to the Site in the name of the United States of America in trust for Nation upon fulfillment of all Departmental requirements. The legal description for the West Mason Site is as follows:

That part of Lot Nineteen (19), according to the recorded plat of First Addition to Packerland Subdivision and part of vacated Frontage Road abutting said Lot, in Section Twenty (29), Township Twenty-four (24) North, Range Twenty (20) East of the Fourth Principal Meridian, in the City of Green Bay, West side of Fox River, Brown County, Wisconsin, described as follows:

Beginning at the Northwest corner of said Lot Nineteen (19); thence South 89°47′40″ East 233.70 feet along the North line of said Lot; thence South 0°23′31″ East 261.67 feet on a line which is the center line of a 10 inch thick building wall, prolonged Northerly and Southerly of a building now located on said Lot Nineteen (19); thence South 89°46′17″ West 234.60 feet along the North line of the Frontage Road; thence North 0°11′51″ West 263.43 feet along the West line of Lot Nineteen (19) to the point of beginning.

Authority: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1, and is published to comply with the requirements of 25 CFR 151.12 (c)(2)(ii) that notice of the decision to acquire land in trust be promptly provided in the **Federal Register**.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–19433 Filed 9–7–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[[223.LLUT980300.L12200000.NPM0000]

Notice of Public Meetings, Utah Resource Advisory Council, Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public meetings.

SUMMARY: In accordance with the Federal Land Policy and Management Act of 1976, the Federal Advisory Committee Act, and the Federal Lands Recreation Enhancement Act, the U.S. Department of the Interior, Bureau of Land Management (BLM) Utah Resource Advisory Council will meet as indicated below.

DATES: The Utah Resource Advisory Council will hold meetings on Oct. 19, 2022, Jan. 18, 2023, and May 17, 2023, with a field tour on May 18, 2023. Each meeting will be held in-person with a virtual participation option. All meetings will occur from 8 a.m. to 5 p.m. Public comments will be received from 4 p.m. to 4:30 p.m. each meeting day. The meetings are open to the public.

ADDRESSES: The Oct. 19 meeting will be held at the BLM Utah West Desert District Office, 491 North John Glenn Road, Salt Lake City, UT 84116. The Jan. 18 meeting will be held at the BLM Utah Green River District Office, 170 South 500 East, Vernal, UT 84078. The May 17 meeting will be held at the BLM Utah Color Country District Office, 176 East D.L. Sargent Drive, Cedar City, UT 84721. The May 18 field tour will visit wind and solar farms in Milford, Utah. The agenda and in-person/virtual meeting access information will be posted on the Utah Resource Advisory Council web page 30 days before each meeting at: *https://www.blm.gov/get-involved/resource-advisory-council/near-you/utah/RAC*. Participants wishing to virtually attend the meeting should register 24 hours in advance of the start time(s). Written comments to address the Utah Resource Advisory Council may be sent in advance of the meeting(s) to the BLM Utah State Office, Attention: Melissa Schnee, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101, or via email to: *BLM___UT___External___Affairs@blm.gov* with the subject line ''Utah RAC Meeting.''

FOR FURTHER INFORMATION CONTACT: Melissa Schnee, Public Affairs Specialist, BLM Utah State Office, 440 West 200 South, Suite 500, Salt Lake City, Utah 84101; phone (801) 539–4001; or email *mschnee@blm.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. Please contact Melissa Schnee for reasonable accommodations to participate.

SUPPLEMENTARY INFORMATION: The Utah Resource Advisory Council provides recommendations to the Secretary of the Interior, through the BLM, on a variety of public lands issues. Agenda topics for the October meeting include updates and/or discussions about BLM Utah priorities, district planning efforts, BLM Utah advisory councils, monument planning efforts, BLM and U.S. Department of Agriculture Forest Service (USDA Forest Service)

recreation fee proposals, implementation of the Bipartisan Infrastructure Law, the fire and fuels program, and other issues as appropriate. Agenda topics for the January meeting include updates and/or discussions about BLM Utah priorities; district planning efforts; BLM and USDA Forest Service recreation fee proposals; the recreation program; monument planning efforts; the wild horse and burro program; lands and realty projects; implementation of the John D. Dingell, Jr. Conservation, Management, and Recreation Act; and other issues as appropriate. Agenda topics for the May meeting include updates and/or discussions about BLM Utah priorities, district planning efforts, recreation business plans, BLM and USDA Forest Service recreation fee proposals, the cultural site stewardship program, the fire and fuels program, implementation of the Bipartisan Infrastructure Law, the energy program, and other issues as appropriate. The May 18 field tour will commence at 8 a.m. Participants will meet at the BLM Utah Color Country District Office. Members of the public are welcome on field tours but must provide their own transportation and meals. Individuals who plan to attend the field tour must RSVP at least one week in advance of the field tour with the person listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Additional details about the field tour will be posted to the Utah Resource Advisory Council web page at least two weeks prior to the tour date. The field tour will follow applicable Centers for Disease Control and Prevention COVID–19 guidance regarding social distancing and wearing of masks. The Utah Resource Advisory Council will offer a 30-minute public comment period at each meeting. There will not be a public comment period during the field tour. Depending on the number of people wishing to comment, the amount of time for individual oral comments may be limited. Written comments may also be submitted to the BLM Utah State Office in advance of the meeting(s) to the attention of Melissa Schnee at the address listed in the **ADDRESSES** section of this notice. All comments received will be provided to the Utah Resource Advisory Council members.

Meeting Accessibility/Special Accommodations: Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. We ask that you contact the person listed in the (see **FOR FURTHER INFORMATION CONTACT**) section of this notice at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware 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 we will be able to do so.

Detailed minutes for the Utah Resource Advisory Council meeting will be maintained in the BLM Utah State Office and will be available for public inspection and reproduction during regular business hours within 90 days following the meeting. Detailed meeting minutes will also be posted to the Utah Resource Advisory Council web page.

(Authority: 43 CFR 1784.4–2)

Gregory Sheehan,

State Director.

[FR Doc. 2022–19378 Filed 9–7–22; 8:45 am]

BILLING CODE 4331–25–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701–TA–676 (Final)]

Steel Nails From Thailand; Termination of Investigation

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: On August 22, 2022, the Department of Commerce published notice in the **Federal Register** of a negative final determination of subsidies in connection with the subject investigation concerning Thailand (87 FR 51343). Accordingly, the countervailing duty investigation concerning steel nails from Thailand (Investigation No. 701–TA–676 (Final)) is terminated.

DATES: August 22, 2022.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi (202–708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired 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 (*https://www.usitc.gov*). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

Authority: This investigation is being terminated under authority of title VII of the Tariff Act of 1930 and pursuant to section 207.40(a) of the Commission's Rules of Practice and Procedure (19 CFR 207.40(a)). This notice is published pursuant to section 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: September 2, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19428 Filed 9–7–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1058 (Third Review)]

Wooden Bedroom Furniture 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 wooden bedroom furniture 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 121) and determined on April 8, 2022 that it would conduct an expedited review (87 FR 47463, August 3, 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 31, 2022. The views of the Commission are contained in USITC Publication 5348 (August 2022), entitled *Wooden Bedroom*

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

Furniture from China: Investigation No. 731–TA–1058 (Third Review).

By order of the Commission.

Issued: August 31, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19427 Filed 9–7–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1070]

Bulk Manufacturer of Controlled Substances Application: Cayman Chemical Company

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Cayman Chemical Company, has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 7, 2022. Such persons may also file a written request for a hearing on the application on or before November 7, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 26, 2022, Cayman Chemical Company, 1180 East Ellsworth Road, Ann Arbor, Michigan 48108–2419, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
3-Fluoro-N-methylcathinone (3-FMC)	1233	I
Cathinone	1235	I
Methcathinone	1237	I
4-Fluoro-N-methylcathinone (4-FMC) 1238 I N flephedrone; 1-(4-fluorophenyl)-2-(methylamino)propan-1-one) (Positional isomer: 2-FMC).	1238	I
Para-Methoxymethamphetamine (PMMA), 1-(4-1245 I N methoxyphenyl)-N-methylpropan-2-amine	1245	I
Pentedrone (α-methylaminovalerophenone)	1246	I
Mephedrone (4-Methyl-N-methylcathinone)	1248	I
4-Methyl-N-ethylcathinone (4-MEC)	1249	I
Naphyrone	1258	I
N-Ethylamphetamine	1475	I
N,N-Dimethylamphetamine	1480	I
Fenethylline	1503	I
Aminorex	1585	I
4-Methylaminorex (cis isomer)	1590	I
4,4′-Dimethylaminorex (4,4′-DMAR; 4,5-dihydro-4-1595 I N methyl-5-(4-methylphenyl)-2-oxazolamine; 4-methyl-5-(4-methylphenyl)-4,5-dihydro-1,3-oxazol-2-amine).	1595	I
Gamma Hydroxybutyric Acid	2010	I
Methaqualone	2565	I
Mecloqualone	2572	I
JWH-250 (1-Pentyl-3-(2-methoxyphenylacetyl) indole)	6250	I
SR-18 (Also known as RCS-8) (1-Cyclohexylethyl-3-(2-methoxyphenylacetyl) indole)	7008	I
ADB-FUBINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7010	I
5-Fluoro-UR-144 and XLR11 [1-(5-Fluoro-pentyl)1H-indol-3-yl](2,2,3,3-tetramethylcyclopropyl)methanone	7011	I
AB-FUBINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboxamide)	7012	I
FUB-144 (1-(4-fluorobenzyl)-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone)	7014	I
JWH-019 (1-Hexyl-3-(1-naphthoyl)indole)	7019	I
MDMB-FUBINACA (Methyl 2-(1-(4-fluorobenzyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7020	I
FUB-AMB, MMB-FUBINACA, AMB-FUBINACA (2-(1-(4-fluorobenzyl)-1Hindazole-3-carboxamido)-3-methylbutanoate).	7021	I
AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7023	I
THJ-2201 ([1-(5-fluoropentyl)-1H-indazol-3-yl](naphthalen-1-yl)methanone)	7024	I
5F-AB-PINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(5-fluropentyl)-1H-indazole-3-carboximide)	7025	I
AB-CHMINACA (N-(1-amino-3-methyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7031	I
MAB-CHMINACA (N-(1-amino-3,3dimethyl-1-oxobutan-2-yl)-1-(cyclohexylmethyl)-1H-indazole-3-carboxamide)	7032	I
5F-AMB (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3-methylbutanoate)	7033	I
5F-ADB, 5F-MDMB-PINACA (Methyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7034	I
ADB-PINACA (N-(1-amino-3,3-dimethyl-1-oxobutan-2-yl)-1-pentyl-1H-indazole-3-carboxamide)	7035	I
5F-EDMB-PINACA (ethyl 2-(1-(5-fluoropentyl)-1H-indazole-3-carboxamido)-3,3-dimethylbutanoate)	7036	I
5F-MDMB-PICA (methyl 2-(1-(5-fluoropentyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate)	7041	I
MDMB-CHMICA, MMB-CHMINACA (Methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3,3-dimethylbutanoate).	7042	I
MMB-CHMICA, AMB-CHMICA (methyl 2-(1-(cyclohexylmethyl)-1H-indole-3-carboxamido)-3-methylbutanoate)	7044	I
FUB-AKB48, FUB-APINACA, AKB48 N-(4-FLUOROBENZYL) (N-(adamantan-1-yl)-1-(4-fluorobenzyl)-1H-indazole-3-carboximide).	7047	I
APINACA and AKB48 (N-(1-Adamantyl)-1-pentyl-1H-indazole-3-carboxamide)	7048	I
5F-APINACA, 5F-AKB48 (N-(adamantan-1-yl)-1-(5-fluoropentyl)-1H-indazole-3-carboxamide)	7049	I
JWH-081 (1-Pentyl-3-(1-(4-methoxynaphthoyl) indole)	7081	I

Controlled substance	Drug code	Schedule
5F-CUMYL-PINACA, 5GT-25 (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide)	7083	I
5F-CUMYL-P7AICA (1-(5-fluoropentyl)-N-(2-phenylpropan-2-yl)-1H-pyrrolo[2,3-b]pyridine-3-carboxamide)	7085	I
4-CN-CUML-BUTINACA, 4-cyano-CUMYL-BUTINACA, 4-CN-CUMYL BINACA, CUMYL-4CN-BINACA, SGT-78 (1-(4-cyanobutyl)-N-(2-phenylpropan-2-yl)-1H-indazole-3-carboxamide).	7089	I
SR-19 (Also known as RCS-4) (1-Pentyl-3-[(4-methoxy)-benzoyl] indole)	7104	I
JWH-018 (also known as AM678) (1-Pentyl-3-(1-naphthoyl)indole)	7118	I
JWH-122 (1-Pentyl-3-(4-methyl-1-naphthoyl) indole)	7122	I
UR-144 (1-Pentyl-1H-indol-3-yl)(2,2,3,3-tetramethylcyclopropyl)methanone	7144	I
JWH-073 (1-Butyl-3-(1-naphthoyl)indole)	7173	I
JWH-200 (1-[2-(4-Morpholinyl)ethyl]-3-(1-naphthoyl)indole)	7200	I
AM2201 (1-(5-Fluoropentyl)-3-(1-naphthoyl) indole)	7201	I
JWH-203 (1-Pentyl-3-(2-chlorophenylacetyl) indole)	7203	I
NM2201, CBL2201 (Naphthalen-1-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate	7221	I
PB-22 (Quinolin-8-yl 1-pentyl-1H-indole-3-carboxylate)	7222	I
5F-PB-22 (Quinolin-8-yl 1-(5-fluoropentyl)-1H-indole-3-carboxylate)	7225	I
4-methyl-alpha-ethylaminopentiophenone (4-MEAP) 7245 I N 4-MEAP	7245	I
N-ethylhexedrone 7246 I N	7246	I
Alpha-ethyltryptamine	7249	I
Ibogaine	7260	I
2-(ethylamino)-2-(3-methoxyphenyl)cyclohexan-1-one (methoxetamine)	7286	I
CP-47,497 (5-(1,1-Dimethylheptyl)-2-[(1R,3S)-3-hydroxycyclohexyl-phenol)	7297	I
CP-47,497 C8 Homologue (5-(1,1-Dimethyloctyl)-2-[(1R,3S)3-hydroxycyclohexyl-phenol)	7298	I
Lysergic acid diethylamide	7315	I
2C-T-7 (2,5-Dimethoxy-4-(n)-propylthiophenethylamine	7348	I
Marihuana	7360	I
Tetrahydrocannabinols	7370	I
Mescaline	7381	I
2C-T-2 (2-(4-Ethylthio-2,5-dimethoxyphenyl) ethanamine)	7385	I
3,4,5-Trimethoxyamphetamine	7390	I
4-Bromo-2,5-dimethoxyamphetamine	7391	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
4-Methyl-2,5-dimethoxyamphetamine	7395	I
2,5-Dimethoxyamphetamine	7396	I
JWH-398 (1-Pentyl-3-(4-chloro-1-naphthoyl) indole)	7398	I
2,5-Dimethoxy-4-ethylamphetamine	7399	I
3,4-Methylenedioxyamphetamine	7400	I
5-Methoxy-3,4-methylenedioxyamphetamine	7401	I
N-Hydroxy-3,4-methylenedioxyamphetamine	7402	I
3,4-Methylenedioxy-N-ethylamphetamine	7404	I
3,4-Methylenedioxymethamphetamine	7405	I
4-Methoxyamphetamine	7411	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Alpha-methyltryptamine	7432	I
Bufotenine	7433	I
Diethyltryptamine	7434	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
5-Methoxy-N,N-diisopropyltryptamine	7439	I
4-chloro-alpha-pyrrolidinovalerophenone (4-chloro-aPV	7443	I
4′-methyl-alpha-pyrrolidinohexiophenone (MPHP	7446	I
N-Ethyl-1-phenylcyclohexylamine	7455	I
1-(1-Phenylcyclohexyl)pyrrolidine	7458	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
1-[1-(2-Thienyl)cyclohexyl]pyrrolidine	7473	I
N-Benzylpiperazine	7493	I
2C-D (2-(2,5-Dimethoxy-4-methylphenyl) ethanamine)	7508	I
2C-E (2-(2,5-Dimethoxy-4-ethylphenyl) ethanamine)	7509	I
2C-H 2-(2,5-Dimethoxyphenyl) ethanamine)	7517	I
2C-I 2-(4-iodo-2,5-dimethoxyphenyl) ethanamine)	7518	I
2C-C 2-(4-Chloro-2,5-dimethoxyphenyl) ethanamine)	7519	I
2C-N (2-(2,5-Dimethoxy-4-nitro-phenyl) ethanamine)	7521	I
2C-P (2-(2,5-Dimethoxy-4-(n)-propylphenyl) ethanamine)	7524	I
2C-T-4 (2-(4-Isopropylthio)-2,5-dimethoxyphenyl) ethanamine)	7532	I
MDPV (3,4-Methylenedioxypyrovalerone)	7535	I
25B-NBOMe (2-(4-bromo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7536	I
25C-NBOMe (2-(4-chloro-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7537	I
25I-NBOMe (2-(4-iodo-2,5-dimethoxyphenyl)-N-(2-methoxybenzyl) ethanamine)	7538	I
Methylone (3,4-Methylenedioxy-N-methylcathinone)	7540	I
Butylone	7541	I
Pentylone	7542	I
alpha-pyrrolidinohexanophenone (a-PHP)	7544	I
alpha-pyrrolidinopentiophenone (α-PVP)	7545	I
alpha-pyrrolidinobutiophenone (α-PBP)	7546	I

Controlled substance	Drug code	Schedule
Ethylone	7547	I
alpha-pyrrolidinoheptaphenone (PV8)	7548	I
AM-694 (1-(5-Fluoropentyl)-3-(2-iodobenzoyl) indole)	7694	I
Acetyldihydrocodeine	9051	I
Benzylmorphine	9052	I
Codeine-N-oxide	9053	I
Desomorphine	9055	I
Etorphine (except HCl)	9056	I
Codeine methylbromide	9070	I
Brorphine (1-(1-(1-(4-bromophenyl)ethyl)piperidin-4-4l)1,3-dihydro-2H-benzo[d]imidazol-2-one)	9098	I
Dihydromorphine	9145	I
Difenoxin	9168	I
Heroin	9200	I
Hydromorphinol	9301	I
Morphine-N-oxide	9307	I
Normorphine	9313	I
Thebacon	9315	I
U-47700 (3,4-dichloro-N-[2-(dimethylamino)cyclohexyl]-N-methylbenzamide)	9547	I
AH-7921 (3,4-dichloro-N-[(1-dimethylamino)cyclohexylmethyl]benzamide))	9551	I
MT-45 (1-cyclohexyl-4-(1,2-diphenylethyl)piperazine))	9560	I
Clonitazene	9612	I
Isotonotazene (N,N-diethyl-2-(2-(4 isopropoxybenzyl)-5-nitro-1H-benzimidazol-1-yl)ethan-1-amine)	9614	I
Etonitazene	9624	I
Ketobemidone	9628	I
Trimeperidine	9646	I
Tilidine	9750	I
lunitazene (N,N-diethyl-2-(2-(4-fluorobenzyl)-5-nitro1H-benzimidazol-1-yl)ethan-1-amine)	9756	I
Metonitazene (N,N-diethyl-2-(2-(4-methoxybenzyl)-5-nitro-1Hbenzimidazol-1-yl)ethan-1-amine	9757	I
N-pyrrolidino etonitazene; etonitazepyne (2-(4-ethoxybenzyl)-5-nitro-1-(2-(pyrrolidin-1-yl)ethyl)-1Hbenzimidazole)	9758	I
Protonitazene (N,N-diethyl-2-(5-nitro-2-(4-propoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine)	9759	I
Metodesnitazene (N,N-diethyl-2-(2-(4-methoxybenzyl)-1H-benzimidazol-1-yl)ethan-1-amine)	9764	I
Etodesnitazene; etazene (2-(2-(4-ethoxybenzyl)-1Hbenzimidazol-1-yl)-N,N-diethylethan-1-amine)	9765	I
Acryl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacrylamide)	9811	I
Para-Fluorofentanyl	9812	I
3-Methylfentanyl	9813	I
Alpha-methylfentanyl	9814	I
Acetyl-alpha-methylfentanyl	9815	I
N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)propionamide	9816	I
Para-Methylfentanyl (N-(4-methylphenyl)-N-(1-phenethylpiperidin-4-yl)propionamide; also known as 4-methylfentanyl).	9817	I
4′-Methyl acetyl fentanyl (N-(1-(4-methylphenethyl)piperidin-4-yl)-N-phenylacetamide)	9819	I
ortho-Methyl methoxyacetyl fentanyl (2-methoxy-N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide)	9820	I
Acetyl Fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide)	9821	I
Butyryl Fentanyl	9822	I
Para-fluorobutyryl fentanyl	9823	I
4-Fluoroisobutyryl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9824	I
2-methoxy-N-(1-phenethylpiperidin-4-yl)-N-phenylacetamide	9825	I
Para-chloroisobutyryl fentanyl	9826	I
Isobutyryl fentanyl	9827	I
Beta-hydroxyfentanyl	9830	I
Beta-hydroxy-3-methylfentanyl	9831	I
Alpha-methylthiofentanyl	9832	I
3-Methylthiofentanyl	9833	I
Furanyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N-phenylfuran-2-carboxamide)	9834	I
Thiofentanyl	9835	I
Beta-hydroxythiofentanyl	9836	I
Para-methoxybutyryl fentanyl	9837	I
Ocfentanil	9838	I
Thiofuranyl fentanyl (N-(1-phenethylpiperidin-4-yl)-Nphenylthiophene-2-carboxamide; also known as 2-thiofuranyl fentanyl; thiophene fentanyl).	9839	I
Valeryl fentanyl	9840	I
Phenyl fentanyl (N-(1-phenethylpiperidin-4-yl)-Nphenylbenzamide; also known as benzoyl fentanyl)	9841	I
beta′-Phenyl fentanyl (N-(1-phenethylpiperidin-4-yl)-N,3-diphenylpropanamide; also known as β′-phenyl fentanyl; 3-phenylpropanoyl fentanyl).	9842	I
N-(1-phenethylpiperidin-4-yl)-N-phenyltetrahydrofuran-2-carboxamide	9843	I
Crotonyl fentanyl ((E-N-(1-phenethylpiperidin-4-yl)-N-phenylbut-2-enamide)	9844	I
Cyclopropyl Fentanyl	9845	I
ortho-Fluorobutyryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)butyramide; also known as 2-fluorobutyryl fentanyl).	9846	I
Cyclopentyl fentanyl	9847	I
ortho-Methyl acetylfentanyl (N-(2-methylphenyl)-N-(1-phenethylpiperidin-4-yl)acetamide; also known as 2-methyl acetylfentanyl).	9848	I
Fentanyl related-compounds as defined in 21 CFR 1308.11(h)	9850	I
Fentanyl carbamate (ethyl (1-phenethylpiperidin-4-yl)(phenyl)carbamate)	9851	I

Controlled substance	Drug code	Schedule
ortho-Fluoroacryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)acrylamide)	9852	I
ortho-Fluoroisobutyryl fentanyl (N-(2-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)isobutyramide)	9853	I
Para-Fluoro furanyl fentanyl (N-(4-fluorophenyl)-N-(1-phenethylpiperidin-4-yl)furan-2-carboxamide)	9854	I
2′-Fluoro ortho-fluorofentanyl (N-(1-(2-fluorophenethyl)piperidin-4-yl)-N-(2-fluorophenyl)propionamide; also known as 2′-fluoro 2-fluorofentanyl).	9855	I
beta-Methyl fentanyl (N-phenyl-N-(1-(2-phenylpropyl)piperidin-4-yl)propionamide; also known as β-methyl fentanyl)	9856	I
Amphetamine	1100	II
Methamphetamine	1105	II
Lisdexamfetamine	1205	II
Phenmetrazine	1631	II
Methylphenidate	1724	II
Amobarbital	2125	II
Pentobarbital	2270	II
Secobarbital	2315	II
Glutethimide	2550	II
1-Phenylcyclohexylamine	7460	II
Phencyclidine	7471	II
ANPP (4-Anilino-N-phenethyl-4-piperidine)	8333	II
Norfentanyl (N-phenyl-N-(piperidin-4-yl) propionamide)	8366	II
Phenylacetone	8501	II
1-Piperidinocyclohexanecarbonitrile	8603	II
Cocaine	9041	II
Codeine	9050	II
Etorphine HCl	9059	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II
Ethylmorphine	9190	II
Hydrocodone	9193	II
Levomethorphan	9210	II
Levorphanol	9220	II
Isomethadone	9226	II
Meperidine	9230	II
Meperidine intermediate-B	9233	II
Oliceridine (N-[(3-methoxythiophen-2yl)methyl] ({2-[9r)-9-(pyridin-2-yl)-6-oxaspiro[4.5] decan-9-yl] ethyl {time})amine fumarate).	9245	II
Methadone	9250	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II
Morphine	9300	II
Thebaine	9333	II
Oxymorphone	9652	II
Noroxymorphone	9668	II
Thiafentanil	9729	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II
Carfentanil	9743	II
Tapentadol	9780	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for internal use or for sale to its customers. In reference to drug codes 7360 (Marihuana), and 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–19391 Filed 9–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1077]

Importer of Controlled Substances Application: Catalent CTS, LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Catalent CTS, LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before October 11, 2022. Such persons may also file a written request for a hearing on the application on or before October 11, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow

the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on July 26, 2022, Catalent CTS, LLC, 10245 Hickman Mills Drive, Kansas City, Missouri 64137–1418, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid.	2010	I
Marihuana Extract.	7350	I
Marihuana	7360	I
Tetrahydrocannabinols.	7370	I

The company plans to import the listed controlled substances as dosage unit products for clinical trial studies. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to import a synthetic tetrahydrocannabinol. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–19394 Filed 9–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1076]

Bulk Manufacturer of Controlled Substances Application: Curia Wisconsin, Inc.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Curia Wisconsin, Inc., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before November 7, 2022. Such persons may also file a written request for a hearing on the application on or before November 7, 2022.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on July 25, 2022, Curia Wisconsin, Inc., 870 Badger Circle, Grafton, Wisconsin 53024–0000, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Lysergic acid diethylamide	7315	I
Tetrahydrocannabinols	7370	I
4-Bromo-2,5-dimethoxyphenethylamine	7392	I
3,4-Methylenedioxyamphetamine	7400	I
3,4-Methylenedioxymethamphetamine	7405	I
5-Methoxy-N-N-dimethyltryptamine	7431	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I
Methylphenidate	1724	II
Nabilone	7379	II
ANPP (4-Anilino-N-phenethyl-4-piperidine)	8333	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for the purpose of analytical reference standards or for sale to its customers. In reference to the drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture as synthetic. No other activity for this drug code is authorized for this registration.

Kristi O'Malley,

Assistant Administrator.

[FR Doc. 2022–19393 Filed 9–7–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Application for Prevailing Wage Determination

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 October 11, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

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: The Immigration and Nationality Act (INA), as amended, assigns responsibilities to the Secretary of Labor (Secretary) relating to the entry and employment of certain categories of immigrant and nonimmigrant foreign workers under the PERM, H–2B, H–1B, H–1B1, and E–3 programs. The INA requires the Secretary to certify that the employment of foreign workers under certain visa classifications will not adversely affect the wages and working conditions of similarly employed workers in the United States. To render this certification, the Secretary determines the prevailing wage for the occupational classification and area of intended employment and ensures the employer offers a wage to the foreign worker that equals at least the prevailing wage. The Department uses Forms ETA–9141 and ETA–9165 to collect information necessary to determine the prevailing wage for the applicable occupation and area of intended employment. For additional substantive information about this ICR, see the related notice published in the **Federal Register** on June 14, 2022 (87 FR 35999).

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: Application for Prevailing Wage Determination.

OMB Control Number: 1205–0508.

Affected Public: Private Sector—Businesses or other for-profits, not-for-profit institutions, and farms.

Total Estimated Number of Respondents: 102,418.

Total Estimated Number of Responses: 331,339.

Total Estimated Annual Time Burden: 148,629 hours.

Total Estimated Annual Other Costs Burden: $213,953.

(Authority: 44 U.S.C. 3507(a)(1)(D))

Dated: September 1, 2022.

Mara Blumenthal,

Senior PRA Analyst.

[FR Doc. 2022–19359 Filed 9–7–22; 8:45 am]

BILLING CODE 4510–FP–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before October 11, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–046 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments for MSHA–2022–046

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov*.

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. 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.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and

Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–016–C.

Petitioner: Iron Cumberland, LLC, 576 Maple Run Road, Waynesburg, Pennsylvania 15370.

Mine: Cumberland Mine, MSHA ID No. 36–05018, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.507–1(a), Electric equipment other than power-connection points; outby the last open crosscut; return air; permissibility requirements.

Modification Request: The petitioner requests a modification of 30 CFR 75.507–1(a) to permit the CleanSpace EX Powered Respirator, an intrinsically safe Powered Air Purifying Respirator (PAPR), to be used in return air outby the last open crosscut as an alternative method for respirable dust protection.

The petitioner states that:

(a) The petitioner previously used the 3M airstream helmets to provide miners respirable dust protection on the longwall faces. 3M has discontinued the Airstream helmet and there are no other MSHA approved PAPRs available.

(b) The CleanSpace EX Power Unit, manufactured by CleanSpace, has been determined to be intrinsically safe under IECEx and other countries' standards which provide the same level of protection.

(c) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions to use in mines with the potential for methane accumulation.

(d) CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2. Examination results will be recorded weekly and may be expunged after 1 year.

(b) The petitioner will comply with 30 CFR 75.320.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is required by the standard in the affected area of the mine.

(d) When not in operation, batteries for the PAPR will be charged on the surface or underground in intake air and in return air outby the last open crosscut.

(e) The following battery charging products will be used: PAF–0066, PAF–1100.

(f) Qualified miners will receive training regarding how to safely use, care for, and inspect the PAPR, and on the Decision and Order before using equipment in the relevant part of the mine.

(g) A record of the training will be kept and available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–19360 Filed 9–7–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before October 11, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–047 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–047.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401. Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. 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.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and Title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–017–C.

Petitioner: Iron Cumberland, LLC, 576 Maple Run Road, Waynesburg, Pennsylvania, 15370.

Mine: Cumberland Mine, MSHA ID No. 36–05018, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.1002 (a), Installation of electric equipment and conductors; permissibility.

Modification Request: The petitioner requests a modification of 30 CFR 75.1002 (a) to permit the CleanSpace EX Powered Respirator, an intrinsically safe Powered Air Purifying Respirator (PAPR), to be used within 150 feet of pillar workings or longwall faces as an alternative method for respirable dust protection.

The petitioner states that:

(a) The petitioner previously used the 3M airstream helmets to provide miners respirable dust protection on the longwall faces. 3M has discontinued the Airstream helmet and there are no other MSHA approved PAPRs available.

(b) The CleanSpace EX Power Unit, manufactured by CleanSpace, has been determined to be intrinsically safe under IECEx and other countries' standards which provide the same level of protection.

(c) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions to use in mines with the potential for methane accumulation.

(d) CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2. Examination results will be recorded weekly and may be expunged after 1 year.

(b) The petitioner will comply with 30 CFR 75.320.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is required by the standard in the affected area of the mine.

(d) When not in operation, batteries for the PAPR will be charged on the surface or underground in intake air and in return air outby the last open crosscut.

(e) The following battery charging products will be used: PAF–0066, PAF–1100

(f) Qualified miners will receive training regarding how to safely use, care for, and inspect the PAPR, and on the Decision and Order before using equipment in the relevant part of the mine.

(g) A record of the training will be kept and available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–19361 Filed 9–7–22; 8:45 am]

BILLING CODE 4520–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petition for Modification of Application of Existing Mandatory Safety Standards

AGENCY: Mine Safety and Health Administration, Labor.

ACTION: Notice.

SUMMARY: This notice is a summary of a petition for modification submitted to the Mine Safety and Health Administration (MSHA) by the party listed below.

DATES: All comments on the petition must be received by MSHA's Office of Standards, Regulations, and Variances on or before October 11, 2022.

ADDRESSES: You may submit comments identified by Docket No. MSHA–2022–045 by any of the following methods:

1. *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments for MSHA–2022–045.

2. *Fax:* 202–693–9441.

3. *Email: petitioncomments@dol.gov.*

4. *Regular Mail or Hand Delivery:* MSHA, Office of Standards, Regulations, and Variances, 201 12th Street South, Suite 4E401, Arlington, Virginia 22202–5452.

Attention: S. Aromie Noe, Director, Office of Standards, Regulations, and Variances. Persons delivering documents are required to check in at the receptionist's desk in Suite 4E401.

Individuals may inspect copies of the petition and comments during normal business hours at the address listed above. 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.

FOR FURTHER INFORMATION CONTACT: S. Aromie Noe, Office of Standards, Regulations, and Variances at 202–693–9440 (voice), *Petitionsformodification@dol.gov* (email), or 202–693–9441 (fax). [These are not toll-free numbers.]

SUPPLEMENTARY INFORMATION: Section 101(c) of the Federal Mine Safety and Health Act of 1977 and title 30 of the Code of Federal Regulations (CFR) part 44 govern the application, processing, and disposition of petitions for modification.

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act) allows the mine operator or representative of miners to file a petition to modify the application of any mandatory safety standard to a coal or other mine if the Secretary of Labor determines that:

1. An alternative method of achieving the result of such standard exists which will at all times guarantee no less than the same measure of protection afforded the miners of such mine by such standard; or

2. The application of such standard to such mine will result in a diminution of safety to the miners in such mine.

In addition, sections 44.10 and 44.11 of 30 CFR establish the requirements for filing petitions for modification.

II. Petition for Modification

Docket Number: M–2022–015–C.

Petitioner: Iron Cumberland, LLC, 576 Maple Run Road, Waynesburg, Pennsylvania, 15370.

Mine: Cumberland Mine, MSHA ID No. 36–05018, located in Greene County, Pennsylvania.

Regulation Affected: 30 CFR 75.500(d), Permissible electric equipment.

Modification Request: The petitioner requests a modification of 30 CFR 75.500(d) to permit the CleanSpace EX Powered Respirator, an intrinsically safe Powered Air Purifying Respirator (PAPR), to be taken into or used inby the last crosscut as an alternative method for respirable dust protection.

The petitioner states that:

(a) The petitioner previously used the 3M airstream helmets to provide miners respirable dust protection on the longwall faces. 3M has discontinued the Airstream helmet and there are no other MSHA approved PAPRs available.

(b) The CleanSpace EX Power Unit, manufactured by CleanSpace, has been determined to be intrinsically safe under IECEx and other countries' standards which provide the same level of protection.

(c) The CleanSpace EX is certified by UL under the ANSI/UL 60079–11 standard to be used in hazardous locations because it meets the intrinsic safety protection level and is acceptable in other jurisdictions to use in mines with the potential for methane accumulation.

(d) CleanSpace is not pursuing MSHA approval.

The petitioner proposes the following alternative method:

(a) The equipment will be examined at least weekly by a qualified person according to 30 CFR 75.512–2. Examination results will be recorded weekly and may be expunged after 1 year.

(b) The petitioner will comply with 30 CFR 75.320.

(c) A qualified person under 30 CFR 75.151 will monitor for methane as is required by the standard in the affected area of the mine.

(d) When not in operation, batteries for the PAPR will be charged on the surface or underground in intake air and in return air outby the last open crosscut.

(e) The following battery charging products will be used: PAF–0066, PAF–1100.

(f) Qualified miners will receive training regarding how to safely use, care for, and inspect the PAPR, and on the Decision and Order before using equipment in the relevant part of the mine.

(g) A record of the training will be kept and available upon request.

The petitioner asserts that the alternative method proposed will at all times guarantee no less than the same measure of protection afforded the miners under the mandatory standard.

Song-ae Aromie Noe,

Director, Office of Standards, Regulations, and Variances.

[FR Doc. 2022–19363 Filed 9–7–22; 8:45 am]

BILLING CODE 4520–43–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 8, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on August 30, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 759 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–102, CP2022–106.

Ruth Stevenson,

Chief Counsel, Ethics and Legal Compliance.

[FR Doc. 2022–19439 Filed 9–7–22; 8:45 am]

BILLING CODE 7710–12–P

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Request for Information; Identifying Critical Needs To Inform a Federal Decadal Strategic Plan for the Interagency Council for Advancing Meteorological Services; Correction

AGENCY: Office of Science and Technology Policy (OSTP).

ACTION: Notice of request for information (RFI); correction.

SUMMARY: The Office of Science and Technology Policy (OSTP) and the National Oceanic and Atmospheric Administration (NOAA), on behalf of the Interagency Council for Advancing Meteorological Services (ICAMS), published a document on August 19, 2022, concerning request for information. The document contained an incorrect email address for comments.

FOR FURTHER INFORMATION CONTACT: Scott Weaver, 202–456–4444.

SUPPLEMENTARY INFORMATION:

Correction

In the **Federal Register** on August 19, 2022, in FR Doc. 2022–17894, on page 51180, in the second column, correct the **FOR FURTHER INFORMATION CONTACT** section to correct the email address, which should read as follows:

FOR FURTHER INFORMATION CONTACT: For additional information, please direct questions to Scott Weaver at *icams.portal@noaa.gov* or 202–456–4444.

Dated: August 29, 2022.

Stacy Murphy,

Operations Manager.

[FR Doc. 2022–18959 Filed 9–7–22; 8:45 am]

BILLING CODE 3270–F2–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95654; File No. SR–ICC–2022–012]

Self-Regulatory Organizations; ICE Clear Credit LLC; Order Approving Proposed Rule Change Relating to the Clearing Rules

September 1, 2022.

I. Introduction

On July 19, 2022, ICE Clear Credit LLC (''ICE Clear Credit'' or ''ICC'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its Rules to permit it to take advantage of certain settlement finality protections under applicable United Kingdom (''UK'') and European Union (''EU'') law. The proposed rule change was published for comment in the **Federal Register** on July 29, 2022.[3] The Commission did not receive comments regarding the proposed rule change. For the reasons discussed below, the Commission is approving the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

The EU Settlement Finality Directive [4] introduced various insolvency-related protections in relation to ''designated systems'' used by EU participants to transfer financial instruments and payments, and participation in those systems. The Settlement Finality Directive aims to ensure that as a matter of EU member state laws, transfer orders which enter into such systems are finally settled, regardless of whether the sending participant has gone into an insolvency process. Transfer orders for this purpose include instructions to make cash payments (including margin payments) and instructions to transfer securities (including as margin or in physical settlement of a cleared transaction, if applicable). Under the Settlement Finality Directive, transfer orders and related netting arrangements are enforceable, even in the event of insolvency proceedings against a participant, provided that the transfer

[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 Clearing Rules; Exchange Act Release No. 95357 (July 25, 2022); 87 FR 45840 (July 29, 2022) (File No. SR–ICC–2022–012) (''Notice'').

[4] EU Directive 98/26/EC.

order was entered into the system before the opening of the insolvency proceeding. Further, under the Settlement Finality Directive, the right of the operator of a designated system to realize and apply collateral security provided by a participant would not be affected by insolvency proceedings against the participant.

''Designated systems'' are defined as formal arrangements, governed by the law of an EU member state, between three or more participants with common rules and standard arrangements for clearing or execution of transfer orders between participants, and have been designated as a system and notified to the European Securities and Markets Authority (''ESMA''). Although the Settlement Finality Directive itself does not establish an equivalent regime for systems operated under the laws of a non-EU member state (''third-country systems''), such as United States (''US'') clearing houses, Recital 7 of the Settlement Finality Directive provides that member states may choose to apply the provisions of the Settlement Finality Directive to their domestic institutions that participate directly in third country systems, and to collateral security provided in connection with participation in such systems. As a result, in some EU member states it is possible for a third country system such as ICC to receive national designation or be otherwise protected as a designated system for the purposes of that member state's national law.

The UK has implemented similar settlement finality regulations that continue to apply following the withdrawal of the UK from the EU, and which are also potentially applicable to UK institutions that participate in third country systems (such as a US clearing house).[5]

B. Proposed Rule Change

The purpose of the proposed rule changes is to modify certain of ICC's Rules to introduce explicit provisions relating to the settlement finality of transfer orders in order to permit ICC to take advantage of certain protections for default rights and remedies under applicable Settlement Finality Laws.[6] The proposed amendments are expected to be principally relevant in the case of an insolvency of an ICC Clearing Participant domiciled in the UK or an EU member state. The proposed amendments would rely on certain protections in such Settlement Finality Laws and regulations that provide additional support (on top of existing protections in applicable law) for the enforceability of the ICC's default rights and remedies under the Rules without interference in such an insolvency.

Specifically, the amendments would address which ''transfer orders'' arise in ICC's system, when they become irrevocable, who is bound by them, and when they terminate. ICC believes that the amendments would facilitate obtaining the relevant protections of the Settlement Finality Laws, which would principally be relevant in the case of an insolvency of a Participant domiciled in an EU member state or in the UK. The amendments would not otherwise affect ICC's rights and obligations under the Rules, including default rights and remedies, and would not be expected to be relevant to an insolvency proceeding involving a Participant organized in the US or otherwise outside of the EU or the UK.

In the Rules, ICE Clear Credit would adopt a new Chapter 10 addressing Settlement Finality Laws. Rule 1000 would add a number of related definitions, including definitions for relevant legislation and regulations, such as ''EMIR,'' ''Financial Collateral Directive,'' ''Financial Collateral Regulations,'' ''FSMA,'' ''Settlement Finality Directive,'' ''Settlement Finality Regulations,'' and ''UK EMIR.'' The rule would also adopt key definitions relating to the settlement finality provisions, including ''ICE Systems'' (referencing ICE Clear Credit's trade registration, clearing processing and finance systems), ''SFD System'' (referencing the third country system operated by ICE Clear Credit for purposes of the Settlement Finality Laws), ''Payment Transfer Order,'' ''Securities Transfer Order'' and ''Transfer Order'' (representing the types of transfer orders used in the ICE system and covered by the Settlement Finality Laws), ''SFD Participant'' (referencing ICE Clear Credit itself, its Participants organized in the European Economic Area (''EEA'') or in the UK, among certain other relevant persons), ''SFD Custodian'' (referencing a custodian located in the EEA or the UK used by ICE Clear Credit or a Participant for the holding or transfer of Non-Cash Collateral), ''SFD Financial Institution'' (referencing a financial institution located in the EEA or UK used by ICE Clear Credit or a Participant for purpose of the deposit or transfer of cash), ''SFD Security'' (referencing a security as defined in the Settlement Finality Laws), ''Indirect Participant'' (referencing Non-Participant Parties that fall within the definition of indirect participant under the Settlement Finality Laws), and ''Non-Cash Collateral'' (referencing Margin or Collateral in the form of a security).

New Rule 1001 would set out general principles relevant to implementation of the EU and UK settlement finality arrangements. Subsection (a) would provide that ICC is the operator of a third country system for purposes of relevant Settlement Finality Laws, and that Chapter 10 of the Rules would apply to ICE Clear Credit and SFD Participants to the extent that the Settlement Finality Laws are applicable to such persons. Subsection (b) would require SFD Participants to comply with actions taken by ICC pursuant to Chapter 10 and the relevant Settlement Finality Laws, and to acknowledge that the Settlement Finality Laws modify certain otherwise applicable provisions of insolvency laws. Subsection (c) would provide that each SFD Participant is on notice of the provisions of Chapter 10, and by virtue of participating in the SFD System, is deemed to agree to the application of Chapter 10 (including in the event of any conflict with any other agreement or obligation). Subsection (d) would provide an additional acknowledgment that Margin and Collateral transferred to ICC under the Rules fall within certain protections for collateral arrangements under the Settlement Finality Laws.

New Rule 1002 would address the timing and circumstances in which various types of Transfer Orders would arise for purposes of the ICC SFD System, specifically Payment Transfer Orders and Securities Transfer Orders in various circumstances, including for transfer of positions (''Position Transfer Orders''), transfer of non-cash collateral (''Collateral Transfer Orders''), submission of new trades for clearing (''New Transaction Clearing Orders''), backloading trades for clearing (''Backloaded Transaction Clearing Orders, and together with New Transaction Clearing Orders, ''Transaction Clearing Orders''), and physical settlement under cleared CDS contracts (''CDS Physical Settlement Orders''). The rule would also specify the subject matter of each type of Transfer Order (*e.g.,* a payment in respect of a Payment Transfer Order) and the parties in respect of which each type of Transfer Order would apply and have effect (*e.g.,* in the case of a Payment Transfer Order, the affected Participant (if it is an SFD Participant), ICE Clear Credit, and any affected SFD

[5] Financial Markets and Insolvency (Settlement Finality) Regulations 1999. As used herein, the EU Settlement Finality Directive, national implementing legislation and the UK Settlement Finality Regulations are collectively referred to as ''Settlement Finality Laws.''

[6] The description that follows is substantially excerpted from the Notice. Capitalized terms not otherwise defined herein have the meanings assigned to them in ICC's Rules, as applicable.

Financial Institution). Rule 1002 would also address the possibility of multiple Transfer Orders existing in respect of the same obligation (which may exist, but would not result in the duplication of any obligation), and the fact that netting or close out of Contracts would not affect the status of Transfer Orders. The rule also states, consistent with the general approach of the Rules, that where a Transfer Order applies to an Indirect Participant, it would not affect the liability of any SFD Participant pursuant to the same Transfer Order.

Rule 1003 would specify the time at which each type of Transfer Order (specifically, Payment Transfer Orders, Position Transfer Orders, Collateral Transfer Orders, Transaction Clearing Orders, and CDS Physical Settlement Orders) becomes irrevocable for purposes of the relevant Settlement Finality Laws. Payment Transfer Orders would become irrevocable at the earlier of the time payment is received or at the time the relevant financial institution used by ICC for this purpose sends a SWIFT or other confirmation that payment has been made. Collateral Transfer Orders similarly would become irrevocable at the earlier of the time the transfer is received or a related securities transfer order in a relevant securities transfer system becomes irrevocable. Position Transfer Orders would become irrevocable at the time the position transfer is recorded in the ICC systems, and Transaction Clearing Orders would become irrevocable at the applicable Novation Time under the Rules. CDS Physical Settlement Orders would become irrevocable at the earliest of (1) the time the Matched Delivery Buyer has irrevocably instructed its custodian to transfer the relevant securities to the Matched Delivery Seller, (2) the time the relevant instrument is delivered or assigned, or (3) the time notice is otherwise given under the Rules that the Matched Delivery Pair have settled the relevant Matched Delivery Contracts. Under the Rule, as from the time when the Transfer Order becomes irrevocable, it could not be revoked or purported to be revoked by any SFD Participant or ICE Clear Credit and would be binding on all SFD Participants.

Rule 1004 would address variations or cancellations of Transfers Orders prior to the time they become irrevocable, in specified circumstances. These circumstances include, for any Transfer Order, cases where the order is affected by manifest or proven error or an error agreed to by all affected SFD Participants. Additional grounds for variation or cancellation apply for particular types of Transfer Order. In the case of a Payment Transfer Order or Collateral Transfer Order, these would include where the underlying Contract is void or avoided under the Rules or applicable law, or amended as a result of ICC exercising its discretion under the Rules. Transaction Clearing Orders may be subject to variation or cancellation where the underlying trade is not eligible for clearing or otherwise not accepted for clearing, and Backloaded Transaction Clearing Orders may be subject to variation or cancellation if an error or omission is noted to ICC prior to the Novation Time. Similarly, variation or cancellation of a CDS Physical Settlement Order may be made if a NOPS Amendment Notice is validly delivered under the Rules or ICE Clear Credit Procedures. Under Rule 1004, in these circumstances, ICC would be permitted to make appropriate modifications to the relevant Transfer Order, or in the alternative to cancel the relevant Transfer Order. Rule 1004 also would not preclude ICC from taking steps to give rise to a new Transfer Order with opposite effect to an existing Transfer Order or part thereof. Rule 1004 also would provide for notice of any modification or cancellation of a Transfer Order to affected SFD Participants.

Rule 1005 would specify the circumstances under which Transfer Orders are deemed satisfied. Specifically, Payment Transfer Orders are satisfied upon all required payments being received in immediately available funds or full satisfaction of the underlying obligation is otherwise made and recorded in ICC's systems, free of any encumbrances. Position Transfer Orders would be deemed satisfied upon becoming irrevocable (at which time the relevant positions have been transferred under the Rules). Collateral Transfer Orders would be deemed satisfied upon ICC or the Participant, as applicable, receiving the Non-Cash Collateral in its account or upon the definitive record of the assets transferred by the Participant being updated to reflect the successful transfer of the relevant collateral. Transaction Clearing Orders would be deemed satisfied at the time the relevant cleared contracts arise under the Rules. A CDS Physical Settlement Order would be deemed satisfied at the time ICC updates its records to reflect that physical delivery of the relevant security has been completed or the delivery obligations of the parties are otherwise discharged or settled.

Rule 1006 would set out certain acknowledgements of ICC, Participants, and Non-Participant Parties with respect to matters relating to Margin or Collateral to the extent they fall to be determined under the laws of an EEA member state or the UK. The amendments would clarify that such arrangements are subject to the EU Financial Collateral Directive or UK Financial Collateral Regulations, as applicable, and would provide that Participants and Non-Participant Parties would not dispute that characterization. The amendments would further provide that arrangements for the provision of cash Margin and Collateral constitute ''title transfer financial collateral arrangements'' and arrangements for the provision of Pledged Items constitute ''security financial collateral arrangements,'' in each case for purposes of the EU Financial Collateral Directive or UK Financial Collateral Arrangements, that all such Margin and Collateral constitute ''financial collateral'' for purposes of such laws, and that ICC has possession or control of such Margin and Collateral for purposes of such laws. The amendments would also state that for purposes of UK law, the security arrangements under the Rules constitute a ''market charge'' for purposes of the Companies Act 1989, which provides certain protections for the enforceability of such arrangements in the event of the insolvency of a clearing participant.

ICC also proposes to make certain amendments to Rule 611, which currently addresses the treatment of certain Rules under various insolvency laws and other protections for the enforceability of default remedies in the event of the insolvency of a clearing participant. The amendments would add a new subsection (f), which would provide that specified Rules providing for default rights and remedies would constitute default rules, procedures and similar arrangements as defined for purposes of relevant EU and UK law, including EMIR, UK EMIR, and the Settlement Finality Laws.

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

[7] 15 U.S.C. 78s(b)(2)(C).

17A(b)(3)(F) of the Act[8] and Rule 17Ad–22(e)(1) 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 a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and, to the extent applicable, derivative agreements, contracts, and transactions.[10]

As noted above, the proposed rule changes would introduce provisions that support the operation of the settlement finality provisions of EU and UK law. These provisions ensure that transfer orders by a Clearing Participant that is domiciled in an EU member state or in the UK will be cleared even if that Clearing Participant enters into insolvency proceedings after the transfer order was entered into the system. As noted in more detail above, the proposed rule change would accomplish this by adopting key definitions relating to the Settlement Finality Laws, set out general principles relevant to implementation of the EU and UK settlement finality arrangements (such as participant acknowledgement of the applicability of the settlement finality rules to margin and collateral), specify timing that each transfer order becomes irrevocable for purposes of the relevant Settlement Finality Laws, circumstances under which transfer orders are deemed satisfied, and specify that Rules providing for default rights and remedies would constitute default rules, procedures and similar arrangements as defined for purposes of relevant EU and UK law, including EMIR, UK EMIR, and the Settlement Finality Laws.

The Commission believes that these proposed rule changes, while not changing any of the existing default rights or remedies of ICC but rather by adopting explicit provisions relating to settlement finality of transfer orders of Clearing Participants in insolvency, will help support the payment and transfer of margin and collateral and thus the prompt and accurate clearance and settlement of securities transactions by ensuring that its rules facilitate explicit reference and participant awareness and acknowledgement of the applicability of EU and UK Settlement Finality Laws.

For these reasons, the Commission believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act.[11]

B. Consistency With Rule 17Ad–22(e)(1)

Rule 17Ad–22(e)(1) requires that each covered clearing agency establish, implement, maintain and enforce written policies and procedures reasonably designed, as applicable, to provide for a well-founded, clear, transparent and enforceable legal basis for each aspect of its activities in all relevant jurisdictions.[12]

As noted above, ICC proposes to rely on provisions of the Settlement Finality Laws regulations that provide additional support for the enforceability of the ICC's default rights and remedies. For example, under the Settlement Finality Directive, transfer orders and related netting arrangements are enforceable, even in the event of insolvency proceedings against a participant. The Commission believes that by proposing to align key definitions and rules to the Settlement Finality Laws as noted above and by requiring relevant Clearing Participants to comply with and acknowledge the settlement finality provisions, the proposed rule changes would provide a well-founded and clear legal basis for ICC to enforce its clearing rules during an insolvency of a Clearing Participant domiciled in the EU or the UK.

For these reasons, the Commission believes that the proposed rule changes are consistent with Rule 17Ad–22(e)(1).[13]

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[14] and Rule 17Ad–22(e)(1) hereunder.[15]

It is therefore ordered pursuant to Section 19(b)(2) of the Act[16] that the proposed rule change (SR–ICC–2022–012), be, and hereby is, approved.[17]

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19348 Filed 9–7–22; 8:45 am]

BILLING CODE 8011–01–P

[8] 15 U.S.C. 78q–1(b)(3)(F).

[9] 17 CFR 240.17Ad–22(e)(1).

[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)(1).

[13] 17 CFR 240.17Ad–22(e)(1).

[14] 15 U.S.C. 78q–1(b)(3)(F).

[15] 17 CFR 240.17Ad–22(e)(1).

[16] 15 U.S.C. 78s(b)(2).

[17] 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).

[18] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95670; File No. SR–OCC–2022–803]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Related to an Expansion of The Options Clearing Corporation's Non-Bank Liquidity Facility Program as Part of Its Overall Liquidity Plan

September 2, 2022.

I. Introduction

On July 7, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2022–803 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'')[1] and Rule 19b–4(n)(1)(i)[2] under the Securities Exchange Act of 1934 (''Exchange Act'')[3] in connection with a proposed change to its operations to expand capacity under OCC's program for accessing additional committed sources of liquidity that do not increase the concentration of OCC's counterparty exposure (''Non-Bank Liquidity Facility'') as part of OCC's overall liquidity plan.[4] The Advance Notice was published for public comment in the **Federal Register** on July 26, 2022.[5] The Commission has received comments regarding the changes proposed in the Advance Notice.[6] The Commission is hereby providing notice of no objection to the Advance Notice.

II. Background[7]

As the sole clearing agency for standardized U.S. securities options listed on national securities exchanges registered with the Commission (''listed options''), OCC is obligated to make certain payments. In the event of a Clearing Member default, OCC would be obligated to make payments, on time,

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing, *infra* note 5, at 87 FR 44477.

[5] *See* Exchange Act Release No. 95327 (Jul. 20, 2022), 87 FR 44477 (Jul. 26, 2022) (File No. SR–OCC–2022–803) (''Notice of Filing'').

[6] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[7] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

related to that member's clearing transactions. To meet such payment obligations, OCC maintains access to cash from a variety of sources, including a requirement for members to pledge cash collateral to OCC and various agreements with banks and other counterparties (''liquidity facilities'') to provide OCC with cash in exchange for collateral, such as U.S. Government securities. OCC routinely considers potential market stress scenarios that could affect such payment obligations. Based on such considerations, OCC now believes that it should seek to expand its liquidity facilities to increase OCC's access to cash to manage a member default.[8]

OCC's liquidity plan already provides access to a diverse set of funding sources, including banks (*i.e.,* OCC's syndicated credit facility),[9] the Non-Bank Liquidity Facility program (defined above),[10] and Clearing Members' Clearing Fund Cash Requirement.[11] OCC currently maintains $8 billion in qualifying liquid resources,[12] consisting of $5 billion of required Clearing Fund cash contributions, $2 billion in the syndicated bank credit facility, and $1 billion in the Non-Bank Liquidity Facility. OCC intends to increase such resources by $2.5 billion to a new total of $10.5 billion. OCC's proposed expansion of its liquidity plan includes several components: (1) creating a new committed repurchase facility with a commercial bank counterparty (''Bank Repo Facility'');[13] (2) expanding OCC's existing Non-Bank Liquidity Facility program;[14] (3) expanding OCC's existing syndicated credit facility; and (4) establishing a target for the aggregate amount of all external liquidity resources (*i.e.,* the syndicated credit facility, Bank Repo Facility and the Non-Bank Liquidity Facility).[15] The Advance Notice concerns the second component described above, namely, a change to OCC's operations to expand its Non-Bank Liquidity Facility program.[16]

Under OCC's existing Non-Bank Liquidity Facility program, OCC maintains a series of arrangements to access cash in exchange for Government securities (''Eligible Securities'') deposited by Clearing Members in respect of their Clearing Fund requirements to meet OCC's settlement obligations. Currently, the aggregate amount OCC may seek through the Non-Bank Liquidity Facility program is limited to $1 billion.[17] Through this Advance Notice, OCC is proposing to remove the $1 billion funding limit and increase the capacity of its Non-Bank Liquidity Facility to an amount to be determined by OCC's Board from time to time, based on OCC's liquidity needs at the time and a number of other factors.[18] Instead of retaining the $1 billion funding limit for the Non-Bank Liquidity Facility program, OCC proposes to establish a target across all external liquidity resources of at least $3 billion, which is the current aggregate amount of external liquidity.[19] OCC is not, as part of this Advance Notice, requiring its members or other market participants to provide additional or different collateral to OCC. Rather, the purpose of the proposal is to provide OCC with increased capacity for accessing cash to meet its payment obligations, including in the event that one of its members fails to meet its payment obligations to OCC.[20]

With respect to OCC's overall liquidity plan, the Non-Bank Liquidity Facility program reduces the concentration of OCC's counterparty exposure by diversifying its base of liquidity providers among banks and non-bank, non-Clearing Member institutional investors, such as pension funds or insurance companies.

The currently approved Non-Bank Liquidity Facility consists of two parts: a Master Repurchase Agreement (''MRA''), and confirmations with one or more institutional investors, which contain certain individualized terms and conditions of transactions executed between OCC, the institutional investors, and their agents. The MRA is structured so that the buyer (*i.e.,* the institutional investor) would purchase Eligible Securities from OCC from time to time.[21] OCC, the seller, would transfer Eligible Securities to the buyer in exchange for a buyer payment to OCC in immediately available funds (''Purchase Price''). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date (''Repurchase Date''), or on OCC's demand against the transfer of funds from OCC to the buyer, where the funds would be equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, ''Repurchase Price'').

The confirmations establish tailored provisions of repurchase transactions permitted under the Non-Bank Liquidity Facility that are designed to reduce concentration risk and promote certainty of funding and operational effectiveness based on the specific needs of a party. For example, OCC would only enter into confirmations with an institutional investor that is not a Clearing Member or affiliated bank, such as a pension fund or an insurance company, in order to allow OCC to access stable and reliable sources of funding without increasing the concentration of its exposure to counterparties that are affiliated banks, broker-dealers, or futures commission merchants. In addition, any such institutional investor is obligated to enter repurchase transactions even if OCC experiences a material adverse

[8] *See* Notice of Filing, 87 FR at 44477.

[9] *See* Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (Jun. 3, 2020) (File No. SR–OCC–2020–804).

[10] *See* Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444 (Jun. 16, 2020) (File No. SR–OCC–2020–803) (''Notice of No Objection to 2020 Advance Notice''); Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208 (Jan. 20, 2016) (File No. SR–OCC–2015–805) (''Notice of No Objection to 2015 Advance Notice''); Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062 (Jan. 8, 2015) (File No. SR–OCC–2014–809) (''Notice of No Objection to 2014 Advance Notice'').

[11] *See* OCC Rule 1002.

[12] *See* 17 CFR 240.17Ad-22(a)(14) (defining qualifying liquid resources).

[13] In a separate advance notice, OCC is proposing to enter a new MRA with a commercial bank counterparty. *See* Exchange Act Release No. 95326 (Jul. 20, 2022), 87 FR 44457 (Jul. 26, 2022) (File No. SR–OCC–2022–802).

[14] *See* Notice of Filing, 87 FR at 44477.

[15] As discussed below, OCC would be required to file an advance notice with the Commission if it were to seek to reduce the commitments under the Non-Bank Liquidity Facility so as to reduce external liquidity below the $3 billion target.

[16] The third and fourth components of OCC's proposed expansion of its liquidity plan are briefly discussed below.

[17] In 2020, OCC set the aggregate amount it may seek through the Non-Bank Liquidity Facility program to an amount up to $1 billion. *See* Notice of No Objection to 2020 Advance Notice, 85 FR at 36446. $1 billion is the same as the aggregate value established at the inception of the Non-Bank Liquidity Facility program. *See* Notice of No Objection to 2014 Advance Notice, 80 FR at 1064 & n.11. In 2015, OCC filed an advance notice that set an aggregate value of at least $1 billion and up to $1.5 billion. *See* Notice of No Objection to 2015 Advance Notice, 81 FR at 3208.

[18] OCC's Board has authorized OCC to seek up to an additional $2.5 billion in external liquidity.

[19] *See* Notice of Filing, 87 FR at 44479.

[20] *See* OCC Rule 1006(f)(1)(A). OCC may also use the Clearing Fund to address liquidity shortfalls arising from the failure of any bank, securities or commodities clearing organization, or investment counterparty to perform any obligation to OCC when due. *See* OCC Rule 1006(f)(1)(C); Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (File No. SR–OCC–2021–014).

[21] OCC would use Eligible Securities that are included in Clearing Fund contributions by Clearing Members and margin deposits of any Clearing Member that has been suspended by OCC for the repurchase arrangements. OCC Rule 1006(f) and OCC Rule 1104(b) authorize OCC to use these sources to obtain funds from third parties through securities repurchases. The officers who may exercise this authority include the Executive Chairman, Chief Executive Officer, and Chief Operating Officer.

change,[22] funds must be made available to OCC within 60 minutes of OCC's delivering Eligible Securities, and the institutional investor is not permitted to rehypothecate purchased securities.[23] Additionally, the confirmations set forth the term and maximum dollar amounts of the transaction permitted under the MRA.

In 2020, OCC set the aggregate amount it may seek through the Non-Bank Liquidity Facility program to an amount of up to $1 billion.[24] OCC has since secured commitments from multiple pension funds in an aggregate amount of $1 billion. Since setting and securing commitments up to that aggregate commitment limit, OCC has experienced an increase in its stressed liquidity demands. Under OCC's Liquidity Risk Management Framework (''LRMF''), OCC performs daily liquidity stress testing to assess its Base Liquidity Resources [25] and Available Liquidity Resources [26] against OCC's liquidity risk tolerance (''Adequacy Scenarios''). Based in part on the results of this stress testing, OCC has periodically adjusted Clearing Member's Clearing Fund Cash Requirement to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times.[27] Through this Advance Notice OCC proposes a change to its Non-Bank Liquidity Facility program to give OCC greater capacity to source liquidity from its non-bank liquidity providers as needed.

The Proposed Change

In order to give OCC greater capacity to source liquidity from external liquidity providers as needed, OCC would modify the Non-Bank Liquidity Facility program to remove the aggregate commitment limit of $1 billion, identified in the 2020 advance notice.[28] OCC proposes that its Board of Directors (''Board'') set, by resolution and from time to time, the level of aggregate commitments under the program to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures at all times.[29]

OCC's Board has authorized OCC to seek up to an additional $2.5 billion in external liquidity, including through the Non-Bank Liquidity Facility, which would give OCC access to a total of $5.5 billion in external liquidity.[30] For the additional $2.5 billion, OCC expects that it will source $1.5 billion from bank counterparties and $1 billion under the Non-Bank Liquidity Facility. In the event that OCC is unable to obtain the full $1.5 billion from its bank counterparties, however, OCC would source the full $2.5 billion under the Non-Bank Liquidity Facility program.[31]

Removing the present $1 billion funding limit to the Non-Bank Liquidity Facility program would remove one of the specified terms that could require OCC to file an advance notice.[32] Consistent with the proposal to establish a target for external liquidity, and drawing from applicable conditions for filing advance notices with respect to renewals of OCC's syndicated credit facility and proposed Bank Repo Facility, OCC would submit another advance notice to execute individual commitments under the Non-Bank Liquidity Facility only if: (1) OCC should seek to execute a commitment at a level that would have the effect of reducing total external liquidity below the target of $3 billion; (2) OCC should seek to change the terms and conditions of the MRA or commitments thereunder in a manner that materially affects the nature or level of risk presented by OCC; [33] or (3) OCC should seek to execute a commitment with a counterparty that has experienced a negative change to its credit profile or a material adverse change since OCC last executed a commitment with that counterparty. Consistent with another prior advance notice, OCC may consider changes to (1) liquidity providers, provided that any new counterparty is subject to a credit review under OCC's Third-Party Risk Management Framework; [34] and (2) term lengths consistent with those approved by OCC's Board, considering factors including, but not limited to, the initial committed length of the term, market conditions, and OCC's liquidity needs.[35] OCC would not consider additional counterparties or different commitment terms within these specified parameters as materially altering the terms and conditions of MRAs or commitments

[22] A ''material adverse change'' is typically defined contractually as a change that would have a materially adverse effect on the business or financial condition of a company.

[23] *See* Notice of No Objection to 2014 Advance Notice, 80 FR at 1064.

[24] *See* Notice of No Objection to 2020 Advance Notice, 85 FR at 36446. $1 billion is the same as the aggregate value established at the inception of the Non-Bank Liquidity Facility program. *See* Notice of No Objection to 2014 Advance Notice, 80 FR at 1064 & n.11. In 2015, OCC filed an advance notice that set an aggregate value of at least $1 billion and up to $1.5 billion. *See* Notice of No Objection to 2015 Advance Notice, 81 FR at 3208.

[25] The LRMF defines ''Base Liquidity Resources'' to mean the amount of committed liquidity resources maintained at all times by OCC to meet its Cover 1 liquidity resource requirements under the applicable regulations. Base Liquidity Resources are comprised of qualifying liquid resources in the form of Clearing Fund cash deposited in respect of the Clearing Fund Cash Requirement and assets that are readily available and convertible into cash (*i.e.,* U.S. Government securities) through prearranged funding arrangements, such as the Non-Bank Liquidity Facility.

[26] The LRMF defines ''Available Liquidity Resources'' to include Base Liquidity Resources plus allowable Clearing Fund cash deposited in excess of the Clearing Fund Cash Requirement. Any Clearing Member request to substitute U.S. Government securities for cash deposits in excess of such Clearing Member's proportionate share of the Clearing Fund Cash Requirement is subject to a two-day notice period. *See* OCC Rule 1002(a)(iv).

[27] In response to increased stressed liquidity demands in 2021, OCC exercised authority under OCC Rule 1002(a) to increase the Clearing Fund Cash Requirement from $3.5 billion to $4 billion in July 2021, and from $4 billion to $5 billion in October 2021.

[28] *See* Notice of No Objection to 2020 Advance Notice, 85 FR at 36446.

[29] In setting the level of aggregate commitments for the Non-Bank Liquidity Facility, the Board would consider factors including, but not limited to: (1) the size and make-up of the Clearing Fund; (2) the aggregate amount of OCC's other liquidity sources; and (3) changing market and business conditions.

[30] OCC performs daily liquidity stress testing to assess its liquidity resources. *See* Notice of Filing, 87 FR at 44478. Based on the results of such stress testing, OCC increased Clearing Fund requirements twice in 2021. *Id.* OCC management recommended that OCC increase the capacity of its Non-Bank Liquidity Facility, which would provide OCC flexibility in how it increases liquidity resources in response to stress testing. *See* Confidential Exhibit 3 to File No. SR–OCC–2022–803.

[31] *See* Notice of Filing, 87 FR at 44479.

[32] The facility is designed to allow OCC to seek individual commitments from counterparties on specified terms. *See e.g.,* Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444, 36446 (Jun. 16, 2020) (File No. SR–OCC–2020–803) (stating that OCC may negotiate individual commitments within an aggregate commitment limit). In 2015, the Commission acknowledged that changes to specified terms (*e.g.,* funding levels) would require the further submissions to the Commission for review. *See* Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208, 3209 (Jan. 20, 2016) (File No. SR–OCC–2015–805). The terms of the current facility, which OCC implemented the terms of its current facility in 2020 following publication of a Notice of No Objection from the Commission, set an aggregate commitment amount OCC may seek under the Non-Bank Repo Facility program at $1 billion so that OCC may negotiate individual commitment amounts, each less than $1 billion, with multiple counterparties. *See* Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444, 36446 (Jun. 16, 2020) (File No. SR–OCC–2020–803).

[33] For the purposes of clarity, OCC would not consider changes to pricing or changes in representations, covenants, and terms of events of default, to be changes to a term or condition that would require the filing of a subsequent advance notice provided that pricing is at the then prevailing market rate and changes to such other provisions are immaterial to OCC as the seller and do not impair materially OCC's ability to draw against the facility.

[34] *See* Third-Party Risk Management Framework, *available at* Documents & Archives, *https://www.theocc.com/Company-Information/Documents-and-Archives.* While credit monitoring of insurance companies that may become liquidity providers would necessarily be different than credit monitoring of existing pension fund counterparties, any new liquidity would be subject to the same credit review for counterparties of the same type.

[35] *See* Notice of No Objection to 2020 Advance Notice, 85 FR at 36445–46.

under the Non-Bank Liquidity Facility program.

Provided that none of the conditions under which OCC would file a subsequent advance notice are present, OCC would consider a new or renewed commitment as being on substantially the same terms and conditions as existing commitments under the Non-Bank Liquidity Facility program, such that executing such commitments would not be subject to the requirement to file an advance notice filing pursuant to Section 806(e)(1) of the Clearing Supervision Act.[36] Conversely, a new commitment or renewal under different conditions would necessitate OCC providing advance notice to the Commission for consideration.

III. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[37]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[38] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a):[39]

- to promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.[40]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[41] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[42] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[43] and in the Clearing Agency Rules, in particular Rule 17Ad-22(e)(7).[44]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.[45]

The Commission believes that the proposed changes are consistent with promoting robust risk management, in particular the management of liquidity risk presented to OCC. As a central counterparty and a SIFMU,[46] it is imperative that OCC have adequate resources to be able to satisfy liquidity needs arising from its settlement obligations, including in the event of a Clearing Member default.[47] To support this objective, OCC proposes to remove the $1 billion aggregate commitment limit it may seek through the Non-Bank Liquidity Facility program, so that OCC's Board could adjust the level of aggregate commitments under the program to ensure that OCC maintains sufficient liquidity resources to cover its liquidity risk exposures.[48] The Commission believes that approving these changes would give OCC greater flexibility to obtain additional liquidity resources in the form of commitments under the Non-Bank Liquidity Facility. Therefore, the Commission believes that the Advance Notice could increase OCC's access to liquidity resources, which in turn would strengthen OCC's overall ability to manage its liquidity risk exposures. As such, the Commission believes that the proposal would promote robust liquidity risk management at OCC consistent with Section 805(b) of the Clearing Supervision Act.[49]

The Commission also believes that the changes proposed in the Advance Notice are consistent with promoting safety and soundness, reducing systemic risks, and promoting the stability of the broader financial system. By removing the $1 billion aggregate commitment limit, OCC will be in a position to increase the aggregate commitments of the Non-Bank Liquidity Facility program to $2 billion.[50] Allowing OCC to increase aggregate commitments under the facility would, in turn, reduce the likelihood that OCC would have insufficient financial resources to address liquidity demands arising out of a Clearing Member default. Further, the Commission believes that, to the extent the proposed changes are consistent with promoting OCC's safety and soundness, they are also consistent with supporting the stability of the broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.[51] The Commission believes that the proposed changes would support OCC's ability to

[36] 12 U.S.C. 5465(e)(1).

[37] *See* 12 U.S.C. 5461(b).

[38] 12 U.S.C. 5464(a)(2).

[39] 12 U.S.C. 5464(b).

[40] 12 U.S.C. 5464(c).

[41] 17 CFR 240.17Ad–22. *See* Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7–08–11). *See also* Covered Clearing Agency Standards, 81 FR 70786. The Commission established an effective date of December 12, 2016 and a compliance date of April 11, 2017 for the Covered Clearing Agency Standards. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[42] 17 CFR 240.17Ad–22.

[43] 12 U.S.C. 5464(b).

[44] 17 CFR 240.17Ad–22(e)(7).

[45] 12 U.S.C. 5464(b).

[46] *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, available at *https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[47] *See* Notice of No Objection to 2014 Advance Notice, 80 FR at 1065.

[48] As proposed, the facility would not limit the total aggregate commitments OCC may seek. As a practical matter, OCC expressed its intent to source approximately $1 billion in additional liquidity under the Non-Bank Liquidity Facility following removal of the aggregate commitment limit. *See* Notice of Filing, 87 FR at 44479.

[49] 12 U.S.C. 5464(b).

[50] As noted above, OCC intends to expand its aggregate external liquidity by $2.5 billion. While OCC intends to seek $1 billion of that amount under the Non-Bank Liquidity Facility, the removal of the commitment limit would allow OCC to seek additional commitments if it is unable to obtain access to external liquidity through other facilities.

[51] *See* FSOC 2012 Annual Report, Appendix A, *https://home.treasury.gov/system/files/261/here.pdf* (last visited Mar. 17, 2021).

continue providing services to the options markets by addressing losses and shortfalls arising out of the default of a Clearing Member. OCC's continued operations would, in turn, help support the stability of the financial system by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market. As such, the Commission believes the proposed changes are consistent with promoting safety and soundness, reducing systemic risks, and promoting the stability of the broader financial system.[52]

The Commission received comments asserting that the proposal would put public retirement funds at risk to cover investing choices made by Clearing Members.[53] The Commission has carefully considered the risk to investors' retirement funds relative to the benefits of expanding the Non-Bank Liquidity Facility. Given that the Non-Bank Liquidity Facility has included non-bank institutional investors such as pension funds and insurance companies among its liquidity providers since its implementation in 2015, and has retained substantially the same terms throughout, the Commission does not believe that the proposed expansion to the Non-Bank Liquidity Facility would introduce new risks to OCC's counterparties.[54] Further, the terms of the facility would require OCC to provide Eligible Securities (*e.g.,* Treasuries) subject to haircuts negotiated by OCC and its counterparties to address the potential credit risk to OCC's counterparties. Moreover, the terms of the facility would require OCC to pay the costs of any covering transactions required if OCC were to fail to perform its obligation. As described above, the expansion of commitments in the Non-Bank Liquidity Facility would reduce the likelihood that OCC would have insufficient financial resources resulting from a Clearing Member default. Taken together, the Commission believes that the terms of the agreement to protect OCC and its counterparties, combined with the reduced likelihood of OCC's failure to manage a default, would in fact promote the safety and soundness of the U.S. markets.

The Commission also received comments asserting that ''changing the rules regarding advance notice'' (likely referring to OCC not having to file an advance notice at renewal) has ''no value to the public.'' [55] The Commission has carefully considered the risk of allowing new or renewed commitments under the terms of Non-Bank Liquidity Facility without requiring additional advance notice filings from OCC. Given that such additional commitments would only be permitted without an advance notice if executed on substantially similar terms as the current Non-Bank Liquidity Facility, to which the Commission has previously not objected, the Commission does not believe that such additional commitments would necessarily present a material change to the risks that OCC presents. Any change to the Non-Bank Liquidity Facility that could materially affect the nature or level of risk posed by OCC would necessitate an advance notice filing.[56]

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[57]

B. Consistency With Rule 17Ad–22(e)(7) Under the Exchange Act

Rule 17Ad–22(e)(7)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad–22(e)(7)(i) [58] in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.[59] For any covered clearing agency, ''qualifying liquid resources'' means assets that are readily available and convertible into cash through prearranged funding arrangements, such as committed arrangements without material adverse change provisions, including, among others, repurchase agreements.[60]

The Non-Bank Liquidity Facility provides OCC with prearranged commitments to convert assets into cash even if OCC experiences a material adverse change, and the Commission believes that the Non-Bank Liquidity Facility provides OCC access to qualifying liquid resources to the extent that OCC has sufficient collateral to access the facility.[61] The Commission believes, therefore, that the proposed changes—to remove the existing aggregate commitment limit, and to allow the OCC Board to increase the Non-Bank Liquidity Facility program aggregate commitment levels as needed to maintain sufficient liquidity—will further enhance OCC's ability to hold qualifying liquid resources to meet its liquidity resource requirements, consistent with the requirements of Rule 17Ad–22(e)(7)(ii) under the Exchange Act.[62]

The Commission received comments raising concerns about the inability of liquidity providers to deny funding in

[52] 12 U.S.C. 5464(b).

[53] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[54] When OCC proposed the first iteration of the Non-Bank Liquidity Facility, it acknowledged that, like any liquidity source, it would involve certain risks. *See* Exchange Act Release No. 73726 (Dec. 3, 2014), 79 FR 73116, 73119 (Dec. 9, 2014) (File No. SR–OCC–2014–809). Upon review of the terms of the facility, the Commission stated its belief that the proposal should promote robust risk management, promote safety and soundness in the marketplace, reduce systemic risks, and support the stability of the broader financial system by giving OCC access to additional committed liquidity that will help OCC meet its settlement obligations in a timely manner, while also limiting the exposure that OCC has to its counterparties. *See* Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062, 1065 (Jan. 8, 2015) (File No. SR–OCC–2014–809).

[55] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[56] OCC would submit another advance notice only if: (1) OCC should seek to execute a commitment at a level that would have the effect of reducing external liquidity below the target of $3 billion; (2) OCC seeks to change the terms and conditions of the agreements underlying the facility or commitments thereunder in a manner that materially affects the nature or level of risk presented by OCC; or (3) OCC seeks to execute a commitment with a counterparty that has experienced a negative change to its credit profile or a material adverse change since OCC last executed a commitment with that counterparty.

[57] 12 U.S.C. 5464(b).

[58] Rule 17Ad–22(e)(7)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day 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 of obligation for the covered clearing agency in extreme but plausible conditions. 17 CFR 240.17Ad–22(e)(7)(i).

[59] 17 CFR 240.17Ad–22(e)(7)(ii).

[60] 17 CFR 240.17Ad–22(a)(14)(ii)(3).

[61] OCC would use Eligible Securities that are included in Clearing Fund contributions by Clearing Members (separate from any required cash contributions to the Clearing Fund) and margin deposits of any Clearing Member that has been suspended by OCC for the repurchase arrangements. *See* Notice of Filing, 85 FR at 31235 n.9.

[62] 17 CFR 240.17Ad–22(e)(7)(ii).

the event of a material adverse change.[63] As noted above, under Rule 17Ad–22(a)(14), committed arrangements, such as repurchase agreements, are only qualifying liquid resources where such agreements do not include material adverse change provisions.[64] Moreover, the non-banks are voluntarily participating in the facility. These liquidity providers may consider the benefits and costs of participation, including the adverse change provision, before determining that their participation in the facility would be preferable to alternative investments and would benefit their shareholders and beneficiaries.

Commenters also raised concerns regarding the speed with which a counterparty would be required to provide funding.[65] As discussed above, a fundamental attribute of liquidity resources is that OCC can quickly access liquidity in the event of a Clearing Member default or market disruption. By necessity, funds must be made available to OCC within 60 minutes of OCC's delivering Eligible Securities, and the institutional investor is not permitted to rehypothecate purchased securities. Any requirement to allow liquidity providers to deny or delay funding would potentially delay OCC's access to liquidity resources, which could negatively affect the safety and soundness of the U.S. markets.

Accordingly, the Commission believes that the changes proposed in the Advance Notice are consistent with Rule 17Ad–22(e)(7) under the Exchange Act.[66]

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission does not object to Advance Notice (SR–OCC–2022–803) and that OCC is authorized to implement the proposed change as of the date of this notice.

[63] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[64] 17 CFR 240.17Ad–22(a)(14)(ii)(A).

[65] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-803/srocc2022803.htm.*

[66] 17 CFR 240.17Ad–22(e)(7).

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19417 Filed 9–7–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95657; File No. SR–CBOE–2022–038]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Amend CBOE Rule 5.32 With Respect to the Handling of Cancel/Replace Messages

September 1, 2022.

I. Introduction

On July 7, 2022, Cboe Exchange, Inc. (''Exchange'' or ''CBOE'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to establish that a cancel/replace message received for an order already resting on the Exchange's order book will cause such resting order to lose its original priority position, subject to certain exceptions. The proposed rule change was published for comment in the **Federal Register** on July 26, 2022.[3] The Commission received no comment letters regarding the proposed rule change. This order approves the proposed rule change.

II. Summary of the Proposal

The Exchange proposes to amend CBOE Rule 5.32(e) to describe the impact on priority of a ''no-change'' order[4] (*i.e.,* an order submitted to cancel or replace a resting order that does not change any terms of an order) and of a cancel/replace message that does not change the price or size of a resting order but changes another term of an order. CBOE Rule 5.32(e) describes whether a resting order's priority position may change if it is modified with a cancel/replace message. Specifically, current CBOE Rule 5.32(e) states if the price of an order is changed, the order loses position and is placed in a priority position as if the Exchange's system (''System'') received the order at the time the order was changed. If the quantity of an order is decreased, it retains its priority position. If the quantity of an order is increased, it loses its priority position and is placed in a priority position as if the System received the order at the time the quantity of the order is increased.

The Exchange explains, however, that CBOE Rule 5.32(e) is currently silent regarding how the System handles a cancel/replace message comprised of a no-change order or an order that changes terms other than price and size.[5] The Exchange further represents that it recently determined that the System does not handle all no-change orders and messages uniformly with respect to how they affect resting orders. Specifically, the Exchange explains that currently, when the System receives a no-change order, the resting order would lose its priority position; however, if the System receives a no-change bid or offer in a bulk message, the resting bid or offer would not lose its priority position.[6]

The Exchange proposes to amend CBOE Rule 5.32(e) so that it states as follows: if a User submits a cancel/replace message for a resting order, regardless of whether the cancel/replace message modifies any terms of the resting order, the order loses its priority position and is placed in a priority position based on the time the System receives the cancel/replace message, unless the User only (1) decreases the quantity of an order (as is currently set forth in the Rules), (2) modifies the Max Floor (if a Reserve Order), or (3) modifies the stop price (if a Stop or Stop-Limit order), in which case the order retains its priority position.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Exchange Act Release No. 95328 (July 20, 2022), 87 FR 44438 (''Notice'').

[4] In this context, the term ''order'' includes bids and offers submitted in bulk messages. A bulk message means a single electronic message a user submits with an M (Market-Maker) capacity to the Exchange in which the User may enter, modify, or cancel up to an Exchange-specified number of bids and offers. *See* CBOE Rule 1.1 (definition of bulk message, which provides that the System handles a bulk message bid or offer in the same manner as it handles an order or quote, unless the Rules specify otherwise).

[5] *See* Notice, *supra* note 3, at 44439.

[6] *See id.*

The Exchange states that this change will harmonize the handling of all no-change orders and quotes so that any no-change order or bulk message bid or offer will lose priority.[7] Further, the Exchange states that this proposal will also codify current System functionality that causes a resting order to lose its priority position if any cancel/replace message is submitted if any term other than the Max Floor (if a Reserve Order) [8] or the stop price (if a Stop or Stop-Limit order [9]) is modified.[10]

III. Discussion and Commission Findings

After careful review, the Commission finds that the Exchange's proposal is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[11] In particular, the Commission finds that the proposed rule change is consistent with Sections 6(b)(5) [12] and 6(b)(8) [13] of the Exchange Act. Section 6(b)(5) of the Exchange Act requires that the rules of a national securities exchange be designed, among other things, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest, and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 6(b)(8) of the Exchange Act requires that the rules of a national securities exchange not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act.

The Commission believes that requiring the System to handle all cancel/replace orders in a uniform manner with respect to priority of affected resting orders is consistent with the Exchange Act in that such requirement is designed to promote just and equitable principles of trade and remove impediments to and perfect the mechanism of a free and open market and a national market system. Furthermore, the Commission believes that narrowly restricting when a resting order retains its priority after the System receives a subsequent cancel/replace message (*e.g.,* its only modifies the Max Floor of the resting order) is designed, to, among other things, promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest without imposing any unreasonable burdens on competition.

Accordingly, the Commission finds that the proposed rule change is consistent with the Exchange Act.

IV. Conclusion

It is therefore ordered that, pursuant to Section 19(b)(2) of the Exchange Act,[14] the proposed rule change (SR–CBOE–2022–038) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19350 Filed 9–7–22; 8:45 am]

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[7] *See id.*

[8] A ''Reserve Order'' is a limit order with both a portion of the quantity displayed and a reserve portion of the quantity not displayed. *See* CBOE Rule 5.6.

[9] A ''Stop (Stop-Loss)'' order is an order to buy (sell) that becomes a market order when the consolidated last sale price (excluding prices from complex order trades if outside of the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. A ''Stop-Limit'' order is an order to buy (sell) that becomes a limit order when the consolidated last sale price (excluding prices from complex order trades if outside the NBBO) or NBB (NBO) for a particular option contract is equal to or above (below) the stop price specified by the User. *See* CBOE Rule 5.6.

[10] *See* Notice, *supra* note 3, at 44439.

[11] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[12] 15 U.S.C. 78f(b)(5).

[13] 15 U.S.C. 78f(b)(8).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95650; File No. SR–NSCC–2022–009]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Designation of Longer Period for Commission Action on a Proposed Rule Change To Adopt Intraday Volatility Charge and Eliminate Intraday Backtesting Charge

September 1, 2022.

On July 7, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–009 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on July 20, 2022,[3] and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.[4]

Section 19(b)(2) of the Act [5] provides that, within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for the Proposed Rule Change is September 3, 2022.

The Commission is extending the 45-day period for Commission action on the Proposed Rule Change. The Commission finds that it is appropriate to designate a longer period within which to take action on the Proposed Rule Change so that it has sufficient time to consider and take action on the Proposed Rule Change.

Accordingly, pursuant to Section 19(b)(2) of the Act [6] and for the reasons stated above, the Commission designates October 18, 2022, as the date by which the Commission shall either approve, disapprove, or institute proceedings to determine whether to disapprove proposed rule change SR–NSCC–2022–009.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[7]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19347 Filed 9–7–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95286 (July 7, 2022), 87 FR 43355 (July 20, 2022) (File No. SR–NSCC–2022–009) (''Notice of Filing'').

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-009/srnscc2022009.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] *Id.*

[7] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95664; File No. SR–MRX–2022–11]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing of Proposed Rule Change To Adopt Rules Related to ISO Functionality

September 2, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to adopt rules related to Intermarket Sweep Order (''ISO'') functionality.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to adopt ISO functionality in Options 3, Section 11 that permits Members to submit ISOs in the Exchange's Facilitation Mechanism (''Facilitation ISO''), and Solicited Order Mechanism (''Solicitation ISO'').[3]

As set forth in Options 3, Section 11(b), the Facilitation Mechanism is a process wherein the Electronic Access Member seeks to facilitate a block-size order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against a block-size order it represents as agent. Electronic Access Members must be willing to execute the entire size of orders entered into the Facilitation Mechanism. As set forth in Options 3, Section 11(d), the Solicited Order Mechanism is a process by which an Electronic Access Member can attempt to execute orders of 500 or more contracts it represents as agent against contra orders it solicited. Each order entered into the Solicited Order Mechanism shall be designated as all-or-none.

An ISO is defined in Options 3, Section 7(b)(5) as a limit order that meets the requirements of Options 5, Section 1(h) and trades at allowable prices on the Exchange without regard to the ABBO. Simultaneously with the routing of the ISO to the Exchange, one or more additional ISOs, as necessary, are routed to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or any Protected Offer, in the case of a limit order to buy, for the options series with a price that is superior to the limit price of the ISO.[4] A Member may submit an ISO to the Exchange only if it has simultaneously routed one or more additional ISOs to execute against the full displayed size of any Protected Bid, in the case of a limit order to sell, or Protected Offer, in the case of a limit order to buy, for an options series with a price that is superior to the limit price of the ISO.

As discussed further below, none of the proposed rule changes will amend current functionality. Rather, these changes are designed to bring greater transparency around certain order types currently available on the Exchange. The Exchange notes that the Facilitation ISO and Solicitation ISO[5] are functionally similar to the Exchange's Price Improvement Mechanism[6] ISO (''PIM ISO'') as set forth in Supplementary Material .08 to Options 3, Section 13, as further discussed below.[7]

Facilitation ISO

Today, the Exchange allows the submission of ISOs into its Facilitation Mechanism as Facilitation ISOs. To promote transparency, the Exchange proposes to memorialize Facilitation ISOs as an order type in Supplementary Material .06 to Options 3, Section 11. Specifically, the Exchange proposes:

A Facilitation ISO order (''Facilitation ISO'') is the transmission of two orders for crossing pursuant to paragraph (b) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Facilitation ISO to the Exchange has, simultaneously with the routing of the Facilitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation auction price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Facilitation ISO provided the order adheres to the current order entry requirements for the Facilitation Mechanism as set forth in Options 3, Section 11(b)(1),[8] but without regard to

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] This functionality is currently offered on the Exchange, so the proposed rule change codifies existing functionality in the Exchange's rules.

[4] ''Protected Bid'' or ''Protected Offer'' means a Bid or Offer in an options series, respectively, that: (a) is disseminated pursuant to the Options Order Protection and Locked/Crossed Market Plan; and (b) is the Best Bid or Best Offer, respectively, displayed by an Eligible Exchange. *See* Options 5, Section 1(o).

[5] The Exchange notes that it has an ISO trade through surveillance in place that will identify and capture when a Member marks a Facilitation or Solicitation ISO and the order possibly trades through a Protected Bid or Protected Offer price at an away exchange. The Exchange will monitor the NBBO prior to and after the order trades on the Exchange to detect potential trade through violations.

[6] The Price Improvement Mechanism (''PIM'') is a process that allows an Electronic Access Member to provide price improvement opportunities for a transaction wherein the Electronic Access Member seeks to facilitate an order it represents as agent, and/or a transaction wherein the Electronic Access Member solicited interest to execute against an order it represents as agent. *See* Options 3, Section 13(a).

[7] The Exchange also notes that its affiliates, Nasdaq BX (''BX'') and Nasdaq Phlx (''Phlx''), currently allow ISOs to be entered into BX's Price Improvement Mechanism (''PRISM'') and Phlx's Price Improvement XL (''PIXL''), respectively. *See* BX Options 3, Section 13(ii)(K) (describing PRISM ISOs) and Phlx Options 3, Section 13(b)(11) (describing PIXL ISOs). Other options exchanges similarly allow ISOs to be entered into their auction mechanisms. *See e.g.,* Cboe Rules 5.37(b)(4)(A) (allowing ISOs to be entered into Cboe's Automated Improvement Mechanism (''AIM ISOs'') and 5.39(b)(4) (allowing ISOs to be entered into Cboe's Solicitation Auction Mechanism (''SAM ISOs'')).

[8] Specifically, Options 3, Section 11(b)(1) provides that orders must be entered into the Facilitation Mechanism at a price that is (A) equal to or better than the NBBO on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the order must be entered at an improved price; and (B) equal to or better than the ABBO on the opposite side. Orders that do not meet these requirements are not eligible for the Facilitation Mechanism and will be rejected.

the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Facilitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on the same side of the market as the agency order unless there is a Priority Customer order on the same side Exchange best bid or offer, in which case the Facilitation ISO must be entered at an improved price. The Exchange does not check the Exchange best bid or offer on the opposite side of the Facilitation ISO because the underlying Facilitation Mechanism similarly does not check the opposite side Exchange best bid or offer. As discussed above, the Facilitation Mechanism only requires that the opposite side of the Facilitation order be equal to or better than the ABBO.[9] The Facilitation Mechanism does not check the opposite side Exchange best bid or offer because any interest that is available on the opposite side of the market would allocate against the Facilitation agency order and provide price improvement. As an example:

Assume the following market:

Exchange BBO: 1 × 2 (also NBBO)
CBOE: 0.75. × 2.25 (next best exchange quote)
Facilitation order is entered to buy 50 contracts @2.05
No Responses are received.

The Facilitation order executes with resting 50 lot quote @2. In this instance, the Facilitation order is able to begin crossed with the contra side Exchange BBO because in execution, the resting 50 lot quote @2 is able to provide price improvement to the facilitation order.

Given that the Facilitation ISO is accepted so long as it adheres to the order entry requirements of the underlying Facilitation Mechanism, but without regard to the ABBO, the Exchange believes that it is appropriate and logical to align the order entry checks of the Facilitation ISO in the manner discussed above.

The Exchange processes the Facilitation ISO in the same manner that it processes any other Facilitation orders, except that it will initiate a Facilitation auction without protecting prices away. Instead, the Member entering the Facilitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Facilitation ISO to the Exchange. The Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate a Facilitation auction while preventing trade-throughs.

[9] *Id.*

The Exchange notes that the Facilitation ISO is similar to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[10] Similar to the Facilitation ISO, the PIM ISO must meet the order entry requirements for PIM in Options 3, Section 13(b) but does not consider the ABBO.[11] Further, the Exchange processes a PIM ISO order the same way as any other PIM order except the Exchange will initiate a PIM auction without protecting away prices. As with Facilitation ISOs, the Member entering the PIM ISO bears responsibility to clear all better priced interest away simultaneously with submitting the PIM ISO to the Exchange.

The following example illustrates how Facilitation ISO operates:

Assume:

ABBO: 1 × 1.20
MRX BBO: 0.90 × 1.30
Member enters Facilitation ISO with Agency side to buy 50 @1.25
Facilitation ISO auction period concludes with no responses arriving
Facilitation ISO executes with contra side 50 @1.25

Solicitation ISO

Today, the Exchange allows the submission of ISOs into its Solicited Order Mechanism as Solicitation ISOs. To promote transparency, the Exchange proposes to memorialize Solicitation ISOs as an order type in Supplementary Material .07 to Options 3, Section 11. Specifically, the Exchange proposes:

A Solicitation ISO order (''Solicitation ISO'') is the transmission of two orders for crossing pursuant to paragraph (d) above without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the Solicitation ISO to the Exchange has, simultaneously with the routing of the Solicitation ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Solicitation auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the Agency order.

Today, the Exchange will accept a Solicitation ISO provided the order adheres to the current order entry requirements for the Solicited Order Mechanism as set forth in Options 3, Section 11(d)(1),[12] but without regard to the ABBO (similar to a regular ISO in Options 3, Section 7(b)(5)). Therefore, Solicitation ISOs must be entered at a price that is equal to or better than the Exchange best bid or offer on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the Solicitation ISO must be entered at an improved price.

The Exchange processes the Solicitation ISO in the same manner that it processes other orders entered in the Solicited Order Mechanism, except that it will initiate a Solicited Order auction without protecting away prices. Instead, the Member entering the Solicitation ISO will bear the responsibility to clear all better priced interest away simultaneously with submitting the Solicitation ISO to the Exchange. Similar to the Facilitation ISO discussed above, the Exchange believes that offering this order type is beneficial for Members as it provides them with an efficient method to initiate an auction in the Solicited Order Mechanism while preventing trade-throughs. Furthermore, Solicitation ISOs are similar to PIM ISOs in the manner described above for Facilitation ISOs.[13] In addition, another options

[10] Supplementary Material .08 to Options 3, Section 13 defines PIM ISO as the transmission of two orders for crossing pursuant to this Rule without regard for better priced Protected Bids or Protected Offers (as defined in Options 5, Section 1) because the Member transmitting the PIM ISO to the Exchange has, simultaneously with the routing of the PIM ISO, routed one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting PIM auction price and has swept all interest in the Exchange's book priced better than the proposed auction starting price. Any execution(s) resulting from such sweeps shall accrue to the PIM order.

[11] Unlike the Facilitation Mechanism, PIM requires an opposite side NBBO check, which would include the Exchange best bid or offer. As discussed above, the Facilitation order entry checks only require that the opposite side of the Facilitation order be equal to or better than the ABBO (*i.e.,* there is no opposite side local book check). For PIM, the order must be entered at one minimum price improvement increment better than the NBBO on the opposite side of the market if the Agency Order is for less than 50 option contracts and if the difference between the NBBO is $0.01. If the Agency Order is for 50 option contracts or more, or if the difference between the NBBO is greater than $0.01, the PIM order must be entered at a price that is equal to or better than the NBBO on the opposite side. *See* Options 3, Section 13(b)(1) and (2). As such, PIM ISOs additionally require the entering Member to sweep all interest in the Exchange's book priced better than the proposed auction starting price (unlike Facilitation ISO which does not have a similar sweep requirement).

[12] Specifically, Options 3, Section 11(d)(1) provides that orders must be entered into the Solicited Order Mechanism at a price that is equal to or better than the NBBO on both sides of the market; provided that, if there is a Priority Customer order on the Exchange best bid or offer, the order must be entered at an improved price. Orders that do not meet these requirements are not eligible for the Solicited Order Mechanism and will be rejected.

[13] The Exchange notes that similar to the PIM ISO, but unlike Facilitation ISO, the Solicitation

exchange currently offers a substantially similar order type as the Exchange's Solicitation ISO.[14]

The following example illustrates how the Solicitation ISO operates:

Assume:

ABBO: 1 × 1.20
MRX BBO: 0.90 × 1.30
Member enters Solicitation ISO with Agency side to buy 500 @1.25
Solicitation ISO auction period concludes with no responses arriving
Solicitation ISO executes with contra side 500 @1.25

Intermarket Sweep Orders

In light of the changes proposed above to adopt the Facilitation ISO and Solicitation ISO into its Rulebook, the Exchange proposes to make related amendments to the ISO rule in Options 3, Section 7(b)(5) to add that ''ISOs may be entered on the single leg order book or into the Facilitation Mechanism, Solicited Order Mechanism, or Price Improvement Mechanism, pursuant to Supplementary Material .06 and .07 to Options 3, Section 11, and Supplementary Material .08 to Options 3, Section 13.''

The proposed rule text will be similar to BX's current ISO rule in BX Options 3, Section 7(a)(6), except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today. Specifically, BX does not currently offer Facilitation ISOs or Solicitation ISOs. PIM ISOs are currently codified in Supplementary Material .08 to Options 3, Section 13, so the proposed rule text herein is a non-substantive amendment to add a cross-reference to the PIM ISO rule. The proposed language does not amend the current ISO functionality but rather is intended to add more granularity and more closely align the ISO rule with BX's ISO rule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[15] in general, and furthers the objectives of Section 6(b)(5) of the Act,[16] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

Facilitation and Solicitation ISOs

The Exchange believes that the proposal to adopt Facilitation ISOs and Solicitation ISOs in Supplementary Material .06 and .07 to Options 3, Section 11 is consistent with the Act. The proposal will codify current functionality, thereby promoting transparency in the Exchange's rules and reducing any potential confusion. As it relates to Solicitation ISOs, the Exchange believes that the proposed rule change promotes fair competition. Specifically, the proposal allows the Exchange to offer Members an order type that is already offered by another options exchange.[17]

In addition, offering the Facilitation ISO and Solicitation ISO benefits market participants and investors because this functionality provides an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs. As discussed above, the Exchange processes the Facilitation and Solicitation ISO in the same manner as it processes any other order entered into the Facilitation and Solicited Order Mechanism, except the Exchange will initiate a Facilitation auction or Solicited Order auction without protecting away prices (similar to a regular ISO in Options 3, Section 7(b)(5)). Instead, the entering Member, simultaneous with the routing of the Facilitation ISO or Solicitation ISO to the Exchange, remains responsible for routing one or more ISOs, as necessary, to execute against the full displayed size of any Protected Bid or Protected Offer that is superior to the starting Facilitation or Solicitation auction price, and for Solicitation ISO, has swept all interest in the Exchange's book priced better than the proposed auction starting price.[18] As discussed above, these order types operate in a similar manner to the PIM ISO that is currently described in Supplementary Material .08 to Options 3, Section 13.[19]

Intermarket Sweep Orders

The Exchange believes that the proposed changes to the definition of ISOs in Options 3, Section 7(b)(5) are consistent with the Act. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted. As such, the Exchange believes that its proposal will promote transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges. While the proposed changes to the Exchange's ISO rule generally track BX's ISO rule, the proposed language will refer to certain Exchange functionality that BX does not have today (*i.e.,* Facilitation ISOs or Solicitation ISOs).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Offering Facilitation and Solicitation ISOs does not impose an undue burden on competition because it enables the Exchange to provide market participants with an additional and efficient method to initiate a Facilitation or Solicited Order auction while preventing trade-throughs, as discussed above. In addition, all Members may submit a Facilitation ISO or Solicitation ISO. As it relates to the Solicitation ISO, the Exchange believes that the proposed rule change will promote fair competition among options exchanges as it will allow the Exchange to compete with other markets that already allow ISOs in their solicitation auction mechanisms.[20]

The Exchange further believes that the proposed changes to its ISO rule do not impose an undue burden on competition. As discussed above, the proposed changes are intended to add more granularity and more closely align the level of detail in the ISO rule with BX's ISO rule in BX Options 3, Section 7(a)(6) by specifying how ISOs may be submitted, except the Exchange's ISO rule will refer to Exchange functionality that BX does not have today (*i.e.,* Facilitation and Solicitation ISOs). With the proposed changes, the Exchange believes that its proposal will promote

ISO requires entering Members to sweep all interest in the Exchange's book priced better than the proposed auction starting price. The order entry checks for the Solicited Order Mechanism, similar to PIM, requires an opposite side NBBO check, which would include the Exchange best bid or offer. *See supra* notes 11–12.

[14] In addition, Cboe currently offers a SAM ISO order type, which is defined as the submission of two orders for crossing in a SAM Auction without regard for better-priced Protected Quotes (as defined in Cboe Rule 5.65) because the Initiating TPH routed an ISO(s) simultaneously with the routing of the SAM ISO to execute against the full displayed size of any Protected Quote that is better than the stop price and has swept all interest in the Book with a price better than the stop price. Any execution(s) resulting from these sweeps accrue to the SAM Agency Order. *See* Cboe Rule 5.39(b)(4). *See also* Securities Exchange Act Release No. 87192 (October 1, 2019), 84 FR 53525 (October 7, 2019) (SR–CBOE–2019–063) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change related to the SAM Auction, including to adopt the SAM ISO).

[15] 15 U.S.C. 78f(b).

[16] 15 U.S.C. 78f(b)(5).

[17] *See supra* note 14.

[18] *See supra* note 13.

[19] *See supra* notes 11 and 13.

[20] *See supra* note 14.

transparency in the Exchange's rules and consistency across the rules of the Nasdaq affiliated options exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days of such date (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–11 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2022–11. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2022–11 and should be submitted on or before September 29, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[21]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19412 Filed 9–7–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95656; File No. SR–NSCC–2022–005]

Self-Regulatory Organizations; National Securities Clearing Corporation; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Revise the Excess Capital Premium Charge

September 1, 2022.

I. Introduction

On May 20, 2022, National Securities Clearing Corporation (''NSCC'') filed with the Securities and Exchange Commission (''Commission'') proposed rule change SR–NSCC–2022–005 (the ''Proposed Rule Change'') pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder.[2] The Proposed Rule Change was published for comment in the **Federal Register** on June 8, 2022,[3] and the Commission has received comments regarding the changes proposed in the Proposed Rule Change.[4]

On July 11, 2022, pursuant to Section 19(b)(2) of the Act,[5] the Commission designated a longer period within which to approve, disapprove, or institute proceedings to determine whether to approve or disapprove the Proposed Rule Change.[6] This order institutes proceedings, pursuant to Section 19(b)(2)(B) of the Act,[7] to determine whether to approve or disapprove the Proposed Rule Change.

II. Summary of the Proposed Rule Change

A key tool that NSCC uses to manage its respective credit exposures to its members is the daily collection of margin from each member, which is referred to as each member's Required Fund Deposit. The aggregated amount of all members' margin constitutes the Clearing Fund, which NSCC would access should a defaulted member's own margin be insufficient to satisfy losses to NSCC caused by the liquidation of that member's portfolio.

The Excess Capital Premium (ECP) charge is a component of the Clearing Fund that is designed to mitigate the heightened default risk a member could pose to NSCC if it operates with lower capital levels relative to its margin requirements. Each Business Day, NSCC determines if a member may be subject to the ECP charge by first determining its Calculated Amount. The Calculated Amount is a portion of a member's Required Fund Deposit designed to represent its margin requirements to NSCC.

As described in the Notice, NSCC proposes to modify Procedure XV (Clearing Fund Formula and Other Matters) of NSCC's Rules & Procedures (''Rules'') to revise the ECP charge by enhancing the methodology for calculating the charge to (1) compare a member's applicable capital amounts with the amount it contributes to the Clearing Fund that represents its volatility charge, (2) for members that are broker-dealers, use net capital amounts rather than excess net capital amounts in the calculation of the ECP charge; and for all other members, use equity capital in the calculation of the ECP charge, and (3) establish a cap of 2.0 for the Excess Capital Ratio that is used in calculating a member's ECP

[21] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 95026 (June 2, 2022), 87 FR 34913 (June 8, 2022) (File No. SR–NSCC–2022–005). The Notice referred to an incorrect filing date of May 30, 2022; however, the proposal was filed on May 20, 2022, as indicated here.

[4] Comments are available at *https://www.sec.gov/comments/sr-nscc-2022-005/srnscc2022005.htm.*

[5] 15 U.S.C. 78s(b)(2).

[6] Securities Exchange Act Release No. 95245 (July 11, 2022), 87 FR 42523 (July 15, 2022) (SR–NSCC–2022–005).

[7] 15 U.S.C. 78s(b)(2)(B).

charge.[8] In addition, NSCC proposes to make additional changes directed at the transparency of the Rules regarding the ECP charge, including (1) clarifying the capital amounts that are used in the calculation of the charge by introducing new defined terms, (2) removing NSCC's discretion to waive or reduce the charge, and (3) providing that NSCC may calculate the charge based on updated capital information.

First, NSCC proposes to revise the ECP Charge to use the members' Volatility Component[9] as the Calculated Amount. Specifically, it proposes to replace the Calculated Amount with the amount collected as that member's volatility component as determined pursuant to Sections I(A)(1)(a)(i)–(iii) and (2)(a)(i)–(iii) of Procedure XV of the Rules.

Second, NSCC proposes to make changes to the calculation of the ECP charge based on whether or not a member is a broker-dealer. Specifically, for broker-dealer members, it would revise the capital measure used to calculate the ECP charge to replace excess net capital with net capital. In addition, it would revise the calculation of the ECP charge for members that are not broker-dealers by using equity capital rather than different measures that are based on other membership requirements.

Third, NSCC proposes to set a maximum amount of Excess Capital Ratio that is used in calculating members' ECP charge to 2.0.

Finally, NSCC proposes certain changes directed at improving transparency regarding the Excess Capital Premium. Specifically, the proposed changes would eliminate NSCC's discretion to waive or reduce the ECP charge. In addition, the proposed changes would add new definitions to its Rules to clarify the description of the capital amounts that NSCC uses in the calculation of the ECP charge and provide that NSCC may calculate the charge based on updated capital information.

III. Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Act[10] to determine whether the Proposed Rule Change should be approved or disapproved. Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the Proposed Rule Change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, the Commission seeks and encourages interested persons to comment on the Proposed Rule Change, providing the Commission with arguments to support the Commission's analysis as to whether to approve or disapprove the Proposed Rule Change.

Pursuant to Section 19(b)(2)(B) of the Act,[11] the Commission is providing notice of the grounds for disapproval under consideration. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the Proposed Rule Change's consistency with Section 17A of the Act,[12] and the rules thereunder, including the following provisions:

- Section 17A(b)(3)(F) of the Act,[13] which requires, among other things, that the rules of a clearing agency must be designed to promote the prompt and accurate clearance and settlement of securities transactions, to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, and to protect investors and the public interest; and
- Rule 17Ad–22(e)(4)(i) of the Act, [14] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed 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 sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence.
- Rule 17Ad–22(e)(6)(i) of the Act,[15] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to cover, if the covered clearing agency provides central counterparty services, 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.
- Rule 17Ad–22(e)(23)(ii) of the Act[16] which requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to provide sufficient information to enable participants to identify and evaluate the risks, fees, and other material costs they incur by participating in the covered clearing agency.

IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the Proposed Rule Change. In particular, the Commission invites the written views of interested persons concerning whether the Proposed Rule Change is consistent with Section 17A(b)(3)(F) of the Act,[17] and Rules 17Ad–22(e)(4)(i), (e)(6)(i) and (e)(23)(ii) of the Act,[18] or any other provision of the Act, or the rules and regulations thereunder.

Interested persons are invited to submit written data, views, and arguments regarding whether the Proposed Rule Change should be approved or disapproved by September 29, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 13, 2022.

The Commission asks that commenters address the sufficiency of NSCC's statements in support of the Proposed Rule Change, which are set forth in the Notice,[19] in addition to any other comments they may wish to submit about the Proposed Rule Change.

Comments may be submitted by any of the following methods:

[8] The description of the Proposed Rule Change is based on the statements prepared by NSCC in the Notice. *See* Notice, *supra* note 3. Capitalized terms used herein and not otherwise defined herein are defined in the Rules, *available at https://www.dtcc.com/-/media/Files/Downloads/legal/rules/nscc_rules.pdf.*

[9] The volatility component is designed to capture the market price risk associated with each member's portfolio at a 99th percentile level of confidence. NSCC has two methodologies for calculating the volatility component—a model-based volatility-at-risk, or VaR, charge and a haircut-based calculation, for certain positions that are excluded from the VaR charge calculation. The charge that is applied to a member's Required Fund Deposit with respect to the volatility component is referred to as the volatility charge and is the sum of the applicable VaR charge and the haircut-based calculation. Amounts calculated pursuant to Sections I(A)(1)(a)(iv) and (2)(a)(iv) of Procedure XV with respect to long positions in Net Unsettled Positions in Family-Issued Securities are designed to address wrong-way risk presented by these positions, not volatility risks, and, as such, are not a part of a member's volatility charge. *See* Sections I(A)(1)(a) and (2)(a) of Procedure XV, *supra* note 3.

[10] 15 U.S.C. 78s(b)(2)(B).

[11] *Id.*

[12] 15 U.S.C. 78q–1.

[13] 15 U.S.C. 78q–1(b)(3)(F).

[14] 17 CFR 240.17Ad–22(e)(4)(i).

[15] 17 CFR 240.17Ad–22(e)(6)(i).

[16] 17 CFR 240.17Ad–22(e)(23)(ii).

[17] 15 U.S.C. 78q–1(b)(3)(F).

[18] 17 CFR 240.17Ad–22(e)(4)(i), (e)(6)(i) and (e)(23)(ii).

[19] *See* Notice, *supra* note 3.

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NSCC–2022–005 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–NSCC–2022–005. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of NSCC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–NSCC–2022–005 and should be submitted on or before September 29, 2022. Rebuttal comments should be submitted by October 13, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[20]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19346 Filed 9–7–22; 8:45 am]

BILLING CODE 8011–01–P

[20] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95658; File No. SR–CboeBZX–2022–037]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Order Approving a Proposed Rule Change, as Modified by Amendment Nos. 1 and 2, To Amend BZX Rule 11.17, Clearly Erroneous Executions

September 1, 2022.

I. Introduction

On July 11, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') 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 (i) make the current clearly erroneous execution (''CEE'') pilot permanent, and (ii) apply the Limit Up-Limit Down (''LULD'') mechanism in place of the CEE review process during regular trading hours, except in limited circumstances. The proposed rule change was published for comment in the **Federal Register** on July 18, 2022.[3] On July 29, 2022, the Exchange filed Amendment No. 1 to the proposed rule change.[4] On August 26, 2022, the Exchange filed Amendment No. 2 to the proposed rule change.[5] This order approves the proposed rule change, as modified by Amendment Nos. 1 and 2.

II. Description of the Proposed Rule Change, as Modified by Amendment Nos. 1 and 2

A. Background

On September 10, 2010, the Commission approved, on a pilot basis, changes to BZX Rule 11.17 (Clearly Erroneous Executions) that, among other things: (i) provided for uniform treatment of CEE reviews in multi-stock events involving twenty or more securities; and (ii) reduced the ability of the Exchange to deviate from the objective standards set forth in the rule.[6] In 2013, BZX Rule 11.17 was further modified to account for the operation of the Plan to Address Extraordinary Market Volatility (the ''LULD Plan'').[7] The Exchange states that in the 12 years since the initiation of the CEE pilot, the Exchange, other national securities exchanges, and Financial Industry Regulatory Authority (''FINRA'') have gained considerable experience in the operation of the CEE rule, as amended on a pilot basis.[8] Based on that experience, the Exchange states that the CEE pilot should continue on a permanent basis so that equities market participants and investors can continue benefit from the increased certainty provided by the amended CEE rule.[9] The CEE pilot is currently set to expire at the close of business on October 20, 2022.[10]

When the participants to the LULD Plan (''Participants'') filed to introduce the LULD mechanism, some commenters noted the potential discordance between the CEE rules and the Price Bands [11] used to limit the price at which trades would be permitted to be executed pursuant to the LULD Plan.[12] While the Participants acknowledged that the potential to prevent CEE would be a ''key benefit'' of the LULD Plan, the Participants decided not to amend the CEE rules at that time in order to study how CEE rules and the LULD mechanism interact.[13] After gaining experience with the LULD Plan, the Exchange now believes that it is appropriate to largely eliminate CEE review during Regular Trading Hours (''RTH'') [14] when Price

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95259 (July 12, 2022), 87 FR 42760 (''Notice'').

[4] In Amendment No. 1, the Exchange made technical and non-substantive corrections to the proposal. Specifically, the Exchange corrected an erroneous mismarking in the rule text and removed certain redundant language in the proposal. Because Amendment No. 1 does not materially alter the substance of the proposed rule change, Amendment No. 1 is not subject to notice and comment. Amendment No. 1 is available at: *https://www.sec.gov/comments/sr-cboebzx-2022-037/srcboebzx2022037-20135398-306303.pdf.*

[5] In Amendment No. 2, the Exchange revised the proposal to provide information on the implementation date of the proposal. Because Amendment No. 2 does not materially alter the substance of the proposed rule change, Amendment No. 2 is not subject to notice and comment. Amendment No. 2 is available at: *https://www.sec.gov/comments/sr-cboebzx-2022-037/srcboebzx2022037-20137788-308117.pdf* (''Amendment No. 2'').

[6] *See* Securities Exchange Act Release No. 62886 (Sept. 10, 2010), 75 FR 56613 (Sept. 16, 2010) (SR–BATS–2010–016) (''CEE Pilot Approval Order'').

[7] *See* Securities Exchange Act Release No. 68797 (Jan. 31, 2013), 78 FR 8635 (Feb. 6, 2013) (SR–BATS–2013–008).

[8] *See* Notice, *supra* note 3, at 42761.

[9] *See id.*

[10] *See* Securities Exchange Act Release No. 95288 (July 14, 2022), 87 FR 43346 (July 20, 2022) (SR–CboeBZX–2022–039).

[11] ''Price Bands'' refers to the term provided in Section V of the LULD Plan.

[12] *See* Notice, *supra* note 3, at 42761. The Exchange states that two commenters on File No. 4–631, Plan to Address Extraordinary Market Volatility, requested that the clearly erroneous rules be amended so the presumption would be that trades executed within the Price Bands would not be not subject to review. *Id.*

[13] *See id.* at 42761–62.

[14] The term ''Regular Trading Hours'' means the time between 9:30 a.m. and 4:00 p.m. Eastern Time. *See* BZX Rule 1.5(w).

Bands are in effect.[15] Thus, as proposed and discussed further below, trades executed within the Price Bands will stand, barring one of a handful of identified scenarios where CEE review may still be necessary for the protection of investors and the public interest.

Based on the forgoing, the Exchange proposes to: (1) make the current CEE pilot permanent; and (2) apply the LULD mechanism in place of the CEE review process during RTH, except in limited circumstances. The Exchange believes that these changes are appropriate as the LULD Plan has been approved by the Commission on a permanent basis,[16] and in light of recent amendments to the LULD Plan, including changes to the applicable Price Bands around the Open and Close of trading.[17]

B. Clearly Erroneous Review During Regular Trading Hours

As proposed, BZX Rule 11.17(c)(1) provides that trades executed within the Price Bands during RTH will not be reviewable as clearly erroneous, except in limited circumstances.[18] Specifically, proposed BZX Rule 11.17(c)(1)(A) provides that a transaction executed during RTH will continue to be eligible for CEE review if the transaction is in an NMS Stock that is not subject to the LULD Plan. In such case, the Numerical Guidelines set forth in BZX Rule 11.17(c)(2) will be applicable to such NMS Stock.[19]

Another such scenario where members will continue to be able to request CEE review is where a transaction resulted from certain systems issues pursuant to proposed BZX Rule 11.17(c)(1)(B). Specifically, as proposed, transactions executed during RTH will be eligible for CEE review if the transaction is the result of an Exchange technology or systems issue that results in the transaction occurring outside the applicable Price Bands pursuant to BZX Rule 11.17(g), or is executed after the primary listing market for the security declares a regulatory trading halt, suspension, or pause pursuant to BZX Rule 11.17(i).[20] Proposed BZX Rule 11.17(c)(1)(B) also provides that a transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the Reference Price, described in proposed BZX Rule 11.17(d), by an amount that equals or exceeds the applicable Percentage Parameter defined in Appendix A to the LULD Plan (''Percentage Parameters'').[21]

Finally, the Exchange proposes to allow for CEE review of transactions during RTH in limited cases when the Reference Price, described in proposed BZX Rule 11.17(d), is determined to be erroneous by an Officer of the Exchange. Specifically, a transaction executed during RTH would be eligible for clearly erroneous review pursuant to proposed BZX Rule 11.17(c)(1)(C), if the transaction involved, in the case of (1) a corporate action or new issue or (2) a security that enters a Trading Pause [22] pursuant to the LULD Plan and resumes trading without an auction,[23] a Reference Price that is determined to be erroneous by an Officer of the Exchange.[24] In such circumstances, the Exchange may use a different Reference Price pursuant to proposed BZX Rule 11.17(d)(2).[25]

In the context of a corporate action or a new issue under proposed BZX Rule 11.17(c)(1)(C), when determining whether the Reference Price is erroneous, the Exchange will examine whether such Reference Price clearly deviated from the theoretical value of the security.[26] In such cases, the Exchange will consider a number of factors to determine a new Reference Price that is based on the theoretical value of the security, including but not limited to, the offering price of the new issue, the ratio of the stock split applied to the prior day's closing price, the theoretical price derived from the numerical terms of the corporate action transaction such as the exchange ratio and spin-off terms, and for an OTC up-listing, the price of the security as provided in the prior day's FINRA Trade Data Dissemination Service final closing report.[27] In the foregoing instances, the theoretical value of the security will be used as the new Reference Price when applying the Percentage Parameters under the LULD Plan (or Numerical Guidelines if the transaction is in an NMS Stock that is not subject to the LULD Plan) to determine whether executions would be cancelled as clearly erroneous.[28]

In the context where a security that enters a LULD Trading Pause and resumes trading without an auction (*i.e.,* reopens with quotations) under proposed BZX Rule 11.17(c)(1)(C), the Reference Price will be the last effective Price Band that was in a limit state before the Trading Pause.[29]

Proposed BZX Rule 11.17(c)(1)(C) also provides that a transaction subject to review pursuant to this paragraph shall be found to be clearly erroneous if the price of the transaction to buy (sell) that is the subject of the complaint is greater than (less than) the new Reference Price, described in proposed BZX Rule 11.17(d)(2), by an amount that equals or exceeds the applicable Numerical Guidelines or Percentage Parameters, as applicable depending on whether the security is subject to the LULD Plan.[30]

C. Review of Transactions During the Early Trading, Pre-Opening, and After Hours Sessions

The Exchange proposes to move existing paragraphs (c)(2), (c)(3), and (d)

[15] *See* Notice, *supra* note 3, at 42762. The Exchange also states that industry feedback has reflected a desire to eliminate the discordance between the LULD mechanism and the CEE rules so that market participants would have more certainty that trades executed within the Price Bands would stand. *See* Notice, *supra* note 3, at 42762.

[16] *See* Securities Exchange Act Release Nos. 84843 (Dec. 18, 2018), 83 FR 66464 (Dec. 26, 2018); 85623 (April 11, 2019), 84 FR 16086 (April 17, 2019) (File No. 4–631) (''Amendment Eighteen'').

[17] *See* Notice, *supra* note 3, at 42762. Amendment Eighteen to the LULD Plan eliminated double-wide Price Bands: (1) between 9:30 a.m. and 9:45 a.m. (''the Open''), and (2) between 3:35 p.m. and 4:00 p.m., or in the case of an early scheduled close (''the Close''), during the last 25 minutes of trading before the Close, for Tier 2 NMS Stocks 2 with a Reference Price above $3.00. *See* Amendment Eighteen, *supra* note 16, at 16090.

[18] *See id.*

[19] *See* proposed BZX Rule 11.17(c)(1)(A). While the majority of securities traded on the Exchange will be subject to the LULD Plan, certain equity securities, such as rights and warrants, are explicitly excluded from the provisions of the LULD Plan and will therefore be eligible for CEE review instead. *See* Notice, *supra* note 3, at 42762. Similarly, there are instances, such as the opening auction on the primary listing market, where transactions are not ordinarily subject to the LULD Plan. *See id.*

[20] *See id.* The Exchange also proposes to delete paragraph (f) of BZX Rule 11.17, System Disruption or Malfunctions.

[21] *See id.*

[22] ''Trading Pause'' refers to the term provided in Section I(V) of the LULD Plan.

[23] The Exchange states that the ''resumption of trading without an auction'' provision of the proposed rule text applies only to securities that enter a Trading Pause pursuant to the LULD Plan and does not apply to a corporate action or new issue. *See* Notice, *supra* note 3, at 42763, n.22.

[24] *See id.* at 42763.

[25] *See id.*

[26] *See id.*

[27] *See* proposed BZX Rule 11.17(d)(2).

[28] *See* Notice, *supra* note 3, at 42763.

[29] *See* proposed BZX Rule 11.17(d)(2). The Exchange states that the LULD Plan requires that the new Reference Price in this instance be established by using the midpoint of the best bid and offer (''BBO'') on the primary listing exchange at the reopening time. *See* Notice, *supra* note 3, at 42763. The Exchange states that this can result in a Reference Price and subsequent Price Band calculation that is significantly away from the security's last traded or more relevant price, especially in less liquid names. *See id.* Thus, the Exchange proposes to use a Reference Price that is based on the prior LULD Price Band that triggered the Trading Pause, rather than the midpoint of the BBO. *See id.*

[30] The Percentage Parameters will apply to all transactions except those in an NMS Stock that is not subject to the LULD Plan, as described in proposed BZX Rule 11.17(c)(1)(A). *See id.* at 42763.

of BZX Rule 11.17 to proposed paragraph (c)(2)(B), (c)(2)(C), and (C)(2)(D) of BZX Rule 11.17, respectively, as Multi-Stock Events, Additional Factors, and Outlier Transactions will only be subject to review and consideration using the Numerical Guidelines if those NMS Stocks are not subject to the LULD Plan or occur during the Early Trading, Pre-Opening, and After Hours Sessions.[31] Additionally, the Exchange proposes to add rule text in renumbered paragraph (f) of BZX Rule 11.17, Officer Acting on Own Motion, to specify that an Officer of the Exchange or senior level employee designee, acting on his or her own motion, may review potentially erroneous transactions that occur only during Early Trading, Pre-Opening, or After Hours Sessions, or that are eligible for review pursuant to proposed BZX Rule 11.17(c)(1).

The Exchange also proposes to modify the Numerical Guidelines applicable to leveraged ETF/ETN securities during RTH.[32] As leveraged ETF/ETN securities are subject to LULD and thus the Percentage Parameters will be applicable during RTH, the Exchange proposes to eliminate the Numerical Guidelines for leveraged ETF/ETN securities traded during RTH.[33]

Finally, the Exchange proposes to make conforming edits to update applicable rule references throughout BZX Rule 11.17.

D. Reference Price

As proposed, the Reference Price used will continue to be equal to the consolidated last sale immediately prior to the execution(s) under review.[34] The Exchange also proposes to allow for an alternate Reference Price to be used as prescribed in proposed paragraphs (d)(1), (2), and (3) of BZX Rule 11.17.[35] Specifically, the Reference Price may be a value other than the consolidated last sale immediately prior to the execution(s) under review (1) in the case of Multi-Stock Events involving twenty or more securities,[36] (2) in the case of an erroneous Reference Price (as described above in proposed BZX Rule 11.17(c)(1)(C)),[37] or (3) in other circumstances, such as, for example, relevant news impacting a security or securities, periods of extreme market volatility, sustained illiquidity, or widespread system issues, where use of a different Reference Price is necessary for the maintenance of a fair and orderly market and the protection of investors and the public interest, provided that such circumstances occurred during Early Trading, Pre-Opening or After-Hours Session, or are eligible for review pursuant to BZX Rule 11.17(c)(1)(A).[38]

E. Appeals

The Exchange proposes to eliminate paragraph (f) of BZX Rule 11.17, System Disruption or Malfunction. Pursuant to proposed BZX Rule 11.17(c)(1)(B), transactions occurring during RTH that are executed outside of the Price Bands due to an Exchange technology or system issue, may be subject to clearly erroneous review pursuant to proposed paragraph (g) of BZX Rule 11.17. The Exchange believe that the elimination of paragraph (f) of BZX Rule 11.17 will remove overlapping provisions in the proposal.[39] Accordingly, the Exchange proposes to remove from paragraph (e)(2), Appeals, each reference to paragraph (f), and include language referencing proposed paragraph (g), Transactions Occurring Outside of the LULD Plan Price Bands.

F. Trade Nullification for UTP Securities That Are the Subject of Initial Public Offerings

Current paragraph (h) of BZX Rule 11.17 provides different procedures for conducting CEE review in initial public offering (''IPO'') securities that are traded pursuant to unlisted trading privileges (''UTP'') after the initial opening of such IPO securities on the listing market. The Exchange states that it no longer believes that this provision is necessary as opening transactions on the Exchange following an IPO are subject to Price Bands pursuant to the LULD Plan.[40] Accordingly, the Exchange proposes to eliminate this provision in connection with the broader changes to CEE review during RTH.[41]

G. Securities Subject to Limit Up-Limit Down Plan

The Exchange proposes to renumber paragraph (i) to paragraph (h) based on the proposal to eliminate existing paragraph (h), to rename the paragraph to provide for transactions occurring outside of LULD Price Bands, and to eliminate redundant language from proposed paragraph (h).[42] The Exchange also proposes to update references to the LULD Plan and Price Bands so that they are uniform throughout BZX Rule 11.17 and to update rule references throughout the paragraph to conform to the structural changes described above.[43]

H. Multi-Day Event and Trading Halts

The Exchange proposes to renumber paragraphs (j) and (k) to paragraphs (h) and (i), respectively.[44] Additionally, the Exchange proposes to modify the text of both paragraphs to reference the Percentage Parameters as well as the Numerical Guidelines.[45] Specifically, the Exchange proposes to amend the rule text to provide that any action taken in connection with paragraphs (h) and (i) will be taken without regard to the Percentage Parameters or Numerical Guidelines set forth in BZX Rule 11.17, with the Percentage Parameters being applicable to an NMS Stock subject to the LULD Plan and the Numerical Guidelines being applicable to an NMS Stock not subject to the LULD Plan.[46]

I. Implementation Date

In order to ensure that the other equity exchanges and FINRA are able to adopt rules consistent with this proposal and to coordinate the effectiveness of such harmonized rules, the Exchange proposes to delay the effectiveness of this proposal to October 1, 2022.[47]

III. Discussion and Commission Findings

The Commission finds that the proposed rule change, as modified by Amendment Nos.1 and 2, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[48] In particular, the Commission finds that the proposed rule change, as modified by Amendment

[31] *See id.*

[32] *See id.*

[33] *See id.*

[34] *See* proposed BZX Rule 11.17(d). The Exchange states that continuing to use the consolidated last sale as the Reference Price is necessary for operational efficiency as it may not be possible to perform a timely CEE review if doing so required computing the arithmetic mean price of eligible reported transactions over the past five minutes, as contemplated by the LULD Plan. *See* Notice, *supra* note 3, at 42764. The Exchange states that while this means that there will still be some differences between the Price Bands and the clearly erroneous parameters, the Exchange believes that this difference is reasonable in light of the need to ensure timely review if clearly erroneous rules are invoked. *Id.*

[35] *See id.*

[36] *See* proposed BZX Rule 11.17(d)(1).

[37] *See* proposed BZX Rule 11.17(d)(2).

[38] *See* proposed BZX Rule 11.17(d)(3).

[39] *See* Notice, *supra* note 3, at 42765.

[40] *See* Notice, *supra* note 3, at 42765.

[41] *See id.*

[42] *See id.*

[43] *See id.*

[44] *See id.*

[45] *See id.*

[46] *See id.*

[47] *See* Amendment No. 2.

[48] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

Nos. 1 and 2, is consistent with the requirements of Section 6(b) of the Act[49] and with Section 6(b)(5) of the Act,[50] which requires, among other things, that the Exchange's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the proposal to make the CEE pilot permanent will help assure greater objectivity, transparency, and clarity with respect to the CEE review process. When the Commission originally approved the CEE pilot, it explained that the changes were ''being implemented on a pilot basis so that the Commission and the Exchanges can monitor the effects of the pilot on the markets and investors, and consider appropriate adjustments, as necessary.'' [51] The Exchange represents that, since that time, the equity exchanges and FINRA have gained considerable experience in the operation of the rule and that the pilot has provided greater certainty and transparency to the process for conducting CEE reviews.[52] In particular, the Exchange states that the pilot has reduced the discretion of the equities exchanges and FINRA to deviate from the objective standards in their respective rules when dealing with potentially erroneous transactions.[53] Accordingly, the Commission finds that approving the CEE pilot as a permanent program is designed to continue to provide members and investors greater certainty and transparency in the CEE review process, thus furthering fair and orderly markets, the protection of investors, and the public interest.

The Commission also finds that applying the LULD mechanism in place of CEE review during RTH except for limited circumstances is consistent with the Act and will further the goal of providing greater certainty to market participants that trades executed within the Price Bands will stand and not be broken. Since the introduction of the LULD mechanism in 2013, the Exchange represents that clearly erroneous trades are largely prevented by the requirement that trades be executed within the Price Bands.[54] Additionally, the Exchange states that the LULD mechanism may provide greater investor protections as it prevents erroneous trades that are outside the Price Bands from being executed in the first place.[55] Thus, the proposal is designed to limit the potential discordance between the LULD mechanism and CEE review process.

Additionally, the Commission believes that limiting the availability of CEE review during RTH to a few exceptional circumstances furthers the goal of providing transparency and certainty to market participants while also balancing the need for flexibility to address a narrow set of circumstances during RTH for the protection of investors and the public interest. Specifically, in the context of transactions that resulted from certain systems issues, CEE review would only be permitted for transactions that would not have occurred if the Price Bands had been available or transactions that would not have occurred because a primary listing market for a security declared a halt, suspension, or pause. Additionally, in the case of a corporate action or a new issue, and a security that enters a Trading Pause pursuant to the LULD Plan and resumes trading without an auction, the Exchange represents that CEE reviews in such cases represent very limited circumstances and will only occur if the Reference Price of a security clearly deviates from the security's theoretical value.[56]

At the same time, the proposed rules in these limited circumstances expressly delineate the boundaries for determining an erroneous Reference Price and subject the Exchange to specific considerations when determining a new Reference Price. In these instances, the result of an erroneous Reference Price that clearly deviated from the theoretical value of the security (*e.g.,* due to a bad first trade for a new issue) can result in subsequent Price Bands being calculated from that incorrect Reference Price, thus diminishing the investor protections under the LULD Plan for the trades that occurred within the erroneous Price Bands and with no remedy to request clearly erroneous review. In the context of the Trading Pause circumstance, the proposal defines the new Reference Price to be the last effective Price Band that was in a limit state before the Trading Pause.[57] In the context of a corporate action or new issue, the proposal describes certain objective factors that will be used to determine a new reference price based on the theoretical value of the security.[58] Accordingly, the Commission finds that these limited circumstances for CEE review are narrowly tailored and designed to provide market participants with greater transparency and certainty to the process of breaking trades.

Furthermore, the Commission believes that the conforming and organizational updates to the CEE rule that are designed to improve the readability and clarity of the CEE review process will remove impediments to a free and open market and will ultimately benefit investors, particularly those involved in the process of breaking trades.

Finally, the Exchange represents that the other U.S. equities exchanges and FINRA will file largely identical proposals to make their respective clearly erroneous pilots permanent.[59] Accordingly, the proposed rule change also should help assure consistent results in handling erroneous trades across the U.S. equities markets, thus furthering fair and orderly markets, the protection of investors, and the public interest. The Commission notes that the proposed rule change will become operative on October 1, 2022. This delayed implementation is to ensure that the other equities exchanges and FINRA will have sufficient time to adopt rules consistent with this proposal.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[60] that the proposed rule change, as modified by Amendment Nos. 1 and 2 (SR–CboeBZX–2022–037), be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19351 Filed 9–7–22; 8:45 am]

BILLING CODE 8011–01–P

[49] 15 U.S.C. 78f(b).

[50] 15 U.S.C. 78f(b)(5).

[51] *See* CEE Pilot Approval Order, *supra* note 6, at 56618.

[52] *See* Notice, *supra* note 3, at 42765.

[53] *See id.* at 42761.

[54] *See id.* at 42762.

[55] *See id.*

[56] *See id.* at 42765.

[57] *See* proposed BZX Rule 11.17(d)(2).

[58] *See id.*

[59] *See id.* at 42766.

[60] 15 U.S.C. 78s(b)(2).

[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95669; File No. SR–OCC–2022–802]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of No Objection to Advance Notice Related to a Master Repurchase Agreement as Part of The Options Clearing Corporation's Overall Liquidity Plan

September 2, 2022.

I. Introduction

On July 7, 2022, the Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') advance notice SR–OCC–2022–802 (''Advance Notice'') pursuant to Section 806(e)(1) of Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act, entitled Payment, Clearing and Settlement Supervision Act of 2010 (''Clearing Supervision Act'') [1] and Rule 19b–4(n)(1)(i) [2] under the Securities Exchange Act of 1934 (''Exchange Act'') [3] in connection with a proposed master repurchase agreement with a bank counterparty.[4] The Advance Notice was published for public comment in the **Federal Register** on July 26, 2022.[5] The Commission has received comments regarding the changes proposed in the Advance Notice.[6] The Commission is hereby providing notice of no objection to the Advance Notice.

II. Background [7]

As the sole clearing agency for standardized U.S. securities options listed on national securities exchanges registered with the Commission (''listed options''), OCC is obligated to make certain payments. In the event of a Clearing Member default, OCC would be obligated to make payments, on time, related to that member's clearing transactions. To meet such payment obligations, OCC maintains access to cash from a variety of sources, including a requirement for members to pledge cash collateral to OCC and various agreements with banks and other counterparties (''liquidity facilities'') to provide OCC with cash in exchange for collateral, such as U.S. Government securities. OCC routinely considers potential market stress scenarios that could affect such payment obligations. Based on such considerations, OCC now believes that it should seek to expand its liquidity facilities to increase OCC's access to cash to manage a member default.[8]

OCC is proposing to expand its liquidity facilities to include a new arrangement with a bank to provide access to cash for OCC. As described in more detail below, OCC is proposing to execute a master repurchase agreement (''MRA'') with a bank counterparty as part of OCC's overall liquidity plan. OCC is not requiring its members or other market participants to provide additional or different collateral to OCC. Rather, the proposed MRA would provide OCC with another vehicle for accessing cash to meet its payment obligations, including in the event that one of its members fails to meet its payment obligations to OCC.[9]

OCC's liquidity plan already provides access to a diverse set of funding sources, including banks (*i.e.,* OCC's syndicated credit facility),[10] the Non-Bank Liquidity Facility program,[11] and Clearing Members' Clearing Fund Cash Requirement.[12] OCC currently maintains $8 billion in qualifying liquid resources,[13] consisting of $5 billion of required Clearing Fund cash contributions, $2 billion in the syndicated bank credit facility, and $1 billion in the Non-Bank Liquidity Facility. OCC intends to increase such resources by $2.5 billion to a new total of $10.5 billion. OCC's proposed expansion of its liquidity plan includes several components: (1) creating a new committed repurchase facility with a commercial bank counterparty (''Bank Repo Facility''); [14] (2) expanding OCC's existing Non-Bank Liquidity Facility program; [15] (3) expanding OCC's existing syndicated credit facility; [16] and (4) establishing a target for the aggregate amount of all external liquidity resources (*i.e.,* the syndicated credit facility, Bank Repo Facility and Non-Bank Liquidity Facility).[17] The Advance Notice concerns the first component described above, namely, a change to OCC's operations to execute an MRA with a commercial bank counterparty.[18]

Although the MRA would be based on the Securities Industry and Financial Markets Association (''SIFMA'') standard form of master repurchase agreement,[19] OCC would require the MRA to contain certain additional provisions tailored to help ensure certainty of funding and operational effectiveness, as described in more detail below.

A. MRA Standard Repurchase Agreement Terms

The MRA repurchase agreement terms would state that the buyer (*i.e.,* the bank counterparty) would purchase U.S. Government securities (''Eligible Securities'') from OCC from time to time.[20] OCC, the seller, would transfer Eligible Securities to the buyer in

[1] 12 U.S.C. 5465(e)(1).

[2] 17 CFR 240.19b–4(n)(1)(i).

[3] 15 U.S.C. 78a *et seq.*

[4] *See* Notice of Filing, *infra* note 5, at 87 FR 44457.

[5] Exchange Act Release No. 95326 (Jul. 20, 2022), 87 FR 44457 (Jul. 26, 2022) (File No. SR–OCC–2022–802) (''Notice of Filing'').

[6] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-802/srocc2022802.htm.*

[7] Capitalized terms used but not defined herein have the meanings specified in OCC's Rules and By-Laws, available at *https://www.theocc.com/about/publications/bylaws.jsp.*

[8] *See* Notice of Filing, 87 FR at 44458.

[9] *See* OCC Rule 1006(f)(1)(A). OCC may also use the Clearing Fund to address liquidity shortfalls arising from the failure of any bank, securities or commodities clearing organization, or investment counterparty to perform any obligation to OCC when due. *See* OCC Rule 1006(f)(1)(C); Exchange Act Release No. 94304 (Feb. 24, 2022), 87 FR 11776 (Mar. 2, 2022) (File No. SR–OCC–2021–014).

[10] *See* Exchange Act Release No. 88971 (May 28, 2020), 85 FR 34257 (June 3, 2020) (File No. SR–OCC–2020–804).

[11] *See* Exchange Act Release No. 89039 (Jun. 10, 2020), 85 FR 36444 (Jun. 16, 2020) (File No. SR–OCC–2020–803); Exchange Act Release No. 76821 (Jan. 4, 2016), 81 FR 3208 (Jan. 20, 2016) (File No. SR–OCC–2015–805); Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062 (Jan. 8, 2015) (File No. SR–OCC–2014–809).

[12] *See* OCC Rule 1002.

[13] *See* 17 CFR 240.17Ad–22(a)(14) (defining qualifying liquid resources).

[14] The Bank Repo Facility would retain a funding limit and a limit on adding new counterparties because OCC is proposing this facility as a discrete MRA with a single counterparty. To the extent OCC determines to add additional commitments or counterparties to the Bank Repo Facility in the future, OCC would first file an advance notice.

[15] In a separate advance notice, OCC is proposing changes to the Non-Bank Liquidity Facility program, including the elimination of the current funding limit to that program in favor of an established target for external liquidity across all sources. *See* Exchange Act Release No. 95327 (Jul. 20, 2022), 87 FR 44477 (Jul. 26, 2022) (File No. SR–OCC–2022–803).

[16] *Id.* at 44479.

[17] *Id.*

[18] The proposed Bank Repo Facility would have terms that largely resemble those of an earlier Bank Repo Facility that OCC executed with a bank counterparty in 2020 after obtaining a notice of no objection from the Commission (''2020 Bank Repo Facility''). *See* Exchange Act Release No. 88317 (Mar. 4, 2020), 85 FR 13681 (Mar. 9, 2020) (File No. SR–OCC–2020–801). However, in this case, the committed amount would be up to $1 billion (as opposed to $500 million), and the bank counterparty would be one to which OCC has minimal other credit exposure.

[19] The standard form master repurchase agreement is published by SIFMA and is commonly used in the repurchase market by institutional investors.

[20] For the repurchase arrangements, OCC would use Eligible Securities that are included in Clearing Fund contributions by Clearing Members and margin deposits of any suspended Clearing Member. OCC Rule 1006(f) and OCC Rule 1104(b) authorize OCC to use these sources to obtain funds from third parties through securities repurchases. The officers who may exercise this authority include the Chairman, Chief Executive Officer, and Chief Operating Officer.

exchange for a buyer payment to OCC in immediately available funds (''Purchase Price''). The buyer would simultaneously agree to transfer the purchased securities back to OCC at a specified later date (''Repurchase Date''), or on OCC's demand against the transfer of funds from OCC to the buyer, where the funds would be equal to the outstanding Purchase Price plus the accrued and unpaid price differential (together, ''Repurchase Price'').

At all times while a transaction is outstanding, OCC would be required to maintain a specified amount of securities or cash margin with the buyer.[21] The market value of the securities supporting each transaction would be determined daily, based on a price obtained from a generally recognized pricing source. If the market value of the purchased securities falls below OCC's required margin, OCC would be required to satisfy its margin requirement by transferring sufficient cash or additional securities reasonably acceptable to the buyer.[22] If the market value of the purchased securities rises above OCC's required margin, OCC would be permitted to require the buyer to return excess purchased securities.

A buyer would default if it fails to purchase securities on a Purchase Date, fails to transfer purchased securities on any applicable Repurchase Date, or fails to transfer any interest, dividends, or distributions on purchased securities to OCC within a specified period after receiving notice of such failure. OCC would default if it fails to transfer purchased securities on a Purchase Date, or fails to repurchase purchased securities on an applicable Repurchase Date. The MRA would also provide for standard events of default for either party, including a party's failure to maintain required margin or an insolvency event with respect to either party. If one party defaults, the non-defaulting party has the option to accelerate the Repurchase Date of all outstanding transactions between the defaulting party and the non-defaulting party, among other rights. If OCC or the buyer did not timely perform, the non-defaulting party would be permitted to buy or sell, or deem itself to have bought or sold, securities as needed to be made whole, and the defaulting party would be required to pay the costs related to any covering transactions. Additionally, if OCC were required to obtain replacement securities to be made whole because of a buyer default, the buyer would be required to pay the excess of the price paid by OCC to obtain replacement securities over the Repurchase Price.

B. Additional Provisions To Promote Funding Certainty

Commitment To Fund

The buyer would provide a funding commitment of up to $1 billion, with the commitment extending for one year (plus or minus one day). The buyer would be obligated to enter into transactions under the MRA up to its committed amount, so long as no default had occurred and OCC transferred sufficient Eligible Securities. The buyer would be obligated to enter into transactions even if OCC had experienced a material adverse change, such as the failure of a Clearing Member.

Funding Mechanics

OCC would receive the Purchase Price in immediately available funds within 60 minutes of its request for funds and delivery of Eligible Securities and, if needed, prior to OCC's regular daily settlement time.[23] These targeted funding mechanics would allow OCC to receive needed liquidity in time to satisfy settlement obligations, even in the event of a default by a Clearing Member or a market disruption. For example, the funding mechanism may be delivery versus payment/receive versus payment [24] or another method acceptable to OCC that both satisfies the objectives of the Bank Repo Facility and presents limited operational risks.

Rehypothecation Not Permitted

The buyer would not be permitted to grant any third party an interest in purchased securities, in order to reduce the risk that the third party could interfere with the buyer's transfer of the purchased securities on the Repurchase Date. The buyer would agree to provide OCC with daily information about the account the buyer uses to hold the purchased securities, which would allow OCC to act quickly in the event the buyer violates any requirements.

Early Termination Rights

OCC would be able to terminate any transaction early upon providing written notice to the buyer, but the buyer would only be able to terminate a transaction upon an OCC default, as further described below. A notice of termination by OCC would specify a new Repurchase Date prior to the originally agreed-upon Repurchase Date. Upon the early termination of a transaction, the buyer would be required to return all purchased securities to OCC and OCC would be required to pay the Repurchase Price.

Substitution

OCC would have the discretion to substitute any Eligible Securities for purchased securities by a specified time, so long as the Eligible Securities satisfy any applicable criteria contained in the MRA and the transfer of the Eligible Securities would not create a margin deficit, as described above.[25]

Default Events

Beyond standard default events (*e.g.,* failure to purchase or transfer securities on the applicable Purchase Date or Repurchase Date), OCC would require the MRA to not contain any additional default events that would restrict OCC's access to funding. Most importantly, OCC would require that if OCC suffers a ''material adverse change,'' it would not be a default event.[26] This provision provides OCC with funding certainty, even in difficult market conditions.

If a default event were to occur, the non-defaulting party may elect to take the actions specified in a ''mini close-out'' provision of the MRA instead of declaring an event of default. For example, if the buyer were to fail to transfer purchased securities on the applicable Repurchase Date, OCC may choose to take one of the following actions, instead of declaring an event of default: (1) If OCC has already paid the Repurchase Price, OCC could require the buyer to repay it; (2) If there is a margin excess, OCC could require the buyer to pay cash or deliver purchased securities in an amount equal to the margin excess; or (3) OCC could declare that the applicable transaction, and only that transaction, will be immediately terminated, and apply default remedies under the MRA to only that transaction. OCC would therefore have remedies to mitigate risk with respect to a particular

[21] OCC expects that it would be required to maintain margin equal to 102% of the Repurchase Price, which is a standard rate for arrangements involving Government securities.

[22] OCC expects that it would use Clearing Fund securities and securities posted as margin by defaulting Clearing Members.

[23] This would include OCC's regular daily settlement time and any extended settlement time implemented by OCC in an emergency situation under Rule 505.

[24] Delivery versus payment/receive versus payment is a method of settlement under which payment for securities must be made prior to or simultaneously with delivery of the securities.

[25] In addition to its substitution rights, OCC could cause the return of purchased securities by exercising its optional early termination rights under the MRA. If OCC were to terminate the transaction, the buyer would be required to return purchased securities to OCC against payment of the corresponding Repurchase Price.

[26] A ''material adverse change'' is typically defined contractually as a change that would have a materially adverse effect on the business or financial condition of a company.

transaction, without having to declare an event of default with respect to all transactions under the MRA.

C. The Proposed Program: Annual Renewal

As discussed above, the MRA would be for an annual term. OCC anticipates that it would renew the MRA with the same bank counterparty, based on the same or substantially similar terms.

At each renewal, OCC would evaluate the commitment amount so that OCC's available liquidity resources remain properly calibrated to its activities and settlement obligations. OCC would submit another advance notice with respect to such renewal for the same term only under one of the following conditions: (1) OCC determines its liquidity needs merit funding levels above the $1 billion; (2) OCC should seek to change the terms and conditions of the MRA in a manner that materially affects the nature or level of risk presented by OCC; [27] (3) OCC should seek to add counterparties or substitute the bank counterparty to the Bank Repo Facility program; or (4) the bank counterparty has experienced a negative change to its credit profile or a material adverse change since the latest renewal of the MRA. Annual renewals for the Bank Repo Facility would proceed in a similar manner to renewals of term commitments under the existing Non-Bank Liquidity Facility.[28]

Absent one or more of the changes described above, OCC states that it does not believe that renewal of the MRA would constitute a change to OCC's operations that could materially affect the nature or level of risks presented by OCC so as to require an advance notice under Section 806(e)(1) of the Clearing Supervision Act.[29] OCC would consider such a renewal to be on substantially the same terms and conditions. Conversely, a new commitment or renewal under different conditions would necessitate OCC providing advance notice to the Commission for consideration.

III. Commission Findings and Notice of No Objection

Although the Clearing Supervision Act does not specify a standard of review for an advance notice, the stated purpose of the Clearing Supervision Act is instructive: to mitigate systemic risk in the financial system and promote financial stability by, among other things, promoting uniform risk management standards for systemically important financial market utilities (''SIFMUs'') and strengthening the liquidity of SIFMUs.[30]

Section 805(a)(2) of the Clearing Supervision Act authorizes the Commission to prescribe regulations containing risk management standards for the payment, clearing, and settlement activities of designated clearing entities engaged in designated activities for which the Commission is the supervisory agency.[31] Section 805(b) of the Clearing Supervision Act provides the following objectives and principles for the Commission's risk management standards prescribed under Section 805(a): [32]

- to promote robust risk management;
- to promote safety and soundness;
- to reduce systemic risks; and
- to support the stability of the broader financial system.

Section 805(c) provides, in addition, that the Commission's risk management standards may address such areas as risk management and default policies and procedures, among other areas.[33]

The Commission has adopted risk management standards under Section 805(a)(2) of the Clearing Supervision Act and Section 17A of the Exchange Act (the ''Clearing Agency Rules'').[34] The Clearing Agency Rules require, among other things, each covered clearing agency to establish, implement, maintain, and enforce written policies and procedures that are reasonably designed to meet certain minimum requirements for its operations and risk management practices on an ongoing basis.[35] As such, it is appropriate for the Commission to review advance notices against the Clearing Agency Rules and the objectives and principles of these risk management standards as described in Section 805(b) of the Clearing Supervision Act. As discussed below, the Commission believes the changes proposed in the Advance Notice are consistent with the objectives and principles described in Section 805(b) of the Clearing Supervision Act,[36] and in the Clearing Agency Rules, in particular Rule 17Ad–22(e)(7).[37]

A. Consistency With Section 805(b) of the Clearing Supervision Act

The Commission believes that the proposal contained in OCC's Advance Notice is consistent with the stated objectives and principles of Section 805(b) of the Clearing Supervision Act. Specifically, as discussed below, the Commission believes that the changes proposed in the Advance Notice are consistent with promoting robust risk management, promoting safety and soundness, reducing systemic risks, and supporting the stability of the broader financial system.[38]

The Commission believes that the addition of a Bank Repo Facility to OCC's overall liquidity plan is consistent with the promotion of robust risk management, in particular management of liquidity risk presented to OCC. As a central counterparty and SIFMU,[39] it is imperative that OCC have adequate resources to be able to satisfy its counterparty settlement obligations, including in the event of a Clearing Member default.[40] As described above, the Bank Repo Facility program would provide an additional source of liquidity to OCC's overall liquidity plan and increase the amount of OCC's qualifying liquid resources. This would promote the reduction of risks to OCC, its Clearing Members, and the options market in general, because it would

[27] For the purposes of clarity, OCC would not consider changes to pricing or changes in representations, covenants, and terms of events of default to be changes to a term or condition that would require the filing of a subsequent advance notice. This would be OCC's position so long as pricing is at the then-prevailing market rate, and changes to such other provisions are immaterial to OCC as the seller and do not materially impair OCC's ability to draw against the facility.

[28] *See* Exchange Act Release No. 76821, 81 FR at 3209 (describing OCC's proposal to submit an advance notice in connection with a renewal of commitments under the Non-Bank Liquidity Facility if: (i) OCC determined that its liquidity needs merited commitments above or below certain levels; (ii) OCC should seek to change the terms and conditions of the Non-Bank Liquidity Facility; and (iii) the commitment counterparty experienced a negative change to its credit profile or a material adverse change since entering the commitment or the latest renewal of the commitment). OCC subsequently submitted an advance notice pursuant to that commitment to support its ability to onboard multiple liquidity providers below the identified thresholds and with different term lengths to replace expiring commitments, *see* Exchange Act Release No. 89039, 85 FR at 36445–46, and has, concurrent with the filing of File No. SR–OCC–2022–802, submitted another advance notice to eliminate the current funding limit to that program in favor of an established target for external liquidity across all sources. *See supra* note 15.

[29] 12 U.S.C. 5465(e)(1).

[30] *See* 12 U.S.C. 5461(b).

[31] 12 U.S.C. 5464(a)(2).

[32] 12 U.S.C. 5464(b).

[33] 12 U.S.C. 5464(c).

[34] 17 CFR 240.17Ad–22. *See* Exchange Act Release No. 68080 (Oct. 22, 2012), 77 FR 66220 (Nov. 2, 2012) (S7–08–11). *See also* Covered Clearing Agency Standards, 81 FR 70786. The Commission established an effective date of December 12, 2016 and a compliance date of April 11, 2017 for the Covered Clearing Agency Standards. OCC is a ''covered clearing agency'' as defined in Rule 17Ad–22(a)(5).

[35] 17 CFR 240.17Ad–22.

[36] 12 U.S.C. 5464(b).

[37] 17 CFR 240.17Ad–22(e)(7).

[38] 12 U.S.C. 5464(b).

[39] *See* Financial Stability Oversight Council (''FSOC'') 2012 Annual Report, Appendix A, available at *https://www.treasury.gov/initiatives/fsoc/Documents/2012%20Annual%20Report.pdf.*

[40] *See* Exchange Act Release No. 73979 (Jan. 2, 2015), 80 FR 1062, 1065 (Jan. 8, 2015) (File No. SR–OCC–2014–809).

allow OCC to increase the amount and availability of short-term funds to address liquidity demands arising out of the default or suspension of a Clearing Member, or in anticipation of a potential default or suspension of a Clearing Member. Moreover, adding another committed source of liquidity resources would help OCC to manage the allocation between its sources of liquidity by giving OCC more flexibility to adjust the mix of liquidity resources based on market conditions, availability, and shifting liquidity needs.

The Commission also believes that the proposed changes to add the Bank Repo Facility are consistent with the promotion of safety and soundness. By adding a liquidity resource of up to $1 billion, OCC is reducing the likelihood that it would have insufficient financial resources to address liquidity demands arising out of a Clearing Member default. Further, the Commission believes that, to the extent the proposed changes are consistent with promoting OCC's safety and soundness, they are also consistent with supporting the stability of the broader financial system. OCC has been designated as a SIFMU, in part, because its failure or disruption could increase the risk of significant liquidity or credit problems spreading among financial institutions or markets.[41] The Commission believes that the proposed changes would support OCC's ability to continue providing services to the options markets by addressing losses and shortfalls arising out of the default of a Clearing Member or a market disruption. OCC's continued operations would, in turn, help support the stability of the financial system by reducing the risk of significant liquidity or credit problems spreading among market participants that rely on OCC's central role in the options market.

The Commission received comments asserting that the proposal would be harmful to U.S. markets, investors, and pension holders, and that ''changing the rules regarding advance notice'' (likely referring to OCC not having to file an advance notice at renewal) has ''no value to the public.'' [42] As described above, an additional liquidity source of $1 billion would reduce the likelihood that OCC would have insufficient financial resources resulting from a Clearing Member default, and would in fact promote the safety and soundness of the U.S. markets. Moreover, the Commission has carefully considered the risk of allowing renewals of the Bank Repo Facility without additional advance notice filings. Given that such a renewal would only be permitted without an advance notice if executed on substantially similar terms as those of the Bank Repo Facility,[43] to which the Commission does not object, the Commission does not believe that future renewals would pose any more risk than the proposal considered here. Any change to the terms of the proposed Bank Repo Facility or a renewal thereof that could materially affect the nature or level of risk posed by OCC would necessitate an advance notice filing.

Accordingly, and for the reasons stated above, the Commission believes the changes proposed in the Advance Notice are consistent with Section 805(b) of the Clearing Supervision Act.[44]

B. Consistency With Rule 17Ad–22(e)(7) Under the Exchange Act

Rule 17Ad–22(e)(7)(ii) under the Exchange Act requires that a covered clearing agency establish, implement, maintain, and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage the liquidity risk that arises in or is borne by the covered clearing agency, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, holding qualifying liquid resources sufficient to meet the minimum liquidity resource requirement under Rule 17Ad–22(e)(7)(i) [45] in each relevant currency for which the covered clearing agency has payment obligations owed to clearing members.[46] For any covered clearing agency, ''qualifying liquid resources'' means assets that are readily available and convertible into cash through prearranged funding arrangements, such as, committed arrangements without material adverse change provisions, including, among others, repurchase agreements.[47]

As described above, implementation of the Bank Repo Facility would provide OCC with a committed funding arrangement that would give OCC access to $1 billion of committed liquid resources through an MRA with a bank counterparty. Under the terms of the MRA, OCC's bank counterparty would be required to provide OCC with funding subject to a number of conditions, including an obligation to fund regardless of any material adverse change at OCC, such as the failure of a Clearing Member. Taken together, the Commission believes that the Bank Repo Facility provides OCC with $1 billion of ''qualifying liquid resources'' as that term is defined in Rule 17Ad–22(e)(14) of the Exchange Act,[48] and therefore is consistent with the requirements of Rule 17Ad–22(e)(7)(ii) under the Exchange Act.

The Commission received comments asserting that the proposal would leave the investing public, rather than Clearing Members, accountable for a Clearing Member default or a market disruption.[49] As permitted by the Clearing Agency Rules, OCC maintains a number of different liquidity resources to manage liquidity risk, including a requirement that Clearing Members provide a specified amount of their Clearing Fund contributions in cash.[50] As noted above, Rule 17Ad–22(a)(14) under the Exchange Act defines qualifying liquid resources to include assets that are readily available and convertible into cash through prearranged funding arrangements, such as committed repurchase agreements.[51] OCC is proposing to arrange a facility for converting assets pledged by its members into cash to ensure that OCC is able to meet its payment obligations. Any cash provided to OCC under the

[41] *See* FSOC 2012 Annual Report, Appendix A, *https://home.treasury.gov/system/files/261/here.pdf* (last visited Mar. 17, 2021).

[42] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-802/srocc2022802.htm.*

[43] OCC would submit another advance notice if: (1) OCC seeks funding above $1 billion; (2) OCC seeks to change the terms and conditions of the MRA in a manner that materially affects the nature or level of risk presented by OCC; (3) OCC seeks to add or substitute counterparties; or (4) the bank counterparty has experienced a negative change to its credit profile or a material adverse change since the latest renewal of the MRA.

[44] 12 U.S.C. 5464(b).

[45] Rule 17Ad–22(e)(7)(i) requires OCC to establish, implement, maintain and enforce written policies and procedures reasonably designed to effectively measure, monitor, and manage liquidity risk that arises in or is borne by OCC, including measuring, monitoring, and managing its settlement and funding flows on an ongoing and timely basis, and its use of intraday liquidity by, at a minimum, maintaining sufficient liquid resources at the minimum in all relevant currencies to effect same-day 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 of obligation for the covered clearing agency in extreme but plausible conditions. 17 CFR 240.17Ad–22(e)(7)(i).

[46] 17 CFR 240.17Ad–22(e)(7)(ii).

[47] 17 CFR 240.17Ad–22(a)(14)(ii)(3).

[48] *Id.*

[49] Comments on the Advance Notice are available at *https://www.sec.gov/comments/sr-occ-2022-802/srocc2022802.htm.*

[50] *See* OCC Rule OCC 1002(a)(i). OCC increased the amount of cash that Clearing Members are required to provide to address liquidity exposures twice in 2021. *See* OCC Info Memo 48995 (Jul. 16, 2021), *available at https://infomemo.theocc.com/infomemos?number=48995* and OCC Info Memo 49316 (Sep. 28, 2021) *available at https://infomemo.theocc.com/infomemos?number=49316.*

[51] 17 CFR 240.17Ad–22(a)(14)(ii).

Bank Repo Facility would be in exchange for U.S. Government Securities.[52] Retail investors would not be directly exposed to any potential risks arising out of the facility because the arrangement would be between OCC and a bank counterparty.[53] The Commission believes, therefore, that the facility would not relieve Clearing Members from collateralizing the risks they pose to OCC or inappropriately shift such risks to the investing public.[54]

Accordingly, the Commission believes that the changes proposed in the Advance Notice are consistent with Rule 17Ad–22(e)(7) under the Exchange Act.[55]

IV. Conclusion

It is therefore noticed, pursuant to Section 806(e)(1)(I) of the Clearing Supervision Act, that the Commission *does not object* to Advance Notice (SR–OCC–2022–802) and that OCC is authorized to implement the proposed change as of the date of this notice.

By the Commission.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19413 Filed 9–7–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meetings

TIME AND DATE: Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission Investor Advisory Committee will hold a public meeting on Wednesday, September 21, 2022. The meeting will begin at 10:00 a.m. (ET) and will be open to the public.

PLACE: The meeting will be conducted by remote means. Members of the public may watch the webcast of the meeting on the Commission's website at *www.sec.gov*.

STATUS: This Sunshine Act notice is being issued because a majority of the Commission may attend the meeting.

PUBLIC COMMENT: The public is invited to submit written statements to the Committee. Written statements should be received on or before September 20, 2022.

Written statements may be submitted by any of the following methods:

Electronic Statements

- Use the Commission's internet submission form (*http://www.sec.gov/rules/other.shtml*); or
- Send an email message to *rules-comments@sec.gov*. Please include File No. 265–28 on the subject line;

Or

Paper Electronic Statements

- Send paper statements to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File No. 265–28. This file number should be included on the subject line if email is used. To help us process and review your statement more efficiently, please use only one method.

Statements also will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Room 1503, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. All statements received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly.

MATTERS TO BE CONSIDERED: The agenda for the meeting includes: welcome and opening remarks; approval of previous meeting minutes; a panel discussion human capital management labor valuation and performance data; a panel discussion regarding proposed rule 10b-1 position reporting of large security-based swap positions/asset-based swaps; a panel discussion regarding schedules 13d and 13g beneficial ownership reports; a panel discussion regarding esg fund disclosure; a discussion of a recommendation on cybersecurity disclosure; a discussion of a recommendation on climate disclosure; a discussion of a recommendation on accounting modernization; subcommittee reports; and a non-public administrative session.

CONTACT PERSON FOR MORE INFORMATION: For further information and to ascertain what, if any, matters have been added, deleted or postponed; please contact Vanessa A. Countryman from the Office of the Secretary at (202) 551–5400.

Authority: 5 U.S.C. 552b.

Dated: September 6, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–19504 Filed 9–6–22; 4:15 pm]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95655; File No. SR–CboeBZX–2022–043]

Self-Regulatory Organizations; Cboe BZX Exchange, Inc.; Notice of Filing of a Proposed Rule Change To Amend Exchange Rule 14.11(d) To Accommodate Exchange Listing and Trading of Options-Linked Securities

September 1, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 18, 2022, Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BZX Exchange, Inc. (the ''Exchange'' or ''BZX'') proposes to amend Exchange Rule 14.11(d) (''Securities Linked to the Performance of Indexes and Commodities (Including Currencies)'') to accommodate Exchange listing and trading of Options-Linked Securities. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/bzx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

[52] *See* Bank Repo Facility Notice of Filing, 87 FR at 44458.

[53] *Id.* at 44457.

[54] The Commission also received comments asserting that the proposal would leave the investing public accountable for a Clearing Member default, specifically because the OCC proposes to obtain liquidity from pension funds. *See* comments on the Advance Notice at *https://www.sec.gov/comments/sr-occ-2022-802/srocc2022802.htm*. These comments were likely intended for OCC's concurrent proposal to expand its Non-Bank Liquidity Facility program, but were erroneously submitted as comments for the Bank Repo Facility proposal. These comments have been considered and addressed as part of the Non-Bank Liquidity Facility proposal. *See* Exchange Act Release No. 95327 (Jul. 20, 2022), 87 FR 44477 (Jul. 26, 2022) (File No. SR–OCC–2022–803).

[55] 17 CFR 240.17Ad–22(e)(7).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Exchange Rule 14.11(d) provides for Exchange listing and trading of Securities Linked to the Performance of Indexes and Commodities (Including Currencies) (''Linked Securities'').[3] The Exchange proposes to amend Rule 14.11(d) to add Options-Linked Securities to the type of Linked Securities permitted to list and trade on the Exchange.

The proposed amendment would include Options-Linked Securities in the list of Linked-Securities set forth in paragraph (d) of Rule 14.11. Additionally, the proposal would provide that the payment at maturity with respect to Options-Linked Securities is based on the performance of U.S. exchange-traded options on any one or combination of the following: (a) Index Fund Shares; (b) Managed Fund Shares, (c) Exchange-Traded Fund Shares; (d) Linked Securities; (e) other securities defined in Rule 14.11; [4] (f) the S&P 100 Index, the S&P 500 Index, the Nasdaq 100 Index, the Dow Jones Industrial Average, the MSCI EAFE Index, the MSCI Emerging Markets Index, the NYSE FANG Index, the Russell 2000 Index, the Russell 1000 Index, the Russell 1000 Growth Index, the Russell 1000 Value Index, the Cboe Volatility Index, and the following subindices of the S&P 500 sectors: the Communication Services Select Sector Index, the Consumer Discretionary Select Sector Index, the Consumer Staples Select Sector Index, the Energy Select Sector Index, the Financial Select Sector Index, the Health Care Select Sector Index, the Industrial Select Sector Index, the Materials Select Sector Index, the Real Estate Select Sector Index, the Technology Select Sector Index, or the Utilities Select Sector Index; or (g) a basket or index of any of the foregoing (an ''Options Reference Asset''). To the extent that the Options Reference Asset consists of options based on Index Fund Shares, Managed Fund Shares, Exchange-Traded Fund Shares, Linked Securities, or other securities defined in Rule 14.11, such Index Fund Shares, Exchange-Traded Fund Shares, Linked Securities, or other securities defined in Rule 14.11 shall not seek to provide investment results, before fees and expenses, that correspond to the inverse, a specific multiple, or a specific inverse multiple of the percentage performance on a given day of a particular index or combination of indexes. The proposal would also include Options Reference Assets as a Multifactor Reference Asset.

The proposal would move existing Rule 14.11(d)(2)(K)(v) (Multifactor Index-Linked Securities Listings Standards) to Rule 14.11(d)(2)(K)(vi), and would set forth the Option-Linked Securities Listing Standards in Rule 14.11(d)(2)(K)(v). Proposed Rule 14.11(d)(2)(K)(v)(a) provides that Option-Linked Securities must meet either of the following initial listing standards: (1) The Options Reference Asset to which the security is linked shall have been reviewed and approved for the trading of Options-Linked Securities or options or other derivatives by the Commission under Section 19(b)(2) of the Securities Exchange Act of 1934 and rules thereunder and the conditions set forth in the Commission's approval order, including with respect to comprehensive surveillance sharing agreements, continue to be satisfied; or (2) The pricing information for components of the Options Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement. Additionally, Proposed Rule 14.11(d)(2)(K)(v)(a) provides that Options-Linked Securities must meet both of the following initial listing criteria: (3) the value of the Options Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session; and (4) in the case of Options-Linked Securities that are periodically redeemable, the indicative value of the subject Options Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session.

Proposed Rule 14.11(d)(2)(K)(v)(b) provides that Option-Linked Securities must meet the following continued listing criteria: (1) the Exchange will consider the suspension of trading in, and will initiate delisting proceedings pursuant to Rule 14.12 if any of the initial listing criteria described above are not continuously maintained; and (2) the Exchange will consider the suspension of trading in, and will initiate delisting proceedings pursuant to Rule 14.12 under any of the following circumstances: (A) if the aggregate market value or the principal amount of the Options-Linked Securities publicly held is less than $400,000; (B) if an interruption to the dissemination of the value of the Options Reference Asset persists past the trading day in which it occurred or is no longer calculated or available and a new Options Reference Asset is substituted, unless the new Options Reference Asset meets the requirements of this proposed Rule 14.11(d)(2)(K); or (C) if such other event shall occur or condition exists which in the opinion of the Exchange makes further dealings on the Exchange inadvisable.[5]

The Exchange proposes to amend Interpretation and Policy .01(a) and (b) to Rule 14.11(d) which relate to specified requirements and obligations of a Member acting as a registered Market Maker, to include options to the financial instruments covered by Commentary .01 and to make ministerial changes [6] to references to currency futures to clarify that each is part of a list. Last, the Exchange proposes to amend the definition of UTP Derivative Security, as provided in

[3] Rule 14.11(d) currently accommodates Exchange listing and trading of Equity Index-Linked Securities, Commodity-Linked Securities, Fixed Income Index-Linked Securities, Futures-Linked Securities, and Multifactor Index-Linked Securities (collectively referred to as ''Linked Securities'').

[4] The following other securities are included in Rule 14.11: Portfolio Depository Receipts (Rule 14.11(b)), Index-Liked Exchangeable Notes (Rule 14.11(d)(1)), Equity Gold Shares (Rule 14.11(d)(2)), Trust Certificates (Rule 14.11(d)(3)), Commodity-Based Trust Shares (Rule 14.11(d)(4)), Currency Trust Shares (Rule 14.11(d)(5), Commodity Index Trust Shares (Rule 14.11(d)(6)), Commodity Futures Trust Shares (Rule 14.11(d)(7), Partnership Units (Rule 14.11(d)(8), Trust Units (Rule 14.11(d)(9), Managed Trust Securities (Rule 14.11(d)(10), Listing of Currency Warrants (Rule 14.11(d)(11), Selected Equity-linked Debt Securities (''SEEDS'') (Rule 14.11(d)(12), Trust Issued Receipts (Rule 14.11(f)), Index Warrants (Rule 14.11(g)), Managed Portfolio Shares (Rule 14.11(k)), and Tracking Fund Shares (Rule 14.11(m)).

[5] Proposed Rule 14.11(d)(2)(K)(v)(b) is substantially the same as existing Rules 14.11(d)(2)(K)(ii)(b), 14.11(d)(2)(K)(iii)(c), and 14.11(d)(2)(K)(iv)(c).

[6] Specifically, the Exchange proposes to correct references to ''currency futures'' to clarify that both currency and futures are part of a list.

Rule 1.5(ee), to include Options-Linked Securities as such securities are a ''new derivative securities product'' as defined in Rule 19b–4(e) under the Act, and, as proposed, would be permitted to trade on the Exchange.

With respect to equity securities underlying Options Reference Assets, the Exchange notes that Index Fund Shares,[7] Managed Fund Shares,[8] Exchange-Traded Fund Shares,[9] and Linked Securities and securities as defined in Rule 14.11 are subject to initial and continued listing criteria under applicable Exchange Rules as approved by the Commission. In addition, the Commission has approved or issued a notice of effectiveness to permit listing on a national securities exchange of securities based on certain Indexes.[10] Further, Index Fund Shares, Managed Fund Shares, Exchange-Traded Fund Shares, Linked Securities or securities defined in Rule 14.11 based on the Indexes have been listed on national securities exchanges under generic listing criteria applicable to such securities. With respect to options on the Indexes, options on all of the Indexes are currently traded on U.S. options exchanges.

Finally, all Options-Linked Securities listed pursuant to Exchange Rule 14.11(d) would be included within the definition of securities as such terms are used in the Exchange's rules and, as such, are subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Linked Securities. The Exchange also believes that the standards for listing and trading Options-Linked Securities are reasonably designed to promote a fair and orderly market for such securities. The proposed addition of Options Reference Assets, as described above, would also work in conjunction with the initial and continued listing criteria related to surveillance procedures and trading guidelines for Linked Securities.

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Options-Linked Securities in all trading sessions and to deter and detect violations of Exchange Rules. The issuer of a series of Options-Linked Securities will be required to comply with Rule 10A–3 under the Act [11] for the initial and continued listing of Linked Securities, as provided in Exchange Rule 14.11(d)(2)(A)–(G). The Exchange notes that the proposed change is not intended to amend any other component or requirement of Exchange Rule 14.11(d). With respect to options comprising the Options Reference Asset, the pricing information for components of the Options Reference Asset must be derived from a market which is an ISG member or affiliate or with which the Exchange has a comprehensive surveillance sharing agreement.

Quotation and last sale information for Options-Linked Securities, Index Fund Shares, Managed Fund Shares, Exchange-Traded Fund Shares, Linked Securities, and securities defined in Rule 14.11 are available via the Consolidated Tape Association (''CTA'') high speed line. Quotation and last sale information for such securities also will be available from the exchange on which they are listed. Quotation and last sale information for options on Index Fund Shares, Managed Fund Shares, Exchange-Traded Fund Shares, Linked Securities, securities defined in Rule 14.11 and the Indexes will be available via the Options Price Reporting Authority and major market data vendors. Information regarding values of the Indexes is available from major market data vendors.

The Exchange believes that the proposed rule change will provide investors with the ability to better diversify and hedge their portfolios using an exchange-listed security without having to trade directly in the underlying options contracts, and will facilitate the listing and trading of additional Linked Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[12] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [13] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5) [14] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes its proposal to amend the definition of UTP Derivative Security, as provided in Rule 1.5(ee), to include Options-Linked Securities as such securities are a ''new derivative securities product'' as defined in Rule 19b–4(e) under the Act, and, as proposed, would be permitted to trade on the Exchange.

With respect to equity securities underlying Options Reference Assets, the Exchange notes that Index Fund Shares, Managed Fund Shares, Exchange-Traded Fund Shares, Linked Securities and securities defined in Rule 14.11 are subject to Exchange initial and continued listing criteria under applicable Exchange rules as approved by the Commission. In addition, the Commission has approved or issued a notice of effectiveness to permit listing on a national securities exchange of securities based on certain Indexes.[15] With respect to options on the Indexes, options on all of the Indexes are currently traded on U.S. options exchanges. All options included in an Options Reference Asset will be U.S. exchange-traded.

Any Options-Linked Securities would be required to meet the following initial

[7] *See* Exchange Rule 14.11(c).

[8] *See* Exchange Rule 14.11(i).

[9] *See* Exchange Rule 14.11(l).

[10] *See, e.g.,* Securities Exchange Act Release Nos. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (SR–Amex–92–18) (approving the listing and trading of Portfolio Depositary Receipts based on the S&P 500 Index); 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998) (SR–Amex–97–29) (approving the listing and trading of DIAMONDS Trust Units, Portfolio Depositary Receipts based on the Dow Jones Industrial Average); 39011 (September 3, 1997), 62 FR 47840 (September 11, 1997) (SR–CBOE–97–26) (approving the listing and trading of options on the Dow Jones Industrial Average); 19907 (June 24, 1983), 48 FR 30814 (July 5, 1983) (SR–CBOE–83–08) (approving the listing and trading of options on the S&P 500 Index on the CBOE); 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999) (SR–Amex–98–34) (Order Approving and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 3 and 4 to the Proposed Rule Change Relating to the Listing and Trading of Shares of the Nasdaq-100 Trust); 87437 (October 31, 2019), 84 FR 59900 (November 6, 2019) (SR–NYSEArca–2019–62) (Notice of Filing of Amendment No. 1, and Order Granting Accelerated Approval of a Proposed Rule Change, as Modified by Amendment No. 1, Relating to the Listing and Trading of Shares of the Innovator MSCI EAFE Power Buffer ETFs and Innovator MSCI Emerging Markets Power Buffer ETFs under NYSE Arca Rule 8.600–E).

[11] 17 CFR 240.10A–3.

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

[14] *Id.*

[15] *Supra* note 8.

listing criteria in proposed Rule 14.11(d)(2)(K)(v)(a): (1) the value of the Options Reference Asset must be calculated and widely disseminated by one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session; and (2) in the case of Options-Linked Securities that are periodically redeemable, the indicative value of the subject Options Linked Securities must be calculated and widely disseminated by the Exchange or one or more major market data vendors on at least a 15-second basis during the Exchange's regular market session. Options-Linked Securities also will be subject to the continued listing criteria in proposed Rule 14.11(d)(2)(K)(v)(b) as described above. Finally, all Options-Linked Securities listed pursuant to Exchange Rule 14.11(d) would be included within the definition of ''security'' or ''securities'' as such terms are used in the Exchange's rules and, as such, are subject to Exchange rules and procedures that currently govern the trading of securities on the Exchange.

The Exchange believes that the proposed standards would continue to ensure transparency surrounding the listing process for Linked Securities. The Exchange also believes that the standards for listing and trading Options-Linked Securities are reasonably designed to promote a fair and orderly market for such securities. The proposed addition of Options Reference Assets, as described above, would also work in conjunction with the initial and continued listing criteria related to surveillance procedures and trading guidelines for Linked Securities. The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of Options Linked Securities in all trading sessions and to deter and detect violations of Exchange rules. Trading in the securities may be halted under the conditions specified in Exchange Rule 14.11(d)(2)(H).

The Exchange believes that the proposed rule change will provide investors with the ability to better diversify and hedge their portfolios using an exchange listed security without having to trade directly in the underlying options contracts, and will facilitate the listing and trading of additional Linked Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change will facilitate the listing and trading of additional Linked Securities that will enhance competition among market participants, to the benefit of investors and the marketplace.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

A. by order approve or disapprove such proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CboeBZX–2022–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeBZX–2022–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CboeBZX–2022–043 and should be submitted on or before September 29, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19349 Filed 9–7–22; 8:45 am]

BILLING CODE 8011–01–P

DEPARTMENT OF STATE

[Public Notice: 11828]

60-Day Notice of Proposed Information Collection: Technology Security/ Clearance Plans, Screening Records, and Non-Disclosure Agreements

ACTION: Notice of request for public comment.

SUMMARY: The Department of State is seeking Office of Management and Budget (OMB) approval for the information collection described below. In accordance with the Paperwork Reduction Act of 1995, we are requesting comments on this collection from all interested individuals and organizations. The purpose of this notice is to allow 60 days for public comment preceding submission of the collection to OMB.

DATES: The Department will accept comments from the public up to *November 7, 2022.*

ADDRESSES: You may submit comments by any of the following methods:

[16] 17 CFR 200.30–3(a)(12).

• *Web:* Persons with access to the internet may comment on this notice by going to *www.Regulations.gov.* You can search for the document by entering ''Docket Number: DOS–2022–0025'' in the Search field. Then click the ''Comment Now'' button and complete the comment form.

• *Email: battistaal@state.gov.*

• *Fax:* 202–395–5806. Attention: Desk Officer for Department of State.

You must include the information collection title and the OMB control number in any correspondence.

SUPPLEMENTARY INFORMATION:

• *Title of Information Collection:* Technology Security/Clearance Plans, Screening Records, and Non-Disclosure Agreements Pursuant to 22 CFR 126.18(c)(2).

• *OMB Control Number:* 1405–0195.

• *Type of Request:* Extension of Currently Approved Collection.

• *Originating Office:* Bureau of Political-Military Affairs, Directorate of Defense Trade Controls (PM/DDTC).

• *Form Number:* No form.

• *Respondents:* Business and Nonprofit Organizations.

• *Estimated Number of Respondents:* 10,000.

• *Estimated Number of Responses:* 10,000.

• *Average Time per Response:* 10 hours.

• *Total Estimated Burden Time:* 100,000 hours.

• *Frequency:* On occasion.

• *Obligation to Respond:* Mandatory.

We are soliciting public comments to permit the Department to:

• Evaluate whether the proposed information collection is necessary for the proper functions of the Department.

• Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The export, temporary import, and brokering of defense articles, defense services, and related technical data are licensed by the Directorate of Defense Trade Controls (DDTC) in accordance with the International Traffic in Arms Regulations (''ITAR,'' 22 CFR parts 120–130) and Section 38 of the Arms Export Control Act.

ITAR § 126.18 eliminates, subject to certain conditions, the requirement for an approval by DDTC of the transfer of unclassified defense articles, which includes technical data, to or within a foreign business entity, foreign governmental entity, or international organization that is an authorized end-user or consignee (including transfers to approved sub-licensees) for defense articles, including the transfer to dual nationals or third-country nationals who are bona fide regular employees directly employed by the foreign consignee or end-user.

To use ITAR § 126.18, effective procedures must be in place to prevent diversion to any destination, entity, or for purposes other than those authorized by the applicable export license or other authorization. Those conditions can be met by requiring a security clearance approved by the host nation government for its employees, or the end-user or consignee have in place a process to screen all its employees and to have executed a Non-Disclosure Agreement that provides assurances that the employee will not transfer any defense articles to persons or entities unless specifically authorized by the consignee or end-user. ITAR § 126.18(c)(2) also provides that the technology security/clearance plans and screening records shall be made available to DDTC or its agents for law enforcement purposes upon request.

Methodology

When information kept on file pursuant to this recordkeeping requirement is required to be sent to the Directorate of Defense Trade Controls, it may be sent electronically or by mail according to guidance given by DDTC.

Michael F. Miller,

Deputy Assistant Secretary, Directorate of Defense Trade Controls, Department of State.

[FR Doc. 2022–19369 Filed 9–7–22; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Delegation of Authority No. 531]

Delegation of Authority Under Section 602(b)(1) of the Afghan Allies Protection Act of 2009, as Amended

By virtue of the authority vested in the Secretary of State by the laws of the United States, including 22 U.S.C. 2651a(a)(4), the Immigration and Nationality Act (''INA''), and section 602(b)(1) of the Afghan Allies Protection Act of 2009, as amended (Pub.L. 111–8) (''AAPA''), I hereby delegate the following authorities:

1. To the Chief of Mission Afghanistan (''COM''), and that individual's designee pursuant to section 602(b)(2)(D)(i) of the AAPA (''COM Designee''), the authority to approve any signed Form DS–157 filed pursuant to the AAPA as a petition for classification as a special immigrant under INA section 203(b)(4) (8 U.S.C. 1153(b)(4)), after determining applicable requirements are met.

2. To the COM, and the COM Designee, the authority to conditionally approve as a petition for classification as a special immigrant under INA section 203(b)(4) any unsigned Form DS–157 filed pursuant to the AAPA, after determining applicable requirements are met.

3. To consular officers, the authority to approve as a petition for classification as a special immigrant under INA section 203(b)(4) any DS–157 conditionally approved by the Secretary, the COM, or the COM Designee, that was submitted to the COM or the COM designee and is electronically signed before the consular officer.

The authority delegated herein may be exercised by the Secretary, Deputy Secretary, the Deputy Secretary for Management and Resources, and the Under Secretary for Management.

This delegation of authority shall be published in the **Federal Register**.

Dated: May 31, 2022.

Antony J. Blinken,

Secretary of State, Department of State.

Editorial Note: This document was received for publication by the Office of the Federal Register on Thursday, September 1, 2022.

[FR Doc. 2022–19326 Filed 9–7–22; 8:45 am]

BILLING CODE 4710–13–P

DEPARTMENT OF STATE

[Public Notice 11855]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''Alex Katz: Gathering'' Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''Alex Katz: Gathering'' at the

Solomon R. Guggenheim Museum, New York, New York, and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Chi D. Tran, Program Administrator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

SUPPLEMENTARY INFORMATION: The foregoing determinations were made pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), E.O. 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

Stacy E. White,

Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 2022–19407 Filed 9–7–22; 8:45 am]

BILLING CODE 4710–05–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Continuation of Actions: China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In a notice published on May 5, 2022, the Office of the United States Trade Representative (USTR) announced the first step in the statutory four-year review process of the two actions, as modified, taken under Section 301 in the investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation. The notice informed representatives of domestic industries which benefit from the actions, as modified, of the possible termination of the actions and of the opportunity for the representatives to request continuation of the actions. The docket to receive requests for continuation for the July 6, 2018 action, as modified, closed on July 5, 2022. The docket to receive requests for the August 23, 2018 action, as modified, closed on August 22, 2022. USTR received requests for continuation of both actions from representatives of domestic industries which benefit from the actions. Accordingly, the actions have not terminated and will remain in effect, subject to possible further modifications, including any modifications resulting from the statutory four-year review.

DATES: The July 6, 2018 action, as modified, did not terminate on July 6, 2022, and will remain in effect, subject to possible further modifications.

The August 23, 2018 action, as modified, did not terminate on August 22, 2022, and will remain in effect, subject to possible modifications.

FOR FURTHER INFORMATION CONTACT: For questions about this notice, contact Associate General Counsels Megan Grimball or Philip Butler at (202) 395–5725.

SUPPLEMENTARY INFORMATION:

A. Background

For background on the Section 301 actions, modifications, and four-year review process in the investigation of China's Acts, Policies, and Practices Related to Technology Transfer, Intellectual Property, and Innovation, please see 87 FR 26797 (May 5, 2022) (May 5 notice).

As stated in the May 5 notice, under Section 307(c)(1)(B) of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. 2417(c)(1)(B)), the July 6, 2018 action under Section 301, as modified, and the August 23, 2018 action under Section 301, as modified, were subject to possible termination on their respective four-year anniversary dates (*i.e.,* July 6, 2022 and August 23, 2022, respectively) unless a representative of a domestic industry which benefits from the respective action submitted in the 60-day period prior to the four-year anniversary of the respective action a request that the action continue.

Pursuant to Section 307(c)(2) of the Trade Act (19 U.S.C. 2417(c)(2)), USTR notified representatives of domestic industries which may benefit from the July 6, 2018 action, as modified, or the August 23, 2018 action, as modified, of the possible termination of these actions, as modified, and of the opportunity for these representatives to request continuation of the actions. *See* May 5 notice. As provided in the May 5 notice, representatives of domestic industries which benefit from the July 6, 2018 action, as modified, were afforded the opportunity to submit between May 7, 2022 and July 5, 2022, a request to continue the action, and representatives of domestic industries which benefit from the August 23, 2018 action, as modified, were afforded the opportunity to submit such requests between June 24, 2022 and August 22, 2022.

B. Continuation of Actions

USTR received numerous requests to continue the July 6, 2018 and August 23, 2018 actions, as modified. For the July 6, 2018 action, as modified, requests were submitted by a range of domestic industries, including 244 requests from domestic producers and 44 requests from trade associations. For the August 23, 2018 action, as modified, requests were submitted by a range of domestic industries, including 114 requests from domestic producers and 32 requests from trade associations. Representatives of domestic industries reported that they benefit from the trade action in a number of ways. For example, representatives of domestic industries reported that the July 6, 2018 action provides an incentive for the Chinese government to stop the harmful policies and practices that are the target of the tariff action. Additionally, representatives stated that the action has allowed them to compete against Chinese imports, invest in new technologies, expand domestic production, and hire additional workers. Similarly, for the August 23, 2018 action, representatives of the domestic industry reported that the additional tariffs have created more leverage to induce China to eliminate the policies and practices that are the subject of the Section 301 action, and have helped to address unfair competition resulting from China's technology transfer policies and practices and encourage better policies and practices.

Based on the requests for continuation received by USTR, and in accordance with Section 307(c)(1)(B) of the Trade Act (19 U.S.C. 2417(c)(1)(B)), the U.S. Trade Representative has determined that the July 6, 2018 action, as modified, and the August 23, 2018 action, as modified, did not terminate on their four-year anniversary dates (July 6, 2022 and August 23, 2022), and accordingly will remain in effect because at least one representative of a domestic industry which benefits from each action, as modified, has submitted to the U.S. Trade Representative during the last 60 days of such four-year period a written request for the continuation of such action.

C. Further Steps in Statutory Four-Year Review

In light of the continuation of the actions, the U.S. Trade Representative will conduct a review of the July 6, 2018 and August 23, 2018 actions, as modified, in accordance with Section 307(c)(3) of the Trade Act (19 U.S.C. 2417(c)(3)). USTR will publish a separate notice or separate notices describing the review process. The process will include opening a docket for interested persons to submit comments on, among other matters, the effectiveness of the actions in achieving the objectives of the investigation, other actions that could be taken, and the effects of such actions on the United States economy, including consumers.

Greta Peisch,

General Counsel, Office of the United States Trade Representative.

[FR Doc. 2022–19365 Filed 9–7–22; 8:45 am]

BILLING CODE 3390–F2–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

2022 Tariff Rate Quota Quantity Limitations Under the U.S.-Australia Free Trade Agreement

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: In accordance with the U.S.-Australia Free Trade Agreement entered into by the United States and the Commonwealth of Australia and the Harmonized Tariff Schedule of the United States (HTSUS), the Office of the United States Trade Representative (USTR) is providing notice of tariff-rate quota quantity limitations of certain tariff subheadings.

DATES: This notice is applicable as of January 1, 2022.

FOR FURTHER INFORMATION CONTACT: Joan Hurst, Office of Agricultural Affairs, at (202) 395–6117 or *Joan_Hurst@ustr.eop.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 201 of the United States-Australia Free Trade Agreement Implementation Act (Pub. L. 108–286; 118 Stat. 919) (19 U.S.C. 3805 note), Presidential Proclamation No. 7857 of December 20, 2004, and subchapter XIII of chapter 99 of the HTSUS, the Annex provides the quantitative limitations in 2022 of originating goods of Australia entering the United States under certain subheadings.

Annex

Effective with respect to originating goods of Australia, entered under the terms of general note 28 to the Harmonized Tariff Schedule of the United States (HTSUS), on or after January 1, 2022, and through the close of December 31, 2022, subchapter XIII of chapter 99 of the HTSUS is modified as follows:

1. U.S. note 4 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''20,196'' in the column labeled ''Quantity'' opposite such year.

2. U.S. note 5 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''2,479'' in the column labeled ''Quantity'' opposite such year.

3. U.S. note 6 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''165'' in the column labeled ''Quantity'' opposite such year.

4. U.S. note 7 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''7,792'' in the column labeled ''Quantity'' opposite such year.

5. U.S. note 8 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''4,040'' in the column labeled ''Quantity'' opposite such year.

6. U.S. note 9 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''8,078'' in the column labeled ''Quantity'' opposite such year.

7. U.S. note 10 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''8,022'' in the column labeled ''Quantity'' opposite such year.

8. U.S. note 11 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''4,584'' in the column labeled ''Quantity'' opposite such year.

9. U.S. note 12 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''1,302'' in the column labeled ''Quantity'' opposite such year.

10. U.S. note 13 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''826'' in the column labeled ''Quantity'' opposite such year.

11. U.S. note 15 is modified by inserting ''2022'' in numerical sequence in the column labeled ''Year'' and by inserting ''1,146'' in the column labeled ''Quantity'' opposite such year.

Julie Callahan,

Assistant U.S. Trade Representative for Agricultural Affairs and Commodity Policy, Office of the United States Trade Representative.

[FR Doc. 2022–19445 Filed 9–7–22; 8:45 am]

BILLING CODE 3290–F2–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice: San Diego County Regional Airport Authority for San Diego International Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of acceptance of a noise exposure map and review of a noise compatibility program.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the San Diego County Regional Airport Authority for San Diego International Airport complies with applicable statutory and regulatory requirements, refer to the supplementary information for details. Further, in conjunction with the noise exposure maps, FAA is reviewing the proposed noise compatibility program for the San Diego International Airport, which the FAA will approve or disapprove on or before February 28, 2023. This notice also announces the availability of this noise compatibility program for public review and comment.

DATES: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is September 1, 2022. The public comment period ends October 31, 2022.

FOR FURTHER INFORMATION CONTACT: David B. Kessler, AICP, Regional Environmental Protection Specialist, 777 South Aviation Boulevard, El Segundo, California 90045. Telephone 424–405–7315. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps (NEMs) submitted by the San Diego County Regional Airport Authority for San Diego International Airport complies with the applicable requirements of title 14, Code of Federal Regulations (CFR) part 150 (14 CFR part 150), effective September 1, 2022. Further, the FAA is reviewing a proposed noise compatibility program (NCP) for San Diego International Airport that will be approved or disapproved on or before February 28, 2023. This notice also announces the availability of this program for public review and comment.

Per United States Code (U.S.C.) section 47503 (49 U.S.C. 47503) an

airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict non-compatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. 49 U.S.C. 47503 requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who submitted noise exposure maps that the FAA determined complies with the requirements of 14 CFR part 150, may submit a noise compatibility program, which sets forth the measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses, for FAA approval.

San Diego County Regional Airport Authority submitted to the FAA on May 6, 2022, noise exposure maps, descriptions and other documentation that were produced during the San Diego International Airport 14 CFR part 150 Update Final Report, dated May 2022. It was requested that the FAA review this material as the noise exposure maps, as described in 49 U.S.C. 47503, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under 49 U.S.C. 47503.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the San Diego County Regional Airport Authority. The specific documentation determined to constitute the noise exposure maps includes: ''Figure NEM–1 Existing 2018 Noise Exposure Map (NEM);'' ''Figure NEM–2 Future Noise Exposure Map (NEM) 2026.'' The Noise Exposure Maps contain current and forecast information including the depiction of the airport and its boundaries, the runway configuration, land uses such as residential, open space, commercial/office, community facilities, libraries, churches, infrastructure, and those areas within the Community Noise Equivalent Level (CNEL) 65, 70, and 75 decibel (dB) noise contours. Estimates for the number of people within these contours for the year 2018 are shown on Figure NEM–1 Existing 2018 Noise Exposure Map. Figures 3.9 and 3.10 show the location of noise monitoring sites. Flight tracks for the existing and the forecast Noise Exposure Maps are found in Figures 4.1, 4.2, and 4.3. The type and frequency of aircraft operations (including nighttime operations) are found in Tables 4.3 and 4.4. The FAA determined that these noise exposure maps for San Diego International Airport are in compliance with applicable statuary and regulatory requirements. This determination is effective on September 1, 2022. The FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of 14 CFR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or constitute a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under 49 U.S.C. 47503, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of 49 U.S.C. 47503. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through the FAA's review of noise exposure maps.

Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted those maps, or with those public agencies and planning agencies with which consultation is required under 49 U.S.C. 47503. The FAA has relied on the certification by the airport operator, 14 CFR 150.21, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for San Diego International Airport, also effective on September 1, 2022. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before February 28, 2023.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities; will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, Los Angeles Airports District Office, 777 South Aviation Boulevard, Suite 150, El Segundo, California 90045.

Sjohnna Knack, Program Manager, Airport Planning & Environmental Affairs, San Diego County Regional Airport Authority, 3270 Admiral Boland Way, San Diego, California 92101

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in El Segundo, California on September 1, 2022.

Mark A. McClardy,

Director, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 2022–19364 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Compatibility Program for Laredo International Airport, Webb County, Texas

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of acceptance of a noise exposure map.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure map submitted by Laredo International Airport is in compliance with applicable statutory and regulatory requirements.

DATES: The effective date of the FAA's determination on the noise exposure map is August 25, 2022.

FOR FURTHER INFORMATION CONTACT: Dean McMath, 10101 Hillwood

Parkway, Fort Worth, Texas 76177, 817–222–5617.

SUPPLEMENTARY INFORMATION: The FAA determined the noise exposure map submitted by Laredo International Airport, is in compliance with applicable statutory and regulatory requirements, effective August 25, 2022. Under Title 49 United States Code (U.S.C.) section 47503 of the Aviation Safety and Noise Abatement Act (hereinafter referred to as ''the Act''), an airport operator may submit to the FAA, noise exposure maps depicting non-compatible uses as of the date such map is submitted, a description of estimated aircraft operations during a forecast period that is at least five years in the future and how those operations will affect the map. A noise exposure map must be prepared in accordance with Title 14 Code of Federal Regulations (CFR) part 150, the regulations promulgated pursuant to section 47502 of the Act, and developed in consultation with public agencies and planning authorities in the area surrounding the airport, state and Federal agencies, interested and affected parties in the local community, and aeronautical users of the airport. In addition, an airport operator that submitted a noise exposure map, which the FAA determined is compliant with statutory and regulatory requirements, may submit a noise compatibility program for FAA approval that sets forth measures the operator has taken or proposes to take to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses.

The FAA completed its review of the noise exposure map and supporting documentation submitted by Laredo International Airport and determined the noise exposure map and accompanying documentation are in compliance with applicable requirements. The documentation that constitutes the Noise Exposure Map includes: Figure 1–2 Airport Operating Area; Table 5–2 2019 Aircraft Operations and Fleet Mix; Table 5–4 2026 Aircraft Operations and Fleet Mix; Figure 5–1 Existing Flight Tracks—North Flow; Figure 5–2 Existing Flight Tracks—South Flow; Table 5–5 2019 and 2026 Modeled Runway Use; Figure 6–1 2019 DNL Contours; Figure 6–2 2026 DNL Contours.

This determination is effective on August 25, 2022. FAA's determination on an airport's noise exposure map is limited to a finding that the noise exposure map developed in accordance with the Act and procedures contained in 14 CFR part 150, Appendix A. FAA's acceptance of an NEM does not does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program. If questions arise concerning the precise relationship of specific properties within noise exposure contours depicted on a noise exposure map, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 47506 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under 14 CFR part 150 or through FAA review and acceptance of a noise exposure map. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator that submitted a noise exposure map or with those public and planning agencies with which consultation is required under section 47503 of the Act. The FAA relied on the certification by the airport operator, under of 14 CFR 150.21 that the required consultations and opportunity for public review has been accomplished during the development of the noise exposure maps. Copies of the noise exposure map and supporting documentation and the FAA's evaluation of the noise exposure maps are available for examination at the following locations:

Federal Aviation Administration ASW–600, 10101 Hillwood Parkway, Fort Worth, Texas 76177 and Laredo International Airport, 5210 Bob Bullock Loop, Laredo, Texas 78041. Questions may be directed to the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

Issued in Fort Worth, Texas on September 2, 2022.

Ignacio Flores,

Director, Airports Division.

[FR Doc. 2022–19388 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0136]

Agency Information Collection Activities; Renewal of an Approved Information Collection: Transportation of Hazardous Materials; Highway Routing

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. FMCSA requests approval to renew an ICR titled, ''Transportation of Hazardous Materials, Highway Routing.'' The information reported by States and Indian tribes is necessary to identify designated/restricted routes and restrictions or limitations affecting how motor carriers may transport certain hazardous materials on highways, including dates that such routes were established and information on subsequent changes or new hazardous materials routing designations.

DATES: Comments on this notice must be received on or before November 7, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System (FDMS) Docket Number FMCSA–2022–0136 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov*. Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy*.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''FAQ'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Melissa Williams, Office of Safety, Hazardous Materials Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–4163; *melissa.williams@dot.gov*.

SUPPLEMENTARY INFORMATION:

Background: The data for the Transportation of Hazardous Materials; Highway Routing ICR is collected under authority of 49 U.S.C. 5112 and 5125. Specifically, 49 U.S.C. 5112(c) requires that the Secretary, in coordination with the States, ''shall update and publish periodically a list of currently effective hazardous material highway route designations.'' This authority is delegated to FMCSA in 49 CFR 1.87(d)(2).

In 49 CFR 397.73, FMCSA requires that each State and Indian tribe, through its routing agency, provide information identifying new, or changes to existing, hazardous materials routing designations within its jurisdiction within 60 days after their establishment (or 60 days of the change). That information is collected and consolidated by FMCSA and published annually, in whole or as updates, in the **Federal Register** and on its website at *https://www.fmcsa.dot.gov/regulations/hazardous-materials/national-hazardous-materials-route-registry*.

Title: Transportation of Hazardous Materials, Highway Routing.

OMB Control Number: 2126–0014.

Type of Request: Renewal of a currently approved ICR.

Respondents: The reporting burden is shared by 50 States, the District of Columbia, Indian tribes with designated routes, and U.S. Territories including Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands and the U.S. Virgin Islands.

Estimated Number of Respondents: 57 [36 States + the District of Columbia, with designated hazardous materials highway routes + 19 States/U.S. Territories without designated hazardous materials highway routes + 1 Indian tribe with a designated route = 57].

Estimated Time per Response: 15 minutes.

Expiration Date: April 30, 2023.

Frequency of Response: Once every two years.

Estimated Total Annual Burden: 7 hours [57 annual respondents × 1 response per 2 years × 15 minutes per response/60 minutes per response = 7.125 hours rounded to 7 hours].

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator Office of Research and Registration.

[FR Doc. 2022–19434 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0133]

Agency Information Collection Activities; Renewal of an Approved Information Collection: 391.41 CMV Driver Medication Form

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), Department of Transportation (DOT).

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the renewal Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for review and approval and invites public comment. FMCSA requests approval to renew an ICR titled, ''391.41 CMV Driver Medication Form.'' This Information Collection (IC) is voluntary and may be utilized by Medical Examiners (MEs) responsible for issuing Medical Examiner's Certificates (MECs) to commercial motor vehicle (CMV) drivers. MEs that choose to use this IC do so to communicate with treating healthcare professionals who are responsible for prescribing certain medications, so that the ME fully understands the reasons the medications have been prescribed. The information obtained by the ME when utilizing this IC assists the ME in determining if the driver is medically qualified and ensures that there are no disqualifying medical conditions or underlying medical conditions and prescribed medications that could adversely affect their safe driving ability or cause incapacitation constituting a risk to the public.

DATES: Comments on this notice must be received on or before November 7, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System Docket Number FMCSA–2022–0133 using any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building,

Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. 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 heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its PRA decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''FAQ'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Medical Programs Division, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; (202) 366–0421; *christine.hydock@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background: FMCSA's primary mission is to reduce crashes, injuries, and fatalities involving large trucks and buses. The Secretary of Transportation has delegated to FMCSA its responsibility under 49 U.S.C. 31136 and 31502 to prescribe regulations that ensure CMVs are operated safely. As part of this mission, the Agency's Medical Programs Division works to ensure that CMV drivers engaged in interstate commerce are physically qualified and able to safely perform their work.

The public interest in, and right to have, safe highways requires the assurance that drivers of CMVs can safely perform the increased physical and mental demands of their duties. FMCSA's physical qualification standards provide this assurance by requiring drivers to be examined and medically certified as physically and mentally qualified to drive.

The purpose for this voluntary IC is to assist the ME in determining if the driver is medically qualified under § 391.41 and to ensure that there are no disqualifying medical conditions that could adversely affect their safe driving ability or cause incapacitation constituting a risk to the public. Under 49 CFR 391.41(b)(12), a person is physically qualified to drive a CMV if that person does not use any drug or substance identified in 21 CFR 1308.11 Schedule I, an amphetamine, a narcotic, or other habit-forming drug; and does not use any non-Schedule I drug or substance that is identified in the other Schedules in 21 CFR part 1308 except when the use is prescribed by a *licensed medical practitioner,* as defined in § 382.107, who is familiar with the driver's medical history and has advised the driver that the substance will not adversely affect the driver's ability to safely operate a CMV.

The use of this IC is at the discretion of the ME and facilitates communication with treating healthcare professionals who are responsible for prescribing certain medications so that the ME fully understands the reasons the medications have been prescribed. This information assists the ME in determining whether the underlying medical condition and the prescribed medication will impact the driver's safe operation of a CMV. Therefore, there is no required collection frequency.

The ''391.41 CMV Driver Medication Form, MCSA–5895,'' may be downloaded from the FMCSA website. Prescribing healthcare providers are also able to fax or scan and email the report to the certified ME. Consistent with OMB's commitment to minimizing respondents' recordkeeping and paperwork burdens and the increased use of secure electronic modes of communication, the Agency believes that approximately 50 percent of the ''391.41 CMV Driver Medication Forms, MCSA–5895,'' are transmitted electronically.

The information collected from the ''391.41 CMV Driver Medication Form, MCSA–5895,'' is used by the certified ME that requested the completion of the form. The ''391.41 CMV Driver Medication Form, MCSA–5895,'' is attached to the ''Medical Examination Report Form, MCSA–5875,'' which becomes part of the CMV driver's record maintained by the certified ME. The information is not available to the public. The Federal Motor Carrier Safety Regulations covering driver physical qualification records are found at § 391.43, which specify that a medical examination be performed on CMV drivers subject to part 391 who operate in interstate commerce. The results of the examination must be recorded in accordance with the requirements set forth in that section. MEs are required to maintain records of the CMV driver medical examinations they conduct.

Title: 391.41 CMV Driver Medication Form.

OMB Control Number: 2126–0064.

Type of Request: Renewal of a currently approved collection.

Respondents: Prescribing healthcare professionals.

Estimated Number of Respondents: Up to 1,163,160 (total number of prescribing healthcare providers in the U.S.).

Estimated Time per Response: 8 minutes.

Expiration Date: April 30, 2023.

Frequency of Response: Other (use of this IC is optional so there is no required collection frequency).

Estimated Total Annual Burden: 279,465 hours.

Public Comments Invited: You are asked to comment on any aspect of this IC, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–19438 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2020–0087]

Petition for Waiver of Compliance and Extension of Comment Period

On July 25, 2022, the Federal Railroad Administration (FRA) published notice [1] of its receipt of a petition dated June 28, 2022, from Illinois Central Railroad Company, for itself and on behalf of the U.S. railroad subsidiaries operating under the Canadian National Railway Company (CN), resubmitting a petition for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR part 232 (Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-Of-Train Devices). The relevant FRA docket number is FRA–2020–0087.

As noted in FRA's July 25, 2022, notice, CN requested to use software technology to implement a virtual three-dimensional simulation as an alternative to satisfy the ''hands-on'' portion of periodic refresher training required by 49 CFR 232.203(b)(8). Refresher training is required at intervals not to exceed 3 years, and must consist of classroom and hands-on training, as well as testing. CN cites FRA's January 10, 2022, denial [2] of its previous petition and states that its June 28, 2022, resubmission addresses the concerns raised in FRA's decision letter. In support of its petition, CN explains that the proposed ''systematic, blended training curriculum'' ''exceeds the training objectives'' required by the regulation ''and is designed to increase user proficiency'' and ''reduc[e] air brake defects across the CN network.'' CN notes that it ''only plans to use this requested waiver for refresher training of employees in train and engine service,'' and not for any other craft.

FRA's July 25, 2022, notice provided a 45-day public comment period (ending September 8, 2022) on CN's request for relief. Subsequent to publication of that notice, in a letter dated August 19, 2022, CN stated that it is seeking to assemble a meeting and demonstration of the subject software for FRA and union representatives in ''the second half of September.'' [3] Therefore, CN requests to extend the comment period by an additional 45 days to allow comments to be submitted following the software demonstration.

FRA understands that the demonstration of the subject software has been scheduled for the end of September. Accordingly, to ensure all interested parties have ample time to provide their comments subsequent to that demonstration, FRA is extending the comment period in this waiver proceeding for an additional 60 days.

A copy of CN's petition, as well as all written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by November 7, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2022–19441 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–06–P

[1] See *https://www.regulations.gov/document/FRA-2020-0087-0009.*

[2] See *https://www.regulations.gov/document/FRA-2020-0087-0006.*

[3] *See https://www.regulations.gov/document/FRA-2020-0087-0012.*

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2022–0081]

Petition for Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 25, 2022, Virginia & Truckee Railroad Company (VT) petitioned the Federal Railroad Administration (FRA) for a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 230.17, *One thousand four hundred seventy-two (1472) service day inspection.* FRA assigned the petition Docket Number FRA–2022–0081.

Specifically, VT requests relief for steam locomotive VTRR #29, which is used in public tourist excursions in Virginia City, Nevada. VT seeks to extend the period in which the locomotive's 1472 service day inspection is due from June 11, 2023, to December 31, 2023 (the end of the 2023 operating season). VT states that VTRR #29 will accumulate fewer than 1200 service days by December 31, 2023. In support of its request, VT explains that ''a new dry pipe was installed'' in VTRR #29 ''in 2021 when the boiler interior was entered and rigorously inspected, besides at each internal annual inspection.'' VT also notes it exercises complete control of the operation, and the inspection, maintenance, and repairs of the locomotive.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 24, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable. Anyone can

search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety, Chief Safety Officer.

[FR Doc. 2022–19435 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–2017–0127]

Petition for Amendment of Waiver of Compliance

Under part 211 of title 49 Code of Federal Regulations (CFR), this document provides the public notice that on August 8, 2022, Dakota, Missouri Valley & Western Railroad (DMVW) petitioned the Federal Railroad Administration (FRA) for an amendment of a waiver of compliance from certain provisions of the Federal railroad safety regulations contained at 49 CFR 229.47, *Emergency brake valve.* The relevant FRA Docket Number is FRA–2017–0127.

Specifically, DMVW requests to amend its existing relief from the requirement that an emergency brake pipe valve be installed adjacent to the rear door of a locomotive for three EMO SD60 locomotive units (Numbers 5504, 5523, and 5557). The three units are of the same car body type and are not equipped with the rear conductor brake valve. Each of the units have rear walkways and switch style steps, thus allowing the engineer to see the person riding on the back and are equipped with radio communication. These units will be used in road service and will always be paired together. The existing relief applies to eight locomotive units (five EMO SD50 locomotive units and three EMO SD60 locomotive units).[1] DMVW requests that its waiver apply to three additional SD60 locomotive units, for a total of 11 locomotive units.

A copy of the petition, as well as any written communications concerning the petition, is available for review online at *www.regulations.gov.*

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment and a public hearing, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number and may be submitted at *http://www.regulations.gov.* Follow the online instructions for submitting comments.

Communications received by October 24, 2022 will be considered by FRA before final action is taken. Comments received after that date will be considered if practicable.

Anyone can search the electronic form of any written communications and comments received into any of our dockets by the name of the individual submitting the comment (or signing the document, if submitted on behalf of an association, business, labor union, etc.). Under 5 U.S.C. 553(c), the U.S. Department of Transportation (DOT) solicits comments from the public to better inform its processes. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.transportation.gov/privacy.* See also *https://www.regulations.gov/privacy-notice* for the privacy notice of *regulations.gov.*

Issued in Washington, DC.

John Karl Alexy,

Associate Administrator for Railroad Safety Chief Safety Officer.

[FR Doc. 2022–19440 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–06–P

[1] *https://www.regulations.gov/document/FRA-2017-0127-0011.*

DEPARTMENT OF TRANSPORTATION

[Docket No. PHMSA–2022–0073]

Pipeline Safety: Information Collection Activities

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the information collection requests abstracted below are being forwarded to the Office of Management and Budget (OMB) for review and comment. A **Federal Register** notice with a 60-day comment period soliciting comments on the information collections was published on June 16, 2022.

DATES: Interested persons are invited to submit comments on or before October 11, 2022.

ADDRESSES: The public is invited to submit comments regarding these information collection requests, including suggestions for reducing the burden, to the Office of Management and Budget, Attention: Desk Officer for the Office of the Secretary of Transportation, 725 17th Street NW, Washington, DC 20503. Comments can also be submitted electronically at *www.reginfo.gov/public/do/PRAMain.*

FOR FURTHER INFORMATION CONTACT: Angela Hill by telephone at 202–680–2034, by email at *angela.dow@dot.gov,* or by mail at DOT, PHMSA, 1200 New Jersey Avenue SE, PHP–30, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

Title 5, Code of Federal Regulations (CFR) section 1320.8(d), requires PHMSA to provide interested members of the public and affected agencies the opportunity to comment on information collection and recordkeeping requests before they are submitted to OMB for approval. In accordance with this regulation, on June 16, 2022, (87 FR 36373) PHMSA published a **Federal Register** notice with a 60-day comment period soliciting comments on its plan to renew, without change, three information collections that are due to expire in 2023. PHMSA received no comments in response to the proposed renewal of these information collection requests. This notice announces that PHMSA will submit the information collection requests abstracted below to OMB for approval.

The following information is provided for each information collection: (1) Title of the information collection; (2) OMB control number; (3) Current expiration date; (4) Type of request; (5) Abstract of the information collection activity; (6) Description of affected public; (7) Estimate of total annual reporting and recordkeeping burden; and (8) Frequency of collection.

PHMSA will request a three-year term of approval for each information collection. PHMSA requests comments on the following information:

1. *Title:* Reporting Safety-Related Conditions on Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

OMB Control Number: 2137–0578.

Current Expiration Date: 1/31/2023.

Type of Request: Renewal of a currently approved information collection.

Abstract: 49 CFR 191.23 and 195.55 require each operator of a pipeline facility (except master meter operators) to submit to PHMSA a written report on any safety-related condition that causes or has caused a significant change or restriction in the operation of a pipeline facility or a condition that is a hazard to life, property or the environment. This information collection supports the PHMSA strategic goal of safety by reducing the number of incidents in natural gas, hazardous liquid, and carbon dioxide pipelines as well as in liquefied natural gas facilities.

Affected Public: Operators of Natural Gas, Hazardous Liquid, and Carbon Dioxide Pipelines and Liquefied Natural Gas Facilities.

Annual Reporting and Recordkeeping Burden:

Total Annual Responses: 174.

Total Annual Burden Hours: 1,044.

Frequency of Collection: On occasion.

2. *Title:* Hazardous Liquid Operator Notifications.

OMB Control Number: 2137–0630.

Current Expiration Date: 1/31/2023.

Type of Request: Renewal of a currently approved information collection.

Abstract: The pipeline safety regulations contained within 49 CFR part 195 require hazardous liquid operators to notify PHMSA in various instances. Section 195.414 requires hazardous liquid operators who are unable to inspect their pipeline facilities within 72 hours of an extreme weather event to notify the appropriate PHMSA Region Director as soon as practicable. Section 195.452 requires operators of pipelines that cannot accommodate an in-line inspection tool to file a petition in compliance with § 190.9. These mandatory notifications help PHMSA to stay abreast of issues related to the health and safety of the nation's pipeline infrastructure.

Affected Public: Hazardous liquid pipeline operators.

Annual Reporting and Recordkeeping Burden:

Estimated number of responses: 110.

Estimated annual burden hours: 125.

Frequency of Collection: On occasion.

3. *Title:* Notification Requirements for Gas Transmission Pipelines.

OMB Control Number: 2137–0636.

Current Expiration Date: 1/31/2023.

Type of Request: Renewal of a currently approved information collection.

Abstract: The pipeline safety regulations contained within 49 CFR part 192 require operators to make various notifications upon the occurrence of certain events. Section 192.506(g) requires that operators who use alternative technologies or evaluation processes when conducting spike hydrostatic pressure tests to notify PHMSA at least 90 days in advance. Section 192.607(e)(4) specifies the reporting requirements associated with the expanded sampling and testing programs required (under § 192.607(e)) when sampling of unknown material properties on onshore steel transmission pipelines identify unknown or unexpected materials. Section 192.607(e)(5) requires that operators who use alternative statistical sampling approaches when verifying unknown materials properties to notify PHMSA at least 90 days in advance and provide information about the alternative program.

Section 192.624(b)(4) allows operators to petition for an extension of the completion deadlines to reconfirm maximum allowable operating pressure (MAOP) by up to one year if they provide an up-to-date plan, the reason for the requested extension, current status, completion date, remediation activities outstanding, and other factors. Section 192.624(c)(2)(iii) requires that operators notify PHMSA when they choose to use a less conservative pressure reduction factor or longer look-back period when reconfirming MAOP under § 192.624(c). Section 192.624(c)(3)(iii)(A) requires operators to notify PHMSA at least 90 days in advance when using an ''other technology'' besides those enumerated in § 192.624(c)(3) for reconfirming MAOP using engineering critical assessment and analysis.

Section 192.624(c)(6) requires operators to notify PHMSA at least 90 days in advance of using an alternative technical evaluation process in reconfirming MAOP in onshore steel transmission pipelines. Section 192.712(e)(2)(i)(E) allows operators to use other appropriate Charpy energy values (other than those specified in § 192.712(e)(2)(i)) if they notify PHMSA in advance.

Section 192.921(a)(7) requires operators to notify PHMSA (and applicable state and local authorities) at least 90 days in advance of using alternative baseline integrity assessment methods. Section 192.937(c)(7) requires operators to notify PHMSA (and applicable state and local authorities) at least 90 days in advance of using alternative ongoing integrity assessment methods.

These mandatory notifications help PHMSA to stay abreast of issues related to the health and safety of the nation's pipeline infrastructure. These notification requirements are necessary to ensure safe operation of transmission pipelines, ascertain compliance with gas pipeline safety regulations, and to provide a background for incident investigations.

Affected Public: Operators of natural gas transmission pipelines.

Estimated number of responses: 722.

Estimated annual burden hours: 1,070.

Frequency of collection: On occasion.

Comments are invited on:

(a) The need for the renewal and revision of this collection of information for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(b) The accuracy of the Agency's estimate of the burden of the proposed collection of information,

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are required to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued in Washington, DC, under authority delegated in 49 CFR 1.97.

John A. Gale,

Director, Standards and Rulemaking Division.

[FR Doc. 2022–19386 Filed 9–7–22; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities: Information Collection Renewal; Comment Request; Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Diversity Self-Assessment Template for OCC-Regulated Entities

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). The OCC may not conduct or sponsor, and a 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 on the renewal of its information collection titled ''Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Diversity Self-Assessment Template for OCC-Regulated Entities.''

DATES: Comments must be submitted on or before November 7, 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: 1557–0334, 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 ''1557–0334'' 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 and 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 ''1557–0334'' or ''Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Diversity Self-Assessment Template for OCC-Regulated Entities.'' 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, Clearance Officer, (202) 649–5490, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability, please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from OMB for each collection of information that they conduct or sponsor. ''Collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) to include agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of title 44 requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, the OCC is publishing notice of the renewal of this collection of information.

Title: Joint Standards for Assessing the Diversity Policies and Practices of Entities Regulated by the Agencies and Diversity Self-Assessment Template for OCC-Regulated Entities.

OMB Control No.: 1557–0334.

Abstract: This information collection covers standards, pursuant to which OCC-regulated entities voluntarily self-assess their diversity policies and practices, and includes a template to assist with the self-assessment. The template provided is a PDF fillable form, which replaces the Excel spreadsheet template. The template (1) asks for general information about a respondent; (2) includes questions and solicits comments for certain standards about program successes and challenges; (3) asks for a description of current practices for the self-assessment standards; (4) seeks additional diversity data; and (5) provides an opportunity for a respondent to provide other information regarding or comment on the self-assessment of its diversity and inclusion policies and practices. The OCC may use the information submitted to monitor progress and trends in the financial services industry regarding diversity and inclusion in employment and contracting activities and to identify and highlight diversity and inclusion policies and practices that have been successful. The OCC will continue to reach out to the entities it regulates and other interested parties to discuss diversity and inclusion in the financial services industry and share leading practices. Finally, if an OCC-regulated entity submits confidential commercial information that is both customarily and actually treated as private by the entity, the entity can designate the information as private, and the OCC will treat the self-assessment information as private to the extent permitted by law, including the Freedom of Information Act, 5 U.S.C. 552, *et seq.*

Type of Review: Regular.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 82 (58 repeat respondents; 24 new respondents) of 327 institutions with greater than 100 employees that are requested to submit.

Frequency of Collection: Annual.

Average Annual Response Time Per Respondent: 8 hours for new respondents and 4 hours for repeat respondents.

Estimated Total Annual Burden Hours: 424 hours.

Comments: The comments submitted in response to this notice will be summarized and included in the OCC's request for OMB approval of this

information collection. All comments will become a matter of public record. The OCC invites comments 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) Whether the OCC has accurately estimated the information collection burden;

(c) How the OCC can enhance the quality, utility, and clarity of the information to be collected;

(d) How the OCC can minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) The respondents' estimated capital or start-up costs, as well as the costs of operating, maintaining, and purchasing services necessary to provide the information being collected.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–19374 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Agency Information Collection Activities; Information Collection Revision; Submission for OMB Review; Bank Secrecy Act/Money Laundering Risk Assessment

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 revised 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 entitled, ''Bank Secrecy Act/Money Laundering Risk Assessment,'' also known as the Money Laundering Risk (MLR) System. The OCC also is giving notice that it has sent the collection to OMB for review.

DATES: Comments must be submitted by October 11, 2022.

ADDRESSES: Commenters are encouraged to submit comments by email, if possible. You may submit comments by any of the following methods:

- *Email: prainfo@occ.treas.gov.*
- *Mail:* Chief Counsel's Office, Attention: Comment Processing, 1557–0231, Office of the Comptroller of the Currency, 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Hand Delivery/Courier:* 400 7th Street SW, Suite 3E–218, Washington, DC 20219.
- *Fax:* (571) 465–4326.

Instructions: You must include ''OCC'' as the agency name and ''1557–0231'' in your comment. In general, the OCC will publish comments on *www.reginfo.gov* without change, including any business or personal information provided, such as name and address information, email addresses, or phone numbers. Comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not include any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

Written comments and recommendations for the proposed information collection should also be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* You can find this information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

On June 8, 2022, the OCC published a 60-day notice for this information collection (87 FR 34927). You may review comments and other related materials that pertain to this information collection following the close of the 30-day comment period for this notice by the method set forth in the next bullet.

- *Viewing Comments Electronically:* Go to *www.reginfo.gov.* Hover over the ''Information Collection Review'' tab and click on ''Information Collection Review'' from the drop-down menu. From the ''Currently under Review'' drop-down menu, select ''Department of Treasury'' and then click ''submit.'' This information collection can be located by searching by OMB control number ''1557–0231'' or ''Bank Secrecy Act/Money Laundering Risk Assessment.'' 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) 874–5090, Chief Counsel's Office, Office of the Comptroller of the Currency, 400 7th Street SW, Washington, DC 20219. If you are deaf, hard of hearing, or have a speech disability please dial 7–1–1 to access telecommunications relay services.

SUPPLEMENTARY INFORMATION: Under the PRA, Federal agencies must obtain approval from the 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) to include questions posed to agencies, instrumentalities, or employees of the United States, if the results are to be used for general statistical purposes, that is, if the results are to be used for statistical compilations of general public interest, including compilations showing the status or implementation of Federal activities and programs. The OCC asks that OMB extend its approval of the collection in this document.

Title: Bank Secrecy Act/Money Laundering Risk Assessment.

OMB Control No: 1557–0231.

Type of Review: Regular.

Affected Public: Business or other for-profit.

Abstract: The MLR System enhances the ability of examiners and bank management to identify and evaluate Bank Secrecy Act/Money Laundering and Office of Foreign Asset Control (OFAC) sanctions risks associated with banks' products, services, customers, and locations. As new products and services are introduced, existing products and services change, and banks expand through mergers and acquisitions, banks' evaluation of money laundering and terrorist financing risks should evolve as well. Consequently, the MLR System risk assessment is an important tool for the OCC's Bank Secrecy Act/Anti-Money Laundering and OFAC supervision activities because it allows the OCC to better identify those institutions, and business activities within institutions, that may pose heightened risk and then allocate examination resources accordingly. This risk assessment is critical for protecting U.S. financial institutions of all sizes from potential abuse from money laundering and terrorist financing. The MLR System also provides the OCC with information regarding products or customers that may be experiencing difficulties or

challenges maintaining banking services. MLR data assists banks' management of BSA/AML programs and provides a starting point for banks to develop their risk assessments. An appropriate risk assessment allows controls to be effectively implemented for the lines of business, products, or entities that would elevate Bank Secrecy Act/Money Laundering and OFAC compliance risks.

The OCC collects MLR information for community and trust banks supervised by the OCC.

The OCC's annual Risk Summary Form (RSF) is fully automated making data entry quick and efficient and provides an electronic record for banks and the OCC. The RSF collects data about different products, services, customers, and geographies (PSCs). The OCC is introducing a few changes to the 2022 RSF to further improve the quality of the collected data, streamline the collection process and more accurately reflect the risks associated with the customers served by banks. For 2022, the RSF will include three changes:

1. The addition of six new PSCs: cash transactions, marijuana-related businesses, ATM Operators, crypto assets—custody, stablecoin issuance, and stablecoin payments.

2. The addition of two new customer types under the money transmitters category: administrators and exchangers of virtual currency; and crypto ATM operators.

3. The deletion of four existing PSCs: boat/airplane, bulk cash/currency repatriation customers, bulk cash/currency repatriation, and international branches.

The addition of these six new PSC categories increases the number of data collection points from 69 to 71 as shown in the table below:

No.	Existing PSCs	No.	New PSCs
1	Convenience Stores	1	***Cash Transactions***
2	Liquor Stores	2	***Marijuana Related Businesses***
3	Domestic Charitable Organizations	3	***ATM Operators***
4	Jewelry, Gem and Precious Metals Dealers	4	***Crypto-Assets Custody***
5	Casinos	5	***Stablecoin Issuance***
6	Car Dealers	6	***Stablecoin Payments***
7	***Boat/Airplane***	7	Convenience Stores
8	Domestic Private Banking	8	Liquor Stores
9	Domestic Commercial Letters of Credit	9	Domestic Charitable Organizations
10	Stand-by Letters of Credit	10	Jewelry, Gem and Precious Metals Dealers
11	Customers/Accounts opened through the Internet, Mail, Wire or Phone (non-branch)	11	Casinos
12	Domestic Deposit Brokers	12	Car Dealers
13	Travel Agencies	13	Domestic Private Banking
14	Broker Dealers	14	Domestic Commercial Letters of Credit
15	Telemarketers	15	Stand-by Letters of Credit
16	Remotely Created Check Customers	16	Customers/Accounts opened through the Internet, Mail, Wire or Phone (non-branch)
17	Domestic Remote Deposit Capture Customers	17	Domestic Deposit Brokers
18	Third Party Senders	18	Travel Agencies
19	Issuance of Traveler's Checks, Official Bank Checks & Money Orders	19	Broker Dealers
20	Domestic Wire Transfers	20	Telemarketers
21	Domestic PUPID Wire Transfers	21	Remotely Created Check Customers
22	ACH	22	Domestic Remote Deposit Capture Customers
23	Remotely Created Checks	23	Third Party Senders
24	Domestic Remote Deposit Capture	24	Issuance of Traveler's Checks, Official Bank Checks & Money Orders
25	Non-Resident Alien Accounts	25	Domestic Wire Transfers
26	Politically Exposed Persons	26	Domestic PUPID Wire Transfers
27	Foreign Off-Shore Corporations	27	ACH
28	Foreign Deposit Brokers	28	Remotely Created Checks
29	Foreign Charitable Organizations	29	Domestic Remote Deposit Capture
30	Import/Export	30	Non-Resident Alien Accounts
31	Foreign Remote Deposit Capture Customers	31	Politically Exposed Persons
32	***Bulk Cash/Currency Repatriation Customers***	32	Foreign Off-Shore Corporations
33	***International Branches***	33	Foreign Deposit Brokers
34	Foreign Correspondent Accounts	34	Foreign Charitable Organizations
35	Payable Through Accounts	35	Import/Export
36	Pouch Services	36	Foreign Remote Deposit Capture Customers
37	Foreign Bank Affiliate	37	Foreign Correspondent Accounts
38	International Department	38	Payable Through Accounts
39	International Private Banking	39	Pouch Services
40	Embassy & Consulate Banking	40	Foreign Bank Affiliate
41	International Commercial Letters of Credit	41	International Department
42	International Bank Drafts	42	International Private Banking
43	International Wire Transfers	43	Embassy & Consulate Banking
44	International PUPID Wire Transfers	44	International Commercial Letters of Credit
45	Remittance Products	45	International Bank Drafts
46	Cross-Border ACH	46	International Wire Transfers
47	International Remote Deposit Capture	47	International PUPID Wire Transfers
48	***Bulk Cash/Currency Repatriation***	48	Remittance Products
49	Domestic Casas de Cambio/Currency Exchange	49	Cross-Border ACH

No.	Existing PSCs	No.	New PSCs
50	Foreign Casas de Cambio/Currency Exchange	50	International Remote Deposit Capture
51	Money Transmitters	51	Domestic Casas de Cambio/Currency Exchange
52	Check Cashers	52	Foreign Casas de Cambio/Currency Exchange
53	Issuers or Sellers of Traveler Checks or Money Orders	53	Money Transmitters
54	Providers of Prepaid Access	54	Check Cashers
55	Sellers of Prepaid Access	55	Issuers or Sellers of Traveler Checks or Money Orders
56	Prepaid Cards	56	Providers of Prepaid Access
57	Prepaid Card Programs—Third Party Sponsored	57	Sellers of Prepaid Access
58	Prepaid Card Programs—Bank Sponsored	58	Prepaid Cards
59	Prepaid Cardholders	59	Prepaid Card Programs—Third Party Sponsored
60	Prepaid Card Program Managers	60	Prepaid Card Programs—Bank Sponsored
61	Domestic Charitable Trusts & Foundations	61	Prepaid Cardholders
62	Foreign Charitable Trusts & Foundations	62	Prepaid Card Program Managers
63	Custodial Accounts	63	Domestic Charitable Trusts & Foundations
64	Investment Advisory Accounts	64	Foreign Charitable Trusts & Foundations
65	Revocable Trusts	65	Custodial Accounts
66	Foreign Grantor or Beneficiaries	66	Investment Advisory Accounts
67	Loans to Closely Held Corporations	67	Revocable Trusts
68	Brokerage Department/Operations	68	Foreign Grantor or Beneficiaries
69	Investment Advisory/Management	69	Loans to Closely Held Corporations
.....		70	Brokerage Department/Operations
.....		71	Investment Advisory/Management

** PSC category deletions (from the existing PSC column) and additions (from the new PSC column are italicized and denoted in bold.*

The OCC estimates the burden of this collection of information as follows:

Burden Estimates:

Community and trust bank population:

Estimated Number of Respondents: 970.

Estimated Number of Responses: 970.

Frequency of Response: Annually.

Estimated Annual Burden: 7,760 hours.

Comments: On June 8, 2022, the OCC published a 60-day notice in the **Federal Register** concerning the collection, 87 FR 34927. The OCC received three comments from the public, including one from a banking association regarding the accuracy of the OCC's information collection burden estimate and the impact the changes in the PSCs would have on the data collection process. The respondent stated the OCC did not provide a basis for its estimated burden of 7,760 hours from an estimated 970 respondents. Per the respondent, the changes proposed to the MLR would require more than the eight hours per respondent estimated by the OCC and that the OCC had underestimated both the staff time and financial resources needed to update reporting systems to reflect the proposed changes. The respondent also commented that the introduction of six new products, services, customers, and geography categories (PSCs) and the resulting changes in the numbering and location of these PSCs would unnecessarily complicate the data collection process, require significant staff retraining, and potentially result in mis-categorizations of the PSCs.

The OCC has observed that the systems most banks currently maintain for MLR data collection purposes already support ready access to the data; thus, the changes to the MLR will not require additional significant investment in technology or systems to collect and report this data. The 7,760 hours in the OCC's estimated burden already includes an additional two hours to account for the two new MLR PSCs. Based on these existing systems and the changes to the MLR platform described below, the addition of the two hours should be sufficient to account for any system changes banks may have to make to collect and report the data for the new PSCs. With planning and minor programming changes to bank systems, the additional MLR data collection burden associated with the proposed changes will be minimal for banks of all sizes.

The introduction of the six new PSCs and the resulting changes in the listing numeration of the PSCs is a minor modification and will not significantly impact the data collection and reporting process. Recently, the OCC made major changes to the MLR platform that have resulted in a more modern, intuitive, and user-friendly collection tool. The current data collection platform, and support resources offered by the OCC, will assist banks with the data collection process. In addition, the OCC offers annual webinars where any changes to the data collection process are presented and discussed with bankers. During the webinars, bankers are given time to ask questions or raise any issues or concerns they may have related to this information collection. The changes to the MLR, introduced this year, will be discussed in detail during the 2022 MLR Webinar and give bankers additional opportunities to provide feedback. Moreover, each year, the OCC releases an updated MLR User Guide, complete with detailed instructions for banks to report MLR data. Finally, the OCC has a dedicated MLR email inbox for bankers to submit MLR-related questions and receive timely assistance from the OCC.

Comments continue to be invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;

(b) The accuracy of the OCC's 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.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–19375 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket ID OCC–2022–0020]

Minority Depository Institutions Advisory Committee; Meeting

AGENCY: Office of the Comptroller of the Currency, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) announces a meeting of the Minority Depository Institutions Advisory Committee (MDIAC).

DATES: The OCC MDIAC will hold a public meeting on Tuesday, September 27, 2022, beginning at 10:00 a.m. Eastern Daylight Time (EDT). The meeting will be in person and virtual.

ADDRESSES: The OCC will hold the September 27, 2022 meeting of the MDIAC at the OCC's offices at 400 7th Street SW, Washington, DC 20219 and virtually.

FOR FURTHER INFORMATION CONTACT: Beverly Cole, Designated Federal Officer and Acting Senior Deputy Comptroller for Midsize and Community Bank Supervision, (202) 649–5420, Office of the Comptroller of the Currency, 400 Seventh Street SW, Washington, DC 20219.

SUPPLEMENTARY INFORMATION: By this notice, the OCC is announcing that the MDIAC will convene a meeting at 10:00 a.m. EDT on Tuesday, September 27, 2022. The meeting is open to the public. Agenda items will include current topics of interest to the industry. The purpose of the meeting is for the MDIAC to advise the OCC on steps the agency may be able to take to ensure the continued health and viability of minority depository institutions and other issues of concern to minority depository institutions. Members of the public may submit written statements to the MDIAC by email to: *MDIAC@OCC.treas.gov.*

The OCC must receive written statements no later than 5:00 p.m. EDT on Thursday, September 22, 2022. Members of the public who plan to attend the meeting should contact the OCC by 5:00 p.m. EDT on Thursday, September 22, 2022, to inform the OCC of their desire to attend the meeting and whether they will attend in person or virtually, and to obtain information about participating in the meeting. Members of the public may contact the OCC via email at *MDIAC@OCC.treas.gov* or by telephone at (202) 649–5420. Attendees should provide their full name, email address, and organization, if any. Members of the public who are deaf, hard of hearing, or have a speech disability, should dial 7–1–1 to access telecommunications relay services for this meeting.

Michael J. Hsu,

Acting Comptroller of the Currency.

[FR Doc. 2022–19329 Filed 9–7–22; 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; Appraisals for Higher-Priced Mortgage Loans

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 renewal of its information collection titled, ''Appraisals for Higher-Priced Mortgage Loans.''

DATES: Comments must be submitted on or before November 7, 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: 1557–0313, 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 ''1557–0313'' 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 and 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 ''1557–0313'' or ''Appraisals for Higher-Priced Mortgage Loans.'' 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, (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 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 proposed collection of information set forth in this document.

Title: Appraisals for Higher-Priced Mortgage Loans.

Description: This information collection relates to section 1471 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which added a new section 129H to the Truth in Lending Act (TILA) establishing special appraisal requirements for ''higher-risk mortgages.'' For certain mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, creditors must obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used to evaluate real estate collateral. The statute permits the OCC to issue a rule to include exemptions from these requirements.

The information collection requirements are found in 12 CFR 34.203(c)(1), (c)(2), (d), (e) and (f). This information is required to protect consumers and promote the safety and soundness of creditors making higher-priced mortgage loans (HPMLs) subject to 12 CFR part 34, subpart G. This information is used by creditors to evaluate real estate collateral securing HPMLs subject to 12 CFR 1026.35(c) and by consumers entering these transactions. The collections of information are mandatory for creditors making HPMLs subject to 12 CFR part 34, subpart G.

Under 12 CFR 34.203(e) and (f), a creditor must, no later than the third business day after the creditor receives a consumer's application for an HPML, provide the consumer with a disclosure that informs the consumer that the creditor may order an appraisal to determine the value of the property and charge the consumer for that appraisal, that the creditor will provide the consumer with a copy of any appraisal, and that the consumer may choose to have an additional appraisal conducted at the expense of the consumer. If a loan is an HPML subject to 12 CFR 34.203(c), then, under 12 CFR 34.203(c)(1) and (2), the creditor is 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 (Written Appraisal) and provide a copy of the Written Appraisal to the consumer. Under 12 CFR 34.203(d)(1), a creditor is required to obtain an additional appraisal (Additional Written Appraisal) for an HPML that is subject to 12 CFR part 34, subpart G if: (1) the seller acquired the property securing the loan 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or (2) the seller acquired the property securing the loan 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

Under 12 CFR 34.203(d)(3) and (4), the Additional Written Appraisal must meet the requirements described in 12 CFR 34.203(c)(1) and also include an analysis of: (1) the difference between the price at which the seller acquired the property and the price the consumer is obligated to pay to acquire the property; (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. Under 12 CFR 34.203(f), a creditor is required to provide the consumer with a copy of any Additional Written Appraisal.

Affected Public: Businesses or other for-profit.

Type of Submission: Regular.

Burden Estimates:

Estimated Number of Respondents: 1,134.

Estimated Total Annual Burden: 292 hours.

Frequency of Response: On occasion.

Comments: 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 information collection burden;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Theodore J. Dowd,

Deputy Chief Counsel, Office of the Comptroller of the Currency.

[FR Doc. 2022–19373 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Golden Parachute Payments

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Internal Revenue Service, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on continuing information collections, as required by the Paperwork Reduction Act of 1995. The IRS is soliciting comments concerning golden parachute payments.

DATES: Written comments should be received on or before November 7, 2022 to be assured of consideration.

ADDRESSES: Direct all written comments to Andres Garcia, Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington, DC 20224, or by email to *pra.comments@irs.gov*. Include OMB control number 1545–1851 or Golden Parachute Payments, in the subject line of the message.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Kerry Dennis at (202) 317–5751, or at Internal Revenue Service, Room 6526, 1111 Constitution Avenue NW, Washington DC 20224, or through the internet, at *Kerry.L.Dennis@irs.gov*.

SUPPLEMENTARY INFORMATION:

Title: Golden Parachute Payments.

OMB Number: 1545–1851.

Regulation Project Number: T.D. 9083.

Abstract: These regulations deny a deduction for excess parachute payments. A parachute payment is payment compensation to a disqualified individual that is contingent on a change in ownership or control of a corporation. Certain payments, including payments from a small corporation, are exempt from the definition of parachute payment if certain requirements are met (such as shareholder approval and disclosure requirements).

Current Actions: There is no change to the paperwork burden previously approved by OMB.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Respondents: 800.

Estimated Time per Respondent: 15 hours.

Estimated Total Annual Burden Hours: 12,000 hours.

The following paragraph applies to all the collections of information covered by this notice.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained if their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. 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 agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on 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.

Approved: September 1, 2022.

Kerry L. Dennis,

Tax Analyst.

[FR Doc. 2022–19336 Filed 9–7–22; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee September 27, 2022, Public Meeting

ACTION: Notice of meeting.

Pursuant to United States Code, Title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for September 27, 2022.

Date: September 27, 2022.

Time: 9:00 a.m. to 3:00 p.m. (EDT).

Location: 2nd Floor Conference Room; United States Mint; 801 9th Street NW; Washington, DC 20220.

Subject: Review and discussion of candidate designs for the Greg LeMond Congressional Gold Medal; review and discussion of candidate designs for the 2024 American Innovation $1 Coins honoring innovations in Maine and Missouri; review and discussion of candidate designs for the Rosie the Riveter Congressional Gold Medal; and review and discussion of candidate designs for the Harlem Hellfighters Congressional Gold Medal.

Interested members of the public may dial in to listen to the meeting at (888) 330–1716; Access Code: 1137147

Interested persons should call the CCAC HOTLINE at (202) 354–7502 for the latest update on meeting time and access information.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended. For members of the public interested in listening in to the provided call number, this is a reminder that the public attendance is for listening purposes only. Any member of the public interested in submitting matters for the CCAC's consideration is invited to submit them by email to *info@ccac.gov.*

For Accommodation Request: If you need an accommodation to listen to the CCAC meeting, please contact the Diversity Management and Civil Rights Office by September 15, 2022, at 202–354–7260 or 1–888–646–8369 (TYY).

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW; Washington, DC 20220; or call 202–354–7208.

(Authority: 31 U.S.C. 5135(b)(8)(C))

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2022–19353 Filed 9–7–22; 8:45 am]

BILLING CODE 4810–37–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 173 September 8, 2022

Part II

Department of Energy

10 CFR Parts 429 and 430

Energy Conservation Program: Test Procedure for Battery Chargers; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2020–BT–TP–0012]

RIN 1904–AE49

Energy Conservation Program: Test Procedure for Battery Chargers

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

ACTION: Final rule.

SUMMARY: In this final rule, the U.S. Department of Energy (''DOE'') amends the existing test procedures for battery chargers to reorganize certain subsections, clarify symbology and references, correct an incorrect cross reference and section title, update the list of battery chemistries, and terminate an existing test procedure waiver because the covered subject models have been discontinued. This final rule also establishes in new appendix Y1 a new a test procedure for battery chargers that expands coverage to include inductive wireless battery chargers and establishes associated definitions and test provisions; establishes a new test procedure approach that relies on separate metrics for active mode, standby mode, and off mode; and updates the EPS selection criteria. The new test procedure Y1 will be used for the evaluation and issuance of updated efficiency standards, as well as to determine compliance with the updated standards, should such standards be established.

DATES: The effective date of this rule is October 11, 2022. The amendments to the current test procedure will be mandatory for product testing starting March 7, 2023. Manufacturers will be required to use the amended test procedure in appendix Y until the compliance date of any final rule establishing amended energy conservation standards based on the newly established test procedure in appendix Y1. At such time, manufacturers will be required to begin using the newly established test procedure in appendix Y1.

The incorporation by reference of certain materials listed in this rule is approved by the Director of the Federal Register on October 11, 2022.

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

A link to the docket web page can be found at *www.regulations.gov/docket/EERE-2020-BT-TP-0012.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

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

FOR FURTHER INFORMATION CONTACT:

Mr. Jeremy Dommu, 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) 586–9870. Email: *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Nolan Brickwood, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–5709. Email: *Nolan.Brickwood@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE incorporates by reference the following industry standards into 10 CFR part 430:

ANSI/NEMA WD 6–2016, ''Wiring Devices—Dimensional Specifications;''

IEC 62040–3 Ed. 2.0, ''Uninterruptible power systems (UPS)—Part 3: Method of specifying the performance and test requirements, Edition 2.0, 2011–03;''

IEC 62301, ''Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01), (''IEC 62301'')''.

Copies of ANSI/NEMA WD 6–2016 can be obtained from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, *webstore.ansi.org.*

Copies of IEC 62040–3 Ed.2.0 and IEC 62301 can be obtained from the International Electrotechnical Commission at 446 Main Street, Sixteenth floor, Worcester, MA 01608, or by going to *www.iec.ch.*, and is available from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or go to *webstore.ansi.org.*

For a further discussion of these standards, see section IV.N. of this document.

Table of Contents

I. Authority and Background

Battery chargers are included among the consumer products for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6295(u)(1)) DOE's energy conservation standards and test procedures for battery chargers are currently prescribed at title 10 CFR 430.32(z) and 10 CFR part 430 subpart B, appendix Y (''appendix Y''), respectively. The following sections discuss DOE's authority to establish test procedures for battery chargers and relevant background information regarding DOE's consideration of test procedures for this product.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act

DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part B [2] of EPCA established the Energy Conservation Program for Consumer Products Other Than Automobiles, which sets forth a variety of provisions designed to improve energy efficiency. Battery chargers, the subject of this final rule, are products included in the Energy Policy Conservation Program. (42 U.S.C. 6291(32); 42 U.S.C. 6295(u)(1))

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), 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 be reasonably designed to produce test results which measure energy efficiency, energy use or estimated annual operating cost of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and shall not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3))

EPCA also requires that DOE evaluate test procedures for each type of covered product, including battery chargers, at least once every 7 years to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle or period of use and to not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(1)(A); 42 U.S.C. 6293(b)(3))

Additionally, EPCA requires DOE to amend its test procedures for all covered products to include standby mode and off mode energy consumption, with standby mode and off mode energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor unless the Secretary determines that (i) the current test procedures already fully account for and incorporate the standby mode and off mode energy consumption, or (ii) such an integrated test procedure is technically infeasible for a particular covered product. (42 U.S.C. 6295(gg)(2)(A); *see also* 42 U.S.C. 6295(u)(1)(B)(i))) If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures, if separate tests are technically feasible. (*Id.*) Any such amendment must consider the most current versions of the International Electrotechnical Commission (IEC) Standard 62301 [3] and IEC Standard 62087 [4] as applicable. (*Id.*)

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. (42 U.S.C. 6293(b)(2)) The comment period on a proposed rule to amend a test procedure shall be at least 60 days and may not exceed 270 days. *Id.* 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. *Id.* If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures. *Id.*

DOE is publishing this final rule in satisfaction of the 7-year review requirement specified in EPCA. (42 U.S.C. 6293(b)(1)(A))

B. Background

On May 4, 2020, DOE published a request for information (''May 2020 RFI'') seeking comments and data on whether, since the last test procedure update, there have been changes in battery charger testing methodology or new products introduced to the market since the last test procedure update that may necessitate amending the test procedure for battery chargers. 85 FR 26369, 26370. DOE specifically solicited feedback on possible approaches to testing inductive wireless battery chargers not designed for use in a wet environment. 85 FR 26369, 26371. DOE requested comment on the characteristics of the EPSs typically used by manufacturers for testing and certification purposes for battery charger products that require an EPS but do not come prepackaged with one, and the characteristics of the EPS used by consumers in real-world settings. *Id.* DOE also requested comment on whether using a reference EPS for testing would be appropriate in such a situation. *Id.* DOE similarly requested comment on the appropriateness of testing a battery charger using a reference battery load. 85 FR 26369, 26372. DOE further requested comment on whether other parts of the battery charger test procedure need to be updated such as end-of-discharge voltages, prescribed battery chemistries, consumer usage profiles, battery selection criteria, and the battery charger waiver process. 85 FR 26369, 26372–26373.

On November 23, 2021, DOE published a notice of proposed rulemaking (''November 2021 NOPR''), in which DOE responded to comments received in response to the May 2020 RFI and proposed amendments to the test procedures for battery chargers in appendix Y and in a new appendix Y1. 86 FR 66878. DOE's proposed amendments to appendix Y included reorganizing two subsections, clarifying symbology and references, correcting an incorrect cross reference and section title, updating the list of battery chemistries, and terminating an existing test procedure waiver because the

of 2020, Public Law 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part B was redesignated Part A.

[3] IEC 62301, *Household electrical appliances—Measurement of standby power* (Edition 2.0, 2011–01).

[4] IEC 62087, *Audio, video and related equipment—Methods of measurement for power consumption* (Edition 1.0, Parts 1–6: 2015, Part 7: 2018).

covered subject models have been discontinued. 86 FR 66878, 66881, 66885–66886, 66889–66894.

DOE also proposed to establish a new appendix Y1 that, in addition to the changes proposed for appendix Y, would expand the scope of the test procedure to include inductive wireless battery chargers beyond those designed and manufactured to operate in a wet environment (removing that distinction altogether), increase the rated battery energy limit of fixed location wireless chargers in appendix Y1 from ≤5 Wh to ≤100 Wh, establish associated definitions for fixed-location wireless chargers and open-placement wireless chargers and corresponding test provisions; establish a new test procedure approach that relies on separate metrics for active mode, standby mode, and off mode (consequently removing the battery charger usage profiles and single-metric unit energy consumption calculation); and update the EPS selection criteria. 86 FR 66878, 66881, 66883–66885, 66887–66889.

On January 7, 2022, DOE published an extension of the comment period in response to a joint request submitted by some stakeholders.[5] 87 FR 890.

DOE received comments in response to the November 2021 NOPR from the interested parties listed in Table II.1.

TABLE II.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE NOVEMBER 2021 NOPR

Commenter(s)	Reference in this final rule	Document No. in docket	Commenter type
American Honda Motor Co., INC	Honda	26	Manufacturer.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Consumer Federation of America, Natural Resources Defense Council.	Joint Efficiency Advocates	23	Efficiency Organizations.
Association of Home Appliance Manufacturers, Outdoor Power Equipment Institute, Power Tool Institute, Inc.	Joint Trade Associations	24	Trade Associations.
California Investor-Owned Utilities (Pacific Gas and Electric Company, San Diego Gas and Electric, Southern California Edison).	CA IOUs	25	Utilities.
CSA Group	CSA	12	Efficiency Organization.
Delta-Q Technologies	Delta-Q	28	Manufacturer.
Information Technology Industry Council	ITI	20	Trade Association.
Northwest Energy Efficiency Alliance	NEEA	27	Efficiency Organization.
Schumacher Electric Corporation	Schumacher	21	Manufacturer
STIHL	STIHL	16	Manufacturer.
Wireless Power Consortium	WPC	22	Efficiency Organization.

A parenthetical reference at the end of a comment quotation or paraphrase provides the location of the item in the public record.[6]

II. Synopsis of the Final Rule

In this final rule, DOE amends appendix Y by adopting the proposed test procedure changes as follows:

(1) Updates terms used in the battery chemistry table;

(2) Provides further direction regarding the application for a battery charger test procedure waiver when battery energy cannot be directly measured;

(3) Provides more descriptive terms for battery energy and battery voltage values used for determining product class and calculating unit energy; and

(4) Corrects a cross-reference and a table title, further clarifies certain references and terminologies, and reorganizes certain subsections for improved readability.

DOE is also adopting the proposed new appendix Y1, which would generally require that testing be conducted as provided in appendix Y as amended in this final rule, but with the following additional changes:

(1) Establishing definitions associated with inductive wireless power transfer, and differentiating between wireless chargers that incorporate a physical receiver locating feature (*e.g.,* a peg, cradle, dock, locking mechanism, magnet, etc.) for aligning or orienting the position of the receiver (''fixed-location'' wireless chargers) to the transmitter and those that do not (''open-placement'' wireless chargers);

(2) Including within the scope of the test procedure fixed-location inductive wireless battery chargers, and adding a separate no-battery mode test for open-placement wireless chargers;

(3) Removing the unit energy consumption (''UEC'')[7] calculations and usage profiles and instead relying on separate metrics for active mode, standby mode, and off mode using E_a, P_{sb}, and P_{off}, respectively, as measured by the newly established appendix Y1; and

(4) Specifying EPS selection priority and amending selection requirements for battery chargers that do not ship with an EPS and for which one is not recommended by the manufacturer.

Manufacturers would not be required to test according to appendix Y1 until such time as compliance is required with any amended energy conservation standards for battery chargers established after September 8, 2022.

The adopted amendments are summarized in Table II.1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

[5] The joint request was submitted by the Association of Home Appliance Manufacturers, Consumer Technology Association, Information Technology Industry Council, National Electrical Manufacturers Association, Outdoor Power Equipment Institute, Plumbing Manufacturers Institute, and Power Tool Institute. Comment no. EERE–BT–2020–TP–0012–0017 (available at *www.regulations.gov/comment/EERE-2020-BT-TP-0012-0017*).

[6] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for battery chargers. (Docket No. EERE–2020–BT–TP–0012, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

[7] The UEC represents the annualized amount of the non-useful energy consumed by a battery charger among all tested modes of operation. Non-useful energy is the energy consumed by a battery charger that is not transferred and stored in a battery as a result of charging, *i.e.,* the losses.

TABLE II.1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

Current DOE test procedure	Amended test procedure	Applicable test procedure	Attribution
Only those wireless chargers that operate in ''wet environments'' and have a battery energy of less than or equal to 5 watt-hours (Wh) are in scope of the battery charger test procedure.	Increases the 5 Wh limit to 100Wh and replaces the ''wet environment'' designation with ''fixed-location wireless chargers'', such that wireless chargers meant for dry as well as wet environments would be in scope.	Appendix Y1	To reflect changes in the market.
Does not differentiate between types of wireless chargers.	Addresses open-placement wireless chargers and fixed-location wireless chargers, and adds definitions for both.	Appendix Y1	To reflect changes in the market.
Does not provide a test method for open-placement wireless chargers.	Adds a no-battery mode test method for open-placement wireless chargers in a newly created section of the appendix.	Appendix Y1	To reflect changes in the market and to improve representativeness.
Does not provide EPS selection priority for chargers that do have associated EPSs. For those that do not, current test procedure requires DC battery chargers be tested with 5.0 V DC for USB port powered devices, or the midpoint of the rated input voltage range for others.	Adds EPS selection order priority and removes the 5.0V DC input criteria. For battery chargers that do not ship with an EPS and do not have a recommended adapter, requires that the charger be tested using an EPS that is minimally compliant with the applicable energy conservation standard and supplies the rated input voltage and current.	Appendix Y1	To reflect changes in technology and to improve representativeness and comparability of results.
Battery chemistries specified in Table 3.3.2 do not reflect the latest industry naming conventions.	Updates ''Lithium Polymer'' to ''Lithium-Ion Polymer,'' and changes ''Nanophosphate Lithium-Ion'' to ''Lithium Iron Phosphate''.	Appendix Y and Appendix Y1.	To reflect changes in the market.
UEC calculation relies on usage profiles to determine the length of time spent in each mode of operation.	Removes battery charger usage profiles and the UEC calculation; adopts separate metrics, E_a, P_{sb} and P_{off}, for the energy performance of a battery charger in each of the following three modes of operation respectively: active mode, standby mode and off mode.	Appendix Y1	To improve representativeness.
Total test duration might not capture a representative measure of maintenance mode power of certain battery chargers.	Prolongs the test duration until maintenance mode power has been captured representatively, if needed.	Appendix Y1	To improve representativeness.
Manufacturer can report the battery discharge energy and the charging and maintenance mode energy as ''Not Applicable'' if the measurements cannot be made.	Provides specific direction to apply for a test procedure waiver if the battery energies cannot be directly measured.	Appendix Y and Appendix Y1.	To improve representativeness.
Uses the designation ''E_{batt}'' for both experimentally measured battery energy and representative battery energy.	Changes the denotations to ''Measured E_{batt}'' for experimentally measured battery energy, and ''Representative E_{batt}'' for representative battery energy, with further clarification in the footnotes.	Appendix Y	To improve readability.
Section 3.3.4 incorrectly references section 3.3.2 for instructions on how to discharge batteries.	Corrects the cross-section reference to Table 3.3.2	Appendix Y and Appendix Y1.	To improve readability.
Table 3.3.2 is located after Section 3.3.10 (Determining the 24-hour Energy Consumption) but is required for use in section 3.3.8 (Battery Discharge Energy Test).	Moves Table 3.3.2 to Section 3.3.8	Appendix Y and Appendix Y1.	To improve readability.
Certain sections use terms such as ''above'' or ''below'' for references.	Further clarifies the referenced sections	Appendix Y and Appendix Y1.	To improve readability.
Battery charger standby mode and off mode can be inappropriately tested if manufacturer does not follow the test procedure in order.	Reorganizes sections 3.3.11 and 3.3.12 so battery charger standby and off modes can be tested correctly even if the test procedure order is not followed.	Appendix Y and Appendix Y1.	To improve readability.
Column title in Table 3.3.3 states ''Special characteristic or rated battery voltage''.	Corrects the title to read ''Special characteristic or highest rated battery voltage'' to clarify that for multi-voltage chargers, the highest battery voltage must be used to determine product class.	Appendix Y and Appendix Y1.	To improve readability.
Uses the term ''wall adapters'' to refer to external power supplies, which is inconsistent with certification requirements and reporting templates.	Changes the ''wall adapter'' terms to more technically correct term of ''EPSs''.	Appendix Y and Appendix Y1.	To improve readability.
Definition of ''C-Rate'' does not provide a straightforward translation between charge or discharge rate and charge or discharge time.	Adds clarification that a 0.2 C-Rate would translate to a charge or discharge period of 5 hours.	Appendix Y and Appendix Y1.	To improve readability.

DOE has determined that the amendments to appendix Y described in section III and adopted in this document will not alter the measured efficiency of battery chargers, or require retesting or recertification solely as a result of DOE's adoption of the amendments to the test procedure at appendix Y. Additionally, DOE has determined that the amendments will not increase the cost of testing under appendix Y.

DOE has determined that the newly established appendix Y1, which specifies testing with a minimally compliant EPS, increases scope of wireless chargers, and removes the usage profiles and UEC calculation would result in a value for measured energy use that is different from that measured using the current test procedure. However, testing in accordance with the newly established appendix Y1 would not be required until such time as compliance is required with new and amended energy conservation standards, should DOE establish such standards. Additionally, DOE has determined that testing under appendix Y1 would not increase the cost of testing as compared to testing under appendix Y. Discussion of DOE's actions are addressed in detail in section III of this document.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in

accordance with the amended appendix Y test procedures beginning 180 days after the publication of this final rule. Manufacturers will be required to certify compliance using the new appendix Y1 test procedure beginning on the compliance date of any final rule published after the effective date of this final rule that establishes amended energy conservation standards for battery chargers.

III. Discussion

In this battery chargers test procedure final rule, DOE is amending appendix Y and establishing a new appendix Y1 as described throughout the following sections.

EPCA requires DOE to review the test procedure for battery chargers at least once every 7 years and to determine whether amendments to the test procedure would more accurately or fully comply with the requirements for test procedures to be reasonably designed to produce representative test results without undue burden. (42 U.S.C. 6293(b)(1)(A)) In response to the November 2021 NOPR, the Joint Trade Associations stated that DOE proposed several changes that improve the clarity but not representativeness of the test procedure and urged DOE to prioritize other rulemakings. (Joint Trade Associations, No. 24 at p. 1) DOE reiterates that it is undertaking this rulemaking pursuant to the periodic review required by EPCA. As discussed in the following sections, DOE has determined that appendix Y, as amended in this final rule, and appendix Y1 as established in this final rule, more accurately and fully comply with the requirements in EPCA for test procedures to be reasonably designed to produce representative test results without undue burden. (42 U.S.C. 6293(b)(3))

A. Scope of Applicability

1. Battery Chargers

This rulemaking applies to battery chargers, which are devices that charge batteries for consumer products, including battery chargers embedded in other consumer products. (42 U.S.C. 6291(32); 10 CFR 430.2) A battery charger may be wholly embedded in another consumer product, partially embedded in another consumer product, or wholly separate from another consumer product. *Id.* Appendix Y differentiates among different types of battery chargers, including batch chargers, multi-port chargers, and multi-voltage chargers, as well as various battery chemistries. For each type of battery charger, appendix Y specifies test setup requirements and test battery selection, such as battery preparation steps, battery end-of-discharge voltages, and battery charger usage profiles based on the respective product classes. These different specifications are intended to ensure that each battery charger is tested to produce results that measure energy use during a representative average use cycle or period of use.

DOE's current battery charger test procedure applies to battery chargers that operate at either direct current (''DC'') or United States alternating current (''AC'') line voltage (115 Volts (''V'') at 60 Hertz), as well as to uninterruptible power supplies that have an AC output and utilize the standardized National Electrical Manufacturer Association (''NEMA'') plug, 1–15P or 5–15P, as specified in American National Standards Institute (''ANSI'')/NEMA WD 6–2016.

The CA IOUs stated in their comment responding to the November 2021 NOPR that new consumer products powered by batteries require more power, and therefore current battery chargers are more powerful than when DOE initially developed its battery charger standard and test procedure. (CA IOUs, No. 25 at p. 7) These more powerful battery chargers, they claimed, offer larger energy savings potential through energy efficiency standards. *Id.* CA IOUs therefore recommended that DOE clarify the scope of the test procedure, and expand it to cover battery chargers that can operate on either 115V or 230V AC voltage levels. (CA IOUs, No. 25 at p. 7) CA IOUs noted that US residences typically offer AC electricity at both 115V and 230V at 60Hz and that modern battery chargers may be designed for either voltage, and therefore DOE should expand the test procedure to include both voltage levels. *Id.*

DOE notes that AC line voltage for common household electrical outlets in the United States is typically limited to 115V [8] at 60Hz for residential environments, with specialized 230V 60Hz AC line voltage outlets reserved for limited number of heavy-duty applications such as clothes washers, dryers, and electric cooking products. While battery chargers with universal inputs exist (*i.e.,* that support a range of 115V to 230V as input voltage), such products support 230V generally only to facilitate travel outside of the United States without the need for a travel adapter. These products, when used within the United States, operate at 115V and therefore should be tested as such. The scope of the test procedure includes any battery charger capable of operating at either DC or United States AC line voltage without regard to whether it is also capable of operating at other voltages.

The CA IOUs further requested that DOE clarify the extent of DOE's authority on automobile chargers and other products. (CA IOUs, No. 25 at p. 7) CA IOUs stated that DOE possessed the authority to regulate battery chargers embedded in consumer products, and therefore DOE could regulate chargers embedded in automobiles even if DOE cannot regulate the efficiency of electric vehicles themselves. *Id.* CA IOUs asked DOE to clarify its authority under EPCA to set standards for chargers embedded in automobiles, both those that charge other consumer products and those that charge the automobile's internal battery. *Id.* NEEA also encouraged DOE to cover electric vehicle (''EV'') chargers under the test procedure scope, stating that market data and policy trends illustrate the need for EV charger efficiency standards. (NEEA, No. 27 at p. 10) NEEA noted there are three types of energy losses associated with EV charging, and that consumers are paying for these energy losses as though the lost energy were gasoline leaking from the hose as a tank is filled. (NEEA, No. 27 at p. 10) NEEA further suggested that because public policy and market designs are not focusing on promoting higher efficiency charging, EV chargers focus on lower cost and lower weight, and that even small efficiency differences from standards could have large nationwide impacts. (NEEA, No. 27 at p. 11)

DOE notes, however, that due to the definition of battery chargers in EPCA, DOE's authority to regulate battery chargers extends only to battery chargers that charge batteries for consumer products. (42 U.S.C. 6291(32)) As defined by EPCA, ''consumer products'' statutorily excludes automobiles. (42 U.S.C. 6291(1)) Regardless, DOE further notes that its test procedure for battery chargers as established in appendix Y (and newly established appendix Y1) cannot be adapted to measure the energy performance of battery chargers designed to charge electric vehicles without significant modifications that were not proposed in the November 2021 NOPR. Therefore, in this final rule DOE clarifies that this battery charger test procedure does not provide a method for testing electric vehicle battery chargers, and they remain outside the test procedure's scope.

[8] DOE refers to AC line voltage here as 115V, recognizing that United States line voltage is also often referred to as 120V or 110V in some contexts.

Finally, CA IOUs requested clarification regarding whether chargers used by (i) electric trucks, E-bikes, electric motorcycles, electric boats, and other consumer electric vehicles that are not automobiles; (ii) aerial drones and other battery-powered, remotely operated devices marketed to consumers; (iii) battery-powered electric riding lawn mowers and walk-behind lawnmowers sold to consumers; and (iv) battery chargers commonly referred to as ''DC fast chargers'' or ''Level 3 chargers'' (*e.g.,* Wallbox and SETEC) that are not embedded in electric automobiles but are designed to charge batteries in electric automobiles by bypassing the on-board battery charger. (CA IOUs, No. 25 at p. 7)

A manufacturer is best positioned to know the nuances of their model's characteristics and design, which impact how regulations apply. DOE however notes that most battery chargers intended for use with consumer electronics, including E-bikes, aerial drones and lawn mowers are in scope of the battery charger test procedure. While DOE cannot comment on the test procedure's applicability to all the battery chargers for a specific end-use product group, DOE suggests inquiring with the department directly for clarifications on a case-by-case basis.

2. Inductive Wireless Battery Chargers

DOE's current energy conversation standards for battery chargers were established in a final rule published on June 13, 2016 (''June 2016 Final Rule''). The standards cover inductive wireless battery charger products (also referred to as ''wireless power devices'') only to the extent that such products are designed and manufactured to operate in a wet environment (*i.e.,* Product Class 1). 81 FR 38266, 38282; 10 CFR 430.32(z)(1). DOE established standards for these wet-environment inductive wireless battery chargers (*e.g.,* battery chargers found in wireless toothbrushes and electric shavers) after finding that the technology used in those products was mature. *Id.* DOE did not establish standards for other types of inductive wireless battery chargers to avoid restricting the development of newer, less mature inductively charged products. *Id.* Similarly, DOE did not generate usage profiles for other types of inductive wireless chargers at the time because of their nascent state of development and their lack of widespread availability in the marketplace. *Id.* Without usage profiles, a corresponding unit energy consumption value cannot be calculated under the test procedure in appendix Y. *Id.*

In the November 2021 NOPR, DOE proposed to define fixed-location wireless chargers and open-placement wireless chargers in a new appendix Y1 to include these chargers within the scope; and to expand the scope of the proposed appendix Y1 test procedure to cover testing of fixed-location wireless chargers in all modes of operation, as well as testing of open-placement wireless charger in no-battery mode only. 86 FR 66878, 66882–66884. DOE proposed to define the term ''fixed location'' wireless charger in appendix Y1 to refer to inductive wireless battery chargers that incorporate a physical receiver locating feature (*e.g.,* a peg, cradle, dock, locking mechanism, magnet, etc.) to repeatably align or orient the position of the receiver with respect to the transmitter. DOE then proposed to define the term ''open-placement'' wireless chargers in appendix Y1 to address wireless charging products that do not have a physical locating feature (*e.g.,* charging mats). DOE proposed to remove the ''wet environment'' products distinction for wireless chargers, as a result of these changes. 86 FR 66878, 66883.

ITI, the Joint Efficiency Advocates, the Joint Trade Associations, the CA IOUs, NEEA, and Delta-Q expressed general support for DOE's proposed approach to expand the scope in appendix Y1 to remove the wet environment definition and to classify and cover both fixed-location and open-placement wireless chargers. (ITI, No. 20 at p. 2; Joint Efficiency Advocates, No. 23 at pp. 1–2; Joint Trade Associations, No. 24 at p. 8; CA IOUs, No. 25 at pp. 2–3; NEEA, No. 27 at pp. 4–6; Delta-Q, No. 28 at p. 1) However, NEEA urged DOE to adopt technology-neutral definitions for wireless chargers rather than specifying only an inductive connection, to allow future products to be tested and considered under the test procedures regardless of specific product technology used (citing inductive, magnetic resonant, radio frequency as examples) and allow free competition to deliver wireless charging without restriction by technology specific test procedures. (NEEA, No. 27 at pp. 6–7) Instead, NEEA recommended a definition for wireless chargers that defines wireless chargers as those chargers that transmit energy without a wired connection to a receiving device. (NEEA, No. 27 at p. 7) DOE notes that other wireless charging methods beyond those addressed in appendix Y and new appendix Y1 are still nascent and lack widespread availability in the market. Defining such technologies and addressing them in the test procedure at this time could potentially restrict the development of these less mature technologies.

DOE proposed in the November 2021 NOPR to cover fixed-location wireless chargers, having tentatively determined that the physical receiver locating feature would allow accurate and repeatable relative receiver alignment or orientation. 86 FR 66878, 66883. NEEA noted that DOE's proposal for fixed-location wireless chargers addresses the technical challenges associated with physical displacement of the transmitter and receiver, and that wireless charger efficiency depends on the product's horizontal and vertical displacement from the transmitter but that fixed-location charger's magnetic or physical guides ensure proper and consistent positioning. (NEEA, No. 27 at 6). ITI suggested that DOE clarify in its definition that fixed-location wireless chargers should be able to align or orient the receiver position in both vertical and horizontal orientations through the receiver locating feature, whereas open-placement chargers do not incorporate a physical receiver locating feature. (ITI, No. 20 at pp. 1–2) ITI further inquired whether a wireless charger that relies on LED or another form of indication to indicate correct placement in lieu of physical locating features, would be considered as an open-placement one. (ITI, No. 20 at p. 2)

DOE concludes that the definition as proposed, specifying that the locating feature should ''repeatably align or orient the position of the receiver with respect to the transmitter'', to be sufficiently specific without respect to whether such alignment is in the vertical or horizontal (or any other) position. DOE finds that this specification in the definition sufficiently minimizes test to test variation without prescribing additional design constraints. In cases where the charger only employs indication of correct placement, such as by visual indication or audio indication, but does not have physical locating features that ensures repeatable alignment or orientation, DOE notes that relative receiver placement can still vary ever so slightly for such chargers, which causes variation in active mode testing. Therefore, such wireless charger would still be considered as open-placement wireless charger because of the lack of locating feature that can ''repeatably align or orient the position of the receiver with respect to the transmitter.''

NEEA stated that for future fixed-location wireless chargers able to charge a variety of products (interoperable fixed-location chargers), different

receiver-battery combinations could result in efficiency differences. (NEEA, No. 27 at p. 6) NEEA suggested that DOE either address these chargers with an active mode test procedure waiver, or further specify that these chargers must be tested with a manufacturer-specified range of receivers but not other products that use the same power transfer standard. (*Id.*) The CA IOUs referred DOE to WPC's comment that fixed-location wireless chargers risk efficiency variations for different receivers, which prevents WPC from releasing a receiver-independent active mode power transfer efficiency metric. (CA IOUs, No. 25 at p. 5) The CA IOUs encouraged DOE to continue to measure performance and regulate fixed-location wireless charging systems under the current approach, and suggested that DOE require combinations of new receiver devices used in conjunction with previous wireless charger models to meet the minimum efficiency requirement. (*Id.*) The CA IOUs further encouraged DOE to clarify that if a change in receiver were to reduce efficiency beyond a nominal threshold for a particular fixed-location wireless charger, then it should be regulated as a new basic model. (*Id.*)

DOE notes that the definitions of ''fixed-location wireless charger'' and ''open-placement wireless charger'' proposed in the November 2021 NOPR and adopted in this final rule indicate that the term ''wireless battery charger'' encompasses both the transmitter (*i.e.,* the charging mat, for example) and the receiver (*i.e.,* the end-use product containing the battery). Neither the transmitter nor the receiver on its own constitutes a ''battery charger.'' As such, each combination of transmitter and receiver [9] that has different electrical, physical, or functional characteristics that affect energy consumption would be considered a different basic model and would be required to be certified accordingly.

ITI further suggested that although ITI is unaware of any type of wireless chargers other than fixed-location or open-placement wireless chargers, DOE should leave open the possibility that future wireless chargers may not fall into either fixed-location or open-placement wireless chargers. (ITI No. 20 at p. 2) DOE agrees with ITI that all current wireless chargers would fall in either fixed-location wireless charger or open-placement wireless charger category. As such, the adopted fixed-location and open-placement wireless charger definitions would capture the current wireless charger market accurately. DOE will make thorough reviews of the battery charger test procedure, should new charger types mature in the market.

The Joint Trade Associations, noting that they support maintaining the UEC approach, also suggested DOE add Table 3.3.3 to a UEC-compatible version of appendix Y1 so that Product Class 1 is preserved with lower battery energy limits, and a new Product Class 1A can be established for higher battery energy inductive chargers. (Joint Trade Associations, No. 24 at p. 8) The Joint Trade Associations stated that it would be appropriate to separate wireless chargers from wired chargers under this approach, and further suggested DOE would need to account for the expanded scope and create a new Product Class 1A for higher energy inductive chargers. (*Id.*) DOE notes that DOE is adopting the proposed multi-metric approach, and under the multi-metric approach, DOE does not need to further separate product classes, as the testing method and calculation steps for determining the tested values are the same for battery chargers in all product classes. To the extent that consideration of different product classes may be warranted, DOE would do so in a future energy conservation standards rulemaking.

ITI inquired as to the applicability of standards to a product that can take either wired or wireless charging; and the applicability of standards to a wireless charger shipped without an end use device. (ITI, No. 20 at p. 6) As stated earlier, different wired/wireless charger and end use product/battery combinations could result in different charging efficiencies. Therefore, they would constitute different battery charger models and would need to be tested and certified separately. DOE notes that manufacturers have already been certifying products in this way under the current test procedure. Furthermore, under the new appendix Y1 test procedure if a consumer product can accept charge either wired or wirelessly, each charging configuration would also need to be tested and certified separately.

The CA IOUs supported DOE expanding coverage to ''combination products'' with integrated wireless chargers such as bedside or desk lamps, clocks, and furniture that has built in wireless chargers. (CA IOUs, No. 25 at pp. 5–6) The CA IOUs suggested that these products are currently not covered under DOE's battery charger test procedure and are expected to significantly displace DOE-regulated battery chargers in some product classes. *Id.* The CA IOUs stated that they are analyzing combination products and recommended DOE establish clear definitions for combination products to clarify what combination products are not covered by DOE's test procedures and standards, so that they can be covered under other energy efficiency regulations or guidelines such as CEC Low Power Mode Roadmap.[10] (CA IOUs, No. 25 at pp. 5–6) The Joint Efficiency Advocates encouraged DOE to expand the no-battery mode only test coverage to include dual-purpose open-placement chargers such as alarm clocks and table lamps with embedded wireless chargers, because they are becoming increasingly common. (Joint Efficiency Advocates, No. 23 at p. 2)

DOE's definition for battery charger includes battery chargers embedded in other consumer products. 10 CFR 430.2. For combination products that have multiple functions, if they do come with a battery charger, then the battery charging component of the combination product would still need to be tested under DOE's battery charger test procedure.

The Joint Trade Associations stated that there was some confusion in DOE's proposal for expanded wireless chargers in appendix Y1, as they noted the preamble proposed a change to Product Class 1 in appendix Y1 to include all fixed-location wireless chargers, but that this change was not present in the regulatory text, and the proposed regulatory text for Table 3.3.3 of appendix Y shows a measured battery energy of 20Wh, a value not discussed anywhere in the preamble. (Joint Trade Associations, No. 24 at p. 8) DOE notes that the reference to 20 Wh in the proposed regulatory text for appendix Y was an error and has been corrected to 5 Wh for this final rule.

In the November 2021 NOPR, DOE proposed to increase the rated battery energy limit of fixed-location wireless chargers in appendix Y1 from ≤5 Wh to 100 Wh. 86 FR 66878, 66883. At the time of the June 2016 Final Rule, all inductive wireless chargers designed for use in wet environments (the prior scope of coverage) had a battery energy under 5 Wh. *Id.* In discussion of the increased limit in the November 2021 NOPR and in light of the removal of the wet environment distinction, DOE stated that it had conducted initial research and found that although most

[9] DOE further notes that applicable to transmitters that can accommodate multiple receivers or batteries, only the manufacturer recommended combinations are tested. *See* section 3.1.4(b) of appendix Y and appendix Y1 as finalized, which specifies testing battery chargers with an EPS recommended by the manufacturer.

[10] CEC Low Power Road Map is available on *www.energy.ca.gov/rules-and-regulations/appliance-efficiency-regulations-title-20/appliance-efficiency-proceedings-6.*

of the fixed-location inductive wireless chargers were designed for batteries with lower energy ratings, typically within 20Wh, there are some fixed-location inductive wireless chargers that can charge products with higher battery energy levels of around 80 Wh, namely inductively charged power tool products. *Id.* The expansion of the limit to 100 Wh was made to accommodate potential future product designs that may have larger battery energies. *Id.* In their response to the November 2021 NOPR, NEEA noted that wireless charging for consumer products is already commonplace and continued growth is expected, along with substantially increased energy use. (NEEA, No. 27 at p. 4) ITI and the Joint Trade Association supported the proposal to expand the scope to include those with battery energies up to 100Wh. (ITI, No. 20 at p. 2, Joint Trade Associations, No. 24 at p. 8)

WPC stated that wireless chargers (referred to as ''wireless power transmitters'' by WPC) should be categorized as external power supplies (''EPSs'') because they can power devices without batteries. (WPC, No. 22 at p. 1) WPC stated that although they believe wireless chargers should be tested as EPSs with appropriate resistive loads, the usage profile is very different from wired chargers, and they are more frequently used for ''top-ups''. (WPC, No. 22 at pp. 1–2)

In the November 2019 NOPR, the department acknowledged that open-placement wireless chargers are sometimes designed to work with third party products, some of which may not be battery operated. DOE's research of the marketplace however shows that the vast majority of these third-party applications continue to be primarily reliant on battery power, with power received from an open-placement charger used to charge that battery. This conclusion is reasonable, considering the inherent limitation in the distance across which wireless power can be transmitted. As such, DOE maintains that the revised battery charger test procedure is appropriate for capturing the energy performance of open-placement wireless chargers in no-battery mode. With regards to WPC's comment that wireless chargers should be measured with resistive loads, DOE notes that testing with a load is only relevant for active mode testing, which DOE did not propose for the reasons stated in section III.B.1 of this final rule. For the reasons discussed in the preceding paragraphs and in the November 2021 NOPR, DOE is adopting the proposals made in the November 2021 NOPR to establish definitions for both fixed-location wireless chargers and open-placement wireless chargers, to increase the rated battery energy limit for fixed-location inductive chargers from <5 Wh to <100 Wh, and, as discussed below to expand the test procedure's scope to cover testing open-placement wireless chargers in no-battery mode only.

B. Test Procedure

1. Wireless Charger Test Procedure

In the November 2021 NOPR, DOE proposed to expand the scope of the proposed appendix Y1 test procedure to cover testing of fixed-location wireless chargers in all modes of operation, and to cover testing of open-placement wireless charger in no-battery mode only. 86 FR 66878, 66882–66884.

The CA IOUs further recommended that DOE collaborate with industry and standards organizations to develop a suitable method of measurement for active mode power for interoperable open placement chargers, such as the approach proposed by WPC that measures active mode power consumption at several key locations on the charging device. (CA IOUs, No. 25 at p. 3) The CA IOUs modeled the savings potential from applying potential standby and active mode power regulations to inductive battery chargers. (CA IOUs, No. 25 at pp. 3–4) The CA IOUs estimated the lifetime unit energy savings from regulating standby mode to be about 1.4 GWh for 5 years of shipments. (*Id.*) The CA IOUs estimated the lifetime unit energy savings from regulating active mode to be about 60 GWh for 5 years of shipments. (*Id.*)

NEEA supported the development of a standby test method for open-placement wireless chargers using International Electrotechnical Commission (IEC) 62301 in appendix Y1 and encouraged DOE to continue developing an active mode test procedure with industry. (NEEA, No. 27 at 6). NEEA further recommended that DOE in the interim retain a placeholder for future active mode or other low power mode testing of open-placement wireless chargers. (NEEA, No. 27 at pp. 6–7). WPC agreed that no appropriate active mode test can be prescribed for open-placement wireless chargers yet, because of varying receiver efficiency and the capability for one open placement charger to simultaneously charge multiple receivers. (WPC, No. 22 at p. 1) However, WPC noted that covering only fixed-location wireless chargers in the active mode test procedures can discourage manufacturers from choosing more efficient fixed-location wireless charger designs. (WPC, No. 22 at pp. 1–2) WPC recommended that DOE extend the no-battery only test to fixed-location chargers designed for receivers that can take open-placement chargers as well (for example, exclude certain wireless charging stands and specific in-car wireless chargers from the active charging test). (WPC, No. 22 at pp. 1–2)

DOE acknowledges the difficulty in establishing a repeatable and representative open-placement wireless charger (including interoperable open-placement wireless charger) test procedure for active mode. As stated in the November 2021 NOPR, first, efficiency of wireless power transfer varies greatly depending on the alignment of the receiver with respect to the transmitter. A test procedure designed to capture the representative energy performance of such a device would need to repeatably measure the average power transfer efficiency across the full range of possible placement positions on the transmitter. Second, representative test load(s) would need to account for all charging scenarios because these open-placement wireless chargers are designed to work with various third-party products. Third, these devices also typically incorporate other non-battery-charging related features inherent to implementing an open-placement design, such as foreign object detection circuits, that may affect charging efficiency. 86 FR 66884. DOE, working in conjunction with industry organizations such as the WPC, has found that mitigating these challenges is difficult. To-date, that work has yielded test methods that either lack repeatability or result in significant test burden. In addition, evaluating whether a particular test procedure measures the energy performance of open-placement wireless chargers during a representative average use cycle, specifically during active mode operation, requires data on consumer usage at the various modes of operation. DOE lacks, and is unaware of, such data. *Id.*

Based on further evaluation and consideration of the comments received, DOE concludes that a representative and repeatable test procedure for measuring the active mode energy performance of open-placement wireless chargers cannot be prescribed at this time without undue burden. DOE will continue its efforts, working with industry bodies, such as WPC, IEC, and ANSI/CTA, to develop an active mode test procedure for open-placement wireless chargers that appropriately addresses the impact of receiver

placement on charging efficiency, and will continue to gather relevant consumer usage data. WPC stated that fixed-placement does not necessarily mean battery charger, because the battery management and control circuitry are often placed in the wireless receiver. (WPC, No. 22 at p. 3) WPC agreed that the present ''interoperable'' wireless charger (regardless of open-placement or fixed-location) efficiency testing method is not representative of real-world performance and is likely not repeatable. WPC stated that to make such a test method repeatable would require a placement coordinate table that moves the receiver in 1mm increments within the charging area, developing accurate user placement models, and limiting the receiver to one specific product design. (*Id.*)

For fixed-location wireless battery chargers that can work with multiple end use products, each different wireless charger and end use product/battery combinations could result in different charging efficiencies, therefore, they would constitute as different battery charger models and would need to be tested and certified separately. DOE notes that manufacturers have already been certifying products in this way under the current test procedure. As for open-placement wireless chargers, DOE notes that for even a relatively small wireless charging coil of 30 by 30 square millimeters, to accurately and repeatably capture the overall active mode energy consumption by moving the relative receiver placement in 1mm increments, as described by WPC, would result in 900 iterations. Even if the technician were to measure the efficiency differences across 5mm or 10mm increments, it would still result in dozens of repeated active mode tests, which adds significant undue burden to the test procedure. Additionally, because of the open-placement wireless charger design, it would be virtually impossible to develop representative relative receiver placement models. Therefore, DOE reiterates that a representative and repeatable test procedure for measuring the active mode energy performance of open-placement wireless chargers cannot be prescribed at this time without undue burden.

WPC further suggested that the name for open-placement chargers ''no-battery mode'' test should be changed to ''no receiver mode''. (WPC, No. 22 at p. 2) DOE notes that wirelessly charged devices usually have batteries and receiving circuitry built-in the device; therefore, batteries and receivers cannot be separated without tearing down the product. To maintain test mode language consistency, DOE is not changing the ''no-battery mode'' designation.

DOE appreciates the remainder of WPC's comments and notes that this final rule establishes only a test procedure and not energy conservation standards for fixed-location wireless chargers. DOE does not believe simply providing a method for testing the efficiency of these technologies without a corresponding energy conservation standard would impact manufacturer's design choices.

In this final rule, DOE is finalizing its proposal from the November 2021 NOPR to test fixed-location wireless chargers in all modes of operation, and to capture the no-battery mode energy performance of open-placement wireless chargers in the new appendix Y1. DOE is also adopting the proposal to leave a placeholder section in the new appendix Y1 to be reserved for a potential active mode test procedure for open-placement wireless chargers.

2. External Power Supply Selection

Most battery chargers require the use of an EPS to convert 115-volt (''V'') AC line voltage into a low-voltage DC or AC output suitable for powering the battery charger. DOE's current battery charger test procedure specifies that the battery charger be tested with the EPS packaged with the charger, or the EPS that is sold or recommended by the manufacturer. If an EPS is not packaged with the charger, or if the manufacturer does not sell or recommend an EPS, then the battery charger is tested using a 5.0V DC input for products that draw power from a computer USB port, or using the midpoint of the rated input voltage range for all other products. Appendix Y, sections 3.1.4.(b) and 3.1.4.(c). However, the 5.0 V DC specification for products drawing power from a computer USB port may not be representative for battery chargers designed for operation only on DC input voltage and for which the manufacturer does not package the charger with an EPS or sell or recommend an EPS. The current generation USB specification can support up to 20 V, per the voltage and current provisions of the most recent version of the International Electrotechnical Commission's (''IEC'') ''Universal serial bus interfaces for data and power—Part 1–2: Common components—USB Power Delivery'' (''IEC 62680–1–2'') specification.

To resolve this issue and improve test procedure representativeness and test results comparability, in the November 2021 NOPR DOE proposed to require in appendix Y1 that when an EPS is not pre-packaged with a battery charger (and the charger manufacturer does not sell or recommend a compatible charger), testing would be performed using any commercially-available EPS that is both (i) minimally compliant with DOE's energy conservation standards for EPS found in 10 CFR 430.32(w) and (ii) satisfies the EPS output criteria specified by the battery charger manufacturer. 86 FR 66878, 66885. DOE further proposed that if the certified EPS is no longer available in the market, then for DOE's compliance and enforcement testing DOE would test the battery charger with any compatible minimally compliant EPS that meets the performance criteria. *Id.* Additionally, in appendix Y1, DOE proposed to clarify the EPS selection priority when one is provided or recommended, to maintain test procedure repeatability. *Id.*

In response to these proposals regarding EPSs, DOE received several comments. Schumacher suggested DOE allow manufacturers describe the recommended EPSs in their user manuals for customers' reference and that such recommendations direct the use of an EPS when testing a battery charger that does not ship with one. (Schumacher, No. 21 at p. 5) ITI asked DOE to clarify whether the ''minimally compliant EPS'' language simply means any compliant EPS, currently level VI, and nothing more. (ITI, No. 20 at p. 2) Both the Joint Efficiency Advocates and NEEA suggested DOE further specify the efficiency range for these minimally compliant EPSs to improve reproducibility and maintain a level playing field. (Joint Efficiency Advocates, No. 23 at p. 2; NEEA, No. 27 at pp. 9–10) WPC and the CA IOUs recommended DOE prescribe a standardized EPS when none is recommended. (WPC, No. 22 at p. 2; CA IOUs, No. 25 at p. 6)

The CA IOUs also commented that there is a trend towards shipping chargers without an EPS, and that many consumers are reusing AC to DC EPSs whose efficiency under load contributes to an important part of the battery charger efficiency and should not be eliminated via an adjustment factor approach unless significant experimental validation confirms this model. (CA IOUs, No. 25 at p. 6) The CA IOUs further requested that DOE consider how new battery chargers will typically be powered by older EPSs if current trends continue. (*Id.*)

As an initial matter, DOE will also continue studying the trends of shipping battery chargers without an EPS and the effect of reusing old EPSs. The proposal to require testing with a minimally compliant EPS reflects the

wide selection of EPSs readily available and ensures that the battery charger is tested in a configuration representative of actual use, as most battery chargers require the use of an EPS to convert 115V AC line voltage into a low-voltage DC or AC output. By ''minimally compliant EPS'', DOE is referring to EPSs that are minimally compliant with their respective EPS product class energy conservation standard, or in other words, EPSs with Compliance Certification Database (''CCD'') reported efficiencies as close to their respective minimum product class energy conservation standard as possible. Requiring the use of a minimally compliant EPS for testing will help improve test procedure reproducibility. Requiring the use of an EPS with an efficiency as close to the minimum as possible also ensures that manufacturers who do not package, sell, or recommend an EPS for testing with their battery chargers do not get an unfair advantage, by preventing the use of a very efficient third-party EPS for testing. DOE reiterates that the make and model of such minimally compliant EPS used for testing would also need to be reported to CCD, as prescribed by battery charger certification reporting requirements at 10 CFR 429.39. Specifying the use of a minimally compliant EPS results in battery chargers shipped without an EPS being tested with EPSs of comparable efficiency. As such, DOE is not prescribing specific EPSs, or the acceptable range of EPS efficiencies for testing with battery chargers.

The Joint Trade Associations opposed DOE's proposal to test battery chargers with a minimally compliant EPS, when applicable. The Joint Trade Associations claimed that manufacturers do not know which adapters are minimally compliant until after testing them. The Joint Trade Associations instead suggested DOE to continue allow 5V DC input option for conventional USB connections. For other connections, including for USB–PDs, the Joint Trade Associations proposed allowing any other commercially available EPS to be used. The Joint Trade Associations asserted that this would avoid possible circumvention through use of a specially designed adapter, but that DOE should study whether adapters vary enough in efficiency that this approach may cause an increase in unacceptable testing variations. (Joint Trade Associations, No. 24 at p. 9)

DOE clarifies that the ''minimally compliant'' qualification applies to the EPS and compliance with the applicable energy conservation standards applicable to EPSs. By adopting the proposal to test with a minimally compliant EPS for applicable battery chargers, it would further avoid accounting for adapter efficiency differences, leading to unacceptable testing variation. The efficiencies of DOE compliant EPSs can be found on DOE's publicly available CCD. As discussed in the November 2021 NOPR, testing with a 5V DC input is less representative than testing with an EPS. 86 FR 66878, 66885. Additionally, testing with a 5V DC input does not provide as comparable of results with battery chargers that are shipped and tested with an EPS. Therefore, in order to improve the representativeness and comparability of testing, DOE is adopting the provisions discussed in the preceding paragraphs to test with a ''minimally compliant EPS,'' as proposed in the November 2021 NOPR. These battery chargers are operated with an EPS by the consumer and testing the chargers without an EPS is not representative of actual use. DOE is also adopting the proposed enforcement testing change in appendix Y1 from the November 2021 NOPR to address instances in which the certified EPS relied on in testing is no longer available in the market. 86 FR 66878, 66885. In such an instance, DOE will test the battery charger with any compatible minimally compliant EPS that meets the performance criteria.

Regarding DOE's proposal in appendix Y1 to further specify the EPS selection priority when one is provided or recommended, DOE did not receive comments opposing such proposal, with both WPC and the Joint Efficiency Advocates expressing their support for this proposal. (WPC, No. 22 at p. 2; Joint Efficiency Advocates, No. 23 at p. 2) As such, DOE is adopting the proposal that a battery charger would first be tested using the pre-packaged wall adapter; if the battery charger does not include a pre-packaged wall adapter, then the battery charger would be tested with a wall adapter sold and recommended by the manufacturer; if the manufacturer does not recommend a wall adapter that it sells, then the battery charger is to be tested with a wall adapter recommended by the manufacturer. DOE reiterates that only if when the manufacturer does not package, sell, or recommend an EPS to be used with the battery charger, then the battery charger should be tested with a minimally compliant EPS, or in other words, and EPS that is no more efficient than the corresponding baseline EPS standard.

For the reasons presented in the November 2021 NOPR and in the preceding paragraphs, DOE is adopting the proposals from the November 2021 NOPR to specify the EPS selection priority and require applicable battery chargers to test with a minimally compliant EPS in the new appendix Y1.

3. Battery Chemistry and End-of-Discharge Voltages

The battery charger test procedure requires that, as part of the battery discharge energy test, the battery must be discharged at a specified discharge rate until it reaches the specified end-of-discharge voltage stipulated in Table 3.3.2 of appendix Y. Appendix Y, section 3.3.8(c)(2). Table 3.3.2 defines different end-of-discharge voltages for different battery chemistries. A footnote to Table 3.3.2 provides that if the presence of protective circuitry prevents the battery cells from being discharged to the end-of-discharge voltage specified, then the battery cells must be discharged to the lowest possible voltage permitted by the protective circuitry. *Id.*

DOE stated in the November 2021 NOPR that although the presence of protective circuitries allows some batteries to discharge to end-of-discharge voltages that are different from the voltages prescribed in Table 3.3.2 of appendix Y, such circuits are not universal, and accurate values for end-of-discharge voltages are required to ensure batteries are safely and representatively discharged when such circuits are not present. 86 FR 66878, 66886. Therefore, DOE proposed no changes for the footnote regarding protective circuitries. *Id.* However, DOE proposed to update the term used for battery chemistry in Table 3.3.2 from ''Lithium Polymer'' to ''Lithium-Ion Polymer'' and to change ''Nanophosphate Lithium-Ion'' to ''Lithium Iron Phosphate'' in order to reflect changes in the market. 86 FR 66878, 66886.

The Joint Trade Associations supported DOE's proposal to update the battery chemistry terms, and also supported not changing the foot note regarding end-of-discharge voltages. The Joint Trade Associations further stated that they are not aware of new cut off voltages and the new battery chemistries DOE considered are still in their infancy. (Joint Trade Associations, No. 24 at p. 9)

Schumacher requested that DOE add Lead-Carbon based Valve-Regulated Lead Acid (''VRLA'') batteries to the list of batteries, stating that such batteries are quickly developing and are mostly used in Solar Charging and RVs. However, Schumacher indicated that they were not sure of the per-cell rating or end-of-discharge voltage for these batteries. (Schumacher, No. 21 at p. 2) In response to Schumacher's comment,

DOE reviewed the Lead-Carbon based VRLA battery market and was not able to find valid data to establish the end-of-discharge voltages for these batteries. At this time, the Lead-Carbon based VRLA battery market appears to still be developing. As such, DOE is not including Lead-Carbon based VRLA batteries in Table 3.3.2 of appendix Y.

Schumacher also suggested DOE provide a tolerance to end-of-discharge voltage to ensure uniformity, because not all test equipment stops the discharge test at the exact voltage. (Schumacher, No. 21 at p. 3) DOE notes that battery voltages can fluctuate during discharge and might drop suddenly around end-of-discharge voltage. Therefore, it would be more accurate for the test equipment and lab technician to determine when exactly should discharge be stopped once it reaches close to DOE specified end-of-discharge voltage. From DOE's own testing according to the current test procedure, the discharge tests are usually terminated by either the battery analyzer at the specified end-of-discharge voltage, or by the built-in battery protection circuitry. DOE does not anticipate the current test procedure language to cause repeatability or reproducibility issues, nor did DOE receive other stakeholder concerns on the current approach.

Delta-Q claimed that the name change from ''Lithium Polymer'' to ''Lithium-Ion Polymer'' does not address the issue that virtually all commercialized lithium-ion batteries have a polymer separator. (Delta-Q, No. 28 at p. 1) Delta-Q further proposed DOE to simply delete ''Lithium Polymer'' from the table to avoid confusion and redundancy. *Id.* DOE notes that although most lithium-ion batteries on the market utilize a polymer separator, there are still potentially some batteries that do not have the polymer separator, and the additional battery chemistry would not cause variation in test results. Therefore, DOE will maintain both the Lithium-Ion Polymer and Lithium-Ion chemistries.

For the reasons discussed in the November 2021 NOPR and in the preceding paragraphs, in this final rule DOE is adopting the proposed updates to the battery chemistry table to update ''Lithium Polymer'' term to ''Lithium-Ion Polymer'' and updating the term ''Nanophosphate Lithium-ion'' to ''Lithium Iron Phosphate''.

4. Battery Selection

Table 3.2.1 of appendix Y specifies battery selection criteria based on the type of charger being tested; specifically, whether the charger is multi-voltage, multi-port, and/or multi-capacity. For multi-capacity chargers, Table 3.2.1 specifies using a battery with the highest charge capacity. Similarly, for multi-voltage chargers, Table 3.2.1 specifies using the highest voltage battery. Section 3.2.3(b)(2) of appendix Y specifies that if the battery selection criteria specified in Table 3.2.1 results in two or more batteries or configurations of batteries with same voltage and capacity ratings, but made of different chemistries, the battery or configuration of batteries that results in the highest maintenance mode power must be used for testing.

Although DOE did not propose to make changes to the current battery selection criteria in the November 2021 NOPR, Schumacher suggested DOE reconsider the battery selection method for automotive chargers. (Schumacher, No. 21 at pp. 1–2) Schumacher stated that it is better to use 12V Absorbent Glass Mat (''AGM'') batteries with Thin Plate Pure Lead (''TPPL'') technology for testing multi-voltage automotive battery chargers because they have lower stratification, do not need electrolytes measurement, are easier to maintain, are safer, have lower losses, and have more repeatable and reproducible results. Schumacher also indicated that these batteries are more popular, with 12V batteries being the most common voltage. Schumacher stated that for multi-voltage automotive battery chargers that can charge 12V batteries, batteries of other voltages should not be required for testing because of their significantly fewer annual volumes. (*Id.*) Schumacher added that these batteries can be reused more times to keep test costs lower. Schumacher further suggested DOE add reusing of automotive batteries and float charging specifications to the test procedure as many automotive battery chargers reuse the same batteries for testing. (Schumacher, No. 21 at p. 2)

DOE reiterates that its current battery selection criteria specifically states that if multiple batteries meet the battery selection criteria, the battery or configuration of batteries with the highest maintenance mode power should be selected for testing. Section 3.2.3.(b)(2) of appendix Y. In real world scenarios, consumers do not always choose the most efficient battery chemistry to use with their battery chargers. Therefore, testing a lead acid charger with more efficient AGM batteries with TPPL technology would not be representative. If a manufacturer can select either a regular AGM battery or an AGM battery with TPPL technology, the battery with higher maintenance mode power would be selected for testing. As for selecting batteries for testing with multi-voltage chargers, Table 3.2.1 of appendix Y specifically states that battery with the highest voltage should be used for testing.

DOE's battery charger test procedure requires manufacturers to use new battery chargers and associated batteries. Section 3.2.2 of appendix Y. Battery charge capacity can vary with number of charge cycles and discharge rates, especially for lead acid batteries. As such, testing a battery charger with a new battery versus with the same battery, but after repeated number of charge and discharge cycles, can result in significant variation that diminishes the accuracy and repeatability of the testing. To determine if a used battery is still suitable for testing would require monitoring and testing of various factors, which can also add undue burden. Therefore, DOE is not changing the requirement that new batteries be used for testing, to maintain test procedure repeatability as well as test result reproducibility and comparability.

5. Mode-Specific Metrics

Currently, DOE's battery charger test procedure is based on the integrated UEC approach. The UEC equation in section 3.3.13 of appendix Y integrates active mode, standby mode, and off mode power measurements by combining certain parameters, including 24-hour energy, measured battery energy, maintenance mode power, standby mode power, off mode power, charge test duration, and usage profiles. Table 3.3.3 specifies the usage profile for each battery charger product class, meaning the values for time spent (in hours per day) in active and maintenance mode, standby mode, off mode; number of charges per day; and threshold charge time (in hours). In incorporating usage profiles into the integrated metric, DOE in the June 2016 Final Rule stated that aggregating the performance parameters of battery chargers into one metric and applying a usage profile would allow manufacturers more flexibility for improving performance during the modes of operation most beneficial to their consumers, rather than being required to improve the performance in each mode of operation, including those which may not provide any appreciable benefit. 81 FR 38266, 38286–38287.

UEC integrates active mode, standby mode, and off mode energy use in order to estimate the amount of non-useful energy (*i.e.,* energy not transferred to the battery) consumed by the battery charger over the course of a year. The UEC approach therefore requires the use

of usage profiles to appropriately reflect the period of time a product spends in each mode, in order to maintain the representativeness of the metric for an average use cycle or period of use as required by EPCA. The usage profiles provide a weighted average of application-specific usage for battery chargers within a specific product class. The usage profiles are based on data for a variety of applications from user surveys, metering studies, and stakeholder input that DOE considered in the June 2016 Final Rule. 81 FR 38266, 38287. DOE's product-class specific usage profiles were initially also developed using the shipment-weighted average usage hours of all the applications of battery chargers whose battery voltage and energy met the criteria for each product class. The intended result was for each usage profile to be representative of the usage of the product class as a whole.

EPCA requires that DOE amend its test procedures for all covered products to include standby mode and off mode energy consumption, with such energy consumption integrated into the overall energy efficiency, energy consumption, or other energy descriptor for each covered product, unless the Secretary determines that (i) the current test procedures for a covered product already fully account for and incorporate the standby mode and off mode energy consumption of the covered product; or (ii) such an integrated test procedure is technically infeasible for a particular covered product, in which case the Secretary shall prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) EPCA requires the use of an integrated metric unless such a test procedure is technically infeasible. If an integrated test procedure is technically infeasible, DOE must prescribe separate standby mode and off mode energy use test procedures, if a separate test is technically feasible. (*Id.*)

However, under EPCA, DOE is required to establish test procedures that are reasonably designed to produce test results which measure energy efficiency and/or energy use of a covered product during a representative average use cycle or period of use, as determined by the Secretary, and such test procedures must not be unduly burdensome to conduct. (42 U.S.C. 6293(b)(3)) The requirement for a representative test procedure that does not impose an undue burden underpins EPCA's ability to develop and enforce standards, and therefore is a fundamental requirement of EPCA. EPCA does not define what is technically infeasible or what it means. But DOE finds it reasonable when considering the technical feasibility of a test procedure that provides for a metric that integrates active mode, standby mode, and off mode energy use to consider the representativeness and burden of a test procedure using that metric. An integrated test procedure metric that cannot be reasonably expected to produce representative test results or that would result in undue burden cannot be considered technically feasible under EPCA, because it is unable to meet the requirements to be a permissible test procedure under the statute—even if an integrated metric is theoretically possible approach were those requirements to not apply.

As explained in the November 2021 NOPR, as the battery charger market continues to evolve, DOE has observed that the relative share of shipments among different types of products within a product class has changed; the types of products within a given product class as well as the usage patterns of the products within a product class have become more varied. 86 FR 66878, 66887. In the November 2021 NOPR DOE presented the example of the current Product Class 2, which includes both smartphones and small capacity home power tools—two products with widely different usage patterns and annual shipments. *Id.* A more recent market review shows that the shipments for certain applications, such as smartphones, cordless phones, wireless headsets, have changed significantly since the usage profiles in appendix Y were originally established. *Id.* Furthermore, there has been a recent but rapid market adoption of smart wearable devices, tablets, consumer drones, and mobility scooters from DOE's internal research. Some of these products would have drastically different usage profiles from their respective product classes, which adversely impacts the representativeness of the corresponding usage profiles. Changes in consumer use of a number of products within a product class or the emergence of new or altered end use products impacts the representativeness of the usage profile for that product class under the UEC metric. DOE anticipates that the battery charger market will continue to change dynamically at a rate that will render usage profiles unrepresentative more quickly than EPCA's review cycles anticipate. Because the UEC metric requires integrating active mode, standby mode, and off mode energy use, which requires representative usage profiles, the need for new or amended usage profiles to maintain representativeness would result in the need to repeatedly and frequently amend test procedures, which in turn potentially would require manufacturers to update representations, increasing undue manufacturer burden.

In an effort to maintain the representativeness of the test procedure for battery chargers in light of the rapidly changing market, while maintaining a consistent test procedure for manufacturers, in the November 2021 NOPR, DOE proposed an approach that does not rely on the UEC equation or usage profiles. 86 FR 66878, 66887. Specifically, DOE proposed in appendix Y1 to establish an approach that relies on a separate metric for each of the following modes of operation: active mode, standby mode, and off mode. *Id.* DOE is not aware and has not been made aware of any other integrated approach that integrates the energy consumption of different battery charger modes of operations.

The Joint Efficiency Advocates and CA IOUs noted in response to DOE's proposal that developing accurate and representative usage profiles has become more difficult with the constant development of new end use product types and changes in consumer usage patterns, risking the market usage assumptions used to calculate UEC becoming obsolete for specific classes of battery chargers unless continuously updated. (*See,* Joint Efficiency Advocates, No. 23 at pp. 2–3; CA IOUs No. 25 at p. 2) The Joint Efficiency Advocates noted that the multi-metric approach presented a more representative method. (Joint Efficiency Advocates, No. 23 at pp. 2–3) The Joint Efficiency Advocates commented that they found it would be more representative to separate the test procedure to three separate metrics for active mode, standby mode, and off mode. (Joint Efficiency Advocates, No. 23 at pp. 2–3) The CA IOUs also supported the development of separate reported metrics for active charge energy, standby mode, and off mode energy use. (CA IOUs, No. 25 at p. 1). The CA IOUs agreed that the evolving nature of battery charger technology tends to quickly make obsolete the market usage assumptions used to calculate UEC obsolete for specific classes of battery chargers. *Id.* The CA IOUs stated that the benefits of the disaggregated metric test procedure have become increasingly relevant for reasons such as products having different usage profiles within the same product class, evolving technology and

usage patterns, increases in battery energy density and capacity across products, and variation in charge time profiles. (CA IOUs, No. 25 at p. 2) The CA IOUs stated that as battery charger technologies and markets evolve, an integrated metric becomes less representative of the product classes as currently defined in the test procedure and stated that because DOE's proposed approach does not rely on a UEC equation or usage profiles, it should be more flexible. (CA IOUs, No. 25 at p. 2)

NEEA also supported DOE's proposed multi-metric approach and noted that its research demonstrated that the use of separate active, standby, and off mode metrics aligns with the current battery charger market. (NEEA, No. 27 at p. 2) NEEA noted that battery charger end uses are substantially more varied than when DOE promulgated its UEC metric, citing AHAM's comment that there are hundreds, if not, thousands of battery-charged consumer products in the market. NEEA noted that there are many factors that contribute to this growth, such as price reduction for lithium-ion batteries, increased wireless applications, and smaller charger formats. NEEA stated that this proliferation makes it technically inappropriate to continue using usage profiles to represent the energy use of hundreds of widely varying applications. (*Id.*) NEEA explained as well that markets for and shipments of battery chargers can change rapidly, as products evolve and consumer demand shifts. NEEA listed certain products as examples, such as landlines, smartphones, drones, cameras and MP3 players. *Id.* NEEA stated that while the UEC approach is appropriate for more stable appliance categories such as refrigerators, it is not a useful measure for the continuously evolving array of battery charger end uses. (NEEA, No. 27 at p. 3) In contrast, NEEA noted that there are multiple advantages to DOE's multi-metric approach: increasing representativeness of the range of battery chargers, both now and as the market continues to change; improving harmonization with DOE's EPS test procedure approach; and enabling more detailed standards analysis. (NEEA, No. 27 at p. 3)

ITI suggested, however, that DOE continue using the UEC metric while gathering active charge energy data to fully understand the complexity of these energy use parameters before deciding to switch metrics. (ITI, No. 20 at 3) ITI and the Joint Trade Associations stated that current class groupings are not perfect, but that they were based on objective criteria and still provide a clear indication of which product class a charger should fall into. (ITI, No. 20 at 3; Joint Trade Associations, No. 24 at p. 3) Delta-Q acknowledged the imperfection of the UEC and its usage profiles but did not support replacing the usage profiles-based UEC system with the multi-metric approach, stating that the multi-metric approach will unduly constrain design options to minimize overall energy use while managing trade-offs with cost and customer value. (Delta-Q, No. 28 at p. 1) Delta-Q suggested that the multi-metric approach would cause uncertainty and could require redesigns, increase costs, and remove features that may not reduce energy consumption in real-world usage. *Id.*

DOE does not agree that the multi-metric approach lacks the potential to reduce energy consumption in real-world usage. DOE's UEC metric currently represents the annualized amount of the non-useful energy consumed by a battery charger (*i.e.,* energy losses) among all tested modes of operation. As battery and battery charger technology develops along with change in usage profiles, DOE is noticing that more and more energy losses happen during maintenance mode and no-battery mode, as battery chargers are simply either maintaining the battery at a fully charged state or monitoring the charger circuitry to facilitate active charging when a battery is inserted. In these modes, the battery charger is not doing any useful work to transfer energy into the battery, and because these modes can last indefinitely, they can result in significant energy savings potential if regulated separately from active mode. DOE further notes that the potential redesign and additional costs are not associated with change to multi-metric testing approach, but directly related to the energy conservation standards rulemaking. However, DOE notes that any energy savings potential and cost burdens from increased efficiency levels would be analyzed thoroughly in the separate energy conservation standards rulemaking.

The Joint Trade Associations opposed the proposed multi-metric approach, asserting that the multi-metric approach does not satisfy EPCA's intent or requirements, and it would make savings and energy savings difficult for the consumer to understand as well as for DOE to analyze. (Joint Trade Associations, No. 24 at pp. 1–3) The Joint Trade Associations asserted that DOE failed to demonstrate that its proposals are justified and are not arbitrary and capricious, and that DOE's proposal does not meet the requirements of the Administrative Procedure Act or the Data Quality Act. (Joint Trade Associations, No. 24 at p. 3) The Joint Trade Associations asserted that DOE has not shown that the current approach does not represent an average consumer use cycle, that it cannot be updated to maintain its representativeness of average consumer use, that it is infeasible to integrate active mode and standby mode, or that the current test procedure approach would be unduly burdensome to conduct. (Joint Trade Associations, No. 24 at pp. 2–4) The Joint Trade Associations also noted that the proposed appendix Y1 would add significant burden and is contrary to EPCA's clear preference for aggregated metrics. (Joint Trade Associations, No. 24 at pp. 1–2)

The Joint Trade Associations acknowledged, however, that the current product classes are not perfect and that they have acknowledged their imperfection from the beginning; they acknowledged that there are difficulties in developing product classes for battery chargers, with thousands of different end use products, and that usage and shipments of products within classes differs. (Joint Trade Associations, No. 24 at pp. 2–3) The Joint Trade Associations solution to these issues was not to remove the UEC metric and usage profiles but to update the usage profiles and shipments analysis more regularly, considering the breadth of products in each class from both usage and shipments perspectives. The Joint Trade Associations offered to provide data to assist in that analysis. (Joint Trade Associations, No. 24 at p. 3). The Joint Trade Associations noted that EPCA requires DOE to review and update test procedures at least once every 7 years, and that DOE has further discretion to initiate an early review if usage profiles or shipments for product classes become unrepresentative. (Joint Trade Associations, No. 24 at p. 4) Because DOE is already required to update the test procedures periodically, the Joint Trade Associates could not see how the multi-metric approach solved any issue. The Joint Trade Associations noted that these reviews and updates are critical to DOE's analysis, and it is difficult to understand why it is too challenging to do these as part of the test procedure review. The Joint Trade Associations speculated that DOE did not want to be bothered re-assessing its categorizations and updating usage profiles. *Id.*

DOE is undertaking this rulemaking in compliance with its requirement under EPCA to review and update test procedures at least once every 7 years. However, the issue DOE identified with keeping the current integrated UEC

approach was not the need to update the test procedures according to the requirements of EPCA, but the frequency of updates required to maintain the UEC metric as a representative approach to testing as required under EPCA. DOE reiterates that it has determined it would need to update the test procedures more often than the 6- and 7-year standards and test procedure update cycles to maintain the UEC metric; as other commenters also noted, the battery chargers' dynamic market already would warrant far more frequent updates and DOE projects this need to only increase over time. While the Joint Trade Associations pointed out that DOE regularly updates annual use cycles for products such as residential dishwashers, laundry products, and air treatment products based on varying sets of data, DOE notes an approach that is both feasible and representative for some products may not be feasible or representative for others where there are clear and significant differences between the products such as quantity of end use products for battery chargers.

The Joint Trade Associations further stated that DOE failed to present data supporting its conclusions from a recent market review showing that shipments for certain applications have changed significantly since the usage profiles were established, or that market and shipments of battery chargers change quickly as the market and consumer use changes. (Joint Trade Associations, No. 24 at p. 3) The Joint Trade Associations further disputed that the current approach is no longer representative, and that DOE has presented no compelling evidence that the test procedure has become overly burdensome, noting that the simple solution is to simply update the test procedures. They concluded that because the current test procedure has accomplished EPCA's requirements of representative results without undue burden relatively well, DOE cannot show it is infeasible to have an integrated metric representative of consumer use. They therefore also disputed DOE's findings of a repeated need to update leading to increased manufacturer burden and claimed the multi-metric approach would be more burdensome than minor revisions to update usage profiles and shipments. *Id.*

DOE notes that an approach's historical success or validity does not necessarily justify maintaining that approach in the face of changed and changing circumstances. DOE has projected that the battery chargers' market and the variety of consumer end uses make the UEC metric increasingly infeasible and untenable to maintain, both administratively and for regulated parties. The technical requirements to maintain the UEC metric and its attendant usage profiles are no longer feasible to meet. The need to frequently review and update usage profiles, while known in the 2016 rulemaking, was of a different scope than the need for review and updating dictated by the current market for battery chargers. DOE believes this need to update would only increase in rapidity. And as DOE has noted, even if DOE were able to maintain these profiles on its own end the frequent changes to the test procedures and standards would require frequent recertifications for manufacturers and may cause impermissible undue burden.

The Joint Trade Associations disputed that the test procedure must be representative of consumer use at every moment, noting that this is not only impossible, but also unnecessary and not consistent with EPCA's intent. (Joint Trade Associations, No. 24 at p. 4) DOE agrees that this is not the statutory standard, but DOE notes that DOE is required to maintain test procedures reasonably designed to produce representative test results without undue burden. Maintaining the current battery charger test procedure, which DOE reasonably believes will lead to foreseeably unrepresentative test results on a regular basis, is contrary to EPCA's requirements where an alternative test procedure exists to provide more representative results without undue burden. While EPCA expresses a preference for an integrated metric, this preference yields before EPCA's more fundamental need for accurate and representative test results, without which EPCA's standards are undermined.

The Joint Trade Associations also argued that DOE originally grouped products with different usage profiles into the same product class, and that DOE did not present data in the November 2021 NOPR on what has changed since the initial test procedure and standards development. (Joint Trade Associations, No. 24 at p. 2) The Joint Trade Associations stated that DOE was placing the burden of proof for retaining the integrated metric on commenters but claimed that the burden was in fact on DOE to demonstrating that its proposals were justified and not arbitrary and capricious. Joint Trade Associations, No. 24 at p. 3) DOE has acknowledged that it is changing its position on whether the UEC metric can meet the requirements of EPCA but disagrees that it has not explained the basis for this change in position. DOE, and other commenters in response, noted that the changes in the market justified reconsideration and ultimately departure from the UEC and usage profile approach. The market review has shown that the UEC integrated metric approach can no longer feasibly be reasonably expected to produce representative test results as required by EPCA, absent such frequent updates to the test procedures as to constitute undue hardship—which itself would contravene EPCA. DOE is adopting its multi-metric approach because an integrated metric is now infeasible.

The Joint Trade Associations asserted that UEC is a more representative approach because it accounts for consumer usage, whereas DOE's multi-metric approach does not account for the contribution of each to the overall product efficiency. (Joint Trade Associations, No. 24 at p. 7) However, as DOE has noted the representativeness of the UEC approach is dependent on representativeness of the usage profiles and shipment data underpinning the metric, and the current battery chargers market dynamics make maintaining the representativeness of that metric infeasible without incurring undue burden. DOE's UEC approach would only be representative of the annual non-useful energy resulting from battery chargers, provided that the usage profiles are updated frequently and repeatedly. DOE's multi-metric approach would, still representatively but separately, measure and certify the active mode energy, standby mode energy, and off mode energy. As battery charger overall efficiency is highly dependent on usage profiles, the multi-metric approach can further help consumers in learning which battery charger would provide best overall efficiency under that specific consumer's usage profile by providing the separate metrics.

The Joint Trade Associations stated that not only is DOE's proposal inconsistent with EPCA's clear preference for integrated metrics, but it is also inconsistent with DOE's systems approach, which aims to allow flexibility in component designs while ensuring an overall efficiency requirement. The Joint Trade Associations stated that they assumed the proposed appendix Y1 will translate to three separate energy conservation standards requirements and noted that not all products have the capability to reduce energy consumption of a particular mode which may require redesign to meet DOE standards. The Joint Trade Associations commented that by separating active, standby, and off modes into three metrics DOE is requiring the redesign of products and

effectively increased design complexity. The Joint Trade Associations stated that manufacturers are allowed flexibility to distribute energy across the different modes with the current UEC compliance requirements. The Joint Trade Associations stated that the integrated UEC approach therefore allows more innovation and flexibility in designs and posited that the burden associated with DOE's multi-metric approach will likely be more significant as it will inhibit innovation inhibit innovation and the ability to differentiate one's products from others in the market. (Joint Trade Associations, No. 24 at pp. 4–6) DOE acknowledges that the original UEC approach provides greater design flexibility because of its integrated nature, and that this was one purpose of the UEC metric. 81 FR 38266, 38286–38287. However, DOE cannot maintain an approach that will not meet EPCA's requirement of representative test procedures or lead to undue burden. Furthermore, DOE's multi-metric approach will still regulate the integrated power draw of battery chargers in standby mode operations, allowing manufacturers to still have significant design flexibility in improving either maintenance mode or no-battery mode efficiency.

The Joint Trade Associations further stated that manufactures have already developed their products to comply with DOE's current standards, which is challenging for some battery chargers, especially the infrequently charged ones. The Joint Trade Associations claimed that if DOE were to change its approach, some products will likely need to be redesigned and the investments manufacturers have made to comply with the current standards would be stranded. (Joint Trade Associations, No. 24 at p. 2)

The Joint Trade Associations commented that they cannot fully comment on DOE's proposal when DOE has not provided more detail on how the product classes or standards would be amended. The Joint Trade Associations stated it is likely that that some currently compliant products may no longer be compliant under the newly proposed approach but with no real savings but only additional costs on consumers and manufacturers. The Joint Trade Associations suggested DOE analyze this further during manufacturer interviews. (Joint Trade Associations, No. 24 at p. 5)

Schumacher stated that if DOE's amended test procedure impacts existing CCD reported models, they recommend the currently compliant products to be grandfathered in under the amended standards or required to be updated several years after the revised standard publication. (Schumacher, No. 21 at p. 6) Schumacher argued that if a newly revised standard was to be put into effect immediately, it would result in higher cost to manufacturers; whereas a buffer period of several years would minimize costs and let manufacturers retest the products or redesign the products. *Id.*

DOE is adopting the mode-specific metric approach as proposed in the December 2021 NOPR and consistent with its authority and duties under EPCA. As previously noted, when considering the feasibility of a test procedure with a metric integrating active mode, standby mode, and off mode energy use, DOE must also consider whether that metric will satisfy the test procedure criteria prescribed by EPCA: the representativeness of the test procedure and whether a test procedure is unduly burdensome. The UEC test procedure approach specifies an integrated metric relying on usage profiles. However, changes in consumer use and the emergence of new products can both impact the representativeness of that usage profile and therefore the UEC metric overall. While the Joint Trade Associations suggested that maintaining the representativeness of the current usage factors is simply a matter of updating the data, as discussed in the November 2021 NOPR the market and shipments of battery chargers has been shown to change over short periods of time as new products that rely on battery chargers emerge and are adopted by the market, and as consumer use of products that rely on battery charger changes. 86 FR 66878, 66887. As an example, DOE noted that the shipments for Digital Audio Players and Digital Cameras have declined significantly with the advent of smart phones that have similar built-in capabilities. *Id.*

Because of the nature of battery chargers, they serve a great variety of end use products, updated on an annual basis. Although DOE collects and reviews usage profiles and shipment data constantly, going through the process of updating the test procedure and energy conservation standards in a similar way would impose undue burden on manufacturers. Needing to update the test procedure in order to avoid reliance on obsolete usage profiles and comply with EPCA's representativeness requirement would in turn require updating the energy conservation standards to reflect the test procedure changes. Manufacturers would then need to frequently retest and recertify their products, creating significant and undue burden.

By regulating the different battery charger operating modes separately, DOE avoids the risk of usage profiles becoming increasingly unrepresentative before having a chance to update them, as the multi-metric approach is not reliant on usage profiles, but rather performance in individual operating modes. The multi-metric approach provides for a more stable regulatory environment, by minimizing the possibility that manufacturers would need to retest and recertify products with changes in the market and the associated usage profiles, thereby reducing potential test burden.

DOE notes that the multi-metric test procedure approach in appendix Y1, adopted in this final rule, would not be required until such time as compliance is required with amended battery chargers energy conservation standards developed based on the new test procedure, should DOE establish such standards. Were DOE to establish amended energy conservation standards reflective of the multi-metrics, DOE would consider, in part, the efficiencies of battery chargers on the current market at each metric and the technologies available to improve the efficiencies at each metric.

DOE reiterates that adoption of the multi-metric test procedure in appendix Y1 itself will not require manufacturers to redesign their products. Moreover, the multi-metric testing approach provides results that more directly correlate to direct testing of a battery charger, as opposed to results that are dependent on shipments data and data regarding consumer usage patterns. As such, the test procedure is less dependent on data that may quickly become obsolete or data that may be unable to fully reflect appropriate market and consumer usage conditions. Therefore, DOE anticipates that it will provide a more stable regulatory environment for manufacturers moving forward.

DOE also notes that it is adopting the alternate active mode test method proposed in the NOPR, which essentially relies on the current active and maintenance modes test method found in appendix Y with only an added step for test technicians to analytically compute the integrated active mode energy from the active mode and maintenance mode test data. DOE estimates the additional time required to perform the active energy calculation would be roughly the same as that for calculating UEC. However, because technicians would no longer need to compute UEC under the multi-metric approach, overall testing burden would be the same between the multi-

metric approach and the current UEC approach.

The CA IOUs further recommended that DOE require manufacturers to report values for different operating modes, and that DOE publish these values in the CCD to allow calculations of UECs for specific products in specific use cases. (CA IOUs, No. 25 at p. 2) The CA IOUs stated this performance data would be essential for assessing the impacts of the new test procedure metrics. *Id.* DOE notes that the performance values are already presented on the CCD, and DOE will make necessary amendments to the reporting template to account for the reporting changes under the multi-metric approach.

ITI also requested DOE to consider harmonizing and coordinating the test procedure with Canada so they remain consistent. (ITI, No. 20 at p. 6) DOE notes that Canada's Department of Natural Resources primarily references DOE's existing test procedure for battery chargers, which relies on the consolidated UEC metric. While there is an effort to harmonize with widely and internationally adopted industry standards, DOE is required by EPCA to ensure that its test procedure for a covered product is representative. For the reasons stated above relating to DOE's own UEC-based test procedure metric, DOE is therefore unable to continue harmonizing with Canada's test procedure for battery chargers. DOE notes however that the test procedure's conduct between the current UEC approach and the adopted multi-metric approach still remains largely the same; therefore, DOE does not anticipate there to be significant difference between how tests are conducted in Canada and in the US. DOE will work with international agencies to reduce manufacturer burden to a reasonable extent, where doing so aligns with DOE's statutory requirements under EPCA.

Based on the discussion presented in the November 2021 NOPR and in the preceding paragraphs, DOE has determined that the adopted multi-metric approach more fully meets the representativeness requirements of EPCA without being unduly burdensome. Moving to a multi-metric approach avoids DOE imposing an undue burden on manufacturers by requiring frequent recertification and retesting due to frequent updates to an integrated metric, updates that would be needed to maintain the metric's compliance with EPCA's representativeness requirement in a shifting market landscape. DOE reiterates that testing under the new multi-metric approach would not be required until after DOE's battery charger energy conservation standards have been amended. DOE will also study the potential redesign needs and costs because of the multi-metric approach in the separate standards rulemaking.

6. Active Mode Test

Battery charger active mode is the state (condition) in which the battery charger system is connected to a main electricity supply (main power source) and is actively delivering power to bring the depleted battery to a fully charged state (the charger's main function), as defined in section 2.1 of appendix Y.—(*See also* 42 U.S.C. 6295(gg)(1)(A)(i)) Appendix Y currently tests the active mode power consumption along with battery maintenance mode power [11] to produce a consolidated 24-hour energy consumption value, or $E_{24,}$ which is then used in the UEC calculation. As previously discussed, in the new appendix Y1, DOE is replacing the UEC metric system with a discrete multi-metric approach that determines the energy efficiency and energy use of the active mode, standby mode, and off mode power consumption separately.

In the November 2021 NOPR, DOE proposed to use a charge test in which the test period would begin upon insertion of a depleted battery and would end when the battery is fully charged. 86 FR 66878, 66888. The active mode energy, E_a, would represent the accumulated input energy, meaning the average input power integrated over this test period. Similar to the procedure currently in section 3.3.2 of appendix Y (Determining the Duration of the Charge and Maintenance Mode Test), if a battery charger has an indicator to show that the battery is fully charged, that indicator would be used to terminate the active mode test. *Id.* If no indicator besides the manufacturer's instructions indicates how long it should take to charge the test battery, the active mode test would be conducted for the longest estimated charge time provided in the manufacturer's materials. *Id.* If the battery charger does not have such an indicator and a manufacturer does not provide such a time estimate, the length of the active mode test would be 1.4 multiplied by the rated charge capacity of the battery divided by the maximum charge current. DOE also proposes to arrange sections of appendix Y1 so that the battery discharge test is performed immediately after this active mode test is completed, but prior to the 24-hour charge and maintenance mode test that would then be used to determine maintenance mode power. *Id.*

Joint Trade Associations commented that the November 2021 NOPR preamble stated the battery discharge test would be performed immediately after the active mode test, but the proposed appendix Y1 regulatory text appropriately included a wait period. The Joint Trade Associations urged DOE to retain the wait periods, should DOE continue with the amended test procedure. The Joint Trade Associations expressed concern that going immediately from active mode testing to maintenance mode testing [12] would impact the test because the battery could be hot and stated the wait times are important for reducing test variation. (Joint Trade Associations, No. 24 at p. 7)

DOE's proposed charge test would begin upon insertion of a depleted battery and would end when the battery is fully charged and require that the test be terminated when there is indication that the charge test has ended. DOE's intent was to explain that manufacturers should terminate charging immediately after the battery reaches full charge, rather than wait for the original total charge and maintenance mode test duration to complete. The proposal was not intended to remove the wait period between the charge and discharge test. As such, DOE clarifies in this final rule that it is not removing the wait period between the charge and battery discharge test, and a wait period continues to be included in the newly established appendix Y1.

ITI suggested that the proposed charging test would be challenging to conduct for the following reasons: the maintenance mode power would be difficult to measure under the new approach for products with integrated battery; and if a battery charger does not have charge status indicator, it would be hard to monitor when the battery is fully charged as there many variables that can affect the total charging time, which makes it difficult to develop an automated and consistently accurate process. (ITI, No. 20 at p. 3) ITI suggested DOE collect more power data before proceeding with the new active charge test and reiterated that separating

[11] Maintenance mode is the operation of a battery charger to maintain a battery at full charge while a battery remains in the charger after fully charged. Under the current test procedure the characterization of maintenance mode as active mode or standby mode is less critical because the current test procedure metric integrates the modes. As discussed in the following section, DOE has tentatively characterized maintenance mode as part of standby mode.

[12] As discussed in the following section, in this final rule DOE has determined that energy use during maintenance mode is appropriately assigned to standby mode.

active charge test with maintenance mode test would require significantly longer testing time, and the maintenance mode power would not be possible to measure after battery discharge test for products with integrated batteries. (*Id.*) ITI suggested that DOE also consider the cost associated with potential redesign of battery charger products. (ITI, No. 20 at p. 6)

ITI and the Joint Trade Associations stated that the multi-metric test would either require active technician monitoring or additional special equipment for monitoring, which adds significant time and cost. (ITI, No. 20 at p. 6; (Joint Trade Associations, No. 24 at pp. 5–6) The Joint Trade Associations opposed the proposed active mode test procedure, stating it would significantly increase test burden and incur undue burden. (Joint Trade Associations, No. 24 at p. 5) The Joint Trade Associations stated that because the test takes longer, fewer tests can be conducted. (Joint Trade Associations, No. 24 at pp. 5–6)

CSA commented that the current appendix Y allows laboratory technicians leave the battery charger unattended for 19 hours before having to check on the charging status to determine total test duration, and the batteries will usually be charged within 19 hours for the test to be terminated at the 24-hour mark; this test can be left running overnight and requires very little time and effort from the lab technician. (CSA, No. 12 at p. 1) CSA further commented that if the active charge test needs to be terminated immediately after indication of battery is fully charged, the lab technician would need to continuously monitor the charge indicator and immediately terminate the charge when the fully charged indicator turns on. (CSA, No. 12 at pp. 1–2) Although CSA conceded this could be done by implementing sensors and other controls, CSA stated that it would be more burdensome than the appendix Y test method. *Id.* Similarly, Delta-Q argued that the proposed test procedure change adds test complexity and duration with the addition of the separate maintenance mode test. (Delta-Q, No. 28 at p. 2) Delta-Q also noted that the active mode test procedure was problematic both because it appeared to require constant monitoring and because it reduces battery rest time, which can increase test-to-test variation. *Id.*

NEEA recommended DOE test a wide variety of battery chargers to evaluate appropriateness of the active mode test. (NEEA, No. 27 at pp. 7–8) NEEA asserted that relying on a battery charge indicator may result in different charge levels at the end of the active mode tests, because not all chargers indicate charge status and those that do may signal full charge at different thresholds, which could result in unfair comparisons. (NEEA, No. 27 at pp. 7–8)

DOE notes that battery chargers are typically designed for a specific battery or combination of batteries. Therefore, manufacturers should already have an understanding of the full charge time for each battery and charger combination, making it unlikely that a technician would need to monitor a unit under test during the entire test period.

However, DOE also stated in the November 2021 NOPR that in its experience, it may be possible to analyze the resulting data from the 24-hour charge and maintenance mode energy consumption test and divide it into its constituents: the active mode energy and maintenance mode power. 86 FR 66878, 66888. DOE therefore considered this alternative approach, in which active mode energy consumption, E_a, would be the time series integral of the power consumed from the point when the battery was first inserted (or plugged in for chargers with integrated batteries) until the measured data indicate a drop in power associated with the transition from active charging to maintenance mode. Under this approach, a single test period would provide the necessary measurements for the active mode energy, E_a, from the 24-hour charge and maintenance mode test data. DOE stated that it would consider the discussed alternate approach in the development of the final rule. *Id.* Under this approach, lab technicians do not need to rely on charge status indicator to determine when the battery reaches the full charge, which would ensure that the test battery would always be fully charged at the end of the combined charge and maintenance mode test.

CA IOUs agreed that calculating energy in active mode as the integral of applied power during the charge period is a practical and reasonable approach based on sound physics. (CA IOUs No. 25 at p. 2) The Joint Trade Associations stated the alternative active mode test would not work because battery chargers may have points at which the battery power is turned off, such as a series of pulses at the end where the battery attempts to get full charge. The Joint Trade Associations stated that such instances could be misinterpreted at the end of the appendix Y1 active test, and for products with complex charge profiles, it is difficult to detect the end of active mode given different battery sizes. (Joint Trade Associations, No. 24 at p. 7)

NEEA similarly commented that analyzing charge status based on AC input power is difficult for slower trickle chargers because input power may not indicate a transition from active to battery maintenance mode. (NEEA, No. 27 at p. 8) NEEA also suggested that although additional instrumentation can be used to monitor battery charger output and more accurately determine the state of charge, measuring additional charger DC output may interfere battery and charger communication signals, impacting testing safety; affect the measurement directly; and increase test burden. (NEEA, No. 27 at p. 8–9) NEEA claimed that determining charge status by using AC input power may result in different charge levels for fast chargers because these chargers transition from fast to slow charging with different algorithms. (*Id.*) NEEA encouraged DOE to investigate the issues it identified, and to retain its current appendix Y active and maintenance mode testing approach if the challenges prove difficult to overcome. (*Id.*) NEEA stated that advantages of the appendix Y 24-hour active mode test include reduced test burden for technicians, the ability to address both slow and fast chargers through a uniform approach and eliminating the need to determine/define charge status. (*Id.*)

WPC supported DOE's alternate approach of conducting a single 24-hour charge and maintenance mode test and determining active charge energy based on the data generated. (WPC, No. 22 at pp. 2–3) WPC also commented however that it may be difficult to define the actual transitioning point between active mode and maintenance mode. (*Id.*)

To minimize any potential additional burden that may be associated with an active-mode only test as noted by commenters, DOE is adopting the alternative active charge energy approach discussed in the November 2021 NOPR, under which active mode energy is calculated from the combined charge and maintenance mode test, similar to the test procure in appendix Y. DOE notes that battery chargers may have different charging profiles. Based on DOE's testing, most battery chargers exhibit a distinctive drop off in power indicating a transition to maintenance mode. In certain limited instances, the battery charger shows unstable power consumption towards the end of charging phase. However, such periods would be classified as active charging because the battery is pining the charger to get full charge, and as stated in section 2.1 of appendix Y and the new appendix Y1 active mode is when ''the battery charger is delivering current,

equalizing the cells, and performing other one-time or limited-time functions in order to bring the battery to a fully charged state.'' Therefore, by defining the state that would be classified as active mode and by determining when the charger enters maintenance mode, lab technicians can precisely identify the transition point from active mode to maintenance mode and calculate the active charge energy from this alternative approach, as prescribed in sections 3.3.9 and 3.3.10 of appendix Y1.

Schumacher commented that the best way to calculate the efficiency of an automotive battery charger with non-integrated batteries is similar to the calculation used for UPSs. (Schumacher, No. 21 at p. 1) Schumacher further noted that including a non-integrated battery into the efficiency calculation is not an effective measure of the charger's efficiency because different batteries have different losses, and the charger has no control over these batteries. *Id.* Schumacher therefore stated that it is better and more accurate to measure the efficiency of the charger directly, by itself, so that the chargers would not be affected by the battery efficiencies. *Id.* Schumacher stated that lower quality batteries can result in manually reduced charge cycles just to pass the standard, which causes faster battery degrading and adds user costs with greater environmental impact. (*Id.*)

DOE understands that for battery chargers designed for large-capacity lead-acid batteries, manufacturers are less involved in the end use product design and usually cannot pick which battery will be used with their chargers. However, battery performance is a crucial part for measuring battery charger efficiencies. Different battery chemistries have different self-discharge rate, affecting the charge and maintenance modes algorithms. DOE's battery charger test procedure also determines the amount of ''useful energy'' by measuring how much energy the fully charged battery can output.

In this final rule, DOE is adopting the alternate active charge energy approach discussed in the November 2021 NOPR, in which active mode energy is calculated from the combined charge and maintenance mode test that is similar to the test procure in appendix Y.

7. Standby Mode Tests

Standby mode is the condition in which an energy-using product is:

(1) Connected to a main power source; and

(2) Offers 1 or more of the following user-oriented or protective functions:

(aa) To facilitate the activation or deactivation of other functions (including active mode) by remote switch (including remote control), internal sensor, or timer.

(bb) Continuous functions, including information or status displays (including clocks) or sensor-based functions.

(42 U.S.C. 6295(gg)(1)(A)(iii))

Appendix Y defines standby mode for battery chargers as the condition in which a battery charger is connected to mains electricity supply, the battery is not connected to the charger—and for battery chargers with manual on-off switches, all switches are turned on. Section 2.25 of appendix Y. Appendix Y also includes a definition for maintenance mode in section 2.8, to mean the mode of operation in which the battery charger is connected to the main electricity supply and the battery is fully charged but still connected to the charger. In maintenance mode, a battery charger continuously monitors the voltage of the fully charged battery and periodically supplies charge current to maintain the battery at the fully-charged state. As mentioned previously, because the test procedure in appendix Y relies on a metric that integrates active mode, standby mode, and off mode, it is less critical in that context as to whether maintenance mode is characterized as standby mode as compared to the proposed multi-metric approach.

The current ''standby mode'' definition in appendix Y only captures what can be referred to as ''no-battery mode,'' *i.e.,* the condition where a battery charger is connected to a mains power source but a battery itself has not yet been inserted. In the context of the proposed multi-metric approach, DOE tentatively determined in the November 2021 NOPR that maintenance mode is also appropriately characterized as a standby power mode. 86 FR 66878, 66888. In maintenance mode, a battery charger provides continuous monitoring of the battery charge. While a battery charger provides some limited charging in maintenance mode in order to maintain the battery at full charge, it is not charging a depleted battery. Unlike active mode, maintenance mode can persist indefinitely. As an example, DOE referenced power tool chargers in the November 2021 NOPR, which in residential environments routinely spend an indefinite amount of time maintaining batteries that are not regularly used but are required to be fully charged. *Id.* In addition to balancing and mitigating self-discharge of the cells, these chargers also typically provide a status display indicating that the battery is in the fully charged state and ready for use.

In the November 2021 NOPR, DOE tentatively determined that these continuous functions in maintenance mode satisfy both EPCA's and IEC 62301's definition of standby. 86 FR 66878, 66888–66889. To better account for these conditions, DOE proposed to first rename what is currently defined in appendix Y as standby mode to ''no-battery mode'' in appendix Y1 (and reference this term, as appropriate, throughout appendix Y1). *Id.* DOE proposed to then define in appendix Y1 the term ''standby mode'' to include both no-battery mode and maintenance mode. *Id.* Specifically, DOE proposed that in appendix Y1, standby mode power of a battery charger (P_{sb}), would be calculated as the sum of the no-battery mode power (P_{nb}), and maintenance mode power (P_m). *Id.*

The Joint Efficiency Advocates supported DOE's proposal to regulate no-battery mode and maintenance as standby mode. (Joint Efficiency Advocates, No. 23 at p. 3) NEEA supported DOE's proposal to include both battery maintenance mode and no battery mode within standby mode but encouraged DOE to require reporting of these two modes separately to support more accurate standards analysis. (NEEA, No. 27 at p. 3) NEEA also supported DOE's proposal to regulate standby power mode as the sum of maintenance mode power and no battery mode power, as this metric gives manufacturers greater design flexibility. (NEEA, No. 27 at pp. 3–4)

ITI stated that the new proposed test procedure would prolong the maintenance mode test until maintenance mode power has been captured representatively, and that it does not make sense to combine no-battery mode power and maintenance mode power as products spend different time in each of these states. (ITI, No. 20 at p. 3) The CA IOUs, while otherwise supportive, stated that the proposed integrated standby metric does not clearly delineate no-battery and maintenance modes power. (CA IOUs, No. 25 at p. 2) The CA IOUs recommended that the no-battery and maintenance modes power be reported separately as unique values, especially in the case of combination products that provide battery charging in addition to other functions. (CA IOUs, No. 25 at p. 2) The CA IOUs also reiterated their support of using IEC 62301 to develop a no-load standby measurement so that DOE's test procedure can harmonize with industry practices and improve

low power factor treatment. (CA IOUs, No. 25 at p. 3) DOE notes that the no-battery mode test procedure was indeed developed based on IEC 62301 test procedure, with resolution parameters for power measurements and uncertainty methodologies, including input crest factor tolerance parameters, referenced directly from IEC 62301.

Honda disagreed with DOE's approach of combining maintenance mode power and no-battery mode power under standby mode power, stating that the approach would not properly evaluate standby power and would result in double evaluation of the power to boot up the battery charger. (Honda, No. 26 at pp. 1–2) Honda additionally asked DOE to monitor the current supply in maintenance mode when calculating standby power, because there can be differences when the charger is ''providing limited charge'' and when the charger is ''not charging''. (*Id.*) DOE reiterates that in maintenance mode operation, the battery charger is only continuously monitoring the fully charged battery's voltage to facilitate limited charging, if the voltage drops below a certain threshold. In no-battery mode, the battery charger is constantly ''scanning'' to determine if a battery has been inserted, or connected, to activate charging. The actual power to boot up the battery charging function to charge the depleted battery would be regulated in active mode itself. Therefore, combining maintenance mode power and no-battery mode power would not be double evaluating the power to boot up the battery charger.

WPC stated that it may be more accurate to determine the start of maintenance mode by measuring the decrease in power rather than using a charge indicator or timed rate of charge, as some device charge indicators may show a premature full charge state when compared to the rated capacity or after a period of maintenance mode charging. (WPC, No. 22 at p. 2) WPC, however, did not agree with DOE's proposal to combine no-battery mode and maintenance mode power into standby mode power for fixed-location wireless chargers, and suggested that focusing on ''no battery'' or ''no receiver'' mode would let DOE focus on standby power reduction. (WPC, No. 22 at p. 3)

DOE is aware of some instances in which battery chargers may enter a low power mode similar to no battery mode prior to entering maintenance mode, which exhibits higher power consumptions in comparison. Therefore, to ensure test procedure repeatability and representativeness, DOE adopts the proposal that the maintenance mode testing period should continue until 5 hours after true maintenance mode has been captured. This ensures that the consumption in the alternate low power mode described above is not being inadvertently captured as maintenance mode. For example, if a battery charger does not enter maintenance mode until the 50th hour of being in the active charge and maintenance mode test, then the total active and maintenance mode test period should be 55 hours, which ends at 5 hours after the charger enters maintenance mode.

EPCA requires DOE to include standby mode and off mode energy consumption, taking into consideration the most current versions of Standards 62301 and 62087 of the IEC, and to integrate such energy consumption into the overall descriptor for each covered product, unless technically infeasible, such as here. However, where integration into an overall metric is infeasible, EPCA directs DOE to prescribe a separate standby mode and off mode energy use test procedure for the covered product, if technically feasible. (42 U.S.C. 6295(gg)(2)(A)) The operation of a battery charger in maintenance mode meets the definition of ''standby mode'' as that term is defined by EPCA. (*See* 42 U.S.C. 6295(gg)(1)(A)(iii)) As discussed, maintenance mode provides the continuous function of maintaining a battery at full charge following active mode until such time as the fully charged battery is removed from the charger by the user. (*Id.*) The energy used during this continuous (and potentially indefinite) mode is distinct from energy use during active mode, the discrete period following placement of a depleted battery on the charger, as the energy used in maintenance mode does not contribute to direct battery charging. Further, because it is providing a user-oriented or protective function, maintenance mode does not meet the definition of off mode, which is defined as the condition in which an energy-using product is connected to a main power source; and is not providing any standby or active mode function. (42 U.S.C. 6295(gg)(1)(A)(ii))

As noted in section III.B.5 of this document, most energy losses happen during maintenance mode and no-battery mode, with the battery charger not doing any useful work to transfer energy into the battery. As these modes can last indefinitely based on different consumer usage and product types, calculating the energy losses based on a weighting factor would not be representative, which is also why DOE is discontinuing the integrated UEC approach. By combining the power draw of battery charger in maintenance mode and no-battery mode, DOE would be able to representatively capture the energy usage metrics for battery chargers in these states regardless of how much time the battery charger spends in each state, while still giving manufacturers freedom in design flexibility. Unlike with the overall UEC metric, DOE would not be reliant on usage profiles and the requisite updates here; therefore, it is not infeasible to combine maintenance mode and no-battery mode. Furthermore, because maintenance mode power computes the average power during at least the last four hours of maintenance mode period, it would not be necessary to separately measure the power of when the battery charger is providing limited charge.

As stated in section III.B.6 of this document, DOE is adopting the NOPR discussed alternative approach that calculates the active mode energy and maintenance mode power analytically from the combined charge and maintenance mode test. DOE reiterates that from extensive internal testing, DOE found that by monitoring battery charger input power, most battery chargers would exhibit a distinctive drop off in power, indicating a clear transition to maintenance mode. In rare instances when the battery charger shows unstable power consumption towards the end of charging phase, DOE notes that technically, they would still be considered as active charging phase as the battery is pining the charger to get full charge. Therefore, DOE does not anticipate there to be obstacles that prevents stakeholders from identifying the maintenance mode power under the alternative approach.

DOE is adopting the NOPR proposal to combine both maintenance mode and no-battery mode under battery charger standby mode. DOE further clarifies that for open-placement chargers, only no-battery mode power would need to be tested, as prescribed in section 5 of appendix Y1.

8. Non-Battery-Charging Related Functions

DOE granted Dyson, Inc. (''Dyson'') a waiver from the current battery charger test procedure for a specified battery charger model (used in a robotic vacuum cleaner) and provided an alternate means for disabling non-battery-charging functions during testing.[13] 82 FR 16580 (Apr. 5, 2017). As described in the petition for waiver, the

[13] Decision and Order Granting a Waiver to Dyson, Inc. From the Department of Energy Battery Charger Test Procedure (Case No. BC–001). Subsequently, DOE issued an Extension of Waiver to Dyson, Inc. to cover an additional basic model (Case No. 2018– 012). 84 FR 12240 (Apr. 1, 2019).

battery charger basic models subject to the waiver have a number of settings and remote management features not associated with the battery charging function but are instead associated with the vacuum cleaner end product that must remain on at all times. 82 FR 16580, 16581. Dyson explained that it would be inappropriate to make these functions user controllable, as they are integral to the function of the robot. *Id.* The DOE test procedure for battery chargers requires that any function controlled by the user and not associated with the battery charging process must be switched off; or, for functions not possible to switch off, be set to the lowest power consuming mode. Section 3.2.4.b of appendix Y. DOE determined that the current test procedure at appendix Y would evaluate the battery charger basic models specified in the Orders granting the waiver and (related waiver extension) in a manner so unrepresentative of its true energy consumption characteristics as to provide materially inaccurate comparatively data. 82 FR 16580, 16581 and 84 FR 12240, 12241. Pursuant to the approved test procedure waiver, the specified basic models must be tested and rated such that power to functions not associated with the battery charging process are disabled by isolating a terminal of the battery pack using isolating tape. *Id.*

In the November 2021 NOPR, DOE reviewed the market and initially determined that the products subject to the waivers granted to Dyson are no longer available; therefore, DOE proposed to not amend the test procedure to include instructions regarding disabling power to functions not associated with the battery charging process that are not consumer controllable, or to allow adders for such functions. 86 FR 66878, 66889–66890. DOE noted that this proposal would also terminate the existing Dyson waivers consistent with 10 CFR 430.27(h)(3) and 10 CFR 430.27(l). *Id.*

In response to DOE's proposal, the Joint Efficiency Advocates supported DOE's proposal to maintain the current approach for disabling power to non-battery-charging related functions, and supported DOE's proposal to terminate Dyson's waivers as these products are no longer available on the market. (Joint Efficiency Advocates, No. 23 at p. 3) NEEA supported maintaining the present approach to waiver petitions, auxiliary functions in the test procedure, and DOE's decision to terminate the existing waiver granted to Dyson. (NEEA, No. 27 at 11)

The Joint Trade Associations asked DOE to provide additional clarity on requirements regarding disabling power to non-battery-charging related functions, because although some functions do not contribute to battery charging, they cannot be disabled directly by the user. The Joint Trade Associations stated that DOE and stakeholders have struggled with how to address these functions in the past and suggested a proposal to allow disabling of these functions but with non-circumventing language. (Joint Trade Associations, No. 24 at p. 10) The Joint Trade Associations suggested DOE to include a publicly viewable column with the CCD so that the public can know when an alternative means is used to isolate the charging function. The Joint Trade Associations further suggested DOE to add a confidential column so manufacturers can report instructions on how to disable the non-battery-charging related functions or set them to the lowest power consuming state. The Joint Trade Associations also proposed to DOE that anti-circumvention language should be added to make the intent that battery-charging related circuit or function cannot be changed in the test procedure clear, as such language has been successful in other appliances categories. (*Id.*) ITI and Delta-Q also supported the joint comments. (ITI, No. 20 at pp. 4–5; Delta-Q, No. 28 at p. 2) Delta-Q further expressed their support of the existing Dyson waiver approach and suggested that DOE integrate allowances to more battery charger models, because it is not always practical or desirable for the user to have the ability to manually disable non-charging-features or reduce their consumption. (Delta-Q, No. 28 at p. 2)

STIHL commented that when STIHL's lawn mower battery is charging, there are some non-battery-charging related functions still running, such as connected functions or safety functions. (STIHL, No. 16 at p. 1) STIHL inquired if these functions can be deactivated or be given appropriate power adders when calculating for energy consumption during testing, because they do not relate to the charging process. *Id.*

DOE's current battery charger test procedure specifically requires non-battery-charging functions to be turned off during testing, unless manufacturers did not provide ways for end user to disable these functions. Section 3.2.4 of appendix Y. DOE notes that, due to the intricate nature of battery charger products, disabling non-battery-charging related functions through non-user-accessible ways can have unexpected effects on the battery charging circuitry, which raises repeatability and reproducibility concerns. Therefore, DOE is not amending the test procedure to allow disabling of non-battery-charging related functions through alternative means. In the case suggested by STIHL's comment, the same requirements would also apply, and the battery charger would only be tested with these non-battery-charging functions on if they cannot be switched off by the end user. Due to the huge variety of non-battery-charging related functions and different ways they can be implemented, DOE is not prescribing power adders for these non-battery-charging related functions.

Schumacher added that there is new automotive battery charger technology that uses internal super capacitors or Li-Ion batteries, which charges the standalone (end-use product's) battery normally, and then the internal battery or supercapacitor, if needed, after charge is complete. (Schumacher, No. 21 at p. 6) Schumacher asked if the charging of these internal batteries should be included into E24 or Pm or some other parts of the standard that are yet to be described. (Schumacher, No. 21 at p. 6) DOE's notes that its battery charger test procedure only measures the energy consumption at the input of the charger. Based on when charging of these super capacitors occur, it could be regulated either under active charge mode or maintenance mode of DOE's test procedure.

C. Corrections and Non-Substantive Changes

Since the publication of DOE's current battery charger test procedure and energy conservation standards, DOE has received numerous stakeholder inquiries regarding various topics involving battery charger testing and certification. Based on these inquiries, DOE identified the need for certain minor corrections. These corrections are addressed in the following sections. Additionally, in the interest of improving overall clarity, DOE will include a flowchart in the docket outlining the required testing and certification process with this final rule.

1. Certification Flowcharts

In the November 2021 NOPR, DOE proposed to include certification flowcharts in the docket upon publication of the final rule, shown in Figure III.C.1 and Figure III.C.2,[14] to

[14] Figures III.C.1 and III.C.2 are included to clarify the process in this rulemaking only. Manufacturers should not rely solely on the flowcharts as substantive guides for testing and compliance.

help manufacturers better understand the battery charger testing and certification process. The flowcharts provide an overview of the testing and certification process, including an overview of the basic model definition, the scope of DOE's battery charger test procedure; the required sample size, the difference between a rated value, a represented value, and a certified rating, and the statistical criteria for determining compliance with energy conservation standards. The flowcharts are not intended to address all aspects of the testing and certification requirements, but instead provide a general-level guide to the process. As such, manufacturers should not rely solely on the flowcharts for testing and compliance. Manufacturers of battery chargers are required to comply with the applicable provisions under 10 CFR parts 429 and 430.

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Figure III.C.1 Appendix Y Battery Charger Certification Testing and Certification Flowchart

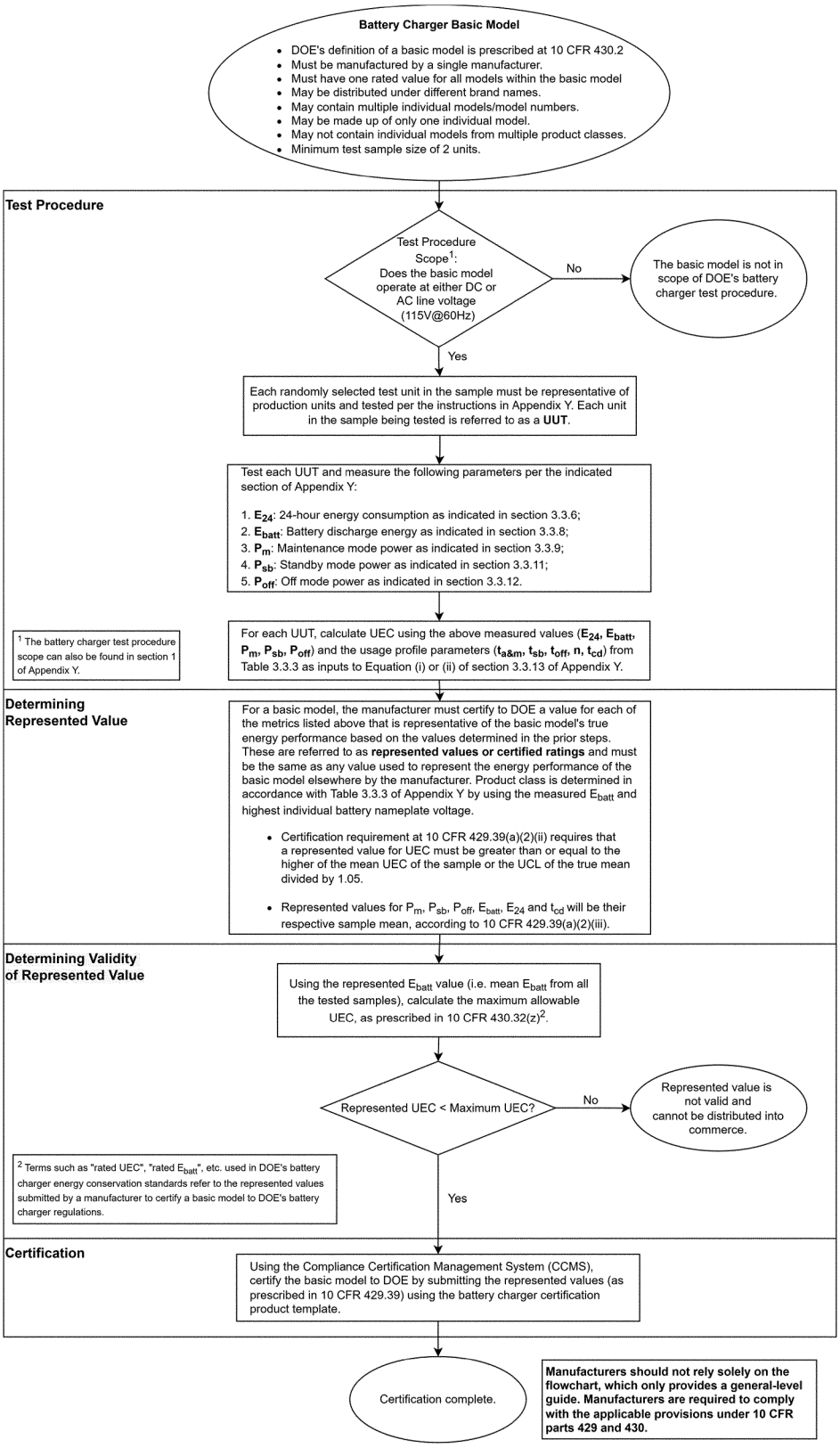
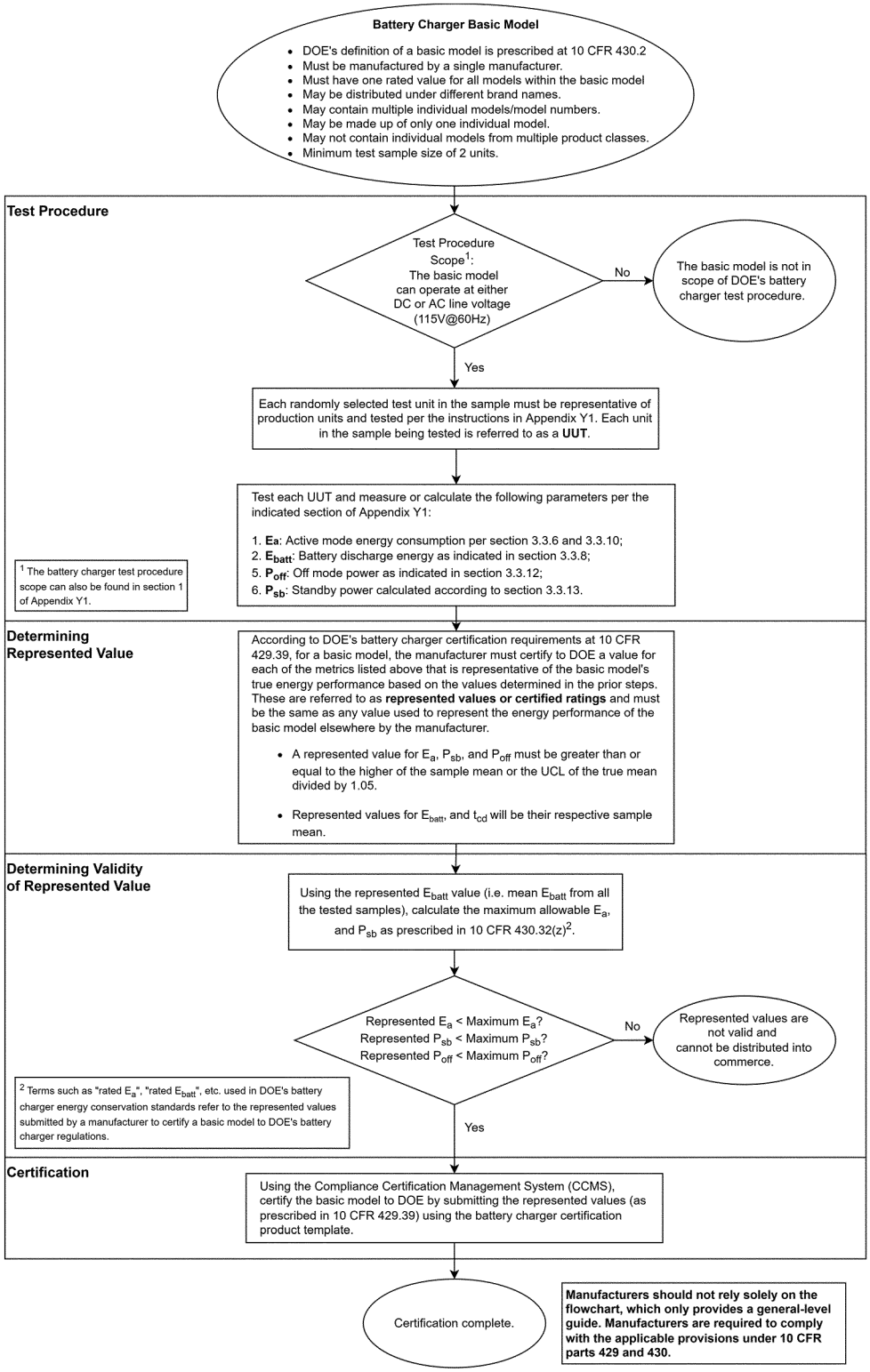


Figure III.C.2 Appendix Y1 Battery Charger Testing and Certification Flowchart[15]



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The Joint Trade Associations suggested that DOE consistently update the flowcharts as needed and make it clear that the regulatory text would override anything in the flowcharts because many manufacturers will rely on these flowcharts, if finalized. (Joint Trade Associations, No. 24 at p. 11) ITI also supported this comment. (ITI, No. 20 at p. 6)

[15] Appendix Y1 test procedure would not be effective until after energy conservation standards have been amended to account for the multi-metric approach.

DOE acknowledges these comments and will ensure that the flowcharts are updated as necessary. DOE also reemphasizes that the regulatory text would override anything in the flowcharts.

2. Testing and Certification Clarifications

DOE's current battery charger UEC calculation is prescribed in section 3.3.13 of appendix Y, with product specific certification requirements prescribed in 10 CFR 429.39. DOE proposed clarifications in the November 2021 NOPR, based on stakeholder comments.

a. Measured vs. Rated Battery Energy

The product class distinctions provided in Table 3.3.3 of appendix Y are based in part on rated battery energy as determined in 10 CFR 429.39(a), which in turn references the represented value of battery discharge energy. 10 CFR 429.39(a)(1). The calculation of UEC in section 3.3.13 of appendix Y is based in part on the tested (measured) battery energy.

In the November 2021 NOPR, DOE proposed to further clarify the nomenclature in appendix Y by modifying the ''E_{batt}'' term used in the UEC calculation and usage profile selection in Table 3.3.3 to ''Measured E_{batt}''. As for the proposed appendix Y1, DOE noted that all of the instructions rely on measured E_{batt}, making it unnecessary to distinguish between measured and rated E_{batt}. 86 FR 66878, 66893.

Delta-Q supported the extra clarifications on measured and nameplate nomenclature. (Delta-Q, No. 28 at p. 2)

The Joint Trade Associations stated that it is not clear whether measured or rated values for battery energy should be used, and they would support DOE's proposal to update the nomenclature if coupled with an enforcement provision that allows for tolerance, as there could be inherent variations in test and production that affect how standard and product class applies. The Joint Trade Associations stated that their proposed approach is consistent with DOE's enforcement approach for other appliances, such as measured volume for refrigerators, freezers, clothes washers, dehumidifiers, etc. (Joint Trade Associations, No. 24 at p. 11) ITI supported this comment and further requested DOE to continue using the term ''rated'' instead of ''represented'', unless DOE can provide a clear definition on when should the ''represented'' term be used. (ITI, No. 20 at p. 5)

DOE recognizes the inherent variations in testing and production, especially for tested battery energies. However, DOE notes that due to the nature of how battery energy differs even for the same models from the same batch, when determining compliance through enforcement testing DOE would be looking at the individual sample performance more closely and determine compliance based on per sample basis, if necessary. DOE will also ensure that its battery charger energy conservation standards would show comparable standards for battery chargers that fall on the border of two neighboring product classes.

DOE notes that under the term ''rated'', some manufacturers might confuse it with ''nameplate'' values, which can differ for batteries. Therefore, to ensure test procedure repeatability and reproducibility, DOE is avoiding using the term ''rated'', and is updating the terms to ''represented'', ''nameplate'', and ''measured'' instead.

b. Other Nomenclatures

Schumacher stated that appendix Y's specified 5-hour discharge time resulted from the 0.2 C-rate, and conflicts with real world automotive battery ratings which are usually based on 10-to-20-hour rates. Schumacher stated that the 5-hour discharge time results in a much lower rating than the nameplate rating because of energy loss through heat. *(Schumacher, No. 21 at p. 2)* Schumacher proposed DOE to clarify the 0.2C C-rate means a 5-hour discharge rate to ensure manufacturers are conducting the tests correctly and reporting correctly. (Schumacher, No. 21 at pp.2–3)

DOE notes that discharge rates will vary by end-use application. It would be infeasible and add burden if DOE was to prescribe a unique discharge rate for each type of application in the test procedure. DOE's specified 0.2C discharge rate offers a practical and repeatable solution for different applications with either slow or fast discharge rates. By maintaining the same discharge rate, it would also improve comparability in results. For batteries that serve the same end-use application, although the tested value may differ from manufacturer designed ratings, they would still be comparable to other batteries from the same application.

The definition for C-rate is prescribed at section 2.10 of appendix Y, which specifies that the C-rate is calculated by dividing the charge or discharge current by the nameplate battery charge capacity of the battery. DOE has not received stakeholder comments suggesting that the current 0.2 discharge C-rate causes confusion prior to Schumacher's comment. DOE is also unaware of any manufacturer discharging the batteries differently than the prescribed 0.2C discharge rate. However, to further improve test procedure language clarity, DOE will amend the C-rate definition in both appendix Y and appendix Y1 to give an example that time needed to charge or discharge with a 0.2 C-rate would equal 5 hours.

Schumacher stated that the term used to refer to ''Product Classes'' and ''wall adapters'' are not consistent between the standard, test procedure, and CCD report template. (Schumacher, No. 21 at pp. 4–5) Schumacher commented that making consistent use of terms would avoid ambiguity and DOE should clarify that wall adapters indeed refer to EPSs. *Id.*

DOE's mention of wall adapters in the test procedure was to facilitate understanding and readability of the test procedure. In most cases, the term ''wall adapter'' can be used interchangeably with ''EPS''. To further improve language consistency, DOE is changing the ''wall adapter'' terms used in appendices Y and Y1 to the more technically appropriate term ''EPSs''. As for the term ''Product Classes'', DOE notes that in the CCD reporting template, they are referred to as ''Product Group Codes'', which should not cause confusion as the ''Product Group Codes'' worksheet details the product groups with matching product classes.

c. Alternate Test Method for Small Electronic Devices

In the November 2021 NOPR, DOE did not propose to amend the test procedure to rely on the measured battery energy value for the purpose of the testing and certification, because DOE has observed several occasions in which the measured battery energy was lower than the marked nameplate energy, which could lead to unrepresentative value of UEC or active energy consumption. 86 FR 66878, 66893.

ITI reiterated their recommendation for DOE to simplify the test procedure for small electronics by relying on the nameplate battery energy so that testers would not need to obtain special standalone battery samples or solder on tiny terminals. (ITI, No. 20 at pp. 6–7) ITI suggested DOE to reconsider its stance on these devices because inconsistencies caused by these small energy batteries would have negligible impact on overall results. (*Id.*) ITI also requested DOE to review data from

small electronics as they normally have passed the UEC standard with large margins, but with maintenance mode energy contributing to majority of energy consumption. (*Id.*) NEEA expressed general support for DOE's assertion that rated and measured battery capacities can differ substantially, and that requiring measurement ensures fair competition under the standard. (NEEA, No. 27 at p. 11)

DOE reemphasizes that DOE's battery charger test procedure relies on the tested battery energy to carry out UEC calculation. DOE has encountered several occasions where the actual battery energy differs from the rated battery energy. Relying on the rated battery energy to test the product therefore would result in inaccurate measurements and certifications, contrary to EPCA's requirement that DOE adopt test procedures reasonably designed to produce representative results. Therefore, DOE is not prescribing any alternative test methods for small electronics.

d. Inability To Directly Measure Battery Energy

Section 3.2.5.(f) of appendix Y states that when the battery discharge energy and the charging and maintenance mode energy cannot be measured directly due to any of the following conditions: (1) inability to access the battery terminals; (2) access to the battery terminals destroys charger functionality; or (3) inability to draw current from the test battery, the battery discharge energy and the charging and maintenance mode energy shall be reported as ''Not Applicable.'' In such cases, the test procedure does not provide instruction on how to proceed with the remainder of the test, and an alternate test method must be used to measure battery discharge energy and the charging and maintenance mode energy.

DOE therefore proposed to update section 3.2.5(f) of appendix Y to explicitly state that if any of the aforementioned conditions are applicable, preventing the measurement of the battery discharge energy and the charging and maintenance mode energy, a manufacturer must submit a petition for a test procedure waiver in accordance with 10 CFR 430.27. The same provision would also be included as part of the new appendix Y1. 86 FR 66878, 66893. DOE did not receive comments on this topic and is adopting the proposed changes in this final rule.

e. Determining Battery Voltage

The product class distinctions provided in Table 3.3.3 of appendix Y are based in part on ''battery voltage'' in addition to rated battery energy or special charging characteristics, as described previously. Section 3.3.1 of appendix Y specifies recording the nameplate battery voltage of the test battery. Section 2.21 of appendix Y defines ''nameplate battery voltage'' as specified by the battery manufacturer and typically printed on the label of the battery itself. If there are multiple batteries that are connected in a series, the nameplate battery voltage of the batteries is the total voltage of the series configuration—that is, the nameplate voltage of each battery multiplied by the number of batteries connected in series. Connecting multiple batteries in parallel does not affect the nameplate battery voltage. Section 2.21 of appendix Y.

Additionally, for a multi-voltage charger, the battery with the highest battery voltage must be selected for testing, as prescribed by Table 3.2.1 of appendix Y. Consequently, the highest supported battery voltage should also be used to determine product class, which is not reflected by the current term ''battery voltage'' in Table 3.3.3. Updating the language in Table 3.3.3 would avoid the potential for future confusion with regard to multi-voltage products.

In the November 2021 NOPR, DOE proposed to amend Table 3.3.3 of appendices Y and Y1 by replacing the term ''battery voltage'' with ''highest nameplate battery voltage'' to provide clearer direction that the battery voltage used to determine product class is based on its nameplate battery voltage, and that for multi-voltage products, the highest voltage is used. 86 FR 66878, 66893–66894. The Joint Trade Associations supported DOE's proposal to clarify that the highest nameplate battery voltage should be used in determining product class. (Joint Trade Associations, No. 24 at p. 12)

In this final rule, DOE is adopting the proposed editorial change on battery voltage specification in Table 3.3.3.

f. UEC and Reporting Discrepancies

Schumacher noted that Ebatt and UEC allow 3 decimal places for entry, while the other measured, calculated, and determined values only allow 2 decimal places, which sometimes creates calculation errors. (Schumacher, No. 21 at p. 3) Schumacher proposed that DOE change all finished calculated values to 3 decimal places, except for UEC and max UEC which should be 2 decimal places; and all the constants provided by DOE to change from 2 decimal places to 5 or with fractions to reduce rounding errors, which sometimes prevents submission. (Schumacher, No. 21 at p. 3) Schumacher claimed that the UEC calculation selection formula can have discrepancies from the use of only 2 decimal places. For example, a battery charger with 64.271 hours of total charge time can use either UEC equation (i) or (ii) from the selection formula. (*Id.*) Schumacher stated that increasing the decimal places to 5 for constants and rounding the finished results to 3 decimal places or keeping the constants in fractions would reduce these discrepancies. (Schumacher, No. 21 at pp. 3–4)

DOE's CCD already allows manufacturers to report values with multiple decimal places. DOE notes that it cannot change the constants provided in appendix Y to more decimal places or fractions, as doing so could affect the currently CCD reported basic models. For example, even a slight change in usage profiles or threshold charge time could cause numerous currently reported basic models to have slightly different UEC. This change would also result in unnecessary need for manufacturers to recertify their basic models. DOE's CCD reporting form does not specifically look for rounding errors, and it was not clear from Schumacher's comment on how the submission rejection occurred. However, if stakeholders continue to have submission related questions, stakeholders can contact DOE's Compliance Certification Management System directly for help.

Schumacher also included a chart to illustrate that there is a 5-hour transition shift between UEC formula (i) and (ii), which does not lead to a smooth transition and asked DOE to provide some explanation. (Schumacher, No. 21 at p. 4) UEC equation (i) was developed based on usage profiles. To account for chargers that takes significantly longer to charge than DOE's threshold charge time, DOE developed UEC equation (ii) with close reference to equation (i). Because DOE's UEC equation (ii) accounts for the prolonged charge time that exceeds DOE's standard threshold charge time, it could negatively impact a battery charger's UEC in very limited cases.

g. Testing Setup

Schumacher suggested that the DOE battery charger test procedure should reference appendix Z or add greater detail on test measurement setup with proper connection sequence, to provide a more uniform standard and ensure reproducibility. (Schumacher, No. 21 at p. 5) Schumacher suggested that the sense leads should be placed directly on the battery terminals and not the charger terminals to ensure voltage loss of the

charger terminals are measured and should be repeated for discharge measurement so that the terminal connection losses can be accounted for, which ensures a more uniform standard. (Schumacher, No. 21 at pp. 5–6)

Battery charger testing setup can vary significantly depending on different product configurations. DOE has already prescribed language in section 3.2.1 for manufacturers to set up the battery chargers according to manufacturer instructions or the default settings. DOE notes that the measurement setup figure used in appendix Z is for reference only and has language indicating that actual test setup may vary pursuant to appendix Z requirements. DOE has not encountered scenarios in which manufacturers cannot successfully set up measurement for battery charger testing; therefore, DOE is not providing greater detail on how manufacturers should set up test measurement.

DOE's battery charger test procedure measures the charging efficiency as a whole. Therefore, DOE is not adding requirements for manufacturers to measure the charger input at battery terminals, because adding the battery input terminal measurements would not representatively measure the useful energy being put into the battery and would add undue burden. Furthermore, battery chargers can have different designs that impact how discharge tests can be performed. As such, DOE is not prescribing additional requirements on where the battery output connections should be made for measurement to avoid undue burden.

3. Cross-Reference Corrections

Section 3.3.4 of appendix Y, ''Preparing the Battery for Charge Testing,'' specifies that the test battery shall be fully discharged for the duration specified in section 3.3.2 of appendix Y, or longer using a battery analyzer. However, DOE's intention was to instruct the user to discharge a test battery not for a set duration but until it reaches the end of discharge voltages listed in Table 3.3.2 of appendix Y. While a battery would be fully discharged with either set of instructions, current instructions would lead to a battery preparation step that is significantly longer. Additionally, there are several instances in appendix Y of which DOE used generic terms such as ''specified above'' or ''noted below''. While these generic reference terms are referring to the test procedure sections immediately preceding or following, identifying the specific referenced sections would improve the test procedure clarity. Therefore, DOE proposed to further clarify these cross-references in appendix Y, and incorporate this same change into proposed appendix Y1, to reduce test burden and avoid potential confusion. To further streamline the readability of appendix Y, DOE proposed to move the end-of-discharge Table 3.3.2 so that it immediately follows the battery discharge energy test at section 3.3.8. 86 FR 66878, 66894.

Honda suggested that the proposed Table 3.1.1 for appendix Y1 includes incorrect subsection references. (Honda, No. 26 at p. 1) Honda also stated that the proposed Table 4.3.1 of appendix Y1 appears to have a typographical error and that it should remain the same for current appendix Y Table 4.3.1. (Honda, No. 26 at p. 2)

DOE appreciates Honda's comment. The incorrect subsection references were unintentional typographical errors. For the proposed Table 4.3.1 of appendix Y1, it was incorrectly formatted upon publication. Table 4.3.1 should still remain the same as the one in appendix Y. DOE is correcting these two typographical errors in this final rule. DOE is also adopting the rest of the proposed cross-reference corrections.

4. Sub-Section Corrections

Sections 3.3.11(b) and 3.3.12(b) of appendix Y provide instructions for testing the standby and off mode power consumption, respectively, of a battery charger with integral batteries. Section 2.6 of appendix Y describes an integral battery as a battery that is contained within the consumer product and is not removed from the consumer product for charging purposes. Sections 3.3.11(c), 3.3.11(d), 3.3.12(c), and 3.3.12(d) provide instructions applicable to products containing ''integrated power conversion and charging circuitry,'' which is intended to refer to products with integral batteries for which the circuitry is integrated within the battery charger, in contrast to being integrated within a cradle or an external adapter (as referred to in sections 3.3.11(b) and 3.3.12(b)).

To improve the readability of the test procedure and avoid potential confusion as to the applicability of sections 3.3.11(c), 3.3.11(d), 3.3.12(c), and 3.3.12(d) in relation to sections 3.3.11(b) and 3.3.12(b), DOE in the November 2021 NOPR proposed to reorder these sections of appendix Y such that section 3.3.11(b) would include only the statement that standby mode may also apply to products with integral batteries. 86 FR 66878, 66894. The remainder of current section 3.3.11(b), as well as 3.3.11(c) and 3.3.11(d) would be reorganized as subsections (1) through (3) subordinate to section 3.3.11(b), to provide clearer indication that these three subsections refer to three different types of products with integral batteries. The same structure would be applied in section 3.3.12(b) for off mode. 86 FR 66878, 66894.

ITI requested DOE to further explain how sections 3.3.11 and 3.3.12 will be reorganized. (ITI, No. 20 at p. 6)

In the November 2021 NOPR, DOE stated in the preamble and in the proposed appendix Y and Y1 regulatory text section that subsections 3.3.11.(b) through (d) would be reorganized as subsections (1) through (3) subordinate to section 3.3.11(b), to provide clearer indication that these three subsections refer to three different types of products with integral batteries. The same structure would be applied in section 3.3.12(b) for off mode. 86 FR 66878, 66894. These would improve readability and DOE does not anticipate any impacts to current test procedure from these reorganizations. Therefore, DOE is adopting the proposed subsection corrections.

D. Effective and Compliance Dates

The effective date for the adopted test procedure amendment 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 an amended 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 would 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.*) To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

Upon the compliance date of test procedure provisions in this final rule, waivers that had been previously issued to Dyson (Case No. BC–001 and Case No. 2018–012) are terminated. 10 CFR 430.27(h)(3). Because these Dyson products are no longer distributed in the

market, DOE does not anticipate further testing for these products.

E. Test Procedure Costs

In this final rule, DOE incorporates some editorial changes in the preceding test procedure for battery chargers at appendix Y to: (1) update battery chemistry table to improve representativeness; (2) explicitly refer manufacturers to the test procedure waiver provisions when battery energy cannot be measured; and (3) provide more descriptive designation of the different battery energy and battery voltage values used for determining product class and calculating unit energy consumption. The changes to appendix Y also include minor cross reference corrections and test procedure organization improvements. DOE is also terminating the existing Dyson test procedure waiver.

Appendix Y1 would include all the changes previously listed, as well as: (1) remove the ''wet environment'' designation and expand the 5 Wh battery energy limit to 100 Wh for fixed-location wireless chargers; (2) add definitions for ''fixed-location'' and ''open-placement'' wireless chargers; (3) introduce a new no-battery mode only test for open-placement wireless chargers; (4) amend the wall adapter selection for chargers that do not come with one; and (5) establish an approach that relies on separate metrics for active mode, standby mode, and off mode, in place of the UEC calculation in appendix Y. DOE has determined that these proposed amendments would not be unduly burdensome for manufacturers to conduct.

Appendix Y Test Procedure Amendments

The amendments specific to appendix Y would not alter the scope of applicability or the measured energy use of basic models currently certified to DOE. DOE does not anticipate that the proposals specific to appendix Y would cause any manufacturer to re-test any currently covered battery chargers or incur any additional testing costs.

Appendix Y1 Test Procedure Proposal

All the amendments specific to appendix Y1 would not be required to be used until DOE amends energy conservation standards for battery chargers in a future rulemaking and requires battery charger manufacturers to rate their products using appendix Y1. DOE is aware that certain manufacturers may be voluntarily reporting under state programs the energy efficiency as determined under appendix Y of a limited number of fixed-location wireless chargers that are not currently subject to the DOE test procedure. DOE is not aware of such representations being included in manufacturer literature. Given that such reporting appears limited to state programs and manufacturers are not otherwise making representations of the energy efficiency or energy use of such products, DOE is unable to estimate the extent of such reporting. Beginning 180 days following the final rule requiring the use of appendix Y1, were manufacturers to continue such voluntary reporting any such representations would have to be based on the DOE test procedure as amended. To the extent there is a limited number of models for which manufacturers are making voluntary representations, such models may require re-testing. Further details regarding the cost impact of the proposed amendments for when battery charger manufacturers are required to test their products using appendix Y1 are presented in the following paragraphs.

Appendix Y1—Wireless Chargers

The amendment to remove the ''wet environment'' designation and increase the battery energy limit will increase the scope of the existing battery charger test procedure to include wireless battery chargers other than those with inductive connection and designed for use in a wet environment.

DOE has estimated the testing cost associated to test these fixed-location and open-placement wireless chargers in accordance with the test procedure. DOE estimates that it would take approximately 40 hours to conduct testing for one fixed-location wireless charger unit and 2.2 hours to conduct the no-battery mode only test for one open-placement wireless charger unit. These tests do not require the wireless charger unit being tested to be constantly monitored by a lab technician. DOE estimates that a lab technician would spend approximately 2.5 hours to test a fixed-location wireless charger unit and 1 hour to test an open-placement wireless charger unit.

Based on data from the Bureau of Labor Statistics' (''BLS's'') Occupational Employment and Wage Statistics, the mean hourly wage for electrical and electronic engineering technologist and technician is $32.84.[16] DOE also 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 70.4 percent of the total compensation for private industry employees.[17] Therefore, DOE estimates that the total hourly compensation (including all fringe benefits) of a technician performing these tests is approximately $46.65.[18] Using these labor rates and time estimates, DOE estimates that it would cost wireless charger manufacturers approximately $117 to conduct a single test on a fixed-location wireless charger unit and approximately $47 to conduct a single test on an open-placement wireless charger unit.[19]

DOE requires that at least two units be tested for each basic model prior to certifying a rating. Therefore, DOE estimates that manufacturers would incur testing costs of approximately $234 per fixed-location wireless charger basic model and approximately $94 per open-placement wireless charger basic model, when testing these wireless chargers. However, this amendment to remove the ''wet environment'' designation and increase the battery energy limit for wireless battery chargers would only be applicable for appendix Y1, and manufacturers would not be required to use appendix Y1 for wireless battery chargers that are not currently covered by appendix Y until DOE amends the energy conservation standards for battery chargers as part of a future rulemaking. DOE will further address the expected costs to industry if and when DOE establishes energy conservation standards for wireless chargers.

Appendix Y1—EPS Selection

The update to require the use of a minimally compliant power supply selection criteria for battery chargers that are not sold with one ensures that these products are tested in a manner that is representative of actual use, as required by EPCA. This update would not create additional cost or require additional time as compared to the prior test procedure, as these battery chargers

[16] DOE used the mean hourly wage of the ''17–3023 Electrical and Electronic Engineering Technologists and Technicians'' from the most recent BLS Occupational Employment and Wage Statistics (May 2020) to estimate the hourly wage rate of a technician assumed to perform this testing. *See https://www.bls.gov/oes/2020/may/oes173023.htm.* Last accessed on July 22, 2021.

[17] DOE used the March 2021 ''Employer Costs for Employee Compensation'' to estimate that for ''Private Industry Workers,'' ''Wages and Salaries'' are 70.4 percent of the total employee compensation. *See www.bls.gov/news.release/archives/ecec_06172021.pdf.* Last accessed on July 22, 2021.

[18] $32.84 ÷ 0.704 = $46.65.

[19] Fixed-location wireless charger: $46.65 × 2.5 hours = $116.63 (rounded to $117).

Open-placement wireless charger: $46.65 × 1 hour = $46.65 (rounded to $47).

currently require a low voltage input; this change will only specify how the low voltage input must be provided and is not expected to result in additional costs. DOE also anticipates this update to impact the measured energy consumption of battery chargers, but only for scenarios where the manufacturer previously certified the product using an EPS that is either not minimally compliant or used a bench power supply and failed to include its energy consumption as part of the battery charger system.

However, the amended test procedure would only apply to the new appendix Y1, meaning it would not be required for testing until DOE amends energy conservation standards and requires manufacturers to use appendix Y1. Based on DOE's market research, DOE estimates that most battery charger models do not remain on the market for more than four years because of frequent battery charger model updates and retirement of old models. Therefore, DOE anticipates that most battery chargers required to use appendix Y1 will likely be introduced into the market after this test procedure amendment is finalized.[20] Should the use of appendix Y1 be required due to amended energy conservation standards, battery chargers introduced prior to this test procedure's finalization would likely no longer be on the market and therefore DOE does not anticipate manufacturers needing to re-test those charger models. Battery chargers introduced into the market after this test procedure takes effect will have the option to test those models using the new power supply selection criteria. Battery charger manufacturers using the proposed selection criteria of a power supply would not incur any additional testing costs compared to the current battery charger testing costs. Any manufacturer seeking to avoid any risk of retesting costs can choose to comply with the new selection criteria of a power supply earlier than required. If a manufacturer chooses this option, they would incur the same testing costs when using the new selection criteria as they currently incur and would not have to retest those battery chargers after appendix Y1 is required. DOE will examine the potential retesting costs of manufacturers continuing to test battery charger models that do not use the new power supply selection criteria in any future energy conservation standard.

[20] For this cost analysis DOE estimates that the battery charger test procedures will be finalized in 2022. Similarly, amended energy conservation standards, if justified, would be finalized in 2024 with an estimated 2026 compliance date.

Appendix Y1—Modes of Operation

DOE has also estimated the testing costs associated with battery charger testing under appendix Y1. Removing usage profiles and switching the UEC metric to the active, standby, and off modes multi-metric system in appendix Y1 will cause battery charger manufacturers to re-test their products when DOE amends energy conservation standards requiring manufacturers to test their products using appendix Y1. Under appendix Y1, if the manufacturer has (i) already tested and certified the battery charger basic model under the current appendix Y and (ii) still has the original testing data from the appendix Y testing available for standby power calculation, those battery charger basic models would only need to be recertified with the active charge energy and standby power data analysis. For these battery charger basic models, DOE estimates an extra labor time of 10 minutes would be needed to reanalyze the test results. Using the previously calculated fully-burdened labor rate of $46.65 per hour for an employee conducting these tests, DOE estimates manufacturers would incur approximately $7.78 to analyze the test results for these battery chargers. DOE requires at least two units be tested per basic model. Therefore, DOE estimates manufacturers would incur approximately $15.56 per battery charger basic model for these battery chargers.

Basic models that will either be newly covered under the expanded scope or that are missing the original test data from their appendix Y testing would need to be fully tested under appendix Y1. DOE estimates a total testing time of approximately 40 hours would be needed, with 2.5 hours of technician intervention required to test each additional battery charger unit. Using the previously calculated fully-burdened labor rate of $46.65 for an electrical technician to conduct these tests, manufacturers would incur approximately $116.63 per unit. DOE requires at least two units be tested per basic model. Therefore, DOE estimates manufacturers would incur approximately $233.25 per battery charger basic model to conduct the complete testing under appendix Y1.

All Other Test Procedure Amendments

The remainder of the final rule would add additional detail and instruction to improve the readability of the test procedure. The cross-reference corrections, sub-section corrections and reorganizations also help improve the test procedure readability and clarity without modifying or adding any steps to the test method. As such, these amendments will not result in increased test burden.

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this 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.*

The following sections detail DOE's FRFA for this test procedure final rule.

1. Description of Reasons Why Action Is Being Considered

DOE is amending the existing DOE test procedures for battery chargers. 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 during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A))

2. Objective of, and Legal Basis for, Rule

DOE is required to review existing DOE test procedures for all covered products every 7 years. (42 U.S.C. 6293(b)(1)(A))

3. Description and Estimate of Small Entities Regulated

For manufacturers of battery chargers, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description and are available at: *www.sba.gov/document/support-table-size-standards.* Battery charger manufacturing is classified under NAICS 335999, ''All Other Miscellaneous Electrical Equipment and Component Manufacturing.'' The SBA sets a threshold of 500 employees or fewer for an entity to be considered as a small business in this category.

DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the proposed rule. 13 CFR part 121. DOE reviewed the test procedures in this final rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003.

Wired Battery Chargers

DOE used data from DOE's publicly available Compliance Certification Database (''CCD'') [21] and the California Energy Commission's Modernized Appliance Efficiency Database System (''MAEDbS'').[22] DOE identified over 2,000 companies that submitted entries for Federally regulated battery chargers.[23] DOE screened out companies that do not meet the SBA definition of a ''small entity'' or are foreign-owned and operated. DOE identified approximately 294 potential small businesses that currently certify battery chargers or applications using battery chargers to DOE's CCD. These 294 potential small businesses manufacture approximately 3,456 unique basic models of battery chargers or applications using battery chargers. The number of battery charger models made by each potential small business ranges from 1 model to 263 models, with an average of approximately 12 unique basic models.

Wireless Battery Chargers

DOE used publicly available data from the Wireless Power Consortium and the aforementioned manufacturer list generated from the CCD and MAEDbS databases to estimate the number of wireless battery charger manufacturers and number of wireless battery charger models.[24] The majority of these companies are foreign owned and operated, as most wireless battery charger manufacturing is done abroad. DOE identified 13 potential domestic small businesses that manufacture approximately 327 wireless battery charger models. The number of wireless battery charger models made by each potential small business ranges from 1 model to 183 models, with an average of approximately 25 models.

4. Description and Estimate of Compliance Requirements

Wired Battery Chargers

DOE assumes that each small business's regulatory costs would depend on the number of unique basic battery charger models and applications using a battery charger that small business manufactures. It is likely that some unique applications using a battery charger may use the same battery charging component as another unique application listed in DOE's CCD, meaning the cost of testing would be double counted in this analysis. However, DOE has conservatively estimated the cost associated with re-testing each unique application using a battery charger. Additionally, while some battery charger manufacturers could partially rely on previous testing conducted under appendix Y for their battery chargers (as described in section III.E of this document), DOE conservatively estimates each small business would need to conduct the entire test under appendix Y1 for each unique basic model they manufacture.

As discussed in section III.E of this document, battery chargers would only need to be tested under appendix Y1 when DOE sets future energy conservation standards for battery chargers that require appendix Y1. DOE estimates that the total time for conducting testing under appendix Y1 would be approximately 40 hours, and that it would require approximately 2.5 hours of technician intervention to test each additional battery charger unit. Using the previously calculated fully-burdened labor rate of $46.65 for an electrical technician to conduct these tests,[25] manufacturers would incur approximately $116.63 of testing costs per unit. DOE requires at least two units be tested per basic model. Therefore, DOE estimates manufacturers would incur approximately $233.25 of testing costs per battery charger basic model to conduct the complete testing under appendix Y1.

DOE estimates that all small businesses combined would incur

[21] *See www.regulations.doe.gov/certification-data.* Last accessed on August 11, 2021.

[22] *See cacertappliances.energy.ca.gov/Pages/ApplianceSearch.aspx.* Last accessed on August 11, 2021.

[23] These entities consist of both battery charger manufacturers and manufacturers of devices that use a battery charger (*e.g.,* toys or small electronic devices that have a battery charger embedded in the product).

[24] *See www.wirelesspowerconsortium.com/products.* Last accessed on September 8, 2021.

[25] Based on data from the BLS's Occupational Employment and Wage Statistics, the mean hourly wage for an electrical and electronic engineering technologist and technician is $32.84 (*www.bls.gov/oes/current/oes173023.htm*). 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 70.4 percent of the total compensation for private industry employees (*www.bls.gov/news.release/archives/ecec_06172021.pdf*). *$32.84 ÷ 0.704 = $46.65.*

approximately $0.81 million [26] if these small businesses re-tested all their unique basic models of battery chargers or applications using battery chargers under appendix Y1. The potential range of testing costs for an individual small business would be between $233.25 (to re-test one basic model to) and approximately $61,340 (to re-test 263 basic models,), with an average cost of approximately $2,799 to re-test 12 basic models (the average number of models) under appendix Y1. As noted in section III.E of this document, manufacturers could alternatively keep their original test data and extract an active charge energy metric for appendix Y1, which would avoid retesting costs for newly introduced basic models. As DOE estimated previously, most battery chargers will not stay on the market for more than four years, accordingly, small business manufacturers may be able to avoid most retesting costs by analyzing and keeping record of the active charge energy data, while conducting tests according to appendix Y.

DOE was able to find annual revenue estimates for 289 of the 294 small businesses DOE identified. DOE was not able to identify any reliable annual revenue estimates for the remaining five small businesses. Based on the number of unique basic models of battery chargers or applications using battery chargers each small business manufactures, DOE estimates that the $233.25 per model potential re-testing cost would represent less than 2 percent of annual revenue for 286 of the 289 small businesses. DOE estimates that three small businesses could incur re-testing costs that would exceed 2.0 percent of their annual revenue.[27]

Wireless Battery Chargers

DOE assumed that each small business's regulatory costs would depend on the number of wireless battery charger models that each small business manufactures. As discussed in section III.E, wireless battery chargers would only need to be tested under appendix Y1 when DOE sets future energy conservation standards for battery chargers. DOE estimates that a total testing time for conducting testing under appendix Y1 for wireless battery chargers would take approximately 40 hours to conduct the test for one fixed-location wireless charger unit, and 2.2 hours to conduct the no-battery mode only test for one open-placement wireless charger unit. These tests do not require the wireless charger unit being tested to be constantly monitored by a lab technician. DOE estimates that a lab technician would spend approximately 2.5 hours to test a fixed-location wireless charger unit and 1 hour to test an open-placement wireless charger unit.

The Wireless Power Consortium database does not identify if the wireless charger is a fixed-location or an open-placement wireless charger. Based on DOE's market research, the vast majority of wireless chargers are open-placement wireless chargers. Therefore, DOE is estimating the costs to small businesses using the estimated per unit open-placement wireless charger testing costs.

Using the previously calculated fully-burdened labor rate of $46.65 for an electrical technician to conduct these tests, manufacturers would incur approximately $47 per unit. DOE requires at least two units be tested per basic model. Therefore, DOE estimates manufacturers would incur approximately $94 to conduct the no-battery mode test for one open-placement wireless charger unit under appendix Y1.

DOE estimates that all small businesses combined would incur approximately $31,000 to test all their wireless chargers under appendix Y1.[28] The potential range of testing costs for an individual small business would be between $94 (to test one wireless charger model) to approximately $17,200 (to test 183 wireless charger models), with an average cost of approximately $2,350 to test 25 wireless charger models (the average number of models) under appendix Y1.

DOE was able to find annual revenue estimates for 12 of the 13 wireless charger small businesses DOE identified. DOE was not able to identify any reliable annual revenue estimates for the remaining wireless charger small businesses DOE identified. Based on the number of wireless charger models each small business manufactures, DOE estimates that the $94 per model testing cost would represent less than 2 percent of annual revenue for all 12 of the wireless charger small businesses that DOE found annual revenue estimates for.

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 the final rule.

6. Significant Alternatives to the Rule

As previously stated in this section, DOE is required to review existing DOE test procedures for all covered products 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 during a representative average use cycle or period of use. (42 U.S.C. 6293(b)(1)(A)) DOE has determined that appendix Y1 would more accurately produce test results to measure the energy efficiency of battery chargers.

While DOE recognizes that requiring that battery charger manufacturers use appendix Y1 to comply with future energy conservation standards would cause manufacturers to re-test some battery charger models or test some wireless chargers, for most battery charger manufacturers it will be inexpensive to re-test or test these models. Additionally, some manufacturers might be able to partially rely on previous test data used manufacturers tested their wired battery chargers under appendix Y.

DOE has determined that there are no better alternatives than this amended test procedure in terms of meeting the agency's objectives to more accurately measure energy efficiency and reducing burden on manufacturers. Therefore, DOE is, in this final rule, amending the DOE test procedure for battery chargers.

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, section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued

[26] $233.25 (testing cost per basic model) × 3,456 (number of unique basic models manufactured by all small businesses) = $806,112.

[27] One small business manufactures eight unique basic models, which if all basic models were re-tested could cost up to $3,136. This small business has an estimated annual revenue of $52,000, meaning testing costs could comprise up to 6.0 percent of their annual revenue. Another small business manufactures six basic models, which if all basic models were re-tested could cost up to $2,352. This small business has an estimated annual revenue of $94,000, meaning testing costs could comprise up to 2.5 percent of their annual revenue. The remaining small business manufactures five basic models, which if all basic models were re-tested could cost up to $1,960. This small business has an estimated annual revenue of $68,400, meaning testing costs could comprise up to 2.9 percent of their annual revenue.

[28] $94 (testing cost per model) × 327 (number of wireless charger models manufactured by all small businesses) = $30,738.

under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. 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 battery chargers 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 battery chargers. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (PRA). This requirement has been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

DOE is not amending the certification or reporting requirements for battery chargers in this final rule. Instead, DOE may consider proposals to amend the certification requirements and reporting for battery chargers under a separate rulemaking regarding appliance and equipment certification. DOE will address changes to OMB Control Number 1910–1400 at that time, as necessary.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for battery chargers. 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 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 modifications to the test procedure for battery chargers adopted in this final rule incorporates testing methods contained in certain sections of IEC 62301, IEC 62040–3, and ANSI/NEMA WD 6–2016. 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 industry standards into the new appendix Y1:

1. ANSI/NEMA WD 6–2016, ''Wiring Devices—Dimensional Specifications,'' ANSI approved February 11, 2016. Appendix Y1 references the input plug requirements in Figure 1–15 and Figure 5–15 of ANSI/NEMA WD 6–2016. ANSI/NEMA WD 6–2016 is an industry standard that covers the plugs, receptacles, and wall plates used in most electrical installations in residential, commercial, and industrial buildings.

2. IEC 62040–3, ''Uninterruptible power systems (UPS)—Part 3: Methods of specifying the performance and test requirements,'' Edition 2.0, 2011–03. Appendix Y1 references various sections from IEC 62040 for test requirements of uninterruptible power supplies. IEC 62040 is an international test standard that specifies the performance and test requirements applied to movable, stationary, and fixed electronic uninterruptible power systems.

3. IEC 62301, ''Household electrical appliances—Measurement of standby power, (Edition 2.0, 2011–01)'' into the new appendix Y1. Appendix Y1 references various sections from IEC 62301 for test conditions, standby power measurement, and measurement uncertainty determination. IEC 62301 is an international test standard that specifies methods of measurement of electrical power consumption of household electrical appliances in standby mode(s) and other low power modes, as applicable.

Copies of ANSI/NEMA WD 6–2016 can be obtained from American National Standards Institute, 25 W 43rd Street, 4th Floor, New York, NY 10036, (212) 642–4900, or by going to *www.ansi.org.*

Copies of IEC 62040–3 and IEC 62301 can be obtained from the International Electrotechnical Commission at 446 Main Street, Sixteenth floor, Worcester, MA 01608, or by going to *www.iec.ch.,* and are also available from the American National Standards Institute, 25 W 43rd Street, 4th Floor, New York,

NY 10036, (212) 642–4900, or go 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

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 430

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Incorporation by reference, Intergovernmental relations, Small businesses.

Signing Authority

This document of the Department of Energy was signed on August 25, 2022, Dr. Geraldine L. Richmond, Undersecretary of Science and Innovation, 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 25, 2022.

Treena V. Garrett,

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

For the reasons stated in the preamble, DOE amends parts 429 and 430 of Chapter II of Title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Section 429.134 is amended by adding paragraph (u) to read as follows:

§ 429.134 Product specific enforcement provisions.

* * * * *

(u) *Battery chargers—verification of reported represented value obtained from testing in accordance with appendix Y1 of 10 CFR part 430 subpart B when using an external power supply.* If the battery charger basic model requires the use of an external power supply (''EPS''), and the manufacturer reported EPS is no longer available on the market, then DOE will test the battery charger with any compatible EPS that is minimally compliant with DOE's energy conservation standards for EPSs as prescribed in § 430.32(w) of this subchapter and that meets the battery charger input power criteria.

PART 430—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS

■ 3. The authority citation for part 430 continues to read as follows:

Authority: 42 U.S.C. 6291–6309; 28 U.S.C. 2461 note.

§ 430.3 [Amended]

■ 4. Section 430.3 is amended by:
■ a. In paragraph (e)(22) introductory text, removing the text ''Appendix Y'', and adding in its place the text ''appendices Y and Y1'';
■ b. In paragraph (p)(3) introductory text, removing the text ''appendix Y'', and adding in its place the text ''appendices Y and Y1''; and
■ c. In paragraph (p)(6), removing the text ''Y, Z,'', and adding in its place the text ''Y, Y1, Z''.

■ 5. Section 430.23 is amended by revising paragraph (aa) to read as follows:

§ 430.23 Test procedures for the measurement of energy and water consumption.

* * * * *

(aa) *Battery Chargers.* (1) For battery chargers subject to compliance with the relevant standard at § 430.32(z) as that standard appeared in the January 1, 2022, edition of 10 CFR parts 200–499:

(i) Measure the maintenance mode power, standby power, off mode power, battery discharge energy, 24-hour energy consumption and measured duration of the charge and maintenance mode test for a battery charger other than uninterruptible power supplies in accordance with appendix Y to this subpart;

(ii) Calculate the unit energy consumption of a battery charger other than uninterruptible power supplies in accordance with appendix Y to this subpart;

(iii) Calculate the average load adjusted efficiency of an uninterruptible power supply in accordance with appendix Y to this subpart.

(2) For a battery charger subject to compliance with any amended relevant standard provided in § 430.32 that is published after September 8, 2022:

(i) Measure active mode energy, maintenance mode power, no-battery mode power, off mode power and battery discharge energy for a battery charger other than uninterruptible power supplies in accordance with appendix Y1 to this subpart.

(ii) Calculate the standby power of a battery charger other than uninterruptible power supplies in accordance with appendix Y1, to this subpart.

(iii) Calculate the average load adjusted efficiency of an uninterruptible power supply in accordance with appendix Y1 to this subpart.

* * * * *

■ 6. Appendix Y to subpart B of part 430 is amended by:
■ a. Revising the introductory note and introductory text;
■ b. Revising sections 2.1.0, 3.1.4.(b), 3.2.5.(f), 3.3.4, 3.3.6.(c)(5), and 3.3.8.;
■ c. Revising Table 3.3.2 to section 3.3.10.; and
■ d. Revising sections 3.3.11. through 3.3.13.

The revisions read as follows:

Appendix Y to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

Note: Manufacturers must use the results of testing under appendix Y to determine compliance with the relevant standard from § 430.32(z) as that standard appeared in the January 1, 2022, edition of 10 CFR parts 200–499. Specifically, before March 7, 2023 representations must be based upon results generated either under this appendix or under appendix Y as it appeared in the 10 CFR parts 200–499 edition revised as of January 1, 2022.

For any amended standards for battery chargers published after September 8, 2022, manufacturers must use the results of testing under appendix Y1 to determine compliance. Representations related to energy consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendix Y or appendix Y1) when determining compliance with the relevant standard. Manufacturers may also use appendix Y1 to certify compliance with amended standards, published after September 8, 2022, prior to the applicable compliance date for those standards.

* * * * *

2.10. *C-Rate (C)* is the rate of charge or discharge, calculated by dividing the charge or discharge current by the nameplate battery charge capacity of the battery. For example, a 0.2 C-rate would result in a charge or discharge period of 5 hours.

* * * * *

3.1.4. Verifying the UUT's Input Voltage and Input Frequency

* * * * *

(b) If a charger is powered by a low-voltage DC or AC input, and the manufacturer packages the charger with an external power supply (''EPS''), sells, or recommends an optional EPS capable of providing that low voltage input, then the charger shall be tested using that EPS and the input reference source shall be 115 V at 60 Hz. If the EPS cannot be operated with AC input voltage at 115 V at 60 Hz, the charger shall not be tested.

* * * * *

3.2.5. Accessing the Battery for the Test

* * * * *

(f) If any of the following conditions noted immediately below in sections 3.2.5.(f)(1) to 3.2.5.(f)(3) are applicable, preventing the measurement of the Battery Discharge Energy and the Charging and Maintenance Mode Energy, a manufacturer must submit a petition for a test procedure waiver in accordance with § 430.27:

(1) Inability to access the battery terminals;

(2) Access to the battery terminals destroys charger functionality; or

(3) Inability to draw current from the test battery.

* * * * *

3.3.4. Preparing the Battery for Charge Testing

Following any conditioning prior to beginning the battery charge test (section 3.3.6 of this appendix), the test battery shall be fully discharged to the end of discharge voltage prescribed in Table 3.3.2 of this appendix, or until the UUT circuitry terminates the discharge.

* * * * *

3.3.6. Testing Charge Mode and Battery Maintenance Mode

* * * * *

(c) * * *

(5) Connect the test battery to the battery charger within 3 minutes of beginning logging. For integral battery products, connect the product to a cradle or EPS within 3 minutes of beginning logging;

* * * * *

3.3.8. Battery Discharge Energy Test

(a) If multiple batteries were charged simultaneously, the discharge energy is the sum of the discharge energies of all the batteries.

(1) For a multi-port charger, batteries that were charged in separate ports shall be discharged independently.

(2) For a batch charger, batteries that were charged as a group may be discharged individually, as a group, or in sub-groups connected in series and/or parallel. The position of each battery with respect to the other batteries need not be maintained.

(b) During discharge, the battery voltage and discharge current shall be sampled and recorded at least once per minute. The values recorded may be average or instantaneous values.

(c) For this test, the technician shall follow these steps:

(1) Ensure that the test battery has been charged by the UUT and rested according to sections 3.3.6. and 3.3.7 of this appendix.

(2) Set the battery analyzer for a constant discharge rate and the end-of-discharge voltage in Table 3.3.2 of this appendix for the relevant battery chemistry.

(3) Connect the test battery to the analyzer and begin recording the voltage, current, and wattage, if available from the battery analyzer. When the end-of-discharge voltage is reached or the UUT circuitry terminates the discharge, the test battery shall be returned to an open-circuit condition. If current continues to be drawn from the test battery after the end-of-discharge condition is first reached, this additional energy is not to be counted in the battery discharge energy.

(d) If not available from the battery analyzer, the battery discharge energy (in watt-hours) is calculated by multiplying the voltage (in volts), current (in amperes), and sample period (in hours) for each sample, and then summing over all sample periods until the end-of-discharge voltage is reached.

* * * * *

TABLE 3.3.2—REQUIRED BATTERY DISCHARGE RATES AND END-OF-DISCHARGE BATTERY VOLTAGES

Battery chemistry	Discharge rate (C)	End-of-discharge voltage * (volts per cell)
Valve-Regulated Lead Acid (VRLA)	0.2	1.75
Flooded Lead Acid	0.2	1.70
Nickel Cadmium (NiCd)	0.2	1.0
Nickel Metal Hydride (NiMH)	0.2	1.0
Lithium-Ion (Li-Ion)	0.2	2.5
Lithium-Ion Polymer	0.2	2.5
Lithium Iron Phosphate	0.2	2.0
Rechargeable Alkaline	0.2	0.9
Silver Zinc	0.2	1.2

* If the presence of protective circuitry prevents the battery cells from being discharged to the end-of-discharge voltage specified, then discharge battery cells to the lowest possible voltage permitted by the protective circuitry.

3.3.11. Standby Mode Energy Consumption Measurement

The standby mode measurement depends on the configuration of the battery charger, as follows:

(a) Conduct a measurement of standby power consumption while the battery charger is connected to the power source. Disconnect the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement. If the battery charger has manual on-off switches, all must be turned on for the duration of the standby mode test.

(b) Standby mode may also apply to products with integral batteries, as follows:

(1) If the product uses a cradle and/or adapter for power conversion and charging, then ''disconnecting the battery from the charger'' will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and standby mode power consumption will equal that of the cradle and/or adapter alone.

(2) If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and standby mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

(3) If the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and standby mode measurement is not applicable.

3.3.12. Off Mode Energy Consumption Measurement

The off mode measurement depends on the configuration of the battery charger, as follows:

(a) If the battery charger has manual on-off switches, record a measurement of off mode energy consumption while the battery charger is connected to the power source.

Remove the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement, with all manual on-off switches turned off. If the battery charger does not have manual on-off switches, record that the off mode measurement is not applicable to this product.

(b) Off mode may also apply to products with integral batteries, as follows:

(1) If the product uses a cradle and/or adapter for power conversion and charging, then ''disconnecting the battery from the charger'' will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and off mode power consumption will equal that of the cradle and/or adapter alone.

(2) If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and off mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

(3) If the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and off mode measurement is not applicable.

3.3.13. Unit Energy Consumption Calculation

Unit energy consumption (UEC) shall be calculated for a battery charger using one of the two equations (equation (i) or equation (ii)) listed in this section. If a battery charger is tested and its charge duration as determined in section 3.3.2 of this appendix minus 5 hours is greater than the threshold charge time listed in Table 3.3.3 of this appendix (*i.e.* $(t_{cd} - 5) * n > t_{a\&m}$), equation (ii) shall be used to calculate UEC; otherwise a battery charger's UEC shall be calculated using equation (i).

$$\text{(i) } UEC = 365\left(n(E_{24} - 5P_m - Measured\ E_{batt})\frac{24}{t_{cd}} + \left(P_m(t_{a\&m} - (t_{cd} - 5)n)\right) + (P_{sb}t_{sb}) + \left(P_{off}t_{off}\right)\right) \text{ or,}$$

$$\text{(ii) } UEC = 365\left(n(E_{24} - 5P_m - Measured\ E_{batt})\frac{24}{(t_{cd} - 5)} + (P_{sb}t_{sb}) + \left(P_{off}t_{off}\right)\right)$$

Where:

E_{24} = 24-hour energy as determined in section 3.3.10 of this appendix,

Measured E_{batt} = Measured battery energy as determined in section 3.3.8. of this appendix,

P_m = Maintenance mode power as determined in section 3.3.9. of this appendix,

P_{sb} = Standby mode power as determined in section 3.3.11. of this appendix,

P_{off} = Off mode power as determined in section 3.3.12. of this appendix,

t_{cd} = Charge test duration as determined in section 3.3.2. of this appendix, and

$t_{a\&m}$, n, t_{sb}, and t_{off}, are constants used depending upon a device's product class and found in Table 3.3.3:

TABLE 3.3.3—BATTERY CHARGER USAGE PROFILES

Product class				Hours per day ***			Charges (n)	Threshold charge time *
Number	Description	Measured battery energy (measured E_{batt}) **	Special characteristic or highest name-plate battery voltage	Active + maintenance (t_a&$_m$)	Standby (t_{sb})	Off (t_{off})	Number per day	Hours
1	Low-Energy	≤5 Wh	Inductive Connection ****.	20.66	0.10	0.00	0.15	137.73
2	Low-Energy, Low-Voltage.	<100 Wh	<4 V	7.82	5.29	0.00	0.54	14.48
3	Low-Energy, Medium-Voltage.		4–10 V	6.42	0.30	0.00	0.10	64.20
4	Low-Energy, High-Voltage.		>10 V	16.84	0.91	0.00	0.50	33.68
5	Medium-Energy, Low-Voltage.	100–3000 Wh	<20 V	6.52	1.16	0.00	0.11	59.27
6	Medium-Energy, High-Voltage.		≥20 V	17.15	6.85	0.00	0.34	50.44
7	High-Energy	>3000 Wh		8.14	7.30	0.00	0.32	25.44

* If the duration of the charge test (minus 5 hours) as determined in section 3.3.2. of this appendix exceeds the threshold charge time, use equation (ii) to calculate UEC otherwise use equation (i).

** Measured E_{batt} = Measured battery energy as determined in section 3.3.8.

*** If the total time does not sum to 24 hours per day, the remaining time is allocated to unplugged time, which means there is 0 power consumption and no changes to the UEC calculation needed.

**** Fixed-location inductive wireless charger only.

* * * * *

■ 7. Appendix Y1 to subpart B of part 430 is added to read as follows:

Appendix Y1 to Subpart B of Part 430—Uniform Test Method for Measuring the Energy Consumption of Battery Chargers

Note: Manufacturers must use the results of testing under this appendix Y1 to determine compliance with any amended standards for battery chargers provided in § 430.32 that are published after September 8, 2022. Representations related to energy or water consumption must be made in accordance with the appropriate appendix that applies (*i.e.,* appendix Y or appendix Y1) when determining compliance with the relevant standard. Manufacturers may also use appendix Y1 to certify compliance with amended standards, published after September 8, 2022, prior to the applicable compliance date for those standards.

1. Scope

This appendix provides the test requirements used to measure the energy consumption of battery chargers, including fixed-location wireless chargers designed for charging batteries with less than 100 watt-hour battery energy and open-placement wireless chargers, operating at either DC or United States AC line voltage (nominally 115V at 60Hz). This appendix also provides the test requirements used to measure the energy efficiency of uninterruptible power supplies as defined in section 2 of this appendix that utilize the standardized National Electrical Manufacturer Association (NEMA) plug, 1–15P or 5–15P, as specified in ANSI/NEMA WD 6–2016 (incorporated by reference, see § 430.3) and have an AC output. This appendix does not provide a method for testing back-up battery chargers.

2. Definitions

The following definitions are for the purposes of explaining the terminology associated with the test method for measuring battery charger energy consumption.[1]

[1] For clarity on any other terminology used in the test method, please refer to IEEE 1515–2000, (Sources for information and guidance, see § 430.4).

2.1. *Active mode* or *charge mode* is the state in which the battery charger system is connected to the main electricity supply, and the battery charger is delivering current, equalizing the cells, and performing other one-time or limited-time functions in order to bring the battery to a fully charged state.

2.2. *Active power* or *real power* (P) means the average power consumed by a unit. For a two terminal device with current and voltage waveforms i(t) and v(t), which are periodic with period T, the real or active power P is:

$$P = \frac{1}{T}\int_0^T v(t)i(t)dt$$

2.3. *Ambient temperature* is the temperature of the ambient air immediately surrounding the unit under test.

2.4. *Apparent power (S)* is the product of root-mean-square (RMS) voltage and RMS current in volt-amperes (VA).

2.5. *Batch charger* is a battery charger that charges two or more identical batteries simultaneously in a series, parallel, series-parallel, or parallel-series configuration. A batch charger does not have separate voltage or current regulation, nor does it have any separate indicators for each battery in the batch. When testing a batch charger, the term ''battery'' is understood to mean, collectively, all the batteries in the batch that are charged together. A charger can be both a batch charger and a multi-port charger or multi-voltage charger.

2.6. *Battery* or *battery pack* is an assembly of one or more rechargeable cells and any integral protective circuitry intended to provide electrical energy to a consumer product, and may be in one of the following forms:

(a) Detachable battery (a battery that is contained in a separate enclosure from the consumer product and is intended to be removed or disconnected from the consumer product for recharging); or

(b) Integral battery (a battery that is contained within the consumer product and is not removed from the consumer product for charging purposes). The word ''intended'' in this context refers to whether a battery has been designed in such a way as to permit its removal or disconnection from its associated consumer product.

2.7. *Battery energy* is the energy, in watt-hours, delivered by the battery under the specified discharge conditions in the test procedure.

2.8. *Battery maintenance mode* or *maintenance mode,* is a subset of standby mode in which the battery charger is connected to the main electricity supply and the battery is fully charged, but is still connected to the charger.

2.9. *Battery rest period* is a period of time between discharge and charge or between charge and discharge, during which the battery is resting in an open-circuit state in ambient air.

2.10. *C-Rate* (C) is the rate of charge or discharge, calculated by dividing the charge or discharge current by the nameplate battery charge capacity of the battery. For example, a 0.2 C-rate would result in a charge or discharge period of 5 hours.

2.11. *Cradle* is an electrical interface between an integral battery product and the rest of the battery charger designed to hold the product between uses.

2.12. *Energy storage system* is a system consisting of single or multiple devices designed to provide power to the UPS inverter circuitry.

2.13. *Equalization* is a process whereby a battery is overcharged, beyond what would be considered ''normal'' charge return, so that cells can be balanced, electrolyte mixed, and plate sulfation removed.

2.14. *Instructions* or *manufacturer's instructions* means the documentation packaged with a product in printed or electronic form and any information about the product listed on a website maintained by the manufacturer and accessible by the general public at the time of the test. It also includes any information on the packaging or on the product itself. ''Instructions'' also includes any service manuals or data sheets that the manufacturer offers to independent service technicians, whether printed or in electronic form.

2.15. *Measured charge capacity of a battery* is the product of the discharge current in amperes and the time in decimal hours required to reach the specified end-of-discharge voltage.

2.16. *Manual on-off switch* is a switch activated by the user to control power reaching the battery charger. This term does not apply to any mechanical, optical, or electronic switches that automatically disconnect mains power from the battery charger when a battery is removed from a cradle or charging base, or for products with non-detachable batteries that control power to the product itself.

2.17. *Multi-port charger* means a battery charger that charges two or more batteries (which may be identical or different) simultaneously. The batteries are not connected in series or in parallel but with each port having separate voltage and/or current regulation. If the charger has status indicators, each port has its own indicator(s). A charger can be both a batch charger and a multi-port charger if it is capable of charging two or more batches of batteries simultaneously and each batch has separate regulation and/or indicator(s).

2.18. *Multi-voltage charger* is a battery charger that, by design, can charge a variety of batteries (or batches of batteries, if also a batch charger) that are of different nameplate battery voltages. A multi-voltage charger can also be a multi-port charger if it can charge two or more batteries simultaneously with independent voltages and/or current regulation.

2.19. *Normal mode* is a mode of operation for a UPS in which:

(a) The AC input supply is within required tolerances and supplies the UPS,

(b) The energy storage system is being maintained at full charge or is under recharge, and

(c) The load connected to the UPS is within the UPS's specified power rating.

2.20. *Off mode* is the condition, applicable only to units with manual on-off switches, in which the battery charger:

(a) Is connected to the main electricity supply;

(b) Is not connected to the battery; and

(c) All manual on-off switches are turned off.

2.21. *Nameplate battery voltage* is specified by the battery manufacturer and typically printed on the label of the battery itself. If there are multiple batteries that are connected in series, the nameplate battery voltage of the batteries is the total voltage of the series configuration—that is, the nameplate voltage of each battery multiplied by the number of batteries connected in series. Connecting multiple batteries in parallel does not affect the nameplate battery voltage.

2.22. *Nameplate battery charge capacity* is the capacity, claimed by the battery manufacturer on a label or in instructions, that the battery can store, usually given in

ampere-hours (Ah) or milliampere-hours (mAh) and typically printed on the label of the battery itself. If there are multiple batteries that are connected in parallel, the nameplate battery charge capacity of the batteries is the total charge capacity of the parallel configuration, that is, the nameplate charge capacity of each battery multiplied by the number of batteries connected in parallel. Connecting multiple batteries in series does not affect the nameplate charge capacity.

2.23. *Nameplate battery energy capacity* means the product (in watts-hours (Wh)) of the nameplate battery voltage and the nameplate battery charge capacity.

2.24. *No-battery mode* is a subset of standby mode and means the condition in which:

(a) The battery charger is connected to the main electricity supply;

(b) The battery is not connected to the charger; and

(c) For battery chargers with manual on-off switches, all such switches are turned on.

2.25. *Reference test load* is a load or a condition with a power factor of greater than 0.99 in which the AC output socket of the UPS delivers the active power (W) for which the UPS is rated.

2.26. *Standby mode* means the condition in which the battery charge is either in maintenance mode or no battery mode as defined in this appendix.

2.27. *Total harmonic distortion* (THD), expressed as a percent, is the root mean square (RMS) value of an AC signal after the fundamental component is removed and interharmonic components are ignored, divided by the RMS value of the fundamental component.

2.28. *Uninterruptible power supply* or *UPS* means a battery charger consisting of a combination of convertors, switches and energy storage devices (such as batteries), constituting a power system for maintaining continuity of load power in case of input power failure.

2.28.1. *Voltage and frequency dependent UPS* or *VFD UPS* means a UPS that produces an AC output where the output voltage and frequency are dependent on the input voltage and frequency. This UPS architecture does not provide corrective functions like those in voltage independent and voltage and frequency independent systems.

Note to 2.28.1: VFD input dependency may be verified by performing the AC input failure test in Section 6.2.2.7 of IEC 62040–3 Ed. 2.0 (incorporated by reference, see § 430.3) and observing that, at a minimum, the UPS switches from normal mode of operation to battery power while the input is interrupted.

2.28.2. *Voltage and frequency independent UPS,* or *VFI UPS,* means a UPS where the device remains in normal mode producing an AC output voltage and frequency that is independent of input voltage and frequency variations and protects the load against adverse effects from such variations without depleting the stored energy source.

Note to 2.28.2: VFI input dependency may be verified by performing the steady state input voltage tolerance test and the input frequency tolerance test in Sections 6.4.1.1 and 6.4.1.2 of IEC 62040–3 Ed. 2.0 respectively, and observing that, at a minimum, the UPS produces an output voltage and frequency within the specified output range when the input voltage is varied by ±10 percent of the rated input voltage and the input frequency is varied by ±2 percent of the rated input frequency.

2.28.3. *Voltage independent UPS* or *VI UPS* means a UPS that produces an AC output within a specific tolerance band that is independent of under-voltage or over-voltage variations in the input voltage without depleting the stored energy source. The output frequency of a VI UPS is dependent on the input frequency, similar to a voltage and frequency dependent system.

Note to 2.28.3: VI input dependency may be verified by performing the steady state input voltage tolerance test in Section 6.4.1.1 of IEC 62040–3 Ed. 2.0 and ensuring that the UPS remains in normal mode with the output voltage within the specified output range when the input voltage is varied by ±10% of the rated input voltage.

2.29. *Unit under test* (UUT) in this appendix refers to the combination of the battery charger and battery being tested.

2.30. *Wireless charger* is a battery charger that can charge batteries inductively.

2.30.1. *Fixed-location wireless charger* is an inductive wireless battery charger that incorporates a physical receiver locating feature (*e.g.,* by physical peg, cradle, locking mechanism, magnet, etc.) to repeatably align or orient the position of the receiver with respect to the transmitter.

2.30.2. *Open-placement wireless charger* is an inductive wireless charger that does not incorporate a physical receiver locating feature (*e.g.,* by a physical peg, cradle, locking mechanism, magnet etc.) to repeatably align or orient the position of the receiver with respect to the transmitter.

3. Testing Requirements for all Battery Chargers Other Than Uninterruptible Power Supplies and Open-Placement Wireless Chargers

3.1. Standard Test Conditions

3.1.1. General

The values that may be measured or calculated during the conduct of this test procedure have been summarized for easy reference in Table 3.1.1 of this appendix.

TABLE 3.1.1—LIST OF MEASURED OR CALCULATED VALUES

Name of measured or calculated value	Reference
1. Duration of the Charge and Maintenance Modes test	Section 3.3.2.
2. Battery Discharge Energy (E_{batt})	Section 3.3.8.
3. Initial time and power (W) of the input current of connected battery	Section 3.3.6.
4. Active and Maintenance Modes Energy Consumption	Section 3.3.6.
5. Maintenance Mode Power (P_m)	Section 3.3.9.
6. Active mode Energy Consumption (E_a)	Section 3.3.10.
7. No-Battery Mode Power (P_{nb})	Section 3.3.11.
8. Off Mode Power (P_{off})	Section 3.3.12.
9. Standby Mode Power (P_{sb})	Section 3.3.13.

3.1.2. Verifying Accuracy and Precision of Measuring Equipment

Any power measurement equipment utilized for testing must conform to the uncertainty and resolution requirements outlined in Section 4, ''General conditions for measurement'', as well as Annexes B, ''Notes on the measurement of low-power modes'', and D, ''Determination of uncertainty of measurement'', of IEC 62301 (incorporated by reference, see § 430.3).

3.1.3. Setting Up the Test Room

All tests, battery conditioning, and battery rest periods shall be carried out in a room with an air speed immediately surrounding the UUT of ≤0.5 m/s. The ambient temperature shall be maintained at 20 °C ± 5 °C throughout the test. There shall be no intentional cooling of the UUT such as by use of separately powered fans, air conditioners, or heat sinks. The UUT shall be conditioned, rested, and tested on a thermally non-conductive surface. When not undergoing active testing, batteries shall be stored at 20 °C ± 5 °C.

3.1.4. Verifying the UUT's Input Voltage and Input Frequency

(a) If the UUT is intended for operation on AC line-voltage input in the United States, it shall be tested at 115 V at 60 Hz. If the UUT is intended for operation on AC line-voltage input but cannot be operated at 115 V at 60 Hz, it shall not be tested.

(b) If a battery charger is powered by a low-voltage DC or AC input and the manufacturer packages the battery charger with an external power supply (''EPS''), test the battery charger using the packaged EPS; if the battery charger does not include a pre-packaged EPS, then test the battery charger with an EPS sold

and recommended by the manufacturer; if the manufacturer does not recommend an EPS that it sells, test the battery charger with an EPS that the manufacturer recommends for use in the manufacturer materials. The input reference source shall be 115 V at 60 Hz. If the EPS cannot be operated with AC input voltage at 115 V at 60 Hz, the charger shall not be tested.

(c) If a battery charger is designed for operation only on DC input voltage and if the provisions of section 3.1.4.(b) of this appendix do not apply, test the battery charger with an external power supply that minimally complies with the applicable energy conservation standard and meets the external power supply parameters specified by the battery charger manufacturer. The input voltage shall be within ±1 percent of the battery charger manufacturer specified voltage.

(d) If the input voltage is AC, the input frequency shall be within ±1 percent of the specified frequency. The THD of the input voltage shall be ≤2 percent, up to and including the 13th harmonic. The crest factor of the input voltage shall be between 1.34 and 1.49.

(e) If the input voltage is DC, the AC ripple voltage (RMS) shall be:

(1) ≤0.2 V for DC voltages up to 10 V; or

(2) ≤2 percent of the DC voltage for DC voltages over 10 V.

3.2. Unit Under Test Setup Requirements

3.2.1. General Setup

(a) The battery charger system shall be prepared and set up in accordance with the manufacturer's instructions, except where those instructions conflict with the requirements of this test procedure. If no instructions are given, then factory or ''default'' settings shall be used, or where there are no indications of such settings, the UUT shall be tested in the condition as it would be supplied to an end user.

(b) If the battery charger has user controls to select from two or more charge rates (such as regular or fast charge) or different charge currents, the test shall be conducted at the fastest charge rate that is recommended by the manufacturer for everyday use, or, failing any explicit recommendation, the factory-default charge rate. If the charger has user controls for selecting special charge cycles that are recommended only for occasional use to preserve battery health, such as equalization charge, removing memory, or battery conditioning, these modes are not required to be tested. The settings of the controls shall be listed in the report for each test.

3.2.2. Selection and Treatment of the Battery Charger

The UUT, including the battery charger and its associated battery, shall be new products of the type and condition that would be sold to a customer. If the battery is lead-acid chemistry and the battery is to be stored for more than 24 hours between its initial acquisition and testing, the battery shall be charged before such storage.

3.2.3. Selection of Batteries To Use for Testing

(a) For chargers with integral batteries, the battery packaged with the charger shall be used for testing. For chargers with detachable batteries, the battery or batteries to be used for testing will vary depending on whether there are any batteries packaged with the battery charger.

(1) If batteries are packaged with the charger, batteries for testing shall be selected from the batteries packaged with the battery charger, according to the procedure in section 3.2.3(b) of this appendix.

(2) If no batteries are packaged with the charger, but the instructions specify or recommend batteries for use with the charger, batteries for testing shall be selected from those recommended or specified in the instructions, according to the procedure in section 3.2.3(b) of this appendix.

(3) If no batteries are packaged with the charger and the instructions do not specify or recommend batteries for use with the charger, batteries for testing shall be selected from any that are suitable for use with the charger, according to the procedure in section 3.2.3(b) of this appendix.

(b)(1) From the detachable batteries specified in section 3.2.3.(a) of this appendix, use Table 3.2.1 of this appendix to select the batteries to be used for testing, depending on the type of battery charger being tested. The battery charger types represented by the rows in the table are mutually exclusive. Find the single applicable row for the UUT, and test according to those requirements. Select only the single battery configuration specified for the battery charger type in Table 3.2.1 of this section.

(2) If the battery selection criteria specified in Table 3.2.1 of this appendix results in two or more batteries or configurations of batteries of different chemistries, but with equal voltage and capacity ratings, determine the maintenance mode power, as specified in section 3.3.9 of this appendix, for each of the batteries or configurations of batteries, and select for testing the battery or configuration of batteries with the highest maintenance mode power.

(c) A charger is considered as:

(1) Single-capacity if all associated batteries have the same nameplate battery charge capacity (see definition) and, if it is a batch charger, all configurations of the batteries have the same nameplate battery charge capacity.

(2) Multi-capacity if there are associated batteries or configurations of batteries that have different nameplate battery charge capacities.

(d) The selected battery or batteries will be referred to as the ''test battery'' and will be used through the remainder of this test procedure.

TABLE 3.2.1—BATTERY SELECTION FOR TESTING

Type of charger			Tests to perform
Multi-voltage	Multi-port	Multi-capacity	Battery selection (from all configurations of all associated batteries)
No	No	No	Any associated battery.
No	No	Yes	Highest charge capacity battery.
No	Yes	Yes or No	Use all ports. Use the maximum number of identical batteries with the highest nameplate battery charge capacity that the charger can accommodate.
Yes	No	No	Highest voltage battery.
Yes	Yes to either or both		Use all ports. Use the battery or configuration of batteries with the highest individual voltage. If multiple batteries meet this criteria, then use the battery or configuration of batteries with the highest total nameplate battery charge capacity at the highest individual voltage.

3.2.4. Limiting Other Non-Battery-Charger Functions

(a) If the battery charger or product containing the battery charger does not have any additional functions unrelated to battery charging, this section may be skipped.

(b) Any optional functions controlled by the user and not associated with the battery charging process (*e.g.,* the answering machine in a cordless telephone charging base) shall be switched off. If it is not possible to switch such functions off, they shall be set to their lowest power-consuming mode during the test.

(c) If the battery charger takes any physically separate connectors or cables not required for battery charging but associated with its other functionality (such as phone lines, serial or USB connections, Ethernet, cable TV lines, etc.), these connectors or cables shall be left disconnected during the testing.

(d) Any manual on-off switches specifically associated with the battery

charging process shall be switched on for the duration of the charge, maintenance, and no-battery mode tests, and switched off for the off mode test.

3.2.5. Accessing the Battery for the Test

(a) The technician may need to disassemble the end-use product or battery charger to gain access to the battery terminals for the Battery Discharge Energy Test in section 3.3.8 of this appendix. If the battery terminals are not clearly labeled, the technician shall use a voltmeter to identify the positive and negative terminals. These terminals will be the ones that give the largest voltage difference and are able to deliver significant current (0.2 C or 1/hr) into a load.

(b) All conductors used for contacting the battery must be cleaned and burnished prior to connecting in order to decrease voltage drops and achieve consistent results.

(c) Manufacturer's instructions for disassembly shall be followed, except those instructions that:

(1) Lead to any permanent alteration of the battery charger circuitry or function;

(2) Could alter the energy consumption of the battery charger compared to that experienced by a user during typical use, *e.g.,* due to changes in the airflow through the enclosure of the UUT; or

(3) Conflict requirements of this test procedure.

(d) Care shall be taken by the technician during disassembly to follow appropriate safety precautions. If the functionality of the device or its safety features is compromised, the product shall be discarded after testing.

(e) Some products may include protective circuitry between the battery cells and the remainder of the device. If the manufacturer provides a description for accessing the connections at the output of the protective circuitry, these connections shall be used to discharge the battery and measure the discharge energy. The energy consumed by the protective circuitry during discharge shall not be measured or credited as battery energy.

(f) If any of the following conditions specified in sections 3.2.5.(f)(1) to 3.2.5.(f)(3) of this appendix are applicable, preventing the measurement of the Battery Discharge Energy and the Charging and Maintenance Mode Energy, a manufacturer must submit a petition for a test procedure waiver in accordance with § 430.27:

(1) Inability to access the battery terminals;

(2) Access to the battery terminals destroys charger functionality; or

(3) Inability to draw current from the test battery.

3.2.6. Determining Charge Capacity for Batteries With No Rating

(a) If there is no rating for the battery charge capacity on the battery or in the instructions, then the technician shall determine a discharge current that meets the following requirements. The battery shall be fully charged and then discharged at this constant-current rate until it reaches the end-of-discharge voltage specified in Table 3.3.2 of this appendix. The discharge time must be not less than 4.5 hours nor more than 5 hours. In addition, the discharge test (section 3.3.8 of this appendix) (which may not be starting with a fully-charged battery) shall reach the end-of-discharge voltage within 5 hours. The same discharge current shall be used for both the preparations step (section 3.3.4 of this appendix) and the discharge test (section 3.3.8 of this appendix). The test report shall include the discharge current used and the resulting discharge times for both a fully-charged battery and for the discharge test.

(b) For this section, the battery is considered as ''fully charged'' when either: it has been charged by the UUT until an indicator on the UUT shows that the charge is complete; or it has been charged by a battery analyzer at a current not greater than the discharge current until the battery analyzer indicates that the battery is fully charged.

(c) When there is no capacity rating, a suitable discharge current must generally be determined by trial and error. Since the conditioning step does not require constant-current discharges, the trials themselves may also be counted as part of battery conditioning.

3.3. Test Measurement

The test sequence to measure the battery charger energy consumption is summarized in Table 3.3.1 of this appendix, and explained in detail in this appendix. Measurements shall be made under test conditions and with the equipment specified in sections 3.1 and 3.2 of this appendix.

TABLE 3.3.1—TEST SEQUENCE

Step/description	Equipment needed					
	Data taken?	Test battery	Charger	Battery analyzer or constant-current load	AC power meter	Thermometer (for flooded lead-acid battery chargers only)
1. Record general data on UUT; Section 3.3.1.	Yes	X	X			
2. Determine Active and Maintenance Modes Test duration; Section 3.3.2.	No					
3. Battery conditioning; Section 3.3.3	No	X	X	X		
4. Prepare battery for Active Mode test; Section 3.3.4.	No	X	X			
5. Battery rest period; Section 3.3.5	No	X				X
6. Conduct Active and Maintenance Modes Test; Section 3.3.6.	Yes	X	X		X	
7. Battery Rest Period; Section 3.3.7	No	X				X
8. Battery Discharge Energy Test; Section 3.3.8.	Yes	X		X		
9. Determine the Maintenance Mode Power; Section 3.3.9.	Yes	X	X		X	
10. Determine Active Charge Energy; Section 3.3.10.	Yes	X	X		X	
11. Conduct No-Battery Mode Test; Section 3.3.11.	Yes		X		X	
12. Conduct Off Mode Test; Section 3.3.12.	Yes		X		X	
13. Calculating Standby Mode Power; Section 3.3.13.	Yes					

3.3.1. Recording General Data on the UUT

The technician shall record:

(a) The manufacturer and model of the battery charger;

(b) The presence and status of any additional functions unrelated to battery charging;

(c) The manufacturer, model, and number of batteries in the test battery;

(d) The nameplate battery voltage of the test battery;

(e) The nameplate battery charge capacity of the test battery; and

(f) The nameplate battery charge energy of the test battery.

(g) The settings of the controls, if battery charger has user controls to select from two or more charge rates.

3.3.2. Determining the Duration of the Charge and Maintenance Modes Test

(a) The charge and maintenance modes test, described in detail in section 3.3.6 of this appendix, shall be 24 hours in length or longer, as determined by the items in sections 3.3.2.(a)(1) to 3.3.2.(a)(3) of this appendix. Proceed in order until a test duration is determined. In case when the battery charger does not enter its true battery maintenance mode, the test shall continue until 5 hours after the true battery maintenance mode has been captured.

(1) If the battery charger has an indicator to show that the battery is fully charged, that indicator shall be used as follows: if the indicator shows that the battery is charged after 19 hours of charging, the test shall be terminated at 24 hours. Conversely, if the full-charge indication is not yet present after 19 hours of charging, the test shall continue until 5 hours after the indication is present.

(2) If there is no indicator, but the manufacturer's instructions indicate that charging this battery or this capacity of battery should be complete within 19 hours, the test shall be for 24 hours. If the instructions indicate that charging may take longer than 19 hours, the test shall be run for the longest estimated charge time plus 5 hours.

(3) If there is no indicator and no time estimate in the instructions, but the charging current is stated on the charger or in the instructions, calculate the test duration as the longer of 24 hours or:

$$Duration = 1.4 * \frac{RatedChargeCapacity(Ah)}{ChargeCurrent(A)} + 5h$$

(b) If none of section 3.3.2.(a) applies, the duration of the test shall be 24 hours.

3.3.3. Battery Conditioning

(a) No conditioning is to be done on lithium-ion batteries. The test technician shall proceed directly to battery preparation, section 3.3.4 of this appendix, when testing chargers for these batteries.

(b) Products with integral batteries will have to be disassembled per the instructions in section 3.2.5 of this appendix, and the battery disconnected from the charger for discharging.

(c) Batteries of other chemistries that have not been previously cycled are to be conditioned by performing two charges and two discharges, followed by a charge, as sections 3.3.3.(c)(1) to 3.3.3.(c)(5) of this appendix. No data need be recorded during battery conditioning.

(1) The test battery shall be fully charged for the duration specified in section 3.3.2 of this appendix or longer using the UUT.

(2) The test battery shall then be fully discharged using either:

(i) A battery analyzer at a rate not to exceed 1 C, until its average cell voltage under load reaches the end-of-discharge voltage specified in Table 3.3.2 of this appendix for the relevant battery chemistry; or

(ii) The UUT, until the UUT ceases operation due to low battery voltage.

(3) The test battery shall again be fully charged per step in section 3.3.3(c)(1) of this appendix.

(4) The test battery shall again be fully discharged per step in section 3.3.3(c)(2) of this appendix.

(5) The test battery shall be again fully charged per step in section 3.3.3(c)(1) of this appendix.

(d) Batteries of chemistries, other than lithium-ion, that are known to have been through at least two previous full charge/discharge cycles shall only be charged once per step in section 3.3.3(c)(5) of this appendix.

3.3.4. Preparing the Battery for Charge Testing

Following any conditioning prior to beginning the battery charge test (section 3.3.6 of this appendix), the test battery shall be fully discharged to the end of discharge voltage prescribed in Table 3.3.2 of this appendix, or until the UUT circuitry terminates the discharge.

3.3.5. Resting the Battery

The test battery shall be rested between preparation and the battery charge test. The rest period shall be at least one hour and not exceed 24 hours. For batteries with flooded cells, the electrolyte temperature shall be less than 30 °C before charging, even if the rest period must be extended longer than 24 hours.

3.3.6. Testing Active Charge Mode and Battery Maintenance Mode

(a) The Active Charge and Battery Maintenance Modes test measures energy consumed during charge mode and some time spent in the maintenance mode of the UUT. Functions required for battery conditioning that happen only with some user-selected switch or other control shall not be included in this measurement. (The technician shall manually turn off any battery conditioning cycle or setting.) Regularly occurring battery conditioning or maintenance functions that are not controlled by the user will, by default, be incorporated into this measurement.

(b) During the measurement period, input power values to the UUT shall be recorded at least once every minute.

(1) If possible, the technician shall set the data logging system to record the average power during the sample interval. The total energy is computed as the sum of power samples (in watts) multiplied by the sample interval (in hours).

(2) If this setting is not possible, then the power analyzer shall be set to integrate or accumulate the input power over the measurement period and this result shall be used as the total energy.

(c) The technician shall follow these steps:

(1) Ensure that the user-controllable device functionality not associated with battery charging and any battery conditioning cycle or setting are turned off, as instructed in section 3.2.4 of this appendix;

(2) Ensure that the test battery used in this test has been conditioned, prepared, discharged, and rested as described in sections 3.3.3. through 3.3.5. of this appendix;

(3) Connect the data logging equipment to the battery charger;

(4) Record the start time of the measurement period, and begin logging the input power;

(5) Connect the test battery to the battery charger within 3 minutes of beginning logging. For integral battery products, connect the product to a cradle or EPS within 3 minutes of beginning logging;

(6) After the test battery is connected, record the initial time and power (W) of the input current to the UUT. These measurements shall be taken within the first 10 minutes of active charging;

(7) Record the input power for the duration of the ''Maintenance Mode Test'' period, as determined by section 3.3.2. of this appendix. The actual time that power is connected to the UUT shall be within ±5 minutes of the specified period; and

(8) Disconnect power to the UUT, terminate data logging, and record the final time.

3.3.7. Resting the Battery

The test battery shall be rested between charging and discharging. The rest period shall be at least 1 hour and not more than 4 hours, with an exception for flooded cells. For batteries with flooded cells, the electrolyte temperature shall be less than 30 °C before charging, even if the rest period must be extended beyond 4 hours.

3.3.8. Battery Discharge Energy Test

(a) If multiple batteries were charged simultaneously, the discharge energy (E_{batt}) is the sum of the discharge energies of all the batteries.

(1) For a multi-port charger, batteries that were charged in separate ports shall be discharged independently.

(2) For a batch charger, batteries that were charged as a group may be discharged individually, as a group, or in sub-groups connected in series and/or parallel. The position of each battery with respect to the other batteries need not be maintained.

(b) During discharge, the battery voltage and discharge current shall be sampled and recorded at least once per minute. The values recorded may be average or instantaneous values.

(c) For this test, the technician shall follow these steps:

(1) Ensure that the test battery has been charged by the UUT and rested according to the procedures prescribed in sections 3.3.6 and 3.3.7 of this appendix.

(2) Set the battery analyzer for a constant discharge rate and the end-of-discharge voltage in Table 3.3.2 of this appendix for the relevant battery chemistry.

(3) Connect the test battery to the analyzer and begin recording the voltage, current, and wattage, if available from the battery analyzer. When the end-of-discharge voltage is reached or the UUT circuitry terminates the discharge, the test battery shall be returned to an open-circuit condition. If current continues to be drawn from the test battery after the end-of-discharge condition is first reached, this additional energy is not to be counted in the battery discharge energy.

(d) If not available from the battery analyzer, the battery discharge energy (in watt-hours) is calculated by multiplying the voltage (in volts), current (in amperes), and sample period (in hours) for each sample, and then summing over all sample periods until the end-of-discharge voltage is reached.

TABLE 3.3.2—REQUIRED BATTERY DISCHARGE RATES AND END-OF-DISCHARGE BATTERY VOLTAGES

Battery chemistry	Discharge rate (C)	End-of-discharge voltage* (volts per cell)
Valve-Regulated Lead Acid (VRLA)	0.2	1.75
Flooded Lead Acid	0.2	1.70
Nickel Cadmium (NiCd)	0.2	1.0
Nickel Metal Hydride (NiMH)	0.2	1.0
Lithium-ion (Li-Ion)	0.2	2.5
Lithium-ion Polymer	0.2	2.5
Lithium Iron Phosphate	0.2	2.0
Rechargeable Alkaline	0.2	0.9
Silver Zinc	0.2	1.2

*If the presence of protective circuitry prevents the battery cells from being discharged to the end-of-discharge voltage specified, then discharge battery cells to the lowest possible voltage permitted by the protective circuitry.

3.3.9. Determining the Maintenance Mode Power

After the measurement period is complete, the technician shall determine the average maintenance mode power consumption (P_m) by examining the power-versus-time data from the charge and maintenance mode test and:

(a) If the maintenance mode power is cyclic or shows periodic pulses, compute the average power over a time period that spans a whole number of cycles and includes at least the last 4 hours.

(b) Otherwise, calculate the average power value over the last 4 hours.

3.3.10. Determining the Active Charge Energy

After the measurement period is complete, the technician shall determine the total active charge energy (E_a) by examining the power-versus-time data from the charge and maintenance mode test and:

(a) First determine when the battery charger enters maintenance mode by examining the power-versus-time data to identify when the input power enters either a steady state or a cyclic state with average power for that period being the same as the maintenance mode power determined in section 3.3.9. of this appendix.

(b) The accumulated energy or the average input power, integrated over the test period from the initial recorded input time up until when the battery charger enters maintenance mode would be the active charge energy, E_a.

3.3.11. No-Battery Mode Energy Consumption Measurement

The no-battery mode measurement depends on the configuration of the battery charger, as follows:

(a) Conduct a measurement of no-battery power consumption while the battery charger is connected to the power source. Disconnect the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement. If the battery charger has manual on-off switches, all must be turned on for the duration of the no-battery mode test.

(b) No-battery mode may also apply to products with integral batteries, as follows:

(1) If the product uses a cradle and/or adapter for power conversion and charging, then ''disconnecting the battery from the charger'' will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and no-battery mode power consumption will equal that of the cradle and/or adapter alone.

(2) If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and no-battery mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

(3) If the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the system will remain connected to mains, and no-battery mode measurement is not applicable.

3.3.12. Off Mode Energy Consumption Measurement

The off mode measurement depends on the configuration of the battery charger, as follows:

(a) If the battery charger has manual on-off switches, record a measurement of off mode energy consumption while the battery charger is connected to the power source. Remove the battery from the charger, allow the charger to operate for at least 30 minutes, and record the power (*i.e.,* watts) consumed as the time series integral of the power consumed over a 10-minute test period, divided by the period of measurement, with all manual on-off switches turned off. If the battery charger does not have manual on-off switches, record that the off mode measurement is not applicable to this product.

(b) Off mode may also apply to products with integral batteries, as follows:

(1) If the product uses a cradle and/or adapter for power conversion and charging, then ''disconnecting the battery from the charger'' will require disconnection of the end-use product, which contains the batteries. The other enclosures of the battery charging system will remain connected to the main electricity supply, and off mode power consumption will equal that of the cradle and/or adapter alone.

(2) If the product is powered through a detachable AC power cord and contains integrated power conversion and charging circuitry, then only the cord will remain connected to mains, and off mode power consumption will equal that of the AC power cord (*i.e.,* zero watts).

(3) If the product contains integrated power conversion and charging circuitry but is powered through a non-detachable AC power cord or plug blades, then no part of the

system will remain connected to mains, and off mode measurement is not applicable.

3.3.13. Standby Mode Power

The standby mode power (P_{sb}) is the summation power of battery maintenance mode power (P_m) and no-battery mode power (P_{nb}).

4. Testing Requirements for Uninterruptible Power Supplies

4.1. Standard Test Conditions

4.1.1. Measuring Equipment

(a) The power or energy meter must provide true root mean square (r.m.s) measurements of the active input and output measurements, with an uncertainty at full rated load of less than or equal to 0.5 percent at the 95 percent confidence level notwithstanding that voltage and current waveforms can include harmonic components. The meter must measure input and output values simultaneously.

(b) All measurement equipment used to conduct the tests must be calibrated within the measurement equipment manufacturer specified calibration period by a standard traceable to International System of Units such that measurements meet the uncertainty requirements specified in section 4.1.1(a) of this appendix.

4.1.2. Test Room Requirements

All portions of the test must be carried out in a room with an air speed immediately surrounding the UUT of ≤0.5 m/s in all directions. Maintain the ambient temperature in the range of 20.0 °C to 30.0 °C, including all inaccuracies and uncertainties introduced by the temperature measurement equipment, throughout the test. No intentional cooling of the UUT, such as by use of separately powered fans, air conditioners, or heat sinks, is permitted. Test the UUT on a thermally non-conductive surface.

4.1.3. Input Voltage and Input Frequency

The AC input voltage and frequency to the UPS during testing must be within 3 percent of the highest rated voltage and within 1 percent of the highest rated frequency of the device.

4.2. Unit Under Test Setup Requirements

4.2.1. General Setup

Configure the UPS according to Section J.2 of Annex J of IEC 62040–3 Ed. 2.0 with the following additional requirements:

(a) UPS Operating Mode Conditions. If the UPS can operate in two or more distinct normal modes as more than one UPS architecture, conduct the test in its lowest input dependency as well as in its highest input dependency mode where VFD represents the lowest possible input dependency, followed by VI and then VFI.

(b) Energy Storage System. The UPS must not be modified or adjusted to disable energy storage charging features. Minimize the transfer of energy to and from the energy storage system by ensuring the energy storage system is fully charged (at the start of testing) as follows:

(1) If the UUT has a battery charge indicator, charge the battery for 5 hours after the UUT has indicated that it is fully charged.

(2) If the UUT does not have a battery charge indicator but the user manual shipped with the UUT specifies a time to reach full charge, charge the battery for 5 hours longer than the time specified.

(3) If the UUT does not have a battery charge indicator or user manual instructions, charge the battery for 24 hours.

(c) DC output port(s). All DC output port(s) of the UUT must remain unloaded during testing.

4.2.2. Additional Features

(a) Any feature unrelated to maintaining the energy storage system at full charge or delivery of load power (*e.g.,* LCD display) shall be switched off. If it is not possible to switch such features off, they shall be set to their lowest power-consuming mode during the test.

(b) If the UPS takes any physically separate connectors or cables not required for maintaining the energy storage system at full charge or delivery of load power but associated with other features (such as serial or USB connections, Ethernet, etc.), these connectors or cables shall be left disconnected during the test.

(c) Any manual on-off switches specifically associated with maintaining the energy storage system at full charge or delivery of load power shall be switched on for the duration of the test.

4.3. Test Measurement and Calculation

Efficiency can be calculated from either average power or accumulated energy.

4.3.1. Average Power Calculations

If efficiency calculation are to be made using average power, calculate the average power consumption (P_{avg}) by sampling the power at a rate of at least 1 sample per second and computing the arithmetic mean of all samples over the time period specified for each test as follows:

$$P_{avg} = \frac{1}{n}\sum_{i=1}^{n} P_i$$

Where:

P_{avg} = average power
P_i = power measured during individual measurement (i)
n = total number of measurements

4.3.2. Steady State

Operate the UUT and the load for a sufficient length of time to reach steady state conditions. To determine if steady state conditions have been attained, perform the following steady state check, in which the difference between the two efficiency calculations must be less than 1 percent:

(a)(1) Simultaneously measure the UUT's input and output power for at least 5 minutes, as specified in section 4.3.1 of this appendix, and record the average of each over the duration as P_{avg_in} and P_{avg_out}, respectively; or,

(2) Simultaneously measure the UUT's input and output energy for at least 5 minutes and record the accumulation of each over the duration as E_{in} and E_{out}, respectively.

(b) Calculate the UUT's efficiency, Eff_1, using one of the following two equations:

(1)

$$Eff = \frac{P_{avg\_out}}{P_{avg\_in}}$$

Where:

Eff is the UUT efficiency
P_{avg_out} is the average output power in watts
P_{avg_in} is the average input power in watts

(2)

$$Eff = \frac{E_{out}}{E_{in}}$$

Where:

Eff is the UUT efficiency
E_{out} is the accumulated output energy in watt-hours
E_{in} in the accumulated input energy in watt-hours

(c) Wait a minimum of 10 minutes.

(d) Repeat the steps listed in paragraphs (a) and (b) of section 4.3.2 of this appendix to calculate another efficiency value, Eff_2.

(e) Determine if the product is at steady state using the following equation:

$$Percentage\ difference = \frac{|Eff_1 - Eff_2|}{Average(Eff_1, Eff_2)}$$

If the percentage difference of Eff_1 and Eff_2 as described in the equation, is less than 1 percent, the product is at steady state.

(f) If the percentage difference is greater than or equal to 1 percent, the product is not at steady state. Repeat the steps listed in paragraphs (c) to (e) of section 4.3.2 of this appendix until the product is at steady state.

4.3.3. Power Measurements and Efficiency Calculations

Measure input and output power of the UUT according to Section J.3 of Annex J of IEC 62040–3 Ed. 2.0, or measure the input and output energy of the UUT for efficiency calculations with the following exceptions:

(a) Test the UUT at the following reference test load conditions, in the following order: 100 percent, 75 percent, 50 percent, and 25 percent of the rated output power.

(b) Perform the test at each of the reference test loads by simultaneously measuring the UUT's input and output power in Watts (W), or input and output energy in Watt-Hours (Wh) over a 15 minute test period at a rate of at least 1 Hz. Calculate the efficiency for that reference load using one of the following two equations:

(1)

$$Eff_{n\%} = \frac{P_{avg\_out\ n\%}}{P_{avg\_in\ n\%}}$$

Where:

$Eff_{n\%}$ = the efficiency at reference test load n%

$P_{avg\_out\ n\%}$ = the average output power at reference load n%

$P_{avg\_in\ n\%}$ = the average input power at reference load n%

(2)

$$Eff_{n\%} = \frac{E_{out\ n\%}}{E_{in\ n\%}}$$

Where:

$Eff_{n\%}$ = the efficiency at reference test load n%

$E_{out\ n\%}$ = the accumulated output energy at reference load n%

$E_{in\ n\%}$ = the accumulated input energy at reference load n%

4.3.4. UUT Classification

Optional Test for determination of UPS architecture. Determine the UPS architecture by performing the tests specified in the definitions of VI, VFD, and VFI (sections 2.28.1 through 2.28.3 of this appendix).

4.3.5. Output Efficiency Calculation

(a) Use the load weightings from Table 4.3.1 to determine the average load adjusted efficiency as follows:

$Eff_{avg} = (t_{25\%} \times Eff|_{25\%}) + (t_{50\%} \times Eff|_{50\%}) + (t_{75\%} \times Eff|_{75\%}) + (t_{100\%} \times Eff|_{100\%})$

Where:

Eff_{avg} = the average load adjusted efficiency

$t_{n\%}$ = the portion of time spent at reference test load n% as specified in Table 4.3.1

$Eff|_{n\%}$ = the measured efficiency at reference test load n%

TABLE 4.3.1—LOAD WEIGHTINGS

Rated output power (W)	UPS architecture	Portion of time spent at reference load			
		25%	50%	75%	100%
P ≤ 1500 W	VFD	0.2	0.2	0.3	0.3
	VI or VFI	0 *	0.3	0.4	0.3
P > 1500 W	VFD, VI, or VFI	0 *	0.3	0.4	0.3

* Measuring efficiency at loading points with 0 time weighting is not required.

(b) Round the calculated efficiency value to one tenth of a percentage point.

5. Testing Requirements for Open-Placement Wireless Chargers

5.1. Standard Test Conditions and UUT Setup Requirements

The technician will set up the testing environment according to the test conditions as specified in sections 3.1.2, 3.1.3, and 3.1.4 of this appendix. The unit under test will be configurated according to section 3.2.1 and all other non-battery charger related functions will be turned off according to section 3.2.4.

5.2. Active Mode Test

[Reserved]

5.3. No-Battery Mode Test

(a) Connect the UUT to mains power and place it in no-battery mode by ensuring there are no foreign objects on the charging surface (*i.e.,* without any load).

(b) Monitor the AC input power for a period of 5 minutes to assess the stability of the UUT. If the power level does not drift by more than 1percent from the maximum value observed, the UUT is considered stable.

(c) If the AC input power is not stable, follow the specifications in Section 5.3.3. of IEC 62301 for measuring average power or accumulated energy over time for the input. If the UUT is stable, record the measurements of the AC input power over a 5-minute period.

(d) Power consumption calculation. The power consumption of the no-battery mode is equal to the active AC input power (W).

[FR Doc. 2022–18717 Filed 9–7–22; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL REGISTER

Vol. 87 Thursday,
No. 173 September 8, 2022

Part III

Securities and Exchange Commission

17 CFR Parts 229, 232, and 240
Pay Versus Performance; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 232, and 240

[Release Nos. 34–95607; File No. S7–07–15]

RIN 3235–AL00

Pay Versus Performance

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission (''Commission'') is adopting amendments to implement Section 14(i) (''Section 14(i)'') of the Securities Exchange Act of 1934 (''Exchange Act''), as added by Section 953(a) of the Dodd-Frank Wall Street Reform and Consumer Protection Act (''Dodd-Frank Act''). Section 14(i) directs the Commission to adopt rules requiring registrants to provide disclosure of pay versus performance. The disclosure is required in proxy or information statements in which executive compensation disclosure is required. The disclosure requirements do not apply to emerging growth companies, registered investment companies, or foreign private issuers.

DATES:

Effective date: This final rule is effective on October 11, 2022.

Compliance date: Companies (other than emerging growth companies, registered investment companies, or foreign private issuers) must begin to comply with these disclosure requirements in proxy and information statements that are required to include Item 402 of Regulation S–K (as defined below) disclosure for fiscal years ending on or after December 16, 2022.

FOR FURTHER INFORMATION CONTACT: John Byrne, Special Counsel, Office of Small Business Policy, at (202) 551–3460, Division of Corporation Finance.

SUPPLEMENTARY INFORMATION: The Commission is adopting an amendment to add new paragraph (v) to 17 CFR 229.402 (''Item 402 of Regulation S–K''); and amending 17 CFR 232.405 (''Item 405 of Regulation S–T''), 17 CFR 240.14a-101 (''Schedule 14A''), and 17 CFR 240.14c-101 (''Schedule 14C''), each under the Exchange Act.

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I. Introduction

A. Background

Section 953(a) of the Dodd-Frank Act[1] (''Section 953(a)'') added Section 14(i)[2] to the Exchange Act.[3] Section 14(i) mandates that the Commission shall, by rule, require each issuer to disclose in any proxy or consent solicitation material for an annual meeting of the shareholders of the issuer a clear description of any compensation required to be disclosed by the issuer under Item 402 of Regulation S–K (or any successor thereto), including, for any issuer other than an emerging growth company, information that shows the relationship between executive compensation actually paid and the financial performance of the issuer, taking into account any change in the value of the shares of stock and dividends of the issuer and any distributions. Section 14(i) also states that an issuer may include a graphic representation of the information required to be disclosed.

As a part of the Dodd-Frank Act legislative process, in a 2010 report, the Senate Committee on Banking, Housing and Urban Affairs stated that the disclosure required under Section 14(i)

[1] Public Law 111–203, 124 Stat. 1376 (2010).

[2] 15 U.S.C. 78n(i).

[3] 15 U.S.C. 78a *et seq.* Subsequent to the addition of Section 14(i) to the Exchange Act, Section 102(a)(2) of the Jumpstart Our Business Startups Act amended Section 14(i) to exclude registrants that are ''emerging growth companies'' from the pay-versus-performance disclosure requirements. Public Law 112–106, 126 Stat. 306 (2012).

''may take many forms.'' [4] In addition, the report indicated that the relationship between executive pay and performance has become a ''significant concern of shareholders,'' and that the required disclosure should ''add to corporate responsibility,'' as registrants will be required to provide clearer executive pay disclosures.[5]

In 2015, the Commission proposed a new rule to implement Section 953(a) by creating a new requirement in Item 402 of Regulation S–K. The proposed new item would require a registrant to provide a clear description of (1) the relationship between executive compensation actually paid to the registrant's named executive officers (''NEOs'') (including the registrant's principal executive officer (or persons acting in a similar capacity during the last completed fiscal year) (''PEO'')) and the cumulative total shareholder return (''TSR'') of the registrant, and (2) the relationship between the registrant's TSR and the TSR of a peer group chosen by the registrant, over each of the registrant's five most recently completed fiscal years.[6] The comment period for the Proposing Release was reopened in 2022 to permit commenters to further analyze and comment upon the proposed rules in light of developments since the publication of the Proposing Release and our further consideration of the Section 953(a) mandate.[7] In the Reopening Release, we stated that we were considering, and requested public comment on, certain additional disclosure requirements that may better implement the Section 953(a) mandate by providing investors with additional decision-relevant data.[8]

We believe the disclosure mandated by Section 953(a) is intended to provide investors with more transparent, readily comparable, and understandable disclosure of a registrant's executive compensation, so that they may better assess a registrant's executive compensation program when making voting decisions, for example when exercising their rights to cast advisory votes on executive compensation under Exchange Act Section 14A or electing directors.[9] This belief is supported by the fact that Section 953(a) was enacted contemporaneously with other executive compensation-related provisions in the Dodd-Frank Act that are ''designed to address shareholder rights and executive compensation practices.'' [10] These included Section 951 of the Dodd-Frank Act, which enacted new Exchange Act Section 14A,[11] and Section 953(b) of the Dodd-Frank Act. These provisions required, respectively, that, not less than every three years, a separate resolution be put to a non-binding shareholder vote to approve compensation of executives; [12] and that registrants provide disclosure of the ratio of the median annual total compensation of employees to the annual total compensation of the chief executive officer.[13]

We believe the disclosure mandated by Section 14(i) will allow investors to assess a registrant's executive compensation actually paid relative to its financial performance more readily and at a lower cost than under the existing executive compensation disclosure regime. Under Item 402 of Regulation S–K, which specifies the information that must be included when the applicable form or schedule requires executive compensation disclosure, specific information regarding financial performance is already required, including in the Performance Graph in 17 CFR 229.201(e) (''Item 201(e) of Regulation S–K''), the Supplementary Financial Information in 17 CFR 229.302 (Item 302), and Management's Discussion and Analysis of Financial Condition and Results of Operations in 17 CFR 220.303 (Item 303). In addition, Item 402 of Regulation S–K also requires detailed disclosure of executive compensation and principles-based disclosure requirements regarding the relationship between pay and performance.[14]

There is no single place, however, where issuers must provide investors with direct comparisons of an executive's pay with their company's performance, and specifically financial performance, particularly if investors are interested in that comparison over a timespan longer than the most recent reporting period. Existing disclosures generally provide the necessary components to make these comparisons, including data required for calculations that aid in these comparisons, but doing so may be time-consuming and costly. We believe this information is important to investors in evaluating executive compensation, and that disclosures about executive compensation may be

[4] Report of the Senate Committee on Banking, Housing and Urban Affairs to accompany S. 3217, S. Rep. No. 111–176, at 135 (2010) (''Senate Report''). The report stated with respect to Section 953(a): ''This disclosure about the relationship between executive compensation and the financial performance of the issuer may include a clear graphic comparison of the amount of executive compensation and the financial performance of the issuer or return to investors and may take many forms.''

[5] *Id.*

[6] *See Pay Versus Performance,* Release No. 34–74835 (Apr. 29, 2015) [80 FR 26329 (May 7, 2015)] (''Proposing Release'').

[7] This reopening of the comment period was set out in *Reopening of Comment Period for Pay Versus Performance* Release No. 34–94074 (Jan. 27, 2022) [87 FR 5939 (Feb. 2, 2022)] (''Reopening Release'').

[8] A comment letter from two members of Congress raised concerns about the Reopening Release. *See* letter from Sen. Pat Toomey and Sen. Richard Shelby, dated Feb. 1, 2022 (''Toomey/Shelby''). Specifically, the letter criticized the Commission for reopening the comment period on the Proposing Release and seeking comment on a number of regulatory alternatives without updating the cost-benefit analysis and analysis required by the Paperwork Reduction Act and the Regulatory Flexibility Act. The letter asserted that the approach taken in the Reopening Release significantly impaired the public's ability to comment thoughtfully on the proposals and was inconsistent with the Administrative Procedure Act. In response to these concerns, we note that the Reopening Release included a robust discussion of the additional disclosures under consideration and solicited comment on specific aspects of those disclosures. The Reopening Release also discussed the potential benefits and costs of the additional disclosures, including their impact on efficiency, competition and capital formation. Finally, the Reopening Release discussed how the additional disclosures might affect smaller registrants and solicited comment on approaches that would minimize the impact on smaller registrants, such as exempting smaller reporting companies from certain aspects of the additional disclosures. Given the discussion included in the Proposing Release and subsequent Reopening Release, we believe the final rules satisfy the requirements of the Administrative Procedure Act and other applicable statutes. Moreover, we received numerous comments from members of the public on the additional disclosures described in the Reopening Release, including comments on the economic effects of the additional disclosure, and we have considered those comments in adopting the final rules and made certain changes in response.

[9] *See generally* Proposing Release at Section I.

[10] Dodd-Frank Act, H.R. Rep. 111–157, at 827 (2010).

[11] 15 U.S.C. 78n–1.

[12] Pursuant to the mandate in Section 14A of the Exchange Act, we adopted rules requiring a shareholder advisory vote to approve the compensation of a registrant's NEOs, as disclosed pursuant to Item 402 of Regulation S–K, at an annual or other meeting of shareholders at which directors will be elected and for which such executive compensation disclosure is required under Commission rules. *See Shareholder Approval of Executive Compensation and Golden Parachute Compensation,* Release No. 33–9178 (Jan. 25, 2011) [76 FR 6010] (Feb. 2, 2011).

[13] In 2015, we adopted rules to implement Section 953(b) of the Dodd-Frank Act. *See Pay Ratio Disclosure,* Release No. 33–9877 (Aug. 5, 2015) [80 FR 50103] (Aug. 18, 2015).

[14] The Compensation Discussion and Analysis (''CD&A'') required by 17 CFR 229.402(b) (''Item 402(b) of Regulation S–K'') requires registrants to provide an explanation of ''all material elements of the registrant's compensation of the named executive officers.'' 17 CFR 229.402(b)(1). With respect to performance, Item 402(b)(2) of Regulation S–K includes non-exclusive examples of information that may be material, including (i) specific items of corporate performance taken into account in setting compensation policies and making compensation decisions; (ii) how specific forms of compensation are structured and implemented to reflect these items of the registrant's performance; and (iii) how specific forms of compensation are structured and implemented to reflect the NEO's individual performance and/or individual contribution to these items of the registrant's performance. 17 CFR 229.402(b)(2)(v) through (vii).

most meaningful to investors when placed in the context of the company's financial performance.[15] Indeed, we are aware that certain third parties (*e.g.,* proxy advisors or compensation consultants) perform such analyses and charge clients for access to the resulting data.[16] Requiring registrants to compute and report this information will make this information equally accessible to all investors in a consistent manner.

By specifically referencing disclosure of ''information that shows the relationship between executive compensation actually paid and . . . financial performance of the issuer,'' Section 14(i) calls for information that will supplement management's discussion of material elements of executive compensation in the CD&A. In addition, we believe this disclosure will provide investors with important and decision-useful information for comparison purposes in one place when they evaluate a registrant's executive compensation practices and policies, including for purposes of the shareholder advisory vote on executive compensation, votes on other compensation matters, director elections, or when making investment decisions.[17]

Section 14(i) did not expressly prescribe the manner in which issuers would disclose the required information and we have exercised our discretion to provide for a consistent format that we believe furthers the statutory objectives of making pay-versus-performance data clear and easy for investors to evaluate. Standardizing the format and presentation of data, in particular quantitative metrics, to promote such ease of use requires incremental costs for issuers. We have elected not to pursue a wholly principles-based approach because, among other reasons, such a route would limit comparability across issuers and within issuers' filings over time, as well as increasing the possibility that some issuers would choose to report only the most favorable information. In addition, as we describe more extensively below, the final rules require that issuers calculate the value of certain equity and pension awards in more detail than would have been required in the proposed rule. These changes, in our view, will result in disclosures that more accurately represent the time when the awards change in value, which is important for investors to be able to assess whether such changes correspond to company performance over the appropriate time period.

We received many comment letters in response to the Proposing Release and the Reopening Release. After taking into consideration these public comments, we are adopting the proposed rules, together with certain of the supplemental disclosure requirements considered in the Reopening Release, with some modifications to reflect public comment. As discussed in more detail below, the final rules require registrants to present disclosure that reflects the specific situation of the registrant with respect to pay-versus-performance, and while also providing pay-versus-performance disclosure that can be readily compared across registrants.

B. Overview of Final Amendments

The amendments add new 17 CFR 229.402(v) (''Item 402(v) of Regulation S–K''), which requires registrants to describe the relationship between the executive compensation actually paid by the registrant and the financial performance of the registrant over the time horizon of the disclosure. Item 402(v) of Regulation S–K requires disclosure of the cumulative TSR of the registrant (substantially as defined in Item 201(e) of Regulation S–K),[18] the TSR of the registrant's peer group, the registrant's net income, and a measure chosen by the registrant and specific to the registrant (''Company-Selected Measure'') as the measures of financial performance.

The final rules require the following tabular disclosures, with the asterisked items indicating portions of the final rules from which smaller reporting companies (''SRCs'') [19] are exempt: [20]

Year	Summary compensation table total for PEO	Compensation actually paid to PEO	Average summary compensation table total for non-PEO NEOs	Average compensation actually paid to non-PEO NEOs	Value of initial fixed $100 investment based on:		Net income	[Company-selected measure] *
					Total shareholder return	Peer group total shareholder return *		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Y1								
Y2								
Y3								
Y4 *								
Y5 *								

[15] *See infra* Section V.C.2.

[16] *See infra* Section V.B.2.

[17] For example, academic researchers find that the salience and readability of disclosures about executive compensation affect say-on-pay votes. *See, e.g.,* Danial Hemmings, Lynn Hodgkinson, & Gwion Williams, *It's OK to Pay Well, if You Write Well: The Effects of Remuneration Disclosure Readability,* 47 J. *Bus. Fin. & Accounting* 547 (2020); and Reggy Hooghiemstra, Yu Flora Kuang, & Bo Qin, *Does Obfuscating Excessive CEO Pay Work? The Influence of Remuneration Report Readability on Say-on-Pay Votes,* 47 *Accounting & Bus. Res.* 695 (2017).

[18] Item 201(e) of Regulation S–K sets forth the specific disclosure requirements for the issuer's stock performance graph, which is required to be included in the annual report to security holders provided for by 17 CFR 240.14a–3 and 240.14c–3. The Item provides that cumulative TSR is calculated by dividing the sum of the cumulative amount of dividends for the measurement period, assuming dividend reinvestment, and the difference between the registrant's share price at the end and the beginning of the measurement period; by the share price at the beginning of the measurement period.

[19] A ''smaller reporting company'' means, in the case of issuers required to file reports under Sections 13(a) or 15(d) of the Exchange Act, an issuer that is not an investment company, an asset-backed issuer, or a majority-owned subsidiary of a parent that is not a smaller reporting company and that: (1) had a public float of less than $250 million (as of the last business day of the issuer's most recently completed second fiscal quarter); or (2) had annual revenues of less than $100 million (as of the most recently completed fiscal year for which audited financial statements are available) and either: (i) no public float (as of the last business day of the issuer's most recently completed second fiscal quarter); or (ii) a public float of less than $700 million (as of the last business day of the issuer's most recently completed second fiscal quarter). 17 CFR 240.12b–2; and 17 CFR 229.10. Business development companies (''BDCs''), which are a type of closed-end investment company that is not registered under the Investment Company Act, do not fall within the SRC definition, and thus do not qualify for the scaled disclosures that we are adopting for SRCs. *See infra* Section II.G (discussing our considerations with respect to SRC disclosure requirements).

[20] The title of column (i) of the table, ''Company-Selected Measure,'' would be replaced with the name of the registrant's most important measure, and that column would include the numerically quantifiable performance of the issuer under such measure for each covered fiscal year. For example, if the Company-Selected Measure for the most recent fiscal year was total revenue, the company would title the column ''Total Revenue'' and disclose its quantified total revenue performance in each covered fiscal year.

In addition, registrants are required to use the information in the above table to provide clear descriptions of the relationships between compensation actually paid and three measures of financial performance, as follows: describe the relationship between (a) the executive compensation actually paid to the registrant's PEO and (b) the average of the executive compensation actually paid to the registrant's remaining NEOs to (i) the cumulative TSR of the registrant, (ii) the net income of the registrant, and (iii) the registrant's Company-Selected Measure, in each case over the registrant's five most recently completed fiscal years. Registrants are also required to provide a clear description of the relationship between the registrant's TSR and the TSR of a peer group chosen by the registrant, also over the registrant's five most recently completed fiscal years. Registrants have flexibility as to the format in which to present the descriptions of these relationships, whether graphical, narrative, or a combination of the two. Registrants will also have the flexibility to decide whether to group any of these relationship disclosures together when presenting their clear description disclosure, but any combined description of multiple relationships must be ''clear.'' SRCs will only be required to present such clear descriptions with respect to the measures they are required to include in the table and for their three, rather than five, most recently completed fiscal years.

A registrant that is not an SRC also will be required to provide an unranked list of the most important financial performance measures used by the registrant to link executive compensation actually paid to the registrant's NEOs during the last fiscal year to company performance. Although, as discussed below, registrants may include non-financial performance measures in this list, they must select the Company-Selected Measure from the financial performance measures included in this list, and it must be the financial performance measure that in the registrant's assessment represents the most important performance measure (that is not otherwise required to be disclosed in the table) used by the registrant to link compensation actually paid to the registrant's NEOs, for the most recently completed fiscal year, to company performance.[21]

As discussed below, the final rules permit registrants to voluntarily provide supplemental measures of compensation or financial performance (in the table or in other disclosure), and other supplemental disclosures, so long as any such measure or disclosure is clearly identified as supplemental, not misleading, and not presented with greater prominence than the required disclosure.[22]

The final rules apply to all reporting companies except foreign private issuers, registered investment companies, and emerging growth companies (''EGCs'').[23] As proposed, BDCs will be treated in the same manner as issuers other than registered investment companies and, therefore, be subject to the disclosure requirement of new Item 402(v) of Regulation S–K.

II. Discussion of Final Amendments

A. New Item 402(v) of Regulation S–K

1. Application and Operation of Item 402(v) of Regulation S–K

i. Proposed Amendments

We proposed including the pay-versus-performance disclosure in a new Item 402(v) of Regulation S–K, as Section 14(i) explicitly refers to Item 402 of Regulation S–K as the reference point for the executive compensation to be addressed by the new disclosure relating compensation to performance. We proposed requiring registrants to include the Item 402(v) of Regulation S–K disclosure in any proxy or information statement for which disclosure under Item 402 of Regulation S–K is required.[24] By including the requirement in Item 402 of Regulation S–K and requiring this disclosure in proxy statements on Schedule 14A and in information statements on Schedule 14C, shareholders would have available the pay-versus-performance disclosure, along with all other executive compensation disclosures called for by Item 402 of Regulation S–K, in circumstances in which shareholder action is to be taken with regard to executive compensation or an election of directors.

Because the language of Section 14(i) calling for the disclosure to be provided in solicitation material for an annual meeting of the shareholders suggests that the disclosure was intended to be provided in conjunction with a shareholder vote, we proposed limiting the requirement to provide these disclosures to a registrant's proxy or information statement, instead of in all filings where disclosure under Item 402 of Regulation S–K is required (which would also include a registrant's Form 10–K[25] and Securities Act[26] registration statements). In addition, as proposed, the information would not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

ii. Comments

Some commenters generally supported the proposed approach,[27] with one noting that including the disclosure in proxy and information statements would provide ''relevant information at a time when (a) it is most useful to shareowners and (b) shareowners are equipped to act on the information if they are so inclined.''[28]

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[21] Registrants that do not use any financial performance measures to link executive compensation actually paid to company performance, or that only use measures already required to be disclosed in the table, would not be required to disclose a Company-Selected Measure or its relationship to executive compensation actually paid.

[22] *See infra* Section II.F.3.

[23] ''Emerging growth company'' means an issuer that had total annual gross revenues of less than $1.07 billion during its most recently completed fiscal year. An issuer that is an emerging growth company as of the first day of that fiscal year shall continue to be deemed an emerging growth company until the earliest of: (i) the last day of the fiscal year of the issuer during which it had total annual gross revenues of $1.07 billion or more; (ii) the last day of the fiscal year of the issuer following the fifth anniversary of the date of the first sale of common equity securities of the issuer pursuant to an effective registration statement under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*]; (iii) the date on which such issuer has, during the previous three year period, issued more than $1 billion in non-convertible debt; or (iv) the date on which such issuer is deemed to be a large accelerated filer. 17 CFR 240.12b–2. Section 102(a)(2) of the Jumpstart Our Business Startups Act amended Section 14(i) to exclude registrants that are EGCs from the pay-versus-performance disclosure requirements. Public Law 112–106, 126 Stat. 306 (2012). In accordance with this provision, the Commission did not propose to require EGCs to provide pay-versus-performance disclosure.

[24] The disclosure called for under Item 402 of Regulation S–K is required under Item 8 of Schedule 14A, and Item 1 of Schedule 14C. Schedule 14C correlates with the items of Schedule 14A to generally require the disclosure of information called for by Schedule 14A to the extent that the item would be applicable to any matter to be acted on at a meeting if proxies were to be solicited. Schedule 14C implements Exchange Act Section 14(c) [15 U.S.C. 78n(c)] (''Section 14(c)''), which created disclosure obligations for registrants that choose not to, or otherwise do not, solicit proxies, consents, or other authorizations from some or all of their security holders entitled to vote.

[25] 17 CFR 249.310.

[26] 15 U.S.C. 77a *et seq.*

[27] *See* letters from Federal Home Loan Banks, dated July 2, 2015 (''FHL Banks''); Financial Services Roundtable, dated July 6, 2015 (''FSR''); and Ohio Public Employees Retirement System, dated July 6, 2015 (''OPERS''). Comment letters received in response to the Proposing Release and Reopening Release are available at *https://www.sec.gov/comments/s7-07-15/s70715.htm.*

[28] Letter from OPERS.

One commenter suggested that the Commission limit the requirement to include the pay-versus-performance information to proxy statements only, noting that any other document could just make reference to the proxy statement;[29] while another commenter suggested the pay-versus-performance information ''should be included in all materials/filings that discuss compensation.''[30]

iii. Final Amendments

As proposed, we are adopting the requirement to include the new Item 402(v) of Regulation S–K disclosure in any proxy or information statement for which disclosure under Item 402 of Regulation S–K is required. As noted by commenters[31] and in the Proposing Release, placing the pay-versus-performance information in proxy statements and information statements will provide shareholders with the pay-versus-performance disclosure (along with all other executive compensation disclosures called for by Item 402 of Regulation S–K) in circumstances in which shareholder action is to be taken with regard to an election of directors or executive compensation. We are not requiring the pay-versus-performance disclosure in other filings where disclosure under Item 402 of Regulation S–K is required, as we believe that, taken in context, the language of Section 14(i) calling for registrants to provide the disclosure ''in any proxy or consent solicitation material for an annual meeting of the shareholders'' suggests that the information was intended to be presented in conjunction with a shareholder vote.

2. Format and Location of Disclosure

i. Proposed Amendments

Section 14(i) requires us to adopt rules requiring disclosure of ''information'' that shows the relationship between executive compensation actually paid and registrant financial performance, but it does not specify the format or location of that disclosure. We proposed allowing registrants to decide where in the proxy or information statement to provide the required disclosure. Although the new disclosure item would show the historical relationship between executive pay and registrant financial performance, and may provide a useful point of comparison for the analysis provided in the CD&A, the Proposing Release indicated that it would be appropriate to provide flexibility for registrants in determining where in the proxy or information statement to provide the disclosure.

We proposed requiring registrants to provide a standardized table containing the values of:

- The total PEO compensation reported in the Summary Compensation Table;
- The value of executive compensation actually paid to the PEO;
- For NEOs (other than the PEO), the average total compensation reported in the Summary Compensation Table;
- The value of the average executive compensation actually paid to the NEOs (other than the PEO);
- The value of a fixed investment scaled by cumulative TSR, for the registrant; and
- The value of a fixed investment scaled by cumulative TSR for the selected peer group.

For the amounts disclosed as executive compensation actually paid, we proposed requiring footnote disclosure of the amounts that were deducted from, and added to, the Summary Compensation Table total compensation amounts to calculate the executive compensation actually paid,[32] and footnote disclosure of vesting date valuation assumptions.

Because the statute specifically references disclosure of the relationship between executive compensation actually paid and registrant's financial performance, we proposed requiring registrants, using the values presented in the table, to describe (1) the relationship between the executive compensation actually paid and registrant TSR, and (2) the relationship between registrant TSR and peer group TSR. The disclosure about the relationship would follow the table and could be described as a narrative, graphically, or a combination of the two.

In the Reopening Release, we requested comment on requiring the tabular disclosure to include disclosure of income or loss before income tax expense,[33] net income, and a Company-Selected Measure. We also requested comment on requiring registrants to provide a clear description of the relationship of each of these additional measures to executive compensation actually paid, but, consistent with the relationship descriptions proposed with respect to TSR and peer group TSR, allowing the registrant to choose the format used to present the relationship, such as a graphical or narrative description (or a combination of the two).

We also proposed that the disclosure be provided in interactive data format using machine-readable eXtensible Business Reporting Language (''XBRL''). Specifically, the proposal would require registrants to tag separately the values disclosed in the required table, and to separately block-text tag the required relationship disclosure and the footnote disclosures.[34] In the Reopening Release, we requested comment on whether we should require registrants also to tag specific data points (such as quantitative amounts) within the footnote disclosures that would be block-text tagged, and to use Inline XBRL rather than XBRL to tag their pay-versus-performance disclosure.[35]

ii. Comments

Commenters were divided over whether we should require registrants to include the pay-versus-performance disclosure in the CD&A,[36] or allow registrants to decide where in the proxy or information statement to provide the required disclosure, as proposed.[37]

[29] *See* letter from Hermes Investment Management, dated July 7, 2015 (''Hermes'').

[30] Letter from Regis Quirin, dated June 24, 2015 (''Quirin'').

[31] *See* letters from FHL Banks and OPERS.

[32] *See infra* Section II.C (discussing the adjustments proposed to be made to the Summary Compensation Table total compensation to calculate executive compensation actually paid).

[33] In the Reopening Release we used the term ''pre-tax net income,'' but are using the phrase ''income or loss before income tax expense'' in this release, to be consistent with the language in 17 CFR part 210 (''Regulation S–X'').

[34] Specifically, the proposed approach would require registrants to provide the interactive data as an exhibit to the definitive proxy or information statement filed with the Commission, in addition to appearing with and in the same format as the rest of the disclosure provided pursuant to proposed Item 402(v) of Regulation S–K; and to prepare their interactive data using the list of tags the Commission specifies and submit them with any supporting files the EDGAR Filer Manual prescribes.

[35] Subsequent to the proposal, the Commission adopted rules replacing XBRL tagging requirements for registrant financial statements with Inline XBRL tagging requirements. Inline XBRL embeds the machine-readable tags in the human-readable document itself, rather than in a separate exhibit. *See Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)]. In 2020, the Commission adopted rules requiring BDCs to tag their financial statements and certain prospectus disclosures in Inline XBRL. *See Securities Offering Reform for Closed-End Investment Companies,* Release No. IC–33836 (Apr. 8, 2020) [85 FR 33290 (June 1, 2020)]. The following year, the Commission required operating companies, BDCs, and non-interval registered closed-end funds to tag their filing fee exhibits on certain forms in Inline XBRL. *See Filing Fee Disclosure and Payment Methods Modernization,* Release No. 33–10997 (Oct. 13, 2021) [86 FR 70166 (Dec. 9, 2021)].

[36] *See* letters from California Public Employees Retirement System Investment Office, dated July 6, 2015 (''CalPERS 2015''); CFA Institute, dated July 6, 2015 (''CFA''); Farient Advisors LLC, dated July 6, 2015 (''Farient''); and Teachers Insurance Annuity Association of America, dated July 6, 2015 (''TIAA'').

[37] *See* letters from Compensation Advisory Partners, dated July 2, 2015 (''CAP''); Celanese

Commenters in favor of allowing registrants to decide where to provide the disclosure argued that including the disclosure in the CD&A could cause confusion, as registrants do not necessarily consider the information included in the pay-versus-performance disclosure when making decisions about executive compensation. Those in favor of locating the disclosure in the CD&A stated that locating the disclosure alongside other executive compensation disclosure would make the disclosure easier to locate for investors and provide investors the ability to more easily assess the pay-versus-performance disclosure.

Commenters were also divided on the proposal to require the disclosure in a tabular format. Some commenters generally supported the proposed tabular disclosure,[38] while others opposed the tabular format, suggesting it was overly simplistic and would require significant supplemental disclosures.[39]

We received significant comment on the specific performance measures to be included in the table, as discussed in Section II.E below. With respect to the other information proposed to be provided in the tabular format, one commenter suggested dividing the table to separate the TSR disclosure from the compensation actually paid disclosure.[40] In addition, some commenters opposed requiring disclosure of the total compensation from the Summary Compensation Table,[41] with one stating that ''including the SCT data would result in redundancy, would add a second figure which is not representative of compensation actually paid, and could result in possible confusion to shareholders.'' [42] However, other commenters supported the inclusion of the Summary Compensation Table total compensation figures,[43] with one suggesting that including the Summary Compensation Table figures would help investors understand the pay-versus-performance disclosure alongside the Summary Compensation Table disclosure when evaluating a registrant's annual compensation decisions,[44] and another noting that the Summary Compensation Table figures ''will help to clarify potential differences between reported compensation and compensation actually paid.'' [45]

A number of commenters suggested that we require or allow graphical disclosures. Some commenters suggested requiring graphical disclosure,[46] while one specifically supported giving registrants the flexibility to choose whether to include graphical disclosure.[47] A few of these commenters suggested requiring inclusion of the performance graph required in Item 201(e) of Regulation S–K, or a modified version of that graph.[48] In addition, a few commenters suggested the Commission mandate formatting requirements for graphical disclosure, if graphical disclosure is permitted.[49] One commenter suggested that we replace the tabular disclosure requirement with a graphical disclosure requirement depicting TSR and compensation actually paid,[50] while another commenter stated that a prescribed graphical format would facilitate comparability.[51]

One commenter generally supported the requirement to provide a clear description of the relationship between the measures disclosed in the table and executive compensation, stating that a ''simple-to-understand approach would be particularly valuable to investors.'' [52] Another commenter, who supported requiring disclosure only of one (or more) Company-Selected Measure(s), indicated that registrants should be required to provide a clear description of the relationship between the Company-Selected Measure(s) in the table and executive compensation.[53]

Commenters were divided on the proposed XBRL tagging requirement. Of the commenters who opposed the requirement,[54] some made alternative suggestions such as only requiring block-tagging,[55] only requiring tagging of the information in the table,[56] delaying the implementation of the tagging requirement,[57] or permitting but not requiring tagging.[58] One commenter stated the Commission should proceed ''cautiously'' to ensure that the cost of tagging does not outweigh the benefits,[59] while another suggested the Commission should provide data on how many investors use XBRL disclosures before implementing the requirement.[60] However, a number of commenters supported the XBRL

Corp., dated June 12, 2015 (''Celanese''); Frederic W. Cook & Co., dated June 24, 2015 (''Cook''); Steven Hall ad Partners, dated July 6, 2015 (''Hall''); and Pearl, Myers and Partners, dated July 6, 2015 (''Pearl''). *See also* letter from Axcelis Technologies, Inc., dated Jan. 31, 2022 (suggesting that pay and performance data for all companies should be made available on a new Commission website, rather than in individual registrant disclosures).

[38] *See* letters from AllianceBernstein L.P., dated Mar. 4, 2022 (''AB''); As You Sow, dated July 2, 2015 (''As You Sow 2015''); CAP; Farient; Hermes; and OPERS.

[39] *See* letters from Aspen Institute's Business and Society Program, dated July 6, 2015 (''Aspen''); Celanese; Center on Executive Compensation, dated July 6, 2015 (''CEC 2015''); Corporate Governance Coalition for Investor Value, dated July 23, 2015 (''Coalition''); Honeywell International Inc., dated July 2, 2015 (''Honeywell''); International Bancshares Corp., dated June 29, 2015 (''IBC 2015''); McGuireWoods LLP and Brownstein Hyatt Farber Schreck, LLP, dated Mar. 4, 2022 (''McGuireWoods''); and National Association of Manufacturers, dated July 6, 2015 (''NAM 2015'').

[40] *See* letter from AON Hewitt, dated July 6, 2015 (''AON'').

[41] *See* letters from CEC 2015; Exxon Mobil Corp., dated June 23, 2015 (''Exxon''); Hall; McGuireWoods; Pay Governance LLC, dated June 30, 2015 (''PG 2015''); Pearl; Technical Compensation Advisors, dated July 6, 2015 (''TCA 2015''); and Technical Compensation Advisors, dated. Mar. 4, 2022 (''TCA 2022'').

[42] Letter from PG 2015.

[43] *See* letters from American Federation of Labor and Congress of Industrial Organizations, dated June 30, 2015 (''AFL–CIO 2015''); CalPERS 2015; and CAP.

[44] *See* letter from AFL–CIO 2015.

[45] Letter from CAP.

[46] *See* letters from AFL–CIO 2015 (stating that a graph would be especially useful if it disclosed (1) the change between executive compensation actually paid and the Summary Compensation Table figure and (2) the TSRs of both the registrant and a peer group over all five disclosure years); CalPERS 2015 (suggesting line graphs be required in addition to tabular and narrative disclosures); Council of Institutional Investors, dated June 25, 2015 (''CII 2015'') (suggesting the Commission require registrants to disclose, at a minimum, ''a graph providing executive compensation actually paid and change in TSR on parallel axes and plotting compensation and TSR over the required time period''); Corning Inc., dated June 12, 2015 (''Corning'') (suggesting requiring the graph included in Item 201(e) of Regulation S–K); OPERS (suggesting requiring a line graph, showing TSR coupled with a corresponding line showing the executive compensation as a group); and Shareholder Value Advisors, dated July 6, 2015 (''SVA'') (suggesting requiring the inclusion of a scatterplot).

[47] *See* letter from Hall.

[48] *See* letters from Allison Transmission Holdings, Inc., dated July 6, 2015 (''Allison''); and Corning. *But see* letters from CAP; Center for Capital Markets Competitiveness, dated June 30, 2015 (''CCMC 2015''); Davis Polk and Wardwell LLP, dated July 2, 2015 (''Davis Polk 2015''); and McGuireWoods (each opposing the inclusion of the performance graph).

[49] *See* letters from Hermes and PG 2015. *But see* letter from Hall (recommending allowing registrants to choose their own graphical disclosure).

[50] *See* letter from Meridian Compensation Partners, dated July 6, 2015 (''Meridian'').

[51] *See* letter from OPERS.

[52] *See* letter from Principles for Responsible Investment, dated Mar. 4, 2022 (''PRI'').

[53] *See* letter from National Association of Manufacturers, dated Mar. 4, 2022 (''NAM 2022'').

[54] *See* letters from CCMC 2015; CEC 2015; Celanese; Davis Polk 2015; Jon Faulkner, dated May 4, 2015 (''Faulkner''); FedEx Corp., dated July 6, 2015 (''FedEx 2015''); Hyster-Yale Materials Handling Inc., dated June 10, 2015 (''Hyster-Yale''); IBC 2015; McGuireWoods; NACCO Industries, Inc., dated June 9, 2015 (''NACCO''); Pearl; Society for Corporate Governance, dated Mar. 10, 2022 (''SCG''); and Society of Corporate Secretaries and Governance Professionals, dated July 7, 2015 (''SCSGP'').

[55] *See* letter from Pearl.

[56] *See* letters from Hyster-Yale and NACCO.

[57] *See* letters from Mercer, dated July 6, 2015 (''Mercer'') and NACCO.

[58] *See* letter from CII 2015.

[59] *See* letter from National Investor Relations Institute, dated July 10, 2015 (''NIRI 2015'').

[60] *See* letter from CCMC 2015.

requirement,[61] with one suggesting that tagging should be required for the actual metrics registrants use to determine executive compensation.[62]

In response to the Reopening Release request for comment regarding Inline XBRL, a number of commenters suggested requiring all registrants to use Inline XBRL to tag their pay-versus-performance disclosure, including the tagging of specific data points within the footnote disclosures that would be block-text tagged.[63] One commenter directly opposed requiring the use of the Inline XBRL (as considered in the Reopening Release),[64] while another commenter, who generally opposed an XBRL tagging requirement, stated that, if XBRL tagging is required, Inline XBRL tagging should be permitted.[65] One commenter suggested the Commission give time for registrants to implement any XBRL requirements, due to the ''stylized'' nature of proxy statements, and that there may be a learning curve because registrant staff preparing the proxy statement may be different from the staff preparing documents that are subject to current tagging requirements.[66]

iii. Final Amendments

The final rules provide registrants flexibility in determining where in the proxy or information statement to provide the disclosure required, as proposed. We believe, as noted in the Proposing Release and by some commenters, that mandating registrants to include the disclosure in the CD&A may cause confusion by suggesting that the registrant considered the pay-versus-performance relationship in its compensation decisions, which may or may not be the case.

We are adopting the tabular disclosure format, as proposed, with the addition of two new financial performance measures—net income and the Company-Selected Measure—as considered in the Reopening Release. Each of these financial performance measures is discussed in more detail below.[67] We are not persuaded by commenters who characterized the tabular disclosure requirement as overly simplistic. The simplicity of the tabular disclosure should allow investors to more easily understand and analyze the relationship between pay and performance. In addition, registrants can supplement the tabular disclosure, so long as any additional disclosure is clearly identified as supplemental, not misleading, and not presented with greater prominence than the required disclosure. We also believe the simplicity of the tabular disclosure matches the requirement in Section 14(i) that registrants provide a ''clear description'' of their pay-versus-performance, and, consistent with Section 14(i), will better allow investors to compare disclosures within companies over time and across companies, making the disclosure more useful.

We are adopting the requirement to include the Summary Compensation Table total compensation amounts for the PEO and the average (*i.e.,* mean) of the remaining NEOs, as proposed. Those amounts will appear in columns (c) and (e) of the Pay Versus Performance table, respectively. We believe including these figures as proposed will provide useful information to investors, especially as the ''actually paid'' figures are directly related to those figures. Requiring disclosure of the Summary Compensation Table measure of total compensation together with executive compensation actually paid will provide shareholders with disclosure of two measures in one single table and, we believe, will facilitate comparisons of the two measures of a registrant's executive compensation to the registrant's performance.[68] For example, to the extent that some shareholders may be interested in considering the relationship of performance with a measure of pay that excludes changes in the value of equity awards, they would be able to refer to the Summary Compensation Table measure of total compensation alongside executive compensation actually paid in the tabular disclosure. As proposed, the final rules will require registrants to provide footnote disclosure of the amounts that are deducted from, and added to, the Summary Compensation Table total compensation amounts reported in columns (c) and (e) to calculate the executive compensation actually paid amounts reported in columns (d) and (f), respectively. We believe any confusion created by the inclusion of the Summary Compensation Table totals in the table will be mitigated by this required footnote disclosure.

As proposed, registrants must also provide a narrative, graphical, or combined narrative and graphical description of the relationships between executive compensation actually paid and the registrant's TSR, and between the registrant's TSR and peer group TSR. We believe the disclosure of the relationship between executive compensation actually paid and TSR will satisfy the language of Section 14(i) that registrants disclose the ''relationship'' between executive compensation and registrant performance. Further, as noted in the Proposing Release, we believe disclosure about the relationship between registrant TSR and peer group TSR may provide a useful point of comparison to assess the relationship between the registrant's executive compensation actually paid and its financial performance compared to the performance of its peers during the same time period.[69]

In light of the addition of two new performance measures to the table, we are also adopting a requirement that registrants provide a clear description of the relationships between executive compensation actually paid and net income, and between executive compensation actually paid and the Company-Selected Measure. These descriptions may also be provided in narrative, graphical, or combined narrative and graphical format. Since some of these measures and

[61] *See* letters from AFL–CIO 2015; CalPERS 2015; Public Citizen, dated July 6, 2015 (''Public Citizen 2015''); and State Board of Administration of Florida, dated July 6, 2015 (''SBA–FL''). *See also* CII 2015 (agreeing with the Commission's rationale for requiring tagging, and not opposing the Commission requiring XBRL tagging, but suggesting that ''permitting, rather than requiring, registrants to tag data when registrant-specific extensions are necessary may be more appropriate'').

[62] *See* letter from AFL–CIO 2015.

[63] *See* letters from Council of Institutional Investors, dated Feb. 24, 2022 (''CII 2022''); Steven Huddart, dated Mar. 4, 2022 (''Huddart''); International Corporate Governance Network, dated Mar. 4, 2022 (''ICGN''); and XBRL US, dated Mar. 4, 2022 (''XBRL US'').

[64] *See* letter from Davis Polk and Wardwell LLP, dated Mar. 4, 2022 (''Davis Polk 2022'') (noting that, while the use of Inline XBRL ''could increase the ability of investors to compare across filers, . . . the initial compliance costs, the quality and the extent of use of XBRL data by investors would not justify the cost of creating XBRL data in company filings,'' and therefore specifically recommending not requiring the use of Inline XBRL).

[65] *See* letter from McGuireWoods.

[66] *See* letter from XBRL US.

[67] *See infra* Sections II.D.1 (discussing TSR and peer group TSR); II.D.2 (discussing net income); and II.D.4 (discussing the Company-Selected Measure).

[68] For example, placing the Summary Compensation Table and actually paid figures side-by-side may make it easier for investors to follow the footnote disclosures in which the registrant explains how compensation actually paid differs from the Summary Compensation Table amounts.

[69] Peer comparisons are a component companies often use to assess the performance of their executives. *See, e.g.,* John Bizjak, Swaminathan Kalpathy, Zhichuan Frank Li, & Brian Young, *The Choice of Peers for Relative Performance Evaluation in Executive Compensation,* 26 Rev. Fin. __ (forthcoming 2022), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2833309* (finding that, in a sample of the largest 750 U.S. companies (by market capitalization), ''over 50%'' of companies in 2017 used performance awards based on performance relative to a peer group, ''comprising approximately one-third of the value of total compensation'').

relationships may be more important to some companies or investors than others, we believe including disclosure about each of these relationships will provide investors with a more complete picture of how pay relates to performance.

We believe permitting, but not mandating, graphical disclosure is consistent with an acknowledgement in the Senate Report that there could be many ways to disclose the relationship between executive compensation and financial performance of the registrant,[70] and the specific language of Section 14(i), which provides the pay-versus-performance disclosures ''may'' include graphic representations. We encourage registrants to present this disclosure in the format that most clearly provides information to investors about the relationships, based on the nature of each measure and how it is associated with executive compensation actually paid. As discussed in the Proposing Release, the required relationship disclosure could include, for example, a graph providing executive compensation actually paid and change in the financial performance measure(s) (TSR, net income, or Company-Selected Measure) on parallel axes and plotting compensation and such measure(s) over the required time period. Alternatively, the required relationship disclosure could include narrative or tabular disclosure showing the percentage change over each year of the required time period in both executive compensation actually paid and the financial performance measure(s) together with a brief discussion of how those changes are related. The required table, along with the required relationship disclosures, should provide investors with clear information from which to determine the relationship between executive compensation actually paid and some basic facets of registrant financial performance. In addition, although the presentation format used by different registrants to demonstrate the relationship between executive compensation actually paid and the financial performance measures included in the table pursuant to Item 402(v) of Regulation S–K may vary, these more variable descriptions may allow investors to understand more easily the registrant's perspective on these required relationship disclosures.

The final rules require registrants to separately tag each value disclosed in the table, block-text tag the footnote and relationship disclosure, and tag specific data points (such as quantitative amounts) within the footnote disclosures, all in Inline XBRL. We recognize that, as noted by commenters,[71] the requirement that registrants use Inline XBRL will increase costs for registrants. However, we believe these costs will be incremental, as registrants are subject to Inline XBRL tagging requirements for other Commission disclosures.[72] In addition, we believe that requiring the data to be structured will lower the cost to investors of collecting this information, permit data to be analyzed more quickly, and facilitate comparisons among public companies, all of which justify the incremental cost to registrants. We also believe that the registrants who will be subject to the pay-versus-performance rule are familiar with Inline XBRL,[73] and for that reason do not believe additional data about the complexity of Inline XBRL, or a phase-in period for the application of the requirement (other than as proposed for SRCs, as discussed below[74]), are necessary. With respect to comments questioning the utility of a structured data language, we note that investors and market participants have gained experience with XBRL and Inline XBRL filings since the time of the Proposing Release, and that there is increased evidence that data in these formats is useful to investors.[75]

B. Executives Covered

1. Proposed Amendments

Under the approach included in the Proposing Release, registrants other than SRCs would have been required to provide disclosure about ''named executive officers,'' as defined in 17 CFR 229.402(a)(3);[76] and SRCs would have been required to provide disclosure about ''named executive officers,'' as defined in 17 CFR 229.402(m).[77] These are the executive officers for whom, under our current rules, compensation disclosure is required under Item 402 of Regulation S–K, including in the Summary Compensation Table and the other executive compensation disclosure requirements. Specifically, we proposed requiring registrants to separately disclose compensation information for the PEO, and as an average for the remaining NEOs. We also proposed that, if more than one person served as the PEO of the registrant in any year, the disclosure for those multiple PEOs would be aggregated for that year, because this reflects the total amount that was paid by the registrant for the services of a PEO.

2. Comments

A number of commenters supported requiring Item 402(v) of Regulation S–K to cover both PEOs and NEOs.[78] These commenters noted that requiring Item 402(v) of Regulation S–K to cover PEOs and NEOs would be consistent with the disclosure in the Summary Compensation Table,[79] and what Congress intended;[80] and would provide investors with useful information about the registrant's compensation practices more broadly.[81] However, a number of other commenters suggested we limit the disclosure to PEOs.[82] Such commenters

[70] *See supra* note 4 and accompanying text.

[71] *See, e.g.,* letter from Davis Polk 2022.

[72] *See supra* note 35 (noting that subsequent to issuing the Proposing Release, the Commission adopted rules replacing XBRL tagging requirements for registrant financial statements with Inline XBRL tagging requirements). *See also Inline XBRL Filing of Tagged Data,* Release No. 33–10514 (June 28, 2018) [83 FR 40846 (Aug. 16, 2018)].

[73] *See infra* Section V.C.4.ii.

[74] *See infra* Section II.G.iii.

[75] *See infra* Section V.C.4.ii.

[76] 17 CFR 229.402(a)(3) defines the NEOs for whom Item 402 of Regulation S–K executive compensation is required as (1) all individuals serving as the registrant's PEO during the last completed fiscal year, regardless of compensation level, (2) all individuals serving as the registrant's principal financial officer or acting in a similar capacity during the last completed fiscal year (''PFO''), regardless of compensation level, (3) the registrant's three most highly compensated executive officers other than the PEO and PFO who were serving as executive officers at the end of the last completed fiscal year, and (4) up to two additional individuals for whom Item 402 of Regulation S–K disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year. Because the pay-versus-performance disclosure was proposed as new paragraph (v) to Item 402 of Regulation S–K, the disclosure also would be required for the NEOs.

[77] For SRCs, 17 CFR 229.402(m)(2) defines the NEOs for whom Item 402 of Regulation S–K executive compensation is required as (1) all individuals serving as the smaller reporting company's PEO during the last completed fiscal year, regardless of compensation level, (2) the smaller reporting company's two most highly compensated executive officers other than the PEO who were serving as executive officers at the end of the last completed fiscal year, and (3) up to two additional individuals for whom Item 402 of Regulation S–K disclosure would have been provided but for the fact that the individual was not serving as an executive officer of the smaller reporting company at the end of the last completed fiscal year.

[78] *See* letters from CalPERS 2015; CII 2015; CFA; Hay Group, Inc., dated July 6, 2015 (''Hay''); David Hook, dated May 3, 2015 (''Hook''); OPERS; National Association of Corporate Directors, dated July 10, 2015 (''NACD 2015''); National Association of Corporate Directors, dated Mar. 10, 2022 (''NACD 2022''); and TIAA.

[79] *See* letters from CalPERS 2015; CFA; and Hay.

[80] *See* letter from CII 2015.

[81] *See* letter from CII 2015; CFA; OPERS; and TIAA.

[82] *See* letters from AON; BorgWarner Inc., dated Aug. 20, 2015 (''BorgWarner''); CAP; CEC 2015;

Continued

raised concerns about the inclusion of non-PEO NEOs, including that: NEO groups may vary considerably from year to year; [83] NEOs are more likely to have business-segment-based compensation, the performance of which might not be reflective of the registrant's overall performance; [84] and not all NEOs are in positions to affect overall company performance.[85] Commenters also stated that PEOs are under the most scrutiny from investors [86] and are the only executives comparable across companies; [87] and that requiring disclosure of non-PEO NEOs would create an increased reporting burden.[88] In addition, one commenter expressed belief that Section 14(i) did not require the pay-versus-performance disclosures to include non-PEO NEOs.[89]

Commenters were generally opposed to the proposal's approach of aggregating multiple PEOs for years when a registrant had more than one individual serve as PEO.[90] These commenters proposed a number of alternatives to aggregation, including: allowing separate disclosure for each PEO; [91] only requiring aggregation for external successors; [92] only disclosing the compensation of the PEO serving at the end of the year (either annualized [93] or not [94]); requiring disclosure of the outgoing PEO only; [95] only aggregating payments for services rendered as PEO; [96] requiring aggregated and disaggregated disclosures; [97] or excluding any disclosures in years where the registrant has multiple PEOs.[98] Additionally, a number of commenters opposed including signing and severance bonuses, either generally,[99] or if the compensation of multiple PEOs were to be aggregated,[100] while some other commenters more specifically stated that these bonuses were reasons not to aggregate PEO compensation.[101]

A few commenters also opposed using the average NEO compensation in the table,[102] while others supported average NEO compensation.[103] A number of other commenters did not expressly oppose the use of average NEO compensation, but stated that this type of disclosure would provide little investor insight,[104] could confuse investors,[105] or would limit comparability.[106] Two commenters suggested requiring separate disclosure for each NEO.[107]

3. Final Amendments

We are adopting requirements for registrants to disclose information pertaining to both NEOs and PEOs in their Item 402(v) of Regulation S–K disclosure, as proposed. As noted in the Proposing Release, Section 14(i) does not specify which executives must be included in the pay-versus-performance disclosure. While we are mindful of concerns raised by commenters that individual NEOs may be in positions less likely to affect overall company performance than the PEO, may have more varied performance measures driving their compensation (including because NEOs within a company have different roles), can vary from year to year, and are less comparable across registrants (with respect to compensation), we believe that Congress intended for the rules to provide disclosure about both PEOs and the remaining NEOs because Section 14(i) specifically refers to ''compensation required to be disclosed by the issuer under [Item 402 of Regulation S–K],'' and Item 402 requires disclosure of NEO compensation. Further, while we agree that investors are typically most interested in the compensation of the PEO, as indicated by commenters,[108] investors also are interested in how the incentives of NEOs relate to company performance, and our rationale of simplifying and reducing costs for investors who monitor executive performance therefore extends to NEOs.

We are also adopting, as proposed, the requirement that registrants provide separate disclosure of the PEO's compensation. We believe this is appropriate because, as noted by commenters, investors frequently have more interest in PEO compensation, PEOs are generally more comparable across companies, and PEOs are frequently in a position to impact performance more than any other NEO.

Similarly, we are adopting as proposed a requirement to include an average of compensation for the remaining NEOs. We disagree with commenters that suggested that average NEO compensation would provide little investor insight, could confuse investors, or would limit comparability. Rather, we believe disclosure of the relationship of performance to average NEO compensation will be more meaningful to shareholders than individual or aggregate NEO compensation. Because a registrant's individual NEOs may change from year to year, we believe that the disclosure of the average NEO compensation will make it easier for investors to compare the registrant's pay-versus-performance disclosure over time. Further, we believe disclosure of compensation for all NEOs (consisting of the PEO, and the remaining NEOs in the aggregate) aligns with our understanding of the intent of Congress that all NEOs be included in the pay-versus-performance disclosure. In addition, we are adopting a requirement that registrants identify in footnote disclosure the individual NEOs whose compensation amounts are included in the average for each year, so that investors can consider whether changes in the average compensation reported from year to year were due to compositional changes in the included NEOs. We believe this will alleviate concerns raised by commenters that the aggregation of NEOs could confuse investors.

Although some commenters opposed our proposal to require an average of NEO compensation and suggested that we instead require the disclosure of compensation for each of the NEOs as separate columns in the table, we believe that approach could result in a lengthy and potentially confusing table, due to the fact that in any year there are multiple NEOs and, as noted by several

CCMC 2015; Celanese; Coalition; Corning; Davis Polk 2015; Exxon; FedEx 2015; FSR; Hall; Hodak Value Investors, dated July 2, 2015 (''Hodak''); Honeywell; Hyster-Yale; McGuireWoods; Mercer; NACCO; NIRI 2015; National Investor Relations Institute, dated Mar. 4, 2022 (''NIRI 2022''); Pearl; PNC Financial Services Group, dated July 6, 2015 (''PNC''); TCA 2015; TCA 2022; and WorldatWork, July 6, 2015 (''WorldatWork'').

[83] *See* letters from CCMC 2015; CEC 2015; Exxon; FSR; Meridian; Pearl; and PNC.

[84] *See* letters from Celanese; FSR; and PNC.

[85] *See* letters from CCMC 2015 and Coalition.

[86] *See* letters from CCMC 2015; CEC 2015; Corning; Davis Polk 2015; FSR; NIRI 2015; NIRI 2022; Pearl; PNC; TCA 2015; and WorldatWork.

[87] *See* letter from TCA 2015.

[88] *See* letters from Davis Polk 2015 and WorldatWork.

[89] *See* letter from Coalition.

[90] *See* letters from AFL–CIO 2015; BorgWarner; Business Roundtable, dated July 6, 2015 (''BRT''); CCMC 2015; Coalition; Celanese; FedEx 2015; FSR; Hall; Honeywell; IBC 2015; McGuireWoods; Mercer; PG 2015; Pearl; TCA 2015; and TCA 2022.

[91] *See* letters from AFL–CIO 2015; BorgWarner; CCMC 2015; FedEx 2015; Honeywell; SCSGP; TCA 2015; and TIAA.

[92] *See* letters from Cook and Pearl.

[93] *See* letters from FSR and Mercer.

[94] *See* letters from Mercer.

[95] *See* letters from Hodak and PG 2015.

[96] *See* letters from AON and SCSGP.

[97] *See* letters from As You Sow 2015 and Hermes.

[98] *See* letter from McGuireWoods.

[99] *See* letters from FedEx 2015 and SCSGP.

[100] *See* letters from CCMC 2015; Celanese; and Davis Polk 2015.

[101] *See* letters from FSR and Honeywell.

[102] *See* letters from CEC 2015; Coalition; and Meridian.

[103] *See* letters from NACD 2015 and Pearl (generally opposing the disclosure of NEO compensation, but stating that it should be aggregated if required to be disclosed).

[104] *See* letter from Honeywell.

[105] *See* letter from IBC 2015.

[106] *See* letter from Meridian.

[107] *See* letters from Loring, Wolcott & Coolidge, dated Mar. 4, 2022 (''LWC'') and OPERS.

[108] *See supra* note 86 and accompanying text.

commenters,[109] there can be frequent turnover in a registrant's NEOs from year to year. In addition, we are not permitting registrants to remove signing bonuses, severance bonuses, and other one-time payments from the amount of executive compensation actually paid, because, although those figures may not represent the executive's compensation in a 'typical' year where no such payment is made, they do reflect amounts that are ''actually paid'' to the executives. Even if such payments are not ordinarily recurring with respect to a particular executive, shareholders voting on executive compensation or directors may wish to take into account the company resources devoted to such payments in light of the company's performance.

In a change from the proposal, in response to comments, the final rules do not require aggregating the compensation of PEOs in years when a registrant had multiple PEOs. Instead, the final rules require that, in those years, registrants include separate Summary Compensation Table total compensation and executive compensation actually paid columns for each PEO. For example, the below table shows the disclosure that would be required when there were two PEOs in ''Year 2'':

Year	Summary compensation table total for first PEO	Summary compensation table total for second PEO	Compensation actually paid to first PEO	Compensation actually paid to second PEO	Average summary compensation table total for non-PEO NEOs	Average compensation actually paid to non-PEO NEOs	Value of initial fixed $100 investment based on:		Net income	[Company-selected measure]
							Total shareholder return	Peer group total shareholder return		
	(a)	(b)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
Y1	N/A	$	N/A	$	$	$	$	$	$	$
Y2	$	$	$	$	$	$	$	$	$	$
Y3	$	N/A	$	N/A	$	$	$	$	$	$
Y4	$	N/A	$	N/A	$	$	$	$	$	$
Y5	$	N/A	$	N/A	$	$	$	$	$	$

We believe including separate disclosure for each PEO, as recommended by some commenters,[110] would address commenters' concerns that aggregating PEO disclosure could lead to confusing or misleading disclosure.[111] In the case of multiple PEOs in a single year, this approach would make the table itself slightly longer, but it would have the added benefit of distinguishing the compensation paid to separate PEOs both visually and in the structured data, instead of presenting a potentially confusing aggregated figure in the table and only having discussion of the separate PEOs in footnote and narrative disclosure.

C. Determination of Executive Compensation Actually Paid

We proposed that ''executive compensation actually paid'' under Item 402(v) of Regulation S–K would be total compensation as reported in the Summary Compensation Table, modified to adjust the amounts included for pension benefits and equity awards. In both the Proposing and Reopening Releases, we requested comment on the proposed approaches to calculating these amounts, and whether the proposed definition appropriately captures the concept of ''executive compensation actually paid,'' and in the Proposing Release we offered an economic analysis of an alternative approach to calculating equity awards. We received significant comment, as discussed below, on the proposed approaches to calculating the amounts of pension benefits and equity awards to be included as ''actually paid.'' In addition, several commenters to the Proposing Release noted that the definition of compensation actually paid as proposed may result in some misalignment between the time period to which pay is attributed and the time period in which the associated performance is reported.[112] After considering the statutory language and the comments received, we are adopting final rules for calculating the amounts reported for pension benefits and equity awards that are modifications of our proposed approach, including, as discussed further below, requiring equity awards to be revalued more frequently than as proposed. We believe that these approaches will more accurately reflect executive compensation actually paid, as required by Section 14(i), and mitigate commenter concerns about timing mismatches by more closely associating compensation with the period of the corresponding performance.

Although Section 14(i) refers to compensation required to be disclosed under Item 402 of Regulation S–K, it also uses the phrase ''actually paid,'' which differs from disclosure required under Item 402 of ''compensation awarded to, earned by or paid to'' the NEOs. Because Congress was aware of the language of Item 402 at the time of the Dodd-Frank Act, and adopted text that did not mirror the language of that provision, we believe that Congress intended executive compensation ''actually paid'' to be an amount distinct from the total compensation as reported under Item 402 because it used a term not otherwise referenced in Item 402. As such, we believe using as a starting point the total compensation that registrants already are required to report in the Summary Compensation Table and making adjustments to some of those figures is appropriate to give effect to the statutory language and reflect executive compensation that is ''actually paid.'' [113] Commenters generally agreed that adjustments to the Summary Compensation Table total

[109] *See supra* note 83.

[110] *See supra* note 91.

[111] We note that a registrant may elect to provide additional information about its PEO or PEOs, such as the amount of time during the year each individual served as PEO, if the registrant believes that information would provide relevant context to investors.

[112] *See, e.g.,* letters from Allison; Celanese; CEC 2015; Cook; Coalition; Farient; Faulkner; FSR; Honeywell; NACCO; NACD 2015; NAM 2015; Pearl; Ross Stores, Inc. dated June 26, 2015 (''Ross''); SVA; SBA–FL; TIAA; TCA 2015; and WorldatWork.

[113] A few commenters on the proposed rules sought clarity on the disclosure required in circumstances where a registrant recovers (or ''claws back'') any portion of an executive officer's compensation. *See* letters from Hyster-Yale; IBC 2015; and NACCO. *See also* letters from BRT and NACD 2015 (noting that the proposed rules did not account for claw-backs). Consistent with the approach currently taken by registrants when reporting claw-backs in the Summary Compensation Table, when any portion of an executive officer's compensation for a fiscal year that is included in the table is clawed back, the amounts of executive compensation disclosed in response to Item 402(v) as the Summary Compensation Table Total and as the Compensation Actually Paid initially reported for such year should be adjusted to reflect the effects of the claw-back, with footnote disclosure of the amount(s) recovered, when applicable.

were appropriate to determine ''executive compensation actually paid,'' [114] noting that there are some items reportable in the Summary Compensation Table total that are not reflective of compensation ''actually paid''; [115] or more generally suggesting that the Summary Compensation Table total is not reflective of ''executive compensation actually paid.'' [116]

1. Deduction of Change in Actuarial Present Value and Addition of Actuarially Determined Service Cost and Prior Service Cost

i. Proposed Amendments

We proposed requiring registrants to deduct the change in actuarial present value of all defined benefit and actuarial pension plans [117] from the Summary Compensation Table total compensation figure, and to add back the actuarially determined service cost for services rendered by the executive during the applicable year,[118] when calculating executive compensation actually paid. We proposed removing the change in actuarial present value of these plans in order to avoid potential volatility associated with revaluing previously accumulated benefits with changes in actuarial inputs and assumptions. However, as discussed in the Proposing Release, we believed that including the service cost from the applicable year was appropriate because it more closely reflected compensation ''actually paid'' during that year, in that it could be seen as an estimate of the value that would be set aside by the registrant to fund the benefits payable in retirement for the service provided during the applicable year. We also stated that we believed that using the actuarially determined service cost, instead of the Summary Compensation Table pension measure, may increase comparability across registrants of the amounts ''actually paid'' under both defined benefit and defined contribution plans. For defined contribution plans, the Summary Compensation Table requires disclosure of registrant contributions or other allocations to vested and unvested defined contribution plans for the applicable fiscal year,[119] which will also be included in computing compensation actually paid for purposes of the new disclosure.

In the Reopening Release, we stated that some commenters had noticed challenges with using the pension service cost approach to determining the value of pension benefits ''actually paid,'' and requested comment on whether there is an alternative measure of the change in pension value attributable to the applicable fiscal year that is better representative of the amount of pension benefits ''actually paid.''

ii. Comments

Some commenters generally supported limiting the pension benefits included in executive compensation actually paid to service cost.[120] In addition, some commenters supported the proposed deduction of the change in actuarial present value of defined benefit and pension plans not attributable to the applicable year of service,[121] or generally supported the Commission's choice to exclude the value associated with actuarial assumptions.[122]

There were also a number of commenters who opposed the inclusion of pension service cost in executive compensation actually paid,[123] noting it may remain subject to vesting conditions and may not ever actually be paid; [124] has assumptions built in that would prevent comparability across registrants or distort the figure; [125] is not presently calculated on a per participant basis, so would add cost; [126] or generally that it does not equal compensation ''actually paid.'' [127] However, a number of commenters who opposed the inclusion of service cost noted their view that it would be a better representation of compensation ''actually paid'' than the current Summary Compensation Table figure.[128] A few commenters suggested excluding changes in pension values entirely,[129] while some others suggested that the registrant should have the option to exclude service cost, if the executive is not vested in the pension benefits.[130]

A number of commenters suggested other ways to include pension amounts in executive compensation actually paid. Some commenters recommended an approach requiring registrants to calculate the change in pension value to equal the actuarial present value of the benefit earned during the year,[131] noting that it tracks the actual pattern of benefit increases resulting from pay increases and plan amendments,[132] and links directly to the existing approach and assumptions used for the Summary Compensation Table.[133] Another suggested multiplying the value of the pension increase during the year, net of any inflationary increase and contribution by the employee, by twenty.[134]

Some commenters requested clarification regarding the calculation of the service cost amount. Two commenters suggested alternatives to the application of FASB ASC Topic

[114] *See, e.g.,* letters from AON; CAP; CEC 2015; Exxon; FedEx 2015; FSR; Hall; Honeywell; Hyster-Yale; KPMG LLP, dated July 1, 2015 (''KPMG''); Meridian; NACCO; NACD 2015; PG 2015; Public Citizen 2015; SCSGP; SVA; TCA 2015; TCA 2022; TIAA; Towers Watson, dated July 6, 2015 (''Towers''); and WorldatWork. *But see* letter from IBC 2015 (stating that ''the Summary Compensation Table already required by Regulation S–K is sufficient'').

[115] *See* letters from AON; CAP; CEC 2015; FedEx 2015; Hall; Honeywell; KPMG; Meridian; NACD 2015; Public Citizen 2015; SCSGP; SVA; TIAA; Towers; and WorldatWork.

[116] *See* letters from CEC 2015; Exxon; FSR (stating that ''Congress did not intend that compensation [actually paid] would be determined by reference to the Summary Compensation Table''); Hall; Hyster-Yale (suggesting an approach where companies are permitted to define ''actually paid'' independently, and then reconcile those amounts with the Summary Compensation Table totals); NACCO (same); PG 2015; SVA; TCA 2015; and TCA 2022.

[117] The change in actuarial present value, generally, reflects the difference between the actuarial present value of accumulated benefits at the end of the fiscal year and at the end of the prior fiscal year.

[118] Service cost is defined in FASB ASC Topic 715 as the actuarial present value of benefits attributed by the pension plan's benefit formula to services rendered by the employee during the period. The measurement of service cost reflects certain assumptions, including future compensation levels to the extent provided by the pension plan's benefit formula.

[119] 17 CFR 229.402(c)(2)(ix)(E).

[120] *See* letters from Chris Barnard, dated June 24, 2015 (''Barnard 2015''); Chris Barnard, dated Mar. 2, 2022 (''Barnard 2022''); CAP; Hall; Exxon; and WorldatWork.

[121] *See* letters from CAP; CEC 2015; Exxon; TIAA; and Towers.

[122] *See* letter from NACD 2015.

[123] *See* letters from AON; CCMC 2015; CEC 2015; Honeywell; IBC 2015; and NACCO.

[124] *See* letters from Honeywell and Towers.

[125] *See* letters CCMC 2015; IBC 2015; and Towers.

[126] *See* letters NACCO.

[127] *See* letters CEC 2015.

[128] *See* letters from AON; Honeywell; Pearl; and Towers.

[129] *See* letters from Coalition; Honeywell; and Pearl (advocating a realized pay approach that would exclude all pension associated values).

[130] *See* letters from AON (generally supporting the exclusion of all non-vested pension benefits); Hyster-Yale; and NACCO.

[131] *See* letters from Mercer and Towers; *see also* letter from AON (suggesting the same, if pensions must be included in compensation actually paid). Other commenters recommended approaches similar to this approach. *See* letters from Barnard 2022 (recommending that we include the change in the actuarial present value of pension benefits over the applicable fiscal year using the same economic assumptions as used in the calculation at the start of the applicable fiscal year); Exxon (recommending that we include the portion of the currently-reported change in pension values that is attributable to an additional year of service); and WorldatWork (same).

[132] *See* letter from Mercer.

[133] *See* letters from Mercer and Towers; *see also* letter from AON (suggesting the same, if pensions must be included in compensation actually paid).

[134] *See* letter from Hermes (specifically suggesting the Commission follow the United Kingdom's method of multiplying the value of the increase in annual pension benefit, net of any inflationary increase and contribution by the employee, by twenty).

715,[135] with one suggesting that the Commission instead clarify that the intended measurement is the change in pension values attributable to an additional year of service,[136] and the other suggesting the Commission use the accumulated benefit obligation service cost or the change in present value of accrued benefits, using the same assumptions at the beginning and end of each year.[137] Two commenters suggested the Commission eliminate the reference to the required use of future salary increases to estimate service cost, because it would require significant new data and reveal new information to investors,[138] with one also suggesting the Commission clarify that the intended measurement is the change in pension values attributable to an additional year of service.[139]

Three commenters responded to our request for comment in the Reopening Release asking if there is an alternative measure of the change in pension value attributable to the applicable fiscal year that is better representative of the amount of pension benefits ''actually paid.'' One suggested that the ''value of dollars set aside to provide a pension benefit to an executive'' be disclosed.[140] Another suggested that registrants should be required to disclose the ''change in (increase) the actuarial present value of pension benefits over the applicable fiscal year using the same economic assumptions as used in the calculation at the start of the applicable fiscal year.'' [141] The third stated that pension benefits should be fully excluded from the ''actually paid'' amount, but also stated that service cost was ''far more representative of the compensation received'' than the change in actual present value amount included in the Summary Compensation Table total.[142]

iii. Final Amendments

With respect to pension compensation, we are adopting final rules largely as proposed with a modification in response to commenters' suggestion to also include the value of plan amendments in the calculation of compensation actually paid. The final rules will require registrants to deduct from the Summary Compensation Table total the aggregate change in the actuarial present value of all defined benefit and actuarial pension plans,[143] and add back the aggregate of two components: (1) actuarially determined service cost for services rendered by the executive during the applicable year, as proposed (the ''service cost''); and (2) the entire cost of benefits granted in a plan amendment (or initiation) during the covered fiscal year that are attributed by the benefit formula to services rendered in periods prior to the plan amendment or initiation (the ''prior service cost''), in each case, calculated in accordance with U.S. Generally Accepted Accounting Principles (''U.S. GAAP'').[144]

As noted above, the change in actuarial present value, generally, reflects the difference between the actuarial present value of accumulated benefits at the end of the fiscal year and at the end of the prior fiscal year. The change in actuarial present value would be deducted only if the value is positive, and therefore included in the sum reported in column (h) of the Summary Compensation Table. Where such amount is negative (and therefore not reflected in the Summary Compensation Table and reported only in a footnote to column (h)), no amounts should be deducted for purposes of Item 402(v) of Regulation S–K.

The below table shows the changes from the proposed rules to the final rules with respect to pension compensation (specific changes are bolded and italicized):

	Proposed Rules	Final Rules
Deduct (from Summary Compensation Table total):.	The aggregate change in the actuarial present value of all defined benefit and actuarial pension plans.	The aggregate change in the actuarial present value of all defined benefit and actuarial pension plans.
Add back:	Service cost	*The aggregate of:* *(1)* Service cost*; and* *(2) Prior service cost.*

We believe that it is appropriate to include pension compensation in the calculation of compensation ''actually paid.'' The adopted approach in particular provides an appropriate measure for purposes of determining compensation ''actually paid'' during the applicable year because it reflects the benefits an executive may expect to receive based on additional service the executive provided during the year (or service cost), and it incorporates additional benefits attributable to changes in the pension contract between the executive and the company (or prior service cost). In many cases, this measure will approximate the value that would be set aside currently by the registrant to fund the pension benefits payable upon retirement for the service provided, and any plan amendments made, during the applicable year. In addition, the inclusion of pension compensation is consistent with other compensation disclosure requirements, such as Item 402(c) of Regulation S–K. These same rationales apply whether or not the pension amounts are vested. Consistent with the equity compensation adjustment, the pension adjustment will be included even when unvested until an officer leaves the company.

Another advantage to the approach we are adopting is that it is more closely associated with underlying information from the GAAP financial statements. In particular, the pension's service cost and prior service cost, while not required to be reported separately and for a subset of employees, is computed in the process of calculating the aggregate service cost and prior service cost at the plan level. As a result, a registrant would not be required to collect significant new data or prepare a new calculation of the actuarial present value of the benefit earned during the year, but would rather calculate service cost and prior service cost for a subset of employees for which the underlying information is already available and subject to internal control over financial reporting. The direct

[135] *See* letters from AON and Exxon.

[136] *See* letter from Exxon.

[137] *See* letter from AON (alternatively suggesting a third alternative of disclosing the present value, using year end assumptions, of the increase in accrued benefit during the year).

[138] *See* letters from Towers and WorldatWork.

[139] *See* letter from WorldatWork.

[140] Letter from ICGN.

[141] Letter from Barnard 2022.

[142] Letter from Aon Human Capital Solutions, dated Mar. 4, 2022 (''Aon HCS'').

[143] As discussed below, smaller reporting companies would not need to deduct this amount or add the service cost because the Summary Compensation Table requirements for smaller reporting companies do not require disclosure of the change in actuarial present value. *See infra* Section II.G.3.

[144] *See* FASB ASC Topic 715.

relationship of this information to the amounts recognized in the audited financial statements may also provide an additional level of comfort to investors as to its accuracy and reliability. In addition, because this approach excludes changes that derive only from differences in the actuarial assumptions used to estimate the value of benefits already earned in prior periods, it will provide for a more meaningful comparison across registrants of the amounts ''actually paid'' under both defined benefit and defined contribution plans. Further, as noted above, commenters were generally more supportive of a service cost approach rather than an approach that would include the amount required to be disclosed in the Summary Compensation Table.[145]

One weakness in the proposed approach, identified by commenters,[146] was that the service cost approach would not fully account for changes in the value of an executive's expected benefit arising from plan amendments or initiations. Our modified approach as adopted addresses this concern by requiring that the registrant include, as a component of this item of compensation actually paid, the entire cost of benefits granted in a plan amendment (or initiation) that are attributed by the benefit formula to services rendered in periods prior to the plan amendment or initiation. Such prior service cost information is part of the underlying information required to account for a defined-benefit plan under U.S. GAAP.[147]

For purposes of the final rules, ''prior service cost'' also refers to any credit arising from a reduction in benefits related to services rendered in prior periods as a result of a negative plan amendment. We acknowledge that including the prior service credit associated with such a negative plan amendment would result in a reduction of compensation actually paid. We believe that such an outcome would be consistent with the statutory objective of capturing compensation actually paid, because the reduction in the accrued benefit reflects a reduction in compensation in the same manner that an increase in the accrued benefit reflects an increase in compensation.

Although one commenter also noted that service cost would exclude the costs related to unexpected compensation changes,[148] we are not adopting a modification in this regard. Under U.S. GAAP,[149] the effects on the projected benefit obligation of unexpected compensation changes (*i.e.,* changes from the estimated future compensation levels used in measuring service cost) are recorded in actuarial gain or loss. In considering whether to add another component to the tabular pension measure related to actuarial gain or loss due to unexpected compensation changes, we determined that the benefits of isolating these items from other actuarial gains and losses did not merit the costs and complexities associated with calculating the additional adjustment. However, we note that information about compensation changes should still generally be discernible by investors, as such compensation amounts would be included as other components of the compensation disclosed in the Item 402(v) of Regulation S–K table.

We are not persuaded that the other alternative approaches recommended by commenters [150] would more accurately reflect compensation ''actually paid.'' Although some of the suggested alternatives could more fully account for changes in compensation levels by reflecting unexpected increases in pay as well as plan amendments,[151] we believe that the benefits discussed above with respect to the adopted approach, including its direct relationship to the values already calculated for the purpose of financial statement reporting, outweigh the potential benefits of the alternatives. Further, while we acknowledge there may be an additional cost to obtain the service cost and prior service cost information on a per participant basis, the other calculations suggested by commenters also would include additional costs since registrants are not currently performing those calculations in the manner suggested.[152] In the case of commenters who suggested that we omit all pension cost amounts, we disagree that their suggested approach would be a reasonable interpretation of compensation ''actually paid.'' Although the approach we are adopting may not always perfectly reflect all potential changes in pension value, the resulting measure is considerably more accurate than a measure that treats the value of promised pension awards as zero when they may ultimately cost the registrant millions of dollars.

We are also requiring that the calculation of ''service cost'' and ''prior service cost'' be consistent with the definitions provided under U.S. GAAP.[153] As discussed above,[154] we acknowledge that some commenters suggested alternatives to the U.S. GAAP definition; however, we believe that this definition is appropriate because it reflects the service cost amount included in the financial statements, and therefore is familiar to registrants. The final rules require the entire amount of prior service cost related to a plan amendment to be included in the pension measure rather than the amortized portion of prior service cost recognized as part of periodic pension cost under U.S. GAAP for the year.

2. Inclusion of Above-Market or Preferential Earnings on Deferred Compensation That Is Not Tax Qualified

i. Proposed Amendments

Consistent with Summary Compensation Table disclosure requirements, we proposed that the executive compensation actually paid would include above-market or preferential earnings on deferred compensation that is not tax qualified.[155]

ii. Comments

Two commenters generally agreed with the proposed rules on disclosure of deferred compensation that is not tax qualified.[156] Two other commenters recommended permitting registrants to exclude unvested amounts of deferred compensation that is not tax qualified.[157]

iii. Final Amendments

We are adopting, as proposed, the requirement that executive compensation actually paid include above-market or preferential earnings on deferred compensation that is not tax qualified. We believe, as discussed in the Proposing Release, that excluding those amounts until their eventual payout would make the amount ''actually paid'' contingent on an NEO's choice to withdraw or take a distribution from their account, rather than the registrant's compensatory decision to pay the above-market return, which we do not believe would be an

[145] *See supra* notes 120 and 128.

[146] *See* letters from AON and Mercer; see also letters from AON; Towers; and WorldatWork.

[147] *See* FASB ASC Topic 715.

[148] *See* letter from Mercer.

[149] *See* FASB ASC Topic 715.

[150] *See supra* notes 131–134 and accompanying text.

[151] *See infra* Section V.C.4.iii.

[152] *See* letters from AON; Barnard; Exxon; Hermes (suggesting multiplying the value of the pension increase during the year, net of any inflationary increase and contribution by the employee, by twenty); Mercer; Towers; and WorldatWork.

[153] *See* FASB ASC Topic 715.

[154] *See supra* notes 131–134 and accompanying text.

[155] These earnings are reported pursuant to 17 CFR 229.402(c)(2)(vii), or, for smaller reporting companies, 17 CFR 229.402(n)(2)(viii).

[156] *See* letters from NACCO and TIAA.

[157] *See* letters from Hyster-Yale and NACCO.

accurate representation of compensation ''actually paid.'' As with pension awards, these amounts may be viewed to approximate the value that would be set aside currently by the registrant to satisfy its obligations in the future. In addition, excluding those amounts would be inconsistent with the approach in the Summary Compensation Table, which requires disclosure of the underlying deferred amounts when earned.[158] We believe that, to the extent the Summary Compensation Table approach aligns with the statutory ''actually paid'' language and purpose of the disclosure, we should minimize adjustments to the Summary Compensation Table figures, in order to make disclosures easier to understand for investors and easier to produce for registrants.[159] To that end, we are also not permitting registrants to voluntarily exclude unvested amounts of deferred compensation that is not tax qualified, as we believe that could complicate investors' understanding of the disclosure, and would limit the comparability of the ''actually paid'' amounts across different registrants.[160]

3. Equity Awards

i. Proposed Amendments

We proposed that equity awards be considered ''actually paid'' on the date of vesting, and valued at fair value on that date, rather than fair value on the date of grant as required in the Summary Compensation Table. In proposing this approach, we noted that an executive does not have an unconditional right to an equity award before vesting, and therefore unvested options or other equity awards may not be ''actually paid'' prior to the vesting conditions being satisfied, which can be viewed as representing payment by the registrant. In addition, we noted that using the vesting date fair value would incorporate changes in the value of the equity awards from the grant date to the vesting date, with that change being one of the key ways that pay is linked to registrant performance.

With respect to the calculation of the vesting date fair value, we noted that the vesting date fair value of stock awards is already disclosed (by registrants other than SRCs) in the Option Exercises and Stock Vested Table,[161] and that the vesting date fair value of option awards can be calculated using existing models and methodologies. Specifically, the proposed approach would require (i) the amounts reported pursuant to 17 CFR 229.402(c)(2)(v) and (vi) to be deducted from Summary Compensation Table total, and (ii) the vesting date fair value of stock awards and options (with or without stock appreciation rights), each computed in accordance with the fair value guidance under U.S. GAAP,[162] to be added. As proposed, a registrant would be required to disclose vesting date valuation assumptions if they are materially different from those disclosed in its financial statements as of the grant date.

In response to comments received on the Proposing Release (discussed below), we included a request for comment in the Reopening Release, noting commenters' concerns that there was a potential misalignment between the time period to which pay is attributed and the time period in which the associated performance is reported, and asking if there were other approaches that would alleviate this misalignment, or if the inclusion of the additional measures considered in the Reopening Release would affect this misalignment.

ii. Comments

We received a number of comments on both the proposal to use fair value methodology to value equity awards in the calculation of executive compensation actually paid, and on the proposal to value such awards as of the vesting date.

Some commenters supported the proposed fair value methodology.[163] However, a number of commenters opposed the approach,[164] noting that the calculation of fair value is time consuming and expensive, particularly when many separate fair value calculations would be required, as in the case of awards that are on a pro-rata vesting schedule or with multiple tranches in a given year; [165] few companies have familiarity with valuing options that have been outstanding for several years; [166] the assumptions that are included in fair value calculations are company-specific and therefore would reduce comparability; [167] and that the fact that assumptions and projections are included in fair value calculations is inconsistent with the concept of ''actually paid.'' [168] As an alternative to fair value, a number of commenters suggested the Commission require options to be valued at their intrinsic value,[169] or permit registrants to choose between disclosure of fair value and intrinsic value (with the non-chosen value being provided in footnote disclosure).[170] These commenters argued that intrinsic value is easier and cheaper to calculate; [171] aligns with the value that the executives would receive upon immediate exercise; [172] and does not include the valuation assumptions that accompany the fair value methodology.[173] Some commenters suggested that if the final rules did not use intrinsic value, they should instead use fair value with certain safe harbors or simplified assumptions that would reduce the effort required to compute the valuation.[174]

Some commenters supported valuing equity at the vesting date,[175] stating that valuing equity at the vesting date will incorporate the grant date fair value and changes until vesting (which ''represent a direct channel, and one of the primary means, through which pay is linked to

[158] *See* Instruction 1 to 17 CFR 229.402(c) and Instruction 1 to 17 CFR 229.402(n) (each providing that ''[a]ny amounts deferred, whether pursuant to a plan established under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)), or otherwise, shall be included in the appropriate column for the fiscal year in which earned'').

[159] *See* letters from Hyster-Yale and NACCO (both stating that ''[t]he fewer adjustments that are made to the SCT earnings, the easier the new proxy table will be for investors to understand and for companies to produce.'').

[160] *See infra* Section II.C.3.iii (discussing the general approach taken in the final rules with respect to unvested amounts of compensation).

[161] *See* 17 CFR 229.402(g)(2)(v).

[162] *See* FASB ASC Topic 718.

[163] *See* letters from AFL–CIO 2015; CII 2015; The Predistribution Initiative and Responsible Asset Allocator Initiative, dated Mar. 4, 2022 (''PDI''); and TIAA.

[164] *See* letters from BRT; CEC 2015; Celanese; Cook; FSR; Honeywell; Meridian; and PG 2015.

[165] *See* letters from CAP; Cook; KPMG; and WorldatWork.

[166] *See* letter from CAP.

[167] *See* letter from IBC 2015.

[168] *See* letters from CEC 2015; Meridian; and SCSGP.

[169] *See* letters from CEC 2015 (supporting the use of intrinsic value if the Commission requires vesting date reporting); Celanese (supporting the use of intrinsic value if the Commission requires vesting date valuation); Coalition (supporting the use of intrinsic value if the commenter's preferred principles-based approach to the pay-versus-performance disclosure was not adopted); Corning; Hall; Honeywell (supporting the use of intrinsic value if the commenter's preferred principles-based approach to the pay-versus-performance disclosure was not adopted); Mercer; Meridian; Pearl (supporting the use of intrinsic value if the Commission does not adopt a realizable pay methodology) PG 2015; SCG; SCSGP; TCA 2015 (supporting the use of intrinsic value if the commenter's preferred principles-based approach to the pay-versus-performance disclosure was not adopted); and WorldatWork. Many of these commenters had slightly different concepts of how options should be valued, but they all generally supported using intrinsic value, or the difference between the exercise price and the market price.

[170] *See* letter from Hall.

[171] *See* letters from Corning and Davis Polk 2015.

[172] *See* letter from Corning.

[173] *See* letter from Davis Polk 2015.

[174] *See* letters from Mercer; TCA 2015 and TCA 2022. *See also* letter from Infinite Equity, dated Mar. 3, 2022 (''Infinite'') (suggesting that certain existing safe harbors should be acceptable for the new disclosures).

[175] *See* letters from AFL–CIO 2015; CII 2015; Honeywell; PDI; and TIAA.

registrant performance''), but will not include post-vesting changes (which ''generally reflect investment decisions made by the executive rather than compensation decisions made by the registrant''); [176] will avoid ''underestimating the actual compensation received by executives,'' which could occur if grant date reporting was required; [177] and ''better reflect[s] the value ultimately delivered to executives.'' [178] Some commenters specifically opposed exercise date valuation,[179] while others supported requiring the vesting date valuation of stock awards, but the exercise date valuation of options [180] or requiring the vesting date valuation of performance-based awards, but the grant date valuation of time-based awards.[181] Some commenters opposed vesting date valuation,[182] with one arguing that valuing options at vesting date would be misleading because executives do not generally include the option value in their income at the time of vesting.[183] As alternatives, commenters suggested: valuing awards at the end of a multi-year period, such as a three-year period; [184] valuing equity at grant date but reversing the value at the vesting date for awards that fail to vest; [185] revaluing outstanding equity awards annually; [186] or revaluing all equity granted during a period at the end of the most recent completed fiscal year.[187]

A number of commenters opposed the reporting of equity as of the vesting date.[188] Some of these commenters noted that vesting date reporting of equity would lead to a timing misalignment between actual performance and executive compensation actually paid, as the performance that ''earned'' the equity would have occurred between the grant date and the vesting date, but only the total amounts of equity would be reported on the vesting date.[189] However, two commenters, who acknowledged the misalignment, indicated that there was no other approach that would eliminate all misalignment.[190]

Several commenters requested clarifications about the proposed approach. A few commenters expressed that reporting equity on the vesting date creates uncertainty in application, and either sought clarification regarding the vesting date or the meaning of when ''all applicable vesting conditions were satisfied.'' [191] One commenter suggested that an award should be considered vested on the date the executive is able to monetize the award,[192] while another suggested that awards should only be considered ''actually paid'' when restrictions on equity lapse, even if already vested.[193] Two commenters also made suggestions that awards should be considered vested when the associated performance period is completed, even if the vesting of the award is still subject to board certification.[194]

Commenters suggested a number of alternatives to vesting date reporting of equity, including: grant date reporting; [195] exercise date reporting; [196] exercise date reporting of the equity's intrinsic value; [197] principles-based reporting (*i.e.,* allowing companies to make their own modifications to the reporting date); [198] reporting ''in the fiscal year for which the compensation was considered as paid''; [199] and annual reporting, starting in the grant year, of the year-end fair value of the award, with annual reporting of any change in the fair value until, and including, the year of vesting.[200] Two commenters also suggested the Commission adopt the ''2 ½ month rule,'' under which equity vesting in the first two and one half months of the calendar year would be attributed to the prior year.[201] One commenter stated that, because the proposed rules would move away from grant date fair value calculations for equity awards, it would be important that the disclosure include dividends paid on unvested equity or equivalents for a given year.[202]

A few commenters supported the proposed requirement that changes in the underlying assumptions for valuation that are materially different from those made in the financial statements as of the grant date must be disclosed, with one specifically supporting the proposed requirement,[203] one supporting requiring any changes from the assumptions in the current financial statements to be disclosed,[204] and two opposing the disclosure of changes in valuation assumptions.[205]

In response to a request for comment in the Reopening Release, one commenter indicated that the additional performance measures considered in the Reopening Release would not exacerbate the timing misalignment,[206] while another stated the additional measures would not improve the misalignment.[207]

iii. Final Amendments

After consideration of the comments received, we are modifying our approach to the treatment of equity awards in relation to the total compensation reported in the Summary Compensation Table. While the final amendments continue to use ''fair value'' as the measure of the amount of an equity award, which is consistent with accounting in the financial statements, we are adjusting the date on which the award is valued in response to comments, so that the first fair value disclosure is made in the year of grant, and changes in value of the award are reported from year to year until the award is vested.[208] We believe this approach will better align the timing of the disclosure and valuation with when

[176] *See* letter from CII 2015.

[177] *See* letter from PDI.

[178] *See* letter from TIAA.

[179] *See* letters from AFL–CIO 2015; CII 2015; and Honeywell.

[180] *See* letters from Coalition (specifically recommending that compensation be deemed ''actually paid'' when reported on Form W–2 for income tax purposes, which they state would include vested stock awards and amounts received in connection with exercised options); Hall; and Mercer.

[181] *See* letter from McGuireWoods.

[182] *See* letters from Celanese; CCMC 2015; Cook; and NACD 2015.

[183] *See* letter from Cook.

[184] *See* letter from Farient.

[185] *See* letter from SVA.

[186] *See* letters from Hodak; Farient; Infinite; TCA 2015; and TCA 2022.

[187] *See* letter from CAP; PG 2015; and PG 2022.

[188] *See* letters from CAP; Celanese; CCMC 2015; Cook; FSR; McGuireWoods; NACCO; NACD 2015; NAM 2022; Ross; SVA; and TIAA. *But see* Hermes (expressly supporting vesting date reporting of equity).

[189] *See* letters from CEC 2015; Celanese; CCMC 2015; Cook; Faulkner; FSR; Hyster-Yale; NACCO; PG 2015; Pearl; Ross; SBA–FL; SVA; TIAA; TCA 2015; and WorldatWork.

[190] *See* letters from Aon HCS and Teamsters.

[191] *See* letters from Cook; IBC 2015; Mercer; Pearl; and Towers.

[192] *See* letters from Davis Polk 2015 and Davis Polk 2022.

[193] *See* letter from CEC 2015.

[194] *See* letters from Mercer and Towers.

[195] *See* letters from CAP and NAM 2022.

[196] *See* letters from CEC 2015; Coalition; and FSR.

[197] Letter from Corning.

[198] *See* letter from Hall.

[199] *See* letter from TIAA.

[200] *See* letters from Infinite; TCA 2015; and TCA 2022. Other commenters made similar suggestions that vary slightly from this suggestion, including by using intrinsic rather than fair value for options, measuring pay over an aggregate time horizon rather than presenting data broken out by year, and revaluing vested as well as unvested equity holdings. *See* letters from CAP; Farient; Hodak; PG 2015; and Pay Governance, dated Mar. 3, 2022 (''PG 2022'').

[201] *See* letters from Hyster-Yale and NACCO.

[202] *See* letter from TIAA.

[203] *See* letter from CII 2015.

[204] *See* letter from Towers.

[205] *See* letters from Davis Polk 2015 and McGuireWoods.

[206] *See* letter from Aon HCS.

[207] *See* letter from McGuireWoods.

[208] This approach was discussed as an implementation alternative in the Proposing Release. *See* Proposing Release at Section IV.C.3.c. Two commenters specifically noted this implementation alternative and were supportive of its adoption. *See* letters from Infinite; TCA 2015; and TCA 2022.

the award is actually ''earned'' by the executive, resulting in disclosure that more clearly shows the relationship between executive compensation and the registrant's performance.

In particular, the proposed rules would have required the deduction of the equity award amounts reported in the Summary Compensation Table total and the addition of:

- The vesting date fair value of stock awards and options (with or without stock appreciation rights), each computed in accordance with the fair value guidance under U.S. GAAP.

The final rules also require the deduction of the equity award amounts reported in the Summary Compensation Table total; however, instead of the addition of the vesting date fair value of stock awards and options, the final rules require the addition (or subtraction, as applicable) of the following:

- The year-end fair value of any equity awards granted in the covered fiscal year that are outstanding and unvested as of the end of the covered fiscal year;
- The amount of change as of the end of the covered fiscal year (from the end of the prior fiscal year) in fair value of any awards granted in prior years that are outstanding and unvested as of the end of the covered fiscal year;
- For awards that are granted and vest in the same covered fiscal year, the fair value as of the vesting date; [209]
- For awards granted in prior years that vest in the covered fiscal year, the amount equal to the change as of the vesting date (from the end of the prior fiscal year) in fair value;
- For awards granted in prior years that are determined to fail to meet the applicable vesting conditions during the covered fiscal year, a deduction for the amount equal to the fair value at the end of the prior fiscal year; [210] and
- The dollar value of any dividends or other earnings paid on stock or option awards in the covered fiscal year prior to the vesting date that are not otherwise reflected in the fair value of such award or included in any other component of total compensation for the covered fiscal year.

We believe fair value is an appropriate measure for compensation ''actually paid.'' Although fair value calculations, like all accounting estimates, do involve some subjective assumptions, we do not agree with commenters that stated that the assumptions and projections included in fair value calculations render such amounts inconsistent with the concept of ''actually paid.'' [211] Fair value is an estimate of the amount by which an executive is compensated as a result of an award, and therefore represents a reasonable measure of that executive's ''actual pa[y].'' Specifically, the fair value of an option is a widely-used measure to estimate the total value of the asset, including both its value if exercised immediately (''intrinsic value'') and the additional value created by the holder's contractual right to exercise at some time in the future (''time value'' of the option). In our view it also represents a more accurate measure of actual pay than alternatives recommended by some commenters.

We are not adopting the approach suggested by some commenters that we use other measures such as intrinsic value. Intrinsic value would ignore the option value inherent in exercisable awards prior to exercise, including the option value inherent in an option award that is at-the-money or out-of-the-money (*i.e.,* the stock price is equal to or less than the strike price of the options), and therefore has zero intrinsic value. Intrinsic value (or any similar measure used to calculate compensation ''actually paid'') would also be a departure from the primary disclosures related to equity compensation, and the recognition and measurement of such compensation in the financial statements under U.S. GAAP, and we believe would not allow investors to as easily link and analyze ''compensation actually paid'' with the other information they are receiving about executive compensation. Further, in 2004, the accounting for stock-based compensation in U.S. GAAP was revised to require fair value accounting.[212] In the revised accounting standard, it was noted that other equity instruments and the consideration the issuing entity receives in exchange for them are recognized in the financial statements based on the fair value of the instrument at the date issued. The fact that the equity instruments would be issued for goods or services rendered or to be performed did not seem to be a reason to measure the cost of the goods or services performed on a different basis. The standard further noted that most advocates of intrinsic value favored its use only at a grant date measurement, and noted that there are weaknesses in its use even in that case, such as treating most fixed share options as though they were a ''free good.'' [213] However, even at the grant date, employee services received in exchange for share options are not free and there is value in the employee services performed and the related stock and stock options received.

Registrants and investors are already familiar with fair value calculations and the determination of the assumptions for such calculations through their use in existing Commission disclosure requirements as well as U.S. GAAP. For example, the Grants of Plan-Based Awards Table requires grant date fair value disclosure of each individual equity award granted during the last completed fiscal year.[214] U.S. GAAP requires information about grant date fair value for equity awards, including the weighted-average grant-date fair value of awards that were granted, vested and forfeited during the year and a description of the significant assumptions used during the year to determine the fair value of share-based compensation awards.[215]

We do not agree with the suggestion from commenters that we consider an option or other award requiring exercise to be ''actually paid'' only upon its exercise, as we believe doing so would commingle the registrant's compensatory decision with the executive's investment decision about when to exercise and would allow executives to influence pay-versus-performance disclosure by controlling the fiscal year in which they receive the compensation. We additionally determined that year-over-year change in fair value better meets the statutory purposes than grant-date fair value, because valuing awards only at grant date fails to reflect increases in value to the executive after the grant date, during the period over which the compensation actually paid is earned. Even if year-over-year change in fair value is only a reasonable estimate, we believe it is far more accurate to include this estimate than to omit such increases in value entirely.

[209] There is no adjustment for awards that are granted and determined not to vest in the same covered fiscal year because those awards result in no compensation actually paid.

[210] For any of an executive's equity awards that are determined to fail to vest, a negative amount equal to the fair value at the end of the prior fiscal year would be included as part of the executive's compensation actually paid as of the date the registrant determines the award will not vest. This negative amount takes the cumulative reported value of that award to $0 since it did not vest.

[211] *See supra* note 168 and accompanying text.

[212] *See* FASB SFAS No. 123 (Revised 2004), *Accounting for Stock-Based Compensation* (''FAS 123R''), which was issued in December 2004 and superseded Accounting Bulletin Opinion No. 25, Accounting for Stock Issued to Employees, which was an intrinsic value approach to stock-based compensation. FAS 123R was codified in FASB ASC Topic 718.

[213] *Id.*

[214] *See* 17 CFR 229.402(d)(2)(vii) and Instruction 8 to 17 CFR 229.402(d).

[215] *See* FASB ASC Topic 718–10–50–2.

We have changed the reporting and valuation date requirements from the Proposing Release to first require the year-end reporting and valuation of awards granted during the fiscal year and then the year-over-year change in fair value of such awards until the vesting date (or the date the registrant determines the award will not vest).

We have made these changes to the reporting and valuation requirements to address commenters' concerns about potential misalignment between the time period to which pay is attributed and the time period in which the associated performance is reported, and the degree to which this would affect the usefulness of the disclosure. We believe that, compared to the vesting date valuation approach included in the Proposing Release, the adopted approach will more effectively allow registrants to describe the relationship between compensation and registrant performance, as the reported amounts of compensation will annually adjust based on the registrant's performance, among other things, in that year. In addition, we acknowledge commenters' observation that comparability may be somewhat reduced by the assumptions that are included in fair value calculations, which, as noted by a commenter, may differ from issuer to issuer. Because investors are already familiar with fair value as the measurement approach for equity awards under U.S. GAAP, they are aware of the reduced comparability that may occur due to the use of different assumptions from issuer to issuer. However, we believe that the use of a consistent measurement approach to equity compensation in the Summary Compensation Table, the financial statements, and the calculation of compensation ''actually paid,'' along with the required disclosures about significant assumptions under U.S. GAAP in the final rules, allows for comparability with respect to an individual issuer's disclosures from year to year. Further, as discussed in the Proposing Release,[216] we believe that, overall, comparability regarding the awards included by registrants in the disclosure will be greater under the adopted approach than it would have been under the proposed approach, as volatility in executive compensation actually paid across the disclosure periods that is due simply to vesting patterns should decrease (as the amount of executive compensation actually paid will be adjusted each year as it is ''earned'' over the course of the vesting period).[217]

Investors will also be able to more easily understand the impact of performance on awards-based compensation over time, because under the final rules as adopted investors will be able to observe the amount by which the value of an executive's compensation changes each year, rather than only observing the value of that compensation in the year an award vests. Furthermore, we believe that the adopted approach in the final rules is similar to the concept of realizable pay, recommended by some commenters, as it reflects an attempt to measure the change in value of an executive's pay package after the grant date, as performance outcomes are experienced.

This approach to unvested equity compensation is consistent with the treatment of other unvested elements of compensation under the final rules, such as unvested pension benefits and contributions to unvested defined contribution plans. In each case, the adopted approach reflects this compensation as it is earned rather than at vesting. We believe the consistent use of this approach should reduce misalignment between the timing of when compensation is earned and when it is reported, and allow the disclosure to more clearly represent the relationship of pay with performance over time.

We also believe this revised approach for equity awards comports with the statutory term ''executive compensation actually paid.'' While non-vested amounts of compensation could be considered unpaid due to their contingent nature, over time the values reported in connection with a particular award will aggregate to its ultimate value upon vesting. Aligning the compensation reporting more closely with when the compensation changes in value also provides investors with a clearer picture of ''the relationship between executive compensation actually paid and the financial performance of the issuer.'' For example, where an award vests over a three-year period and the registrant's financial performance is positive in the first of those two years and negative in the third, reporting the full value of the award only in the vesting year may give investors the misleading impression that the executive was not rewarded for positive performance in years one and two and was rewarded despite negative performance in year three. In addition, the required reporting of the year-over-year change in fair value of such awards until the vesting date (or a deduction for prior reported amounts as of the date the registrant determines the award will not vest) will account for any amounts that fail to vest; will address concerns, noted by commenters, that grant date reporting undervalues compensation ''actually paid''; and will not include those post-vesting changes that generally reflect the executives' investment decisions, not compensation.[218]

We recognize that requiring fair value calculations for each equity award at a date other than the grant date may be burdensome for some issuers, as noted by some commenters,[219] particularly those that have compensation programs with numerous and complex equity grants. However, in the final rules we are not adopting a safe harbor or simplified assumptions other than those generally accepted under U.S. GAAP, as suggested by some commenters.[220] Since accounting for share-based compensation in U.S. GAAP was revised in 2004 to require fair value accounting,[221] registrants have been accounting for equity compensation based on a fair value approach and must determine valuation assumptions every time a new award is granted. While commenters correctly noted that companies are not as familiar with the fair valuation of options after the grant date, U.S. GAAP requires the re-valuation of an award when modified,[222] so the concept of valuing a stock award before vesting is also not novel to registrants. As such, registrants are required to have internal controls and processes over the valuation of stock awards, including the assumptions used in determining fair value.[223] We believe that registrants will likely rely upon the existing fair value

[216] *See* Proposing Release, Section IV.C.3.c (considering the adopted approach as an implementation alternative).

[217] *See supra* note 210.

[218] Not all post-vesting date changes reflect the executives' investment decisions, as vested awards could remain subject to other restrictions (*e.g.,* anti-hedging restrictions or holding requirements) that would limit the investment decisions available to an executive.

[219] *See, e.g.,* letters from CAP (stating that ''a fair value calculation for previously granted stock options at the time of vesting, registrants will undoubtedly encounter many complications,'' and noting that few companies have familiarity with valuing options that have been outstanding for several years); Cook (stating that ''[c]alculating the fair value of stock options as of each vesting date will be a time-consuming and tedious process''); KPMG (stating that ''the vesting date fair value of share options will be more difficult for companies than determining the grant date fair value of those awards''); and WorldatWork (describing the proposed vesting date fair value approach as ''burdensome'').

[220] *See supra* note 174 and accompanying text.

[221] *See supra* note 212 and accompanying text.

[222] *See* FASB ASC Topic 718–20–35.

[223] *See also* 17 CFR 240.13a–14, 13a–15, 15d–14 & 240.15d–15.

processes and internal controls for stock-based compensation, which should mitigate the concerns raised by commenters about assumptions. In addition, the option and contingent-equity valuation models are well-developed and related software solutions are widely available, which will further mitigate those additional burdens and concerns related to valuation approach and related inputs.

The final rules also require footnote disclosure of any valuation assumptions that materially differ from those disclosed at the time of grant, as in the proposal.[224] The proposal did not specify how to disclose the valuation assumptions. Similar to U.S. GAAP, when multiple awards are being valued in a given year, a registrant may disclose a range of the assumptions used or a weighted-average amount for each assumption. In addition, the fact that certain institutional investors and third parties (often proxy advisors or compensation consultants) are already incorporating similar computations in their own pay for performance analyses,[225] suggests that the adopted approach is already considered useful and operational by some investors.

Further, we are also requiring the dollar value of any dividends or other earnings paid on stock or option awards in the covered fiscal year prior to the vesting date to be included in the amount of executive compensation actually paid, if such amounts are not reflected in the fair value of such award or included in any other component of total compensation for the covered fiscal year. As noted by a commenter, the pay-for-performance disclosure should include dividends paid on unvested equity or equivalents ''as a result of the move away from grant date fair value calculations for equity awards.'' [226] Under the Summary Compensation Table total, any such amounts would be typically included in the grant date fair value, as no such dividends or earnings would have been paid on that date. However, if any dividends or other earnings are paid on stock or option awards over time, these amounts would decrease future fair value amounts. This decrease would not be reflective of a decrease in the amount ''actually paid'' to the executive, to the contrary, the amount of the decrease would reflect actual dividends or earnings paid to the executive prior to the valuation. We believe these amounts are compensation ''actually paid'' and should be reflected in the disclosure.

D. Measures of Performance

1. Requirement To Disclose TSR and Peer Group TSR

i. Proposed Amendments

We proposed requiring all registrants subject to the proposed rule to use TSR as the measure of financial performance of the registrant for purposes of the required disclosure. In addition, we proposed requiring registrants that are not SRCs to disclose peer group TSR, using either the same peer group used for purposes of Item 201(e) of Regulation S–K or a peer group used in the CD&A for purposes of disclosing registrants' compensation benchmarking practices.[227]

ii. Comments

Commenters were divided on the use of TSR as a required financial performance measure, with some commenters generally supportive,[228] and some generally opposed.[229] Additionally, some commenters opposed TSR being used as the sole measure of financial performance.[230]

Commenters in favor of including TSR as a required financial performance measure noted that TSR is well-understood by investors; [231] is widely used by companies in setting compensation; [232] is generally a fair representation of company performance; [233] will assist companies ''in articulating and providing justification for their compensation practices''; [234] will increase comparability; [235] and reflects stock price fluctuations that regularly occur in response to publicly known information and company leadership.[236] Commenters in favor of TSR also observed that requiring its disclosure is consistent with the language in Section 953(a) that the pay-versus-performance disclosure should ''tak[e] into account any change in the value of the shares of stock and dividends of the issuer and any distributions.'' [237]

Commenters opposed to the use of TSR, generally or as the sole measure of performance, as well as a few commenters in favor of the use of TSR,[238] noted that TSR has specific limitations, including: not necessarily being used by the subject company to determine compensation; [239] being an unreliable performance measure for thinly-traded stocks; [240] incentivizing short-term performance at the expense of investors' long-term best interests [241] (which some commenters indicated could incentivize companies to incorporate strategies to inflate stock prices over the short term,[242] or to engage in buybacks [243]); requiring lengthy explanatory disclosures to explain any misalignments between compensation and TSR; [244] causing companies to adjust their compensation programs to more heavily rely on TSR; [245] being subject to fluctuations based on circumstances outside of the control of companies, industries, and executives; [246] and being affected by the

[224] For example, there may be a material difference in assumptions if the registrant has made changes to key assumptions that would have materially changed the grant date fair value if the assumption(s) applied as of grant date.

[225] *See infra* Section V.B.2.

[226] *See* letter from TIAA.

[227] *See* 17 CFR 229.402(b)(xiv).

[228] *See* letters from Americans for Financial Reform Educational Fund, dated Mar. 18, 2022 (''AFREF''); Barnard 2015; Barnard 2022; BlackRock, dated July 2, 2015 (''BlackRock''); CalPERS 2015; CAP; CFA; CII 2015; Farient; Hook; Infinite; OPERS; Public Citizen 2015; and TIAA.

[229] *See* letters from American Securities Association, dated Mar. 14, 2022 (''ASA''); Aspen; Better Markets, dated Mar. 4, 2022 (''Better Markets''); CCMC 2015; CEC 2015; Coalition; Cook; Dimensional Fund Advisors LP, dated Mar. 3, 2022 (''Dimensional''); FedEx 2015; FSR; Hay; Honeywell; International Bancshares Corp., dated Mar. 3, 2022 (''IBC 2022''); McGuireWoods; NAM 2015; NAM 2022; NIRI 2015; NIRI 2022; and SBA–FL.

[230] *See* letters from BorgWarner; BRT; Celanese; Hall; Honeywell; Hyster-Yale; IBC 2015; ICGN; Mercer; NACCO; NACD 2015; NACD 2022; PG 2015; Pearl; PNC; PDI; Judy Samuelson, dated Mar. 4, 2022 (''Samuelson''); SCG; SCSGP; Simpson Thacher & Bartlett, dated July 6, 2015 (''Simpson Thacher''); and WorldatWork.

[231] *See* letters from Barnard 2015; Barnard 2022; CFA; and Farient.

[232] *See* letters from Barnard 2015; Barnard 2022; BlackRock; CalPERS 2015; CFA; CII 2015; and Public Citizen 2015.

[233] *See* letters from Barnard 2015; Barnard 2022; CII 2015; Farient; and OPERS.

[234] *See* letter from CalPERS 2015.

[235] *See* letters from Barnard 2015; Barnard 2022; CAP; CII 2015; Hodak; and TIAA.

[236] *See* letter from Infinite.

[237] *See* letters from AFREF; CAP; CII 2015; and Public Citizen 2015.

[238] *See* letters from AFREF; CalPERS 2015; CFA; and CII 2015.

[239] *See* letters from CCMC 2015 and Coalition.

[240] *See* letters from Hyster-Yale and NACCO.

[241] *See* letters from AFREF; ASA; BlackRock; BRT; CCMC 2015; CEC 2015; Coalition; FedEx 2015; FSR; Hall; IBC 2015; IBC 2022; Mercer; NACCO; NACD 2015; NAM 2015; NIRI 2015; Samuelson; SCG; Simpson Thacher; and WorldatWork. *But see* letter from OPERS (stating that the use of TSR alone is not likely to drive short-term decision-making).

[242] *See* letters from Better Markets; IBC 2022; McGuireWoods; NACCO; Pearl; and PDI.

[243] *See* letters from AFREF; Better Markets; PDI; and Samuelson.

[244] *See* letters from Aspen; Celanese; Coalition; Exxon; Hyster-Yale; NACCO; NAM 2015; NIRI 2015; NIRI 2022; and PNC.

[245] *See* letters from CEC 2015; CCMC 2015; Hall; Hay; Hermes; FSR; George S. Georgiev, dated Mar. 4, 2022 (''Georgiev''); McGuireWoods; Mercer; Pearl; PNC; SCSGP; Simpson Thacher; and WorldatWork.

[246] *See* letters from AFL–CIO 2015; Aspen; CEC 2015; Dimensional; FSR; Hay; IBC 2015; IBC 2022; McGuireWoods; Mercer; NACCO; NIRI 2015; NIRI 2022; PDI; Pearl; Samuelson; and SBA–FL.

granting and vesting of stock options.[247] In response to these concerns, some commenters (including commenters in favor of using TSR [248]), suggested permitting disclosure of other metrics alongside TSR.[249] Other commenters generally stated that there was no single performance measure that would align with the compensation plan of every registrant, and therefore suggested adopting a principles-based approach, allowing companies to choose their own performance measures.[250] Alternatively, a number of commenters suggested requiring registrants to disclose the actual metrics used in determining their executive compensation,[251] or revising Item 402 of Regulation S–K to require disclosure of ''all'' metrics actually used to determine NEO incentive compensation.[252]

A number of commenters raised questions or made comments regarding the calculation of TSR. A few commenters suggested that TSR should be presented as a percentage change instead of an indexed dollar value.[253] Others generally raised questions about the method used for calculating TSR,[254] with some suggesting TSR should be calculated and disclosed as a one-year measure,[255] others suggesting that TSR should be calculated as a rolling average,[256] and a third group suggesting TSR be calculated as a cumulative average over the time period of the disclosure.[257] Other commenters suggested that we permit registrants to decide the time period used to calculate their TSR.[258]

Commenters were also divided on our proposal to require registrants, other than SRCs, to disclose peer group TSR. Some commenters supported requiring the inclusion of peer group TSR,[259] while others suggested peer group disclosure should be optional.[260] A number of other commenters opposed the requirement to disclose peer group TSR,[261] arguing peer group disclosure: is already disclosed in the performance graph required by Item 201(e) of Regulation S–K; [262] is beyond the mandate of the Dodd-Frank Act; [263] will confuse or mislead investors; [264] will be expensive and/or time-consuming for registrants to calculate; [265] is difficult for registrants to explain and would require lengthy disclosures; [266] is difficult to understand given that frequent changes in peer groups [267] and different market conditions or performance cycles affect different ''peer'' companies differently; [268] and creates issues relating to the difficulty for companies to find adequate peers, limiting the ability to make direct comparisons between registrants.[269] A number of commenters also opposed requiring weighted peer group TSR (weighted by market capitalization), as used in Item 201(e) of Regulation S–K.[270] In addition, one commenter suggested we permit multiple peer groups to be disclosed, if peer group TSR disclosure is required.[271]

Commenters generally supported allowing registrants to have flexibility in setting their peer groups for the pay-versus-performance disclosure. Commenters had various suggestions as to how to achieve this flexibility, including allowing registrants to choose any peer group referenced in the CD&A; [272] allowing the use of the peer group from either Item 201(e) of Regulation S–K or the CD&A; [273] or allowing registrants to choose a peer group other than the Item 201(e) of Regulation S–K or CD&A peer groups.[274] These commenters generally supported requiring registrants to provide disclosure explaining the make-up of their peer group.[275] One commenter,

[247] *See* letter from IBC 2022.

[248] *See* letters from CalPERS 2015; CAP; CFA; CII 2015; Farient; OPERS; and TIAA.

[249] *See* letters from CalPERS 2015; CAP; CFA; CII 2015; Davis Polk 2015; Davis Polk 2022 (stating that TSR should be the only required measure, but that we should permit registrants to voluntarily disclose other measures, particularly ''[g]iven the complexity and importance of long-term incentive compensation''); Farient; Hall; Mercer; NIRI 2015; OPERS; Pearl; Sacred Heart University, dated July 7, 2015; Simpson Thacher; and TIAA. *But see* letter from IBC 2022 (stating, in response to the Reopening Release's considered additional net income, income or loss before income tax expense, and Company-Selected Measure measures, that the inclusion of additional metrics does not fix the fact that the inclusion of TSR ''overstates'' the importance of TSR).

[250] *See* letters from BRT; Celanese; Exxon; Hall; Hay; Hyster-Yale; McGuireWoods; NACCO; PNC; SCG; SCSGP; and Simpson Thacher.

[251] *See* letters from AFL–CIO 2015; CCMC 2015; FedEx 2015; Hook (supporting the proposal, but stating ''I would like to see the metrics for comparison include focus on longer-term performance''); Public Citizen 2015 (specifically suggesting that the Commission ''mandate a metric supplemental to the TSR of a company's own choosing that it contends would capture long-term performance''); and SBA–FL.

[252] *See* letters from American Federation of Labor and Congress of Industrial Organizations, dated Mar. 2, 2022 (''AFL–CIO 2022''); AFREF; California Public Employees Retirement System Investment Office, dated Mar. 4, 2022 (''CalPERS 2022''); California State Teachers' Retirement System, dated Mar. 2, 2022 (''CalSTRS''); CII 2022; Georgiev; ICGN; and International Brotherhood of Teamsters, dated Mar. 3, 2022 (''Teamsters'').

[253] *See* letters from AON and Towers.

[254] *See* letters from Anonymous, dated May 27, 2015; BorgWarner; CEC 2015; Cook; Hall; Honeywell; Mercer; PG 2015; Pearl; TCA 2015; and Towers.

[255] *See* letters from Cook; Infinite (suggesting that a one-year TSR would be consistent with Item 201(e) of Regulation S–K, but that also including three-year and five-year TSRs may provide helpful context); TCA 2015; TCA 2022; and Towers. *But see* letter from Farient (opposing the calculation of TSR as a year-over-year measurement). *See also* Davis Polk 2015 (stating that, if the Commission requires an annual TSR, we should permit registrants to also disclose a multi-year TSR, because compensation may be based on multi-year performance).

[256] *See* letters from AFREF (supporting a ''five year cumulative and rolling average''); CEC 2015 (supporting the use of a three-year or five-year rolling average TSR); Honeywell (stating that a multi-year rolling TSR would be more meaningful); ICGN; NACD 2015 (recommending the Commission require a three-year or five-year TSR in addition to an annual TSR); and NACD 2022 (also recommending the Commission require a three-year or five-year TSR in addition to an annual TSR). *But see* letter from PG 2015 (noting that a five-year rolling TSR calculation would not be consistent with the Commissions intent).

[257] *See* letters from Pearl (supporting a cumulative 5-year TSR measurement); PG 2015 (noting that a cumulative TSR would be consistent with the Commission's intent, but could ''complicate[ ] comparisons by causing the starting point for TSR measurement to change each year''); and Teamsters.

[258] *See* letters from BorgWarner; Davis Polk 2015; Davis Polk 2022 (suggesting that TSR should be calculated ''in a manner that is consistent with the ways in which the compensation committee considers TSR in the pay setting process''); Exxon (generally opposing the use of TSR, but stating that, if we require its use, we should allow registrants to choose the time period for measuring cumulative TSR that best suits them); and NIRI 2015; *see also* letter from Huddart (suggesting each component of the PEO's compensation actually paid be associated with a requisite service period, and then requiring the calculation of TSR and peer group TSR over the requisite service period of the component of the PEO's compensation having the largest dollar value in a given year).

[259] *See* letters from As You Sow 2015; CalPERS 2015; OPERS; and TIAA.

[260] *See* letters from AON and Hay.

[261] *See* letters from ActiveAllocator Activist Capital Advisors L.P., dated Feb. 3, 2022; CCMC 2015; CEC 2015; Celanese; Cook; Davis Polk 2015; FSR; Georgiev; Hyster-Yale; IBC 2015; IBC 2022; LWC; McGuireWoods; Meridian; NACCO; NAM 2015; NIRI 2015; NIRI 2022; Pearl; PNC; SCG; SCSGP; TCA 2015; TCA 2022; and WorldatWork.

[262] *See* letters from Exxon; Georgiev; Pearl; PNC; SBA–FL; and TCA 2015.

[263] *See* letters from BRT; CEC 2015; Celanese; Davis Polk 2015; Exxon; FSR; Hay; Meridian; Pearl; PNC; and WorldatWork.

[264] *See* letters from CEC 2015; Celanese; Davis Polk 2015; Georgiev; Hay; Hyster-Yale; LWC; NACCO; and PNC.

[265] *See* letters from Celanese; Hyster-Yale; and NACCO.

[266] *See* letters from BRT; CCMC 2015 (also noting that registrants may face public liability for assumptions made regarding a peer's performance); Davis Polk 2015 (similar); and SCSGP.

[267] *See* letters from Hay; Hyster-Yale; and NACCO.

[268] *See* letters CCMC 2015; Exxon; and Pearl.

[269] *See* letters from Hay; Hyster-Yale; IBC 2015; FSR; NACCO; NAM 2015; and Pearl.

[270] *See* letters from Allison; AON; Cook; Meridian; and Ross.

[271] *See* letter from Pearl.

[272] *See* letter from SCSGP.

[273] *See* letter from Quirin.

[274] *See* letters from Barnard 2015; Corning; and Towers (specifically supporting allowing registrants to use the peer group, if any, that is used in setting compensation).

[275] *See* letters from Barnard 2015; Quirin; and SCSGP.

however, opposed giving flexibility to registrants in setting their peer groups, and instead suggested requiring that the peer group should be the same as the peer group used in benchmarking executive compensation.[276]

Commenters raised questions about the impact of a registrant changing its peer group. Some commenters advocated for requiring additional disclosure in the event that a registrant changes its peer group,[277] including requiring the disclosure of comparative results of TSR for all peer groups used in the disclosed time period.[278] Others questioned what impact the change of a peer group would have on cumulative TSR,[279] with some commenters suggesting we only require disclosure of the current peer group.[280] One commenter suggested that, if annual TSR is used, the peer group in place in the respective year of disclosure should be the peer group used to calculate the peer group TSR for that year of disclosure.[281]

iii. Final Amendments

We are adopting the requirement, as proposed, that all registrants subject to the final rules use TSR, and that registrants (other than SRCs) use peer group TSR, as measures of performance. As noted in the Proposing Release, Section 14(i) does not mandate we require specific measures in the pay-versus-performance disclosure. However, the statute does provide that the disclosures should ''tak[e] into account any change in the value of the shares of stock and dividends of the issuer and any distributions.'' [282] While we recognize commenters' concerns that TSR is not an equally useful measure for all registrants (as it is not necessarily used by all registrants to set compensation and is seen by some commenters to be an unreliable performance measure for thinly-traded stocks), is subject to fluctuations based on circumstances outside of the control of the registrant, and may be affected by the granting and vesting of stock options, we believe that TSR is consistent with that statutory language. In addition, we believe mandating a consistently calculated measure for all registrants will further the comparability of the pay-versus-performance disclosures across registrants, as noted by some commenters.[283] We acknowledge, as noted by some commenters, that some registrants may need to provide somewhat lengthy explanatory disclosures to explain any misalignments between compensation and TSR; however, we believe those disclosures are the types of disclosures intended by the language of Section 14(i), and will help investors understand the relationship between executive compensation actually paid and the registrant's performance.

We are not requiring registrants to disclose all measures they use to set executive compensation, as recommended by some commenters,[284] because we believe such a requirement would be a significant change from the current executive compensation disclosure requirements, and would be more appropriately considered by the Commission in a broader context not related to the Section 953(a) mandate. In addition, as noted below,[285] as with other mandated disclosures, registrants would be permitted to disclose additional measures of performance, so long as any additional disclosure is clearly identified as supplemental, not misleading and not presented with greater prominence than the required disclosure. While this does not provide registrants with the full flexibility of a principles based approach suggested by some commenters, we believe this ability to supplement the required disclosures will provide registrants with adequate discretion to provide sufficiently fulsome disclosure of the relationship between their performance and the compensation actually paid to their executives.

We also believe that absolute company performance alone, as reflected in TSR, may not be a sufficient basis for comparison between companies, and that peer group TSR will provide investors with more comprehensive information for assessing whether the registrant's performance was driven by factors common to its peers or instead by the registrant's own strategy and other choices. The final rules require a registrant to disclose weighted peer group TSR (weighted according to the respective issuers' stock market capitalization at the beginning of each period for which a return is indicated), using either the same peer group used for purposes of Item 201(e) of Regulation S–K or a peer group used in the CD&A for purposes of disclosing registrants' compensation benchmarking practices. If the peer group is not a published industry or line-of-business index, the identity of the issuers composing the group must be disclosed in a footnote. A registrant that has previously disclosed the composition of issuers in its peer group in prior filings with the Commission would be permitted to comply with this requirement by incorporation by reference to those filings. We believe this would avoid the potential for duplicative disclosure. Consistent with the approach taken in Item 201(e) of Regulation S–K, as proposed, if a registrant changes the peer group used in its pay-versus-performance disclosure from the one used in the previous fiscal year, it will only be required to include tabular disclosure of peer group TSR for that new peer group (for all years in the table), but must explain, in a footnote, the reason for the change, and compare the registrant's TSR to that of both the old and the new group.[286] Some commenters advocated for more disclosure when a peer group changes (including requiring the disclosure of comparative results of TSR for all peer groups used in the disclosed time period), while other commenters suggested we only require disclosure of the current peer group. We believe the adopted approach strikes the appropriate balance of providing investors information when a peer group changes, while also not requiring overcomplicated disclosure. In addition, as proposed, we are requiring weighted peer group TSR, as calculated under Item 201(e) of Regulation S–K, as registrants are already familiar with this calculation.[287]

In response to commenters' questions about the calculation of TSR, we are clarifying the definition of ''measurement period'' in the final text of the rule. TSR will continue to be calculated on the same cumulative basis as is used in Item 201(e) of Regulation S–K, measured from the market close on the last trading day before the registrant's earliest fiscal year in the table through and including the end of the fiscal year for which TSR is being calculated (*i.e.,* the TSR for the first year in the table will represent the TSR over that first year, the TSR for the second year will represent the cumulative TSR

[276] *See* letter from AFL–CIO 2015; *see also* letter from As You Sow 2015 (stating that ''ideally'' all registrants would use the benchmarking peer group in their pay-versus-performance disclosure).

[277] *See* letters from AFL–CIO 2015; Hermes; and SBA–FL.

[278] *See* letter from Hermes.

[279] *See* letters from Cook and Pearl.

[280] *See* letters from Cook and Quirin.

[281] *See* letter from Cook.

[282] 15 U.S.C. 78n(i).

[283] *See supra* note 235.

[284] *See supra* notes 251–252.

[285] *See infra* Section II.F.3.

[286] *See* 17 CFR 229.402(v)(2)(iv).

[287] To calculated weighted peer group TSR, the returns of each component issuer of the group must be weighted according to stock market capitalization at the beginning of each period for which a return is indicated. *See* Instruction 5 to Item 201(e) of Regulation S–K.

over the first and the second years, *etc.*). We are also clarifying that both TSR and peer group TSR should be calculated based on a fixed investment of one hundred dollars at the measurement point. As noted by a commenter,[288] the TSR presented in the stock performance graph includes a starting investment amount on the y-axis, from which the subsequent TSR amounts are calculated. As the final rules mandate a tabular not graphical disclosure of TSR, we are clarifying that the TSR amounts should be calculated based on an initial fixed investment of one hundred dollars, to clarify for investors what amount is used to calculate the TSR figures, and to standardize the disclosure across registrants. We are not requiring, as suggested by some commenters, that TSR be calculated as a percentage change instead of a dollar value; be disclosed as a one-year measure; be calculated as a rolling average; or be calculated based on a time period chosen by the registrant as we believe all of those approaches would depart from the existing approach used in Item 201(e) of Regulation S–K, and therefore could be burdensome to registrants and confusing to investors. Similarly, we believe that permitting registrants to choose their own criteria for calculating their TSR and peer group TSR for the pay-versus-performance disclosure could also lead to investor confusion.

We disagree with commenters who raised concerns that peer group TSR would be confusing to investors, expensive to calculate, and hard to understand. Peer group TSR is already included in other disclosures, meaning both investors and registrants are generally familiar with it. While peer group TSR is not specifically included in Section 14(i), we believe it is a useful measure for evaluating a registrant's performance, as noted by other commenters, and we are therefore using our discretionary authority to require this additional information to enhance the Dodd-Frank Act mandated disclosures. As we described above, peer group comparisons are often used by registrants' compensation committees,[289] and may help in determining whether a registrant's performance was driven by factors common to its peers, which may have been outside of the control of its executives.

As discussed below,[290] to address commenters' concerns with respect to the proposal to use TSR and peer group TSR as the sole measures of performance (such as causing companies to adjust their compensation programs to more heavily rely on TSR), we are also requiring registrants to include net income and a Company-Selected Measure as performance measures in the tabular disclosure, and also permitting companies to voluntarily include additional measures of their choosing in the table, as suggested by some commenters.[291] The inclusion of the Company-Selected Measure and the ability of registrants to voluntarily include additional measures may also address commenters' concerns with respect to incentivizing short-term performance at the expense of shareholders' long-term best interests. We believe these additional measures should help alleviate concerns expressed by some commenters that disclosing only TSR (for a registrant and its peer group) would put too much emphasis on that one measure.

2. Requirement To Disclose Net Income

i. Amendments Considered in the Reopening Release

In the Reopening Release, we requested comment on requiring registrants to disclose both income or loss before income tax expense and net income in their pay-versus-performance disclosure.[292] We stated we were considering these two measures because in reflecting a registrant's overall profits (net of costs and expenses), they could be additional important measures of company financial performance that may be relevant to investors in evaluating executive compensation, and could complement the market-based performance measures required in the Proposing Release (TSR and peer group TSR) by also providing accounting-based measures of financial performance. In addition, both net income and income or loss before income tax expense are measures that are familiar to registrants and investors, as both are generally required to be presented on the face of the Statement of Comprehensive Income by Regulation S–X. Net income is also a line item required by U.S. GAAP and International Financial Reporting Standards (''IFRS'') as issued by the International Accounting Standards Board.

ii. Comments

Commenters were divided over the potential inclusion of income or loss before income tax expense and net income. A number of commenters generally supported the inclusion of the measures as additional measures in the table; [293] noting that they will be useful to investors in assessing executive compensation; [294] will cause minimal compliance challenges, as they are already calculated by registrants; [295] and will increase comparability.[296] However, other commenters opposed requiring registrants to disclose the measures,[297] noting they are not relevant for or comparable across all companies [298] (particularly early stage companies and real estate investment trusts (''REITs'') [299]); are not used by

[288] *See* letter from CAP (noting that ''TSR is indexed based on a $100 investment while compensation is reported in dollars so the scales are fundamentally different'' and suggesting that ''[t]he easiest solution would be to require companies to calculate compensation actually paid for 6 years, with the sixth year indexed to 100, similar to TSR in the stock performance graph'').

[289] *See supra* note 69 and accompanying text.

[290] *See infra* Sections II.D.2; II.D.4; and II.F.3.

[291] *See supra* note 249.

[292] As discussed above, in this release, to be consistent with the language in Regulation S–X, we are using the phrase ''income or loss before income tax expense'' in lieu of the phrase ''pre-tax net income,'' which was used in the Reopening Release. *See supra* note 33.

[293] *See* letters from As You Sow, dated Mar. 4, 2022 (''As You Sow 2022''); Better Markets; Better Markets, Institute for Policy Studies, Global Economy Project, and Public Citizen, dated Mar. 4, 2022 (''Better Markets et al.''); CalPERS 2022; CalSTRS; CII 2022; ICGN; Mark C, dated Feb. 21, 2022 (''Mark C''); PRI; Public Citizen, dated Mar. 4, 2022 (''Public Citizen 2022''); Teamsters; and Troop Inc., dated Feb. 17, 2022 (''Troop'').

[294] *See* letters from As You Sow 2022; Better Markets; Better Markets et al.; CalPERS 2022; CalSTRS; CII 2022; ICGN (noting that net income ''could be useful for companies that have a highly complex tax structure''); PRI; Public Citizen 2022; Teamsters; and Troop.

[295] *See* letter from Better Markets; Better Markets et al.; PRI; and Public Citizen 2022.

[296] *See* letter from PRI.

[297] *See* letters from AB; Aon HCS; ASA; Center on Executive Compensation, dated Mar. 4, 2022 (''CEC 2022''); Davis Polk 2022; Dimensional; FedEx Corp., dated Mar. 4, 2022; Georgiev; Infinite; Legal & General Investment, dated Mar. 3, 2022 (''LGIM''); McGuireWoods; Nareit, dated Mar. 4, 2022 (''Nareit''); NAM 2022; NIRI 2022; PG 2022; SCG; and TCA 2022.

[298] *See* letters from AB; CEC 2022; Dimensional; Infinite; LGIM; Nareit; NIRI 2022; PG 2022; and SCG.

[299] *See* letters from Dimensional (noting that changes to a company's business plan (such as closing business lines, selling certain assets, or investing in research and development) could result in low or negative net income, ''even though the strategies may ultimately pay off for shareholders over the long term''); Infinite (noting that income or loss before income tax expense and net income ''may not provide reliable insight into the results of management's efforts at developmental or transitional stage companies''); LGIM (noting that ''different growth stages'' of a company might necessitate it focusing on metrics other than income metrics); Nareit (stating that ''[d]ue to certain features of the way REITs are organized and operated under [F]ederal tax law as well as certain features of U.S. GAAP,'' income or loss before income tax expense and net income are not typically used by investors or management when evaluating the alignment of pay with performance for REITs); and NIRI 2022 (stating that income measures are ''completely impractical as measures of financial performance for smaller companies that

many companies in setting executive compensation;[300] would be incomplete or misleading without appropriate context;[301] and can vary period over period due to one-time adjustments and events such that the relationship with pay would be distorted.[302] Other commenters opposed the measures more generally, as non-company-specific measures, indicating their inclusion would ''substantially lengthen'' the pay-versus-performance disclosure, without providing specific insight into the registrant,[303] would not address the shortcomings of TSR because they have similar weaknesses (such as encouraging short-termism or ''overemphasiz[ing] financial performance''),[304] or would stifle innovation by encouraging more uniform compensation structures given the standardized disclosure across registrants.[305]

iii. Final Amendments

We are adopting the final rules to require registrants to include net income in their tabular disclosure. As discussed above,[306] registrants would also be required to provide a clear description of the relationship of net income to executive compensation actually paid, in narrative or graphical form, or a combination of the two.

Although, as noted by some commenters, net income itself may not be frequently used by registrants directly in setting compensation, we believe that net income is closely related to other profitability measures that we believe, based on Commission staff experience, may be used by registrants in setting compensation, while also being widely understood and standardized, as a required disclosure item under Regulation S–X, U.S. GAAP, and IFRS. The inclusion of net income as an additional financial performance measure could complement the market-based performance measure of TSR, and, to the extent that TSR does not (in the view of management) fully reflect a company's performance, could help to provide investors more ready access to an additional key measure of the company's recent financial performance. As noted in the Reopening Release, to the extent that net income would otherwise be considered by investors when evaluating the alignment of pay with performance, its inclusion in the table may lower the burden of analysis for those investors.

We also believe that the standardized disclosure of net income could assist investors in generally understanding and analyzing the relationship between pay and performance. While, as noted by some commenters, net income may not be relevant for all registrants at all times,[307] including it may allow investors to have a standard baseline from which to analyze a registrant's pay-versus-performance disclosure. Moreover, by requiring a Company-Selected Measure and giving registrants the ability to disclose additional registrant-specific measures, we believe registrants can avoid concerns raised by commenters that financial performance would be overemphasized or disclosure overly standardized[308] by the required disclosure of net income.

The final rules do not require disclosure of income or loss before income tax expense, as considered in the Reopening Release. Net income and income or loss before income tax expense are highly correlated,[309] so we believe requiring both could lead to unnecessarily duplicative disclosure, which could have raised questions for investors trying to understand what, if any, meaningful differences there were between the measures. This potentially duplicative disclosure also would have required registrants to prepare additional relationship disclosure (about the relationship between income or loss before income tax and executive compensation actually paid), which would have created an additional burden on registrants, and may have been less clear for investors. By requiring only one of the two net income measures, we also partially address the concern that adding both net income and income or loss before income tax expense could ''substantially lengthen'' the pay-versus-performance disclosure. In addition, we believe net income may, based on statistics provided by a commenter, be used by significantly more companies in linking pay to performance than income or loss before income tax expense.[310]

3. Tabular List of the Registrant's ''Most Important'' Performance Measures

i. Amendments Considered in the Reopening Release

In the Reopening Release, we requested comment on requiring registrants to provide a ranked tabular list of the five[311] most important measures that they use to link executive compensation actually paid during the fiscal year to company performance, over the time horizon of the disclosure. We requested comment on the inclusion of such a ranked list, in part, in response to commenters who stated that the proposal should be revised to require disclosure of the quantitative metrics or key performance targets companies actually use to set executive pay.[312] We noted that this disclosure, if required, would be supplemental to the existing CD&A disclosure, which requires registrants to disclose ''all material elements of the compensation paid,'' including, for example, which ''specific items of corporate performance are taken into account in setting compensation policies and making compensation decisions,'' but does not specifically mandate disclosure of the performance measures that determined the level of recent NEO compensation actually paid. We noted that, under the considered approach, registrants would be able to cross-reference to existing disclosures elsewhere in the applicable disclosure document that describe the various processes and calculations that go into determining NEO compensation as it relates to these performance measures, if they elected to do so.

ii. Comments

A number of commenters supported the inclusion of a ranked list.[313] Some of the commenters who supported the ranked list also suggested additional

are at a startup or early phase and not generating any net income under GAAP'').

[300] *See* letter from ASA; CEC 2022; and Davis Polk.

[301] *See* letters from ICGN; Infinite; and PG 2022.

[302] *See* letter from Dimensional Infinite; and PG 2022.

[303] Letter from Aon HCS.

[304] *See* letters from Georgiev; and McGuireWoods.

[305] *See* letter from SCG.

[306] *See supra* Section II.A.2.iii.

[307] *See supra* notes 298–300 and accompanying text.

[308] *See supra* notes 304–305 and accompanying text.

[309] Based on staff analysis of data from Compustat, net income and income or loss before income tax expense are roughly 95 percent correlated.

[310] *See* letter from CEC 2022.

[311] The Reopening Release provided that, if the registrant considers fewer than five performance measures when it links executive compensation actually paid during the fiscal year to company performance, the registrant would be required to disclose only the number of measures it actually considers.

[312] *See, e.g.,* letters from AFL–CIO 2015; CII 2015; Public Citizen 2015; and SBA–FL.

[313] *See* letters from As You Sow 2022; Better Markets; Better Markets et al.; CalSTRS; Ceres and Ceres Accelerator for Sustainable Capital Markets, dated Mar. 4, 2022 (''Ceres''); CII 2022; Dimensional; Infinite; ICGN; Mark C (stating that the list ''would give investors greater transparency into [registrants'] policies as well as more tangible metrics by which to make their investment decisions''); PRI; Public Citizen 2022; and Responsible Asset Allocator Initiative at New America, and The Predistribution Initiative, dated Mar. 3, 2022 (''RAAI''); *see also* letter from AFREF (supporting the ranked list as an alternative to not disclosing 'all' performance measures).

disclosures to supplement the list itself, including requiring ''clear description of the relationship between the measures and executive compensation,'' [314] the metrics and methodology used to calculate the measures,[315] and the ''percentage of total compensation paid at the vesting date'' with respect to each of the measures included in the list.[316] In addition, some commenters supported requiring or permitting environmental, social and governance (''ESG'') metrics to be included in the ranked list.[317] One commenter also specifically supported using a tabular format for the list, stating that it would help make company-to-company comparisons.[318]

A number of other commenters opposed the ranked list,[319] with some indicating that its ranking requirement would be difficult to satisfy, as registrants do not rank their measures in the compensation setting process and measures can interact in determining pay in complex ways. Some commenters objected that the list oversimplifies the compensation setting process, particularly because there could be difficulty ranking multiple measures, which might be related or hold equal importance at any given time.[320] Others indicated the list and associated clarifications and explanations would increase the length and complexity of disclosure and associated burdens with little or no corresponding benefit.[321] In contrast, one commenter indicated that it was not aware of any additional costs to disclose the five most important performance measures, and that the disclosure of sensitive or competitive information should not be necessary to provide the list.[322] One commenter suggested that the ranked list was beyond the scope of the Dodd-Frank Act mandate,[323] and others noted that similar disclosure is already available in the CD&A.[324]

There were also a number of commenters who commented on the ''most important'' concept, which we considered applying both to the ranked list and the Company-Selected Measure (discussed below). Two commenters suggested that defining the ''most important'' measures would be burdensome for companies,[325] particularly given that many companies overlap and interrelate the measures they use to set compensation. One commenter, who opposed the requirement to include a Company-Selected Measure, stated that, if a ''most important'' concept is included in the final rules, the Commission should not define ''most important'' on behalf of registrants.[326] However, another commenter suggested that the Commission make explicit that the ''most important'' measures are those that drove the outcome of compensation payments, not those that were the most important in compensation decision-making.[327] Some commenters suggested that the Commission clarify whether certain market-linked measures could be considered the ''most important'' measures,[328] with one suggesting that companies should be able to select the measure they believe to be most important ''regardless of whether that measure is one that it uses in a performance or market condition in the context of an incentive plan.'' [329] One commenter suggested that the ''most important'' concept would be improved, ''if the definition includes the registrant's assessment that the measure will assist investors in better understanding how the registrant's pay programs contribute to the company's long-term shareholder return,'' [330] while another suggested that the standard to evaluate ''most important'' should be ''most useful'' for the company.[331]

A number of commenters supported allowing the companies' ''most important'' measures to be non-financial measures.[332]

Two commenters specifically commented on the time period over which the ''most important'' measures should be measured: one supported using the measure that was the ''most important'' over the time horizon of the disclosure,[333] while the other suggested that the ''most important'' evaluation should be made annually.[334]

A few commenters were concerned that requiring companies to disclose a specific ''most important'' measure may lead companies to provide disclosure that highlights the measure that makes the company look the best.[335]

iii. Final Amendments

The final rules require registrants provide a list of their most important financial performance measures used by the registrant to link executive compensation actually paid during the fiscal year to company performance (''Tabular List''), and permit registrants to include non-financial performance measures in the Tabular List if such measures are among their most important performance measures.[336] However, in response to comments received on the Reopening Release, certain of the requirements for this list differ from the approach discussed in the Reopening Release.

First, in response to comments, we are not requiring the Tabular List to be ranked. As noted by a number of commenters, numerically ranking measures may be difficult for companies, given the frequent interplay between different measures within a company's compensation program. We believe an unranked list will provide investors with insights into companies' executive compensation programs by still presenting them with the ''most important'' measures, while avoiding potentially burdensome calculations

[314] Letter from PRI.

[315] *See* letter from ICGN.

[316] Letter from Infinite.

[317] *See* letters from As You Sow 2022; Better Markets; Ceres; PRI; Public Citizen 2022; and RAAI.

[318] *See* letter from ICGN.

[319] *See* letters from Aon HCS; ASA; CEC 2022; Davis Polk 2022; IBC 2022; McGuireWoods; NAM 2022; NIRI 2022; PG 2022; SCG; and TCA 2022.

[320] *See* letters from Aon HCS; Davis Polk 2022; IBC 2022; LGIM; NAM 2022; and SCG.

[321] *See* letters from Aon HCS; CEC 2022; Davis Polk 2022; and IBC 2022.

[322] *See* letter from ICGN.

[323] *See* letter from SCG.

[324] *See* letters from CEC 2022; Davis Polk 2022; McGuireWoods; and SCG.

[325] *See* letters from Davis Polk 2022 and NAM 2022.

[326] *See* letter from Davis Polk 2022.

[327] *See* letter from Infinite.

[328] *See* letters from Georgiev and Infinite.

[329] Letter from Davis Polk 2022 (opposing the requirement to include a Company-Selected Measure, but stating that, if it is required, the measure should be able to be one that is not linked to a performance or market condition). *See also Executive Compensation and Related Person Disclosure* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158] at n. 167 (discussing the use of performance conditions and market conditions in equity incentive plans).

[330] Letter from CII 2022.

[331] *See* letter from ICGN.

[332] *See* letters from AFREF; As You Sow 2022; Better Markets; CalSTRS; Ceres; CII 2022; Georgiev; PRI; and RAAI. *See also* letter from LWC (stating that companies should be required to discuss ESG metrics, and if ESG metrics are not used by the company, ''the company should be required to explain why not'').

[333] *See* letter from CII 2022.

[334] *See* letter from Davis Polk 2022.

[335] *See* letters from AFL–CIO 2022; AFREF; and Mark C.

[336] *See* 17 CFR 229.402(v)(6). We are clarifying that the measures required to be included in the registrant's list of its most important financial measures are ''financial performance measures,'' given that the language in Section 14(i) specifically references financial performance. For purposes of Item 402(v) of Regulation S–K, as adopted,''financial performance measures'' means measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, any measures that are derived wholly or in part from such measures, and stock price and total shareholder return. A financial performance measure need not be presented within the financial statements or otherwise included in a filing with the Commission to be included in the Tabular List or be the Company-Selected Measure. *See* 17 CFR 229.402(v)(2)(vi). ''Non-financial performance measures'' are performance measures other than those that fall within the definition of financial performance measures.

and analysis that could be involved in specifically designating a first, second, third, *etc.* ''most important'' measure. We are not requiring registrants to provide the methodology used to calculate the measures included in the Tabular List. We believe such a requirement would be burdensome on registrants, particularly when the measures are already well understood by investors or otherwise disclosed. However, registrants should consider if such disclosure would be helpful to investors to understand the measures included in the Tabular List, or necessary to prevent the Tabular List disclosure from being confusing or misleading.

Second, under the final rules, the ''most important'' determination is made on the basis of looking only to the most recently completed fiscal year, as opposed to ''the time horizon of the disclosure,'' as described in the Reopening Release. We believe this approach will alleviate commenters' concerns that identifying the ''most important'' measures would be difficult, particularly when companies have overlapping or interrelating measures, by narrowing the universe of measures to be considered when selecting the ''most important'' to those used in the prior year (instead of the prior five years). In addition, we believe focusing the disclosure on the registrant's ''most recently completed fiscal year'' will accommodate changes in compensation programs and in the compensation related to specific measures over time, and avoid situations where a registrant is disclosing measures that are no longer used in, or important to, its executive compensation program, but would still be ''most important'' based on the measure's usage in prior years disclosed in the table.

Finally, although the Reopening Release considered a list that would include the five most important measures, the final rules we are adopting require disclosure of at least three,[337] and up to seven financial performance measures,[338] and also permit registrants to include non-financial performance measures in that list. We believe that providing registrants with flexibility in the number of measures they can include in the list may also lessen the difficulty, noted by commenters, of identifying a registrant's ''most important'' measures. For example, a registrant with three, four, five, or six equally ''most important'' measures would not need to increase or decrease their ''most important'' measure disclosure to specifically disclose five measures. We acknowledge that, for certain issuers, this concern may still remain due to the minimum of three and limit of seven measures imposed by the final rules; however we are of the view that providing an upper bound for the list will reduce the risk of lengthy, overly complicated lists, which would fail to advance the statutory objective of providing clear and simple comparisons of pay with performance. In addition, we believe allowing an unlimited number of measures could in some cases result in misleading or confusing disclosures by obscuring which performance measures are principally driving compensation actually paid.

As discussed in the Reopening Release, the final rules specify that measures required to be included in the Tabular List are financial performance measures that, in the registrant's assessment, represent the most important financial performance measures used by the registrant to link compensation actually paid during the fiscal year to company performance. As discussed in the Reopening Release, we believe that a list of the measures that the registrant assesses to be the ''most important'' may enable investors to more easily assess which performance measures actually have the most impact on compensation actually paid and make their own judgments as to whether that compensation appropriately incentivizes management. In addition, we believe this list will provide investors with helpful context for interpreting the pay-versus-performance disclosure, more generally, particularly when analyzing the other measures included in the table, by showing which (if any) of those measures are considered ''important'' by the registrant, in determining pay. While we recognize that some commenters supported permitting non-financial performance measures to be included in the list, the final rules specify that the only required disclosures in the Tabular List are ''financial performance measures'' given the ''financial performance'' language in Section 14(i). However, in response to commenters, the final rules provide that registrants have the option of including non-financial performance measures in the Tabular List. Registrants may do so only if such measures are included in their three to seven most important performance measures, and they have disclosed at least three (or fewer, if the registrant only uses fewer) most important financial performance measures. Regardless of whether registrants elect to disclose non-financial performance measures in their Tabular List, they still may only disclose a maximum of seven measures in the list.

Under the final rules, registrants may disclose the Tabular List in three different ways.[339] First, registrants may present one list with at least three, and up to seven, performance measures, which in the registrant's assessment represent the most important performance measures used by the registrant to link compensation actually paid to the registrant's NEOs, for the most recently completed fiscal year, to company performance, similar to the ranked list contemplated in the Reopening Release.

Second, registrants may break up the Tabular List disclosure into two separate lists: one for the PEO and one for the remaining NEOs. Third, registrants may break up the Tabular List disclosure into separate lists for the PEO and each NEO. If the registrant elects to provide the Tabular List disclosure in multiple lists (the second or third options, described above), each list must include at least three,[340] and

[337] If the registrant considers fewer than three financial performance measures when it links executive compensation actually paid during the fiscal year to company performance, under the final rules and as considered in the Reopening Release, the registrant will be required to disclose only the number of measures it actually considers. Registrants that do not use any financial performance measures to link executive compensation actually paid to company performance would not be required to present a Tabular List.

[338] Based on staff experience, the majority of companies use fewer than seven metrics, in total, in their incentive plans. *See also, e.g.,* Meridian Compensation Partners, LLC, 2020 Trends and Developments in Executive Compensation (April 30, 2020), *available at https://www.meridiancp.com/wp-content/uploads/Meridian-2020-Trends-and-Developments-Survey-Final.pdf* (''Meridian 2020 Survey'') (indicating that, while the measures used in long-term and annual incentive plans are often different, only 2% of 108 companies surveyed by Meridian used three or more performance measures in their long-term incentive plans or their annual incentive plans); and Aon plc, *The Latest Trends in Incentive Plan Design as Firms Adjust Plans Amid Uncertainty* (October 2020), *available at https://humancapital.aon.com/insights/articles/2020/the-latest-trends-in-incentive-plan-design-as-firms-adjust-plans-amid-uncertainty* (''Aon 2020 Study'') (surveying the CEO short- and long-term incentive plans at a sample of the S&P 500, across all industries, and finding that for short-term incentive plans, ''[a]ll industries, excluding energy, reveal most companies use one to two metrics'' and that ''[a]cross all sectors of the S&P 500, companies, on average, use two metrics for long-term incentives''). Given this, we believe a range of at least three and up to seven metrics should give almost all companies flexibility in listing their ''most important'' measures, even if they determine that all of their financial performance measures are the ''most important.''

[339] *See* 17 CFR 229.402(v)(6)(i).

[340] If the registrant considers fewer than three financial performance measures when it links

Continued

up to seven, financial performance measures. As in situations where a registrant elects to provide one Tabular List, registrants electing to provide the Tabular List disclosure in multiple lists may include non-financial performance measures in such lists if such measures are among their most important performance measures. Requiring the Tabular List to include measures related to both PEO and NEO compensation is consistent with the approach taken throughout Item 402(v) of Regulation S–K and we believe this consistency in disclosure will make the disclosure more readily understandable to investors.

As noted above, commenters suggested that such a list was beyond the scope of the Dodd-Frank Act mandate, and that similar disclosure is already available in the CD&A.[341] We believe the Tabular List would further the objectives of the Section 14(i) mandated disclosure, as it provides another avenue for investors to understand the relationship between executive compensation actually paid and the registrant's financial performance. It is within our authority to specify the form and content of this disclosure as well as to require additional information to enhance the Dodd-Frank Act mandated disclosures. While it is possible that some registrants provide similar disclosure in the CD&A, we note that the CD&A requires disclosure of performance measures that are ''material elements of the registrant's compensation of named executive officers,'' [342] not the ''most important'' measures used by the registrant to link executive compensation actually paid to company performance. There would be an overlap between those two disclosure requirements when the ''most important'' measures are also ''material elements of the registrant's compensation of named executive officers''; however, they are not necessarily the same. Even in situations where the performance measures included in the Tabular List are already included in CD&A disclosure, we believe that the presentation of the measures in the Tabular List should allow investors to more readily understand what measures in the registrant's view are the ''most important'' to its compensation program, and thus better understand the relationship between registrant performance and executive compensation, as the statute provides.

Finally, as considered in the Proposing Release, under the final rules, registrants may cross-reference to other disclosures elsewhere in the applicable disclosure document that describe the registrant's processes and calculations that go into determining NEO compensation as it relates to these performance measures, if they elect to do so.

4. Requirement To Disclose a Company-Selected Measure

i. Amendments Considered in the Reopening Release

The Reopening Release requested comment on requiring registrants to disclose a Company-Selected Measure—a measure that in the registrant's assessment represents the most important performance measure (that is not already included in the table) used by the registrant to link executive compensation actually paid during the fiscal year to company performance, over the time horizon of the disclosure. We considered adding this requirement in order to both provide additional useful disclosure to investors regarding the measures the registrant actually used to set compensation, and to lessen the likelihood that the mandated measures in the tabular disclosure would misrepresent or provide an incomplete picture of how pay relates to performance. We believed that requiring disclosure of a Company-Selected Measure would not be overly burdensome on registrants, as, by definition, the Company-Selected Measure would be a measure already considered by registrants when making executive compensation determinations, and may already be discussed, in a different form, in the CD&A.

ii. Comments

A number of commenters provided feedback on potential disclosure of a Company-Selected Measure, as discussed in the Reopening Release. Some commenters supported mandatory disclosure of a Company-Selected Measure,[343] with one suggesting that the Company-Selected Measure (or Measures) should be the only mandated performance measure(s).[344] One commenter, who generally favored requiring registrants to disclose ''all'' measures used by registrants in linking executive compensation paid to performance, suggested that the Company-Selected Measure should be limited to financial measures, to provide an ''alternative'' to TSR, and suggested that companies should be permitted to omit the Company-Selected Measure if they do not have a single measure used to assess financial performance for compensation purposes.[345] Another commenter suggested requiring the disclosure of multiple Company-Selected Measures, such as three such measures, with corresponding peer group disclosure to prevent registrants from ''cherry-pick[ing] measures.'' [346] Other commenters suggested that the Company-Selected Measure should be based on the compensation paid to the PEO, not all of the NEOs.[347]

Some commenters suggested that the Company-Selected Measures be disclosed alongside the methodology used to calculate it,[348] with two commenters specifically suggesting the Company-Selected Measure must be ''auditable/assurable'' [349] or accompanied by ''an explanation of its calculation and a complete GAAP reconciliation, if possible.'' [350] Two commenters specifically said that, if ESG metrics are used as Company-Selected Measures, additional information about the metrics used should be disclosed.[351]

A number of commenters opposed the mandatory inclusion of a Company-Selected Measure,[352] stating that the idea that there is one ''most important'' measure ''oversimplifies'' the compensation setting process,[353] and that different measures cannot be considered in ''isolation.'' [354]

As discussed above, a number of commenters supported allowing the companies' ''most important'' measures to be non-financial measures,[355] with

compensation actually paid to the specific NEO (or group of NEOs) included in the list, during the fiscal year to company performance, the registrant will be required to disclose only the number of measures it actually considers.

[341] *See* letters from CEC 2022; Davis Polk 2022; McGuireWoods; and SCG.

[342] Item 402(b) of Regulation S–K.

[343] *See* letters from As You Sow 2022; Better Markets; CalPERS 2022; CalSTRS; Dimensional; Georgiev; Infinite; ICGN; Nareit (specifically supporting the fact that it would provide REITs with flexibility to disclose a measure more relevant for them); PG 2022; PRI; RAAI; Teamsters; and Troop.

[344] *See* letter from NAM 2022.

[345] *See* letter from Georgiev.

[346] Letter from Dimensional; *see also* letter from Georgiev (suggesting registrants be permitted to include multiple Company-Selected Measures).

[347] *See* letter from Davis Polk 2022 (opposing the mandatory disclosure of a Company-Selected Measure, but stating that, if it is required, it should be based on compensation paid to the PEO) and Infinite.

[348] *See* letters from AFREF; CII 2022; and ICGN.

[349] Letter from ICGN.

[350] Letter from Teamsters.

[351] *See* letters from Dimensional and PRI.

[352] *See* letters from Aon HCS; ASA; CEC 2022; Davis Polk 2022; IBC 2022; McGuireWoods; and TCA 2022 (stating that the Company-Selected Measure should be ''allow[ed] for,'' while other prescribed measures should be eliminated).

[353] Letter from IBC 2022.

[354] Letter from CEC 2022.

[355] *See supra* note 332. *See also* letter from Davis Polk 2022 (opposing the mandatory disclosure of a

some supportive of allowing non-financial measures to be a registrant's Company-Selected Measure.[356] Other commenters opposed either allowing non-financial measures to be included as Company-Selected Measures, indicating that doing so ''would be at odds with both the language and intent of Section 953(a),'' [357] or requiring or encouraging companies to incorporate ESG metrics in setting executive pay.[358]

Commenters were divided on whether Company-Selected Measures should be permitted to be changed from year to year, and if so, what disclosure should be required. One commenter was directly opposed to regular changes in the Company-Selected Measure, stating the measure should be required to remain the same for at least five years, in order to avoid companies rationalizing the ''best'' measure each year.[359] Other commenters supported allowing annual changes to the Company-Selected Measure, so long as accompanying disclosure about the reason for the change or a period of disclosure of the 'old' and 'new' measures was provided.[360] One commenter alternatively suggested that the Company-Selected Measure should be the ''most important'' measure over a given period, and not the ''most important measure'' for all five years in the table.[361]

One commenter suggested that, if the ''most important'' measure is already included in the tabular disclosure, the next-most important measure should be included as the Company-Selected Measure,[362] while another commenter (who generally opposed the inclusion of the Company-Selected Measure) stated that, if it is a measure otherwise required to be disclosed in the table, the Company-Selected Measure should be able to be an already-included measure.[363]

iii. Final Amendments

The final rules require registrants to disclose a Company-Selected Measure in the table required under new 17 CFR 229.402(v)(1). The Company-Selected Measure must be a financial performance measure included in the Tabular List, which in the registrant's assessment represents the most important performance measure (that is not otherwise required to be disclosed in the pay-versus-performance table required under new Item 402(v) of Regulation S–K) used by the registrant to link compensation actually paid to the registrant's NEOs, for the most recently completed fiscal year, to company performance. If the registrant's ''most important'' measure is already included in the tabular disclosure, the registrant would select its next-most important measure as its Company-Selected Measure. As discussed above,[364] registrants would also be required to provide a clear description of the relationship of the Company-Selected Measure to executive compensation actually paid, in narrative or graphical form, or a combination of the two.[365]

We believe that providing a quantified Company-Selected Measure, along with the Tabular List, will provide investors with useful context for understanding the measures actually used by registrants in their compensation programs. In order to allow investors to understand the measure that is most important, we are only requiring registrants to provide one Company-Selected Measure. However, we recognize some registrants may have additional performance measures (including non-financial measures) that they believe are ''important'' measures and that could warrant quantified disclosure. We note that, under the Plain English principles (discussed below [366]), registrants may provide additional performance measures as new columns in the table. However, such additional disclosures may not be misleading or obscure the required information, and the additional performance measures may not be presented with greater prominence than the required disclosure.[367] If a registrant elects to provide any additional performance measures in the table, each additional measure must also be accompanied by a clear description of the relationship between executive compensation actually paid to the registrant's PEO, and, on average, to the other NEOs, and that measure.[368] We believe clarifying that registrants have the flexibility to include additional measures will, to some degree, alleviate concerns raised by some commenters in response to the Reopening Release that selecting one Company-Selected Measure was overly simplistic and did not reflect how companies actually approach their compensation programs, while also providing registrants the opportunity to provide context to the other mandatory measures disclosed in the table.

As the Company-Selected Measure must be a measure included in the Tabular List,[369] the determination of ''most important'' that registrants must use for selecting Company-Selected Measures is the same as the determination they must use for selecting required measures for the Tabular List (*i.e.,* the ''most important'' determination is made based on the most recently completed fiscal year and the measures required to be disclosed are financial measures of performance). We are limiting the measures required to be included in the Tabular List (and to be included as the Company-Selected Measure) to financial performance measures given the statutory language referencing ''the relationship between executive compensation actually paid and the *financial performance* of the issuer.'' [370] We recognize that some registrants may consider one or more non-financial performance measures to be their most important measures for executive compensation purposes. In addition to the option under the final rules to include such measures in the Tabular list, under the Plain English principles, those registrants can supplement their mandatory pay-versus-performance disclosure with disclosure

Company-Selected Measure, but stating that, if it is required, ''it should be permitted to encompass factors other than measures that relate to financial performance'').

[356] *See* letters from AFREF; CII 2022; Ceres; and PRI.

[357] *See* letter from Center for Capital Markets Competitiveness, dated Mar. 4, 2022.

[358] *See* letter from Dimensional.

[359] *See* letter from Better Markets et al.

[360] *See* letters from CalPERS 2022; CII 2022; Davis Polk 2022 (opposing the mandatory disclosure of a Company-Selected Measure, but stating that, if it is required, it should allow for variability over different years); ICGN; and Troop.

[361] *See* letter from PG 2022.

[362] *See* letter from PDI.

[363] *See* letter from Davis Polk 2022.

[364] *See supra* Section II.A.2.iii.

[365] As with the Tabular List, we are also not requiring registrants to provide the methodology used to calculate the Company-Selected Measure. We believe such a requirement would be overly burdensome on registrants, particularly when the measure is already well understood by investors or otherwise disclosed. However, registrants should consider if such disclosure would be helpful to investors to understand the Company-Selected Measure, or necessary to prevent the Company-Selected Measure disclosure from being confusing or misleading.

[366] *See infra* Section II.F.3.

[367] Consistent with the Plain English principles, if a registrant elects to include multiple additional measures in the table, it should consider whether the addition of those measures modifies the disclosure in such a way that the disclosure becomes misleading, the required information in the table becomes obscured, or the additional measures are presented with greater prominence than the required disclosure. In addition, in situations where registrants elect to describe multiple measures because they believe multiple measures are equally the ''most important,'' they would still be required to select one Company-Selected Measure, but could provide explanatory disclosure, for example, about why additional measures are added and the reason that the Company-Selected Measure was selected.

[368] *See* 17 CFR 229.402(v)(5).

[369] *See* 17 CFR 229.402(v)(2)(vi).

[370] 15 U.S.C. 78n(i) (emphasis added).

about those non-financial performance measures, as discussed below.[371]

The table will include the numerically quantifiable performance of the issuer under the Company-Selected Measure for each covered fiscal year. For example, if the Company-Selected Measure for the most recent fiscal year was total revenue, the company would disclose its quantified total revenue performance in each covered fiscal year. The Company-Selected Measure could change from one filing to the next, and we acknowledge that some commenters were concerned that registrants may change their Company-Selected Measure in order to present the relationship of pay to performance in a positive light.[372] However, we believe limiting the Company-Selected Measure to compensation linked to performance for the most recently completed fiscal year will provide investors with visibility into the registrant's current executive compensation program, and avoid situations in which the Company-Selected Measure is not a measure that is currently used by the registrant (*i.e.,* when a measure is only the ''most important'' measure based on historical usage). In addition, as is the case for the Tabular List, we believe limiting the Company-Selected Measure to the most recent fiscal year will allow registrants to more easily calculate and assess which measure is the ''most important.''

Similarly to the Tabular List, we do not believe it would be appropriate to limit the Company-Selected Measure to a measure relating only to the PEO's compensation, because our understanding is that Congress intended for the rules to provide disclosure about both PEOs and the remaining NEOs.

We are not mandating that the methodology used to calculate the Company-Selected Measure be included in the registrant's disclosure. However, as discussed above,[373] registrants will be required to provide a narrative, graphical, or combined narrative and graphical description of the relationships between executive compensation actually paid to the PEO, and, on average, the other NEOs, and the Company-Selected Measure, and may cross-reference to other disclosures elsewhere in the applicable disclosure document that describe the processes and calculations that go into determining NEO compensation as it relates to the Company-Selected Measure, if they elected to do so. In addition, registrants are permitted to supplement their Company-Selected Measure disclosure, so long as any additional disclosure is clearly identified as supplemental, not misleading and not presented with greater prominence than the required disclosure.

Further, we recognize that a registrant's Company-Selected Measure, or additional measures included in the table, may be non-GAAP financial measures. Under existing CD&A requirements, if a company discloses a target level that applies a non-GAAP financial measure in its CD&A, the disclosure will not be subject to the general rules regarding disclosure of non-GAAP financial measures, but the company must disclose how the number is calculated from its audited financial statements.[374] Because the disclosure required by the final rules is intended, among other things, to supplement the CD&A, we believe it is appropriate to treat non-GAAP financial measures provided under Item 402(v) of Regulation S–K consistently with the existing CD&A provisions. As a result, the final rules specify that disclosure of a measure that is not a financial measure under generally accepted accounting principles will not be subject to Regulation G and Item 10(e) of Regulation S–K; however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements.

E. Time Period Covered

1. Proposed Amendments

We proposed requiring all registrants, other than SRCs, to provide the pay-versus-performance disclosure for the five most recently completed fiscal years, and requiring SRCs to provide disclosure for the three most recently completed fiscal years. We also proposed providing transition periods for registrants: SRCs would only be required to provide the Item 402(v) of Regulation S–K disclosure for the last two fiscal years in the first applicable filing after the rules became effective; and all other registrants would be required to provide the disclosure for three fiscal years, in the first applicable filing after the rules became effective, and to provide disclosure for an additional year in each of the two subsequent annual proxy filings where disclosure is required.

The Proposing Release also provided that the pay-versus-performance disclosure would only need to be provided for years in which a registrant was a reporting company pursuant to Section 13(a) of the Exchange Act [375] or Section 15(d) of the Exchange Act [376] (''Section 15(d)''), consistent with the phase-in period for new reporting companies in their Summary Compensation Table disclosure.[377]

2. Comments

Several commenters supported the proposed disclosure periods,[378] while several others generally opposed them.[379] Some commenters who opposed the proposed disclosure periods stated that the periods were too short to measure management's performance; [380] while others argued the periods were too long, creating burdensome costs for registrants, and were inconsistent with other approaches taken in the proxy statement.[381]

Commenters suggested a number of different alternative time periods. Some commenters suggested permitting registrants to voluntarily disclose additional years in the tabular disclosure,[382] while others opposed permitting additional years of disclosure.[383] Some other commenters recommended the Commission use a three-year period,[384] with some of those commenters noting that three-year periods will have less NEO turnover, meaning registrants will need to make less explanatory disclosure.[385] One commenter suggested we only require the disclosure for one year.[386] Another commenter suggested allowing registrants to set the time period

[371] *See infra* Section II.F.3.

[372] *See* letters from Better Markets *et al.* (suggesting that the Company-Selected Measure should remain the same for five years to prevent firms from using a measure that best justifies compensation in a given year); *see also* letters from CalPERS 2022 (suggesting that if the Company-Selected Measure is changed, the prior and current Company-Selected Measures should both be reported for some period of time).

[373] *See supra* Section II.A.2.iii.

[374] *See* Instruction 5 to Item 402(b) of Regulation S–K. The general non-GAAP financial measure provisions are specified in Regulation G [17 CFR 244.100 through 102] (''Regulation G'') and Item 10(e) of Regulation S–K [17 CFR 229.10(e)] (''Item 10(e) of Regulation S–K'').

[375] 15 U.S.C. 78m(a).

[376] 15 U.S.C. 78o(d).

[377] *See* Instruction 1 to 17 CFR 229.402(c) and Instruction 1 to 17 CFR 229.402(n).

[378] *See* letters from CII 2015; CFA; Farient; LWC; OPERS; Quirin; SVA; and TIAA.

[379] *See* letters from AON; BorgWarner; CEC 2015; Celanese; Hay; Hyster-Yale; McGuireWoods; NACCO; PNC; SCG; and WorldatWork.

[380] *See* Letters from Hyster-Yale and NACCO.

[381] *See* letters from BorgWarner; Celanese; Hay; and WorldatWork.

[382] *See* letters from CFA; NACD 2015; Andrea Pawliczek, dated Mar. 4, 2022; and Simpson Thacher.

[383] *See* letters from Barnard 2015 and Quirin.

[384] *See* letters from AON; Celanese; FSR; Hay; Honeywell; McGuireWoods; SCG; and WorldatWork; *see also* letters from Davis Polk 2015 and Davis Polk 2022 (each recommending a one-year period, but suggesting a three-year period as an alternative to their suggestion).

[385] *See* letters from AON and SCG.

[386] *See* letters from Davis Polk 2015 and Davis Polk 2022.

covered, with a minimum requirement, such as three years.[387] Finally, one commenter did not propose a specific time period, but rather suggested the longer the period the better.[388]

Commenters were also divided on the suggested transition period. Some commenters supported the transition period,[389] while one commenter opposed it.[390] Others questioned whether there would be significant enough costs to justify applying a transition period.[391] One commenter specifically supported a transition period for newly public companies.[392]

Commenters offered a few alternatives to the proposed transition period, including a one-year transition period, not requiring reporting until the anniversary of the effective date of the rule,[393] and a longer transition period.[394]

3. Final Amendments

We are adopting the time periods as proposed. We believe that requiring registrants, other than SRCs, to provide pay-versus-performance disclosure for a five year period will provide a meaningful period over which a relationship between annual measures of pay and performance over time can be evaluated. Further, we are requiring that the disclosure be in order beginning with the most recent fiscal year. We believe that requiring a shorter time period, for all registrants, may not provide investors with enough data to evaluate the pay-versus-performance relationship, while requiring a longer period may be overly burdensome to registrants. We also believe that the scaled disclosure requirement under which SRCs may elect to provide three years of pay-versus-performance disclosure will provide investors with an appropriate time horizon over which to observe a relationship between pay and performance, while also remaining consistent with the scaled-disclosure approach generally applied to SRCs under our executive compensation rules. While SRCs generally are only required to provide two years of executive compensation disclosure in filings with the Commission, because the final rules include a transition period that permits an existing SRC to provide two years of disclosure, instead of three, in the first applicable filing after the rules become effective, and three years of disclosure in subsequent filings, we do not believe requiring three years of pay-versus-performance data will be unduly burdensome on SRCs.[395]

We are also adopting the transition periods and the requirement that a registrant provide pay-versus-performance disclosure only for years that it was a reporting company pursuant to Section 13(a) or Section 15(d) of the Exchange Act, as proposed. We believe both of these provisions will mitigate concerns expressed by some commenters regarding the costs of the potential disclosure, while also, over time, providing investors with a meaningful way to evaluate a registrant's period pay-versus-performance disclosure. In order to give companies adequate time to implement the new disclosures, we are providing that companies are required to comply with Item 402(v) of Regulation S–K in proxy and information statements that are required to include the Item 402 of Regulation S–K disclosure for fiscal years ending on or after December 16, 2022.

With respect to some commenters' suggestions that we should permit registrants to voluntarily provide additional years of disclosure, as noted below, under the Plain English principles, the final rules will permit registrants to provide additional years of disclosure, so long as doing so would not be misleading and would not obscure the required information.

F. Permitted Additional Pay-Versus-Performance Disclosure

1. Proposed Amendments

We proposed applying the Plain English principles in 17 CFR 240.13a–20 and 17 CFR 240.15d–20 to the pay-versus-performance disclosures. We noted that, under those principles, registrants would be permitted to provide additional information beyond what is specifically required by the rules so long as the information is not misleading and would not obscure the required information. As discussed in the Proposing Release, we note that the Plain English principles applicable to compensation disclosure would permit registrants to ''include tables or other design elements, so long as the design is not misleading and the required information is clear, understandable, consistent with applicable disclosure requirements, consistent with any other included information, and not misleading.'' [396]

2. Comments

Some commenters supported applying the Plain English principles to the pay-versus-performance disclosure, noting that their application would be beneficial for both investors and the financial community.[397]

3. Final Amendments

The final amendments allow registrants to provide additional pay-versus-performance information beyond what is specifically required by Item 402(v) of Regulation S–K, so long as doing so would not be misleading and would not obscure the required information. For example, registrants that are already providing voluntary pay-versus-performance disclosures may generally continue to provide such disclosures in their present format, or could include disclosure of long-term performance metrics measured over periods longer than a single fiscal year.[398] Subject to these same principles, registrants will be permitted to include additional compensation and performance measures, or additional years of data, in the newly required table. Any supplemental measures of compensation or financial performance and other supplemental disclosures provided by registrants must be clearly identified as supplemental, not misleading, and not presented with greater prominence than the required disclosure. For example, depending on the facts and circumstances, a registrant could use a heading in the table indicating that the disclosure is supplemental, or include language in the text of its filing stating that the disclosure is supplemental. As noted above, to the extent additional performance measures are included in the table, these must also be accompanied by a clear description of their relationship to executive compensation actually paid to the PEO

[387] *See* letter from Hall.

[388] *See* letter from Hermes.

[389] *See* letters from BRT; CFA; Hook; McGuireWoods; and TIAA.

[390] *See* letter from Barnard 2015.

[391] *See* letters from CII 2015 and Hermes.

[392] *See* letter from Pearl.

[393] *See* letters from BRT and NIRI 2015.

[394] *See* letter from Pearl.

[395] *See infra* Section II.G (discussing the required disclosures for SRCs).

[396] *See Executive Compensation and Related Person Disclosure,* Release No. 33–8732A (Aug. 29, 2006) [71 FR 53158 (Sept. 8, 2006)], at Section II.C.6.

[397] *See* letters from McGuireWoods and PG 2015; *see also* letter from Hermes (supporting a ''plain English'' requirement for the pay-versus-performance disclosure, but questioning whether its application ''can be mandated through regulation'').

[398] As noted above, the placement and presentation of the information required by the final rules relative to existing disclosures may not obscure the required disclosures, place the required disclosures in a less prominent position, or otherwise mislead or confuse investors. In addition, a registrant should consider whether retaining its existing pay-versus-performance disclosure would be duplicative of the disclosures required by the final rules, and, if so, it may need to consider mitigating any such duplication.

and to the average such compensation of the other NEOs. As discussed in the Proposing Release, and noted by commenters, we believe applying the Plain English principles to the pay-versus-performance disclosure will facilitate investors' understanding and decision-making with respect to the pay-versus-performance disclosure.

G. Required Disclosure for Smaller Reporting Companies

1. Proposed Amendments

The Proposing Release would have required SRCs to provide disclosure under Item 402(v) of Regulation S–K, but the disclosure would be scaled for those companies, consistent with SRCs' existing scaled executive compensation disclosure requirements. Specifically, as proposed, SRCs would:

- Only be required to present three, instead of five, fiscal years of disclosure under new Item 402(v) of Regulation S–K;
- Not be required to disclose amounts related to pensions for purposes of disclosing executive compensation actually paid;
- Not be required to present peer group TSR;
- Be permitted to provide two years of data, instead of three, in the first applicable filing after the rules became effective; and
- Be required to provide disclosure in the prescribed table in XBRL format beginning in the third filing in which it provides-pay-versus performance disclosure.

In the Reopening Release, the Commission indicated that it was considering requiring SRCs to disclose the income or loss before income tax expense and net income measures, but not the Company-Selected Measure or the list of their five most important measures.

2. Comments

Some commenters supported fully exempting SRCs from the pay-versus-performance disclosure requirements, stating that the disclosure requirements would be disproportionally burdensome to SRCs;[399] executive disclosure issues are less acute at SRCs;[400] and TSR is a more problematic measure for SRCs due to the relative illiquidity and volatility of SRCs' shares.[401] One commenter suggested that the Commission exempt SRCs from the disclosure requirements for five years, so that the Commission could first analyze the impact of the disclosure requirements on larger registrants.[402] Another commenter suggested that the pay-versus-performance disclosure be voluntary for SRCs.[403]

Other commenters stated that we should not exempt SRCs from the disclosure requirements.[404] One commenter opposed to exempting SRCs indicated that a lack of transparency could have negative market effects for SRCs.[405] In addition, one commenter specifically supported requiring SRCs to disclose income or loss before income tax expense, net income, the Company-Selected Measure, and the list of the five most important measures.[406]

With respect to the timing of the disclosure, one commenter, who supported SRCs being subject to the full pay-versus-performance disclosure requirement, suggested a one year ''grace period.''[407] Another commenter suggested that SRCs provide five years of data, but that we provide SRCs with a three year transition period requiring two years of data in the first applicable filing after the rules became effective, and increasing until the fourth applicable filing after the rules become effective, when all five years of data would be required.[408]

As discussed above, a number of commenters supported requiring all registrants to use Inline XBRL to tag their pay-versus-performance disclosure,[409] with one specifically stating that all filers are now familiar with Inline XBRL.[410] On the other hand, one commenter specifically suggested, in response to the Proposing Release, that we exempt SRCs from any XBRL tagging requirement.[411]

3. Final Amendments

We are adopting the scaled disclosure requirements for SRCs as described in the Proposing Release (and with respect to the net income measure, the Reopening Release). For the reasons noted above,[412] we believe requiring SRCs to provide three instead of five years is appropriate, and is aligned with SRCs' existing scaled executive compensation disclosure requirements. While the three-year period applicable for the disclosure is longer than what SRCs currently are required to disclose in the Summary Compensation Table, we believe the pay-versus-performance calculations, or the information required to make the calculations, for the additional year would generally be available in SRCs' disclosures from prior years.

We also believe that requiring SRCs to provide peer group TSR, a Company-Selected Measure, a Tabular List, or disclose amounts related to pensions would be unduly burdensome for SRCs, which, unlike larger registrants, are not otherwise required to present the TSR of a peer group or disclosure of how executive compensation relates to performance in a CD&A, and are subject to scaled compensation disclosure that does not include pension plans. Finally, we believe a transition period that would permit SRCs to provide two years of data, instead of three, in the first applicable filing after the rules become effective is appropriate, as is a phase-in period to allow SRCs to provide the required Inline XBRL data beginning in the third filing in which it provides pay-versus-performance disclosure, instead of the first.

III. Other Matters

If any of the provisions of these rules, or the application thereof to any person or circumstance, is held to be invalid, such invalidity shall not affect other provisions or application of such provisions to other persons or circumstances that can be given effect without the invalid provision or application.

Pursuant to the Congressional Review Act,[413] the Office of Information and Regulatory Affairs has designated these rules as not a ''major rule,'' as defined by 5 U.S.C. 804(2).

IV. Compliance Dates

In order to give companies adequate time to implement these disclosures, we are requiring registrants to begin complying with Item 402(v) of Regulation S–K in proxy and information statements that are required to include Item 402 disclosure for fiscal years ending on or after December 16, 2022.

V. Economic Analysis

A. Background

We are adopting these final rules to satisfy the statutory mandate of Section 14(i). The Senate Report that accompanied the statute references shareholder interest in the relationship

[399] *See* letters from CCMC 2015; Mercer; Pearl; TCA 2015; and TCA 2022.

[400] *See* letter from CCMC 2015.

[401] *See* letters from Mercer and Pearl.

[402] *See* letters from NIRI 2015 and NIRI 2022.

[403] *See* letter from ICGN.

[404] *See* letters from AB; Better Markets; CalPERS 2015; CalSTRS; CII 2015; Eileen Morrell, dated Mar. 6, 2022 (''Morrell''); SBA–FL; and Troop.

[405] *See* letter from CalPERS 2015.

[406] *See* letter from CII 2022.

[407] *See* letter from AB.

[408] *See* letter from Hermes.

[409] *See* letters from CII 2022; Huddart; ICGN; and XBRL US.

[410] Letter from XBRL US.

[411] *See* letter from Hay.

[412] *See supra* Section II.E.3.

[413] 5 U.S.C. 801 *et seq.*

between executive pay and performance as well as the general benefits of transparency of executive pay practices.[414] As discussed above, we believe that the statute is intended to provide further disclosures concerning a registrant's executive compensation program for shareholders to consider when making related voting decisions, such as decisions with respect to the shareholder advisory vote on executive compensation, votes on other compensation matters, and director elections.

The final rules require the disclosure of information that is largely already reported under current disclosure rules, but that is currently not computed or presented in the way the final rules will require. This repackaging of some of the information from existing disclosures into the required pay-versus-performance disclosure is intended to allow investors to more quickly or easily process the information accurately.

The final rules require registrants to present the values of prescribed measures of executive compensation and financial performance for each of their five most recently completed fiscal years (three years for SRCs) in a standardized table in proxy or information statements in which executive compensation disclosure is required. Registrants will also be required to provide ''clear descriptions'' of the relationships between the compensation and performance measures in the table (and between TSR and peer group TSR), but will be allowed to choose the format used to present the relationships, such as graphical or narrative descriptions (or a combination of the two). The final rules will also allow registrants to supplement the required elements of the disclosure with additional measures or additional years of data, subject to certain restrictions. Registrants will be required to provide the disclosure in a structured data language using Inline XBRL.

The final rules reflect several modifications relative to the proposed rules in response to comments received. For example, one area of significant comment on the Proposing Release was the proposal's reliance on TSR (and, for registrants other than SRCs, peer group TSR) as the exclusive measure of financial performance used to present the relation of pay with performance.[415] The Reopening Release discussed, solicited comment on, and analyzed the economic effects of some possible additional measures of financial performance that the Commission was considering requiring. The final rules introduce two of these additional measures to the table: net income and, for registrants other than SRCs, a Company-Selected Measure. In addition, the final rules require registrants other than SRCs to provide a Tabular List of the most important financial performance measures used to link executive compensation actually paid, for the most recent fiscal year, to company performance. The additions will broaden the picture of registrant performance presented in the disclosure, providing additional detail and context that could enhance the usefulness of the disclosure by certain registrants or for certain investors. The additions will also entail some additional compliance costs and could make it more difficult for investors to quickly review the disclosure.

Many commenters to the Proposing Release also raised concerns that, under the proposed approach, the year to which company performance would be attributed and the year in which associated pay would be recognized would frequently be mismatched,[416] which could significantly limit the usefulness of the proposed disclosure. To address these comments, the final rules require equity awards to be revalued more frequently than had been proposed in order to better align pay and any related performance, at the expense of somewhat greater costs to registrants of computing the prescribed measure of pay.

We are mindful of the costs and benefits of the final rules. The discussion below addresses the economic effects of the final rules, including their anticipated costs and benefits, as well as the likely effects of the final rules on efficiency, competition, and capital formation.[417] The final rules reflect the statutory mandate in Section 14(i) as well as the discretion we exercise in implementing that mandate. For purposes of this economic analysis, we address the costs and benefits resulting from the statutory mandate and from our exercise of discretion together, recognizing that it is difficult to separate the costs and benefits arising from these two sources. We also analyze the potential costs and benefits of significant alternatives to the final rules.

B. Baseline

To assess the economic impact of the final rules, we are using as our baseline the current state of the market without a requirement for registrants to disclose the relationship between executive compensation actually paid and the financial performance of the registrant.

1. Affected Parties

We consider the impact of the final rules on investors and registrants (and their NEOs). The final rules will apply to all companies that are registered under Section 12 of the Exchange Act[418] (''Section 12'') and are therefore subject to the Federal proxy rules, except EGCs. The final rules will also not apply to foreign private issuers or companies with reporting obligations only under Section 15(d) of the Exchange Act, which are not subject to the proxy rules. In addition, for some Section 12(g) of the Exchange Act[419] (''Section 12(g)'') registrants, such as limited partnerships, the disclosure requirement might not apply in some or all years because these registrants might not file either proxy or information statements every year.[420]

[414] The Senate Report includes the following with respect to Section 953(a) of the Dodd-Frank Act: ''It has become apparent that a significant concern of shareholders is the relationship between executive pay and the company's financial performance of the issuers. . . The Committee believes that these disclosures will add to corporate responsibility as firms will have to more clearly disclose and explain executive pay.'' *See* Senate Report *supra* note 4.

[415] *See supra* notes 229 and 230.

[416] *See infra* note 631.

[417] Section 3(f) of the Exchange Act [17 U.S.C. 78c(f)] requires the Commission, when engaging in rulemaking where it is required to consider or determine whether an action is necessary or appropriate in the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation. Further, Section 23(a)(2) of the Exchange Act [17 U.S.C. 78w(a)(2)] requires the Commission, when making rules under the Exchange Act, to consider the impact that the rules would have on competition, and prohibits the Commission from adopting any rule that would impose a burden on competition not necessary or appropriate in furtherance of the Exchange Act.

[418] 15 U.S.C. 78l.

[419] 15 U.S.C. 78l(g).

[420] Registrants subject to the final rules will be required to make pay-versus-performance disclosure under Item 402(v) of Regulation S–K when they file proxy statements or information statements in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required. Proxy statement disclosure obligations only arise under Section 14(a) of the Exchange Act [15 U.S.C. 78n(a)] when a registrant with a class of securities registered under Section 12 chooses to solicit proxies. Whether or not a registrant has to solicit proxies is dependent upon any requirement under its charter or bylaws, or otherwise imposed by law in the state of incorporation or stock-exchange (if listed), not the Federal securities laws. For example, NYSE, NYSE American, and Nasdaq require the solicitation of proxies for annual meetings of shareholders. A Section 12(b) of the Exchange Act [15 U.S.C. 78l(b)] (''Section 12(b)'') registrant is listed on a national securities exchange, and therefore likely would solicit proxies and be compelled to provide the disclosure identified in Item 402(v) of Regulation S–K annually. Registrants with reporting obligations under Section 12(g), but not Section 12(b), would not be subject to any obligation to solicit proxies under the listing

Continued

We estimate that approximately 4,530 registrants will be subject to the final rules, including approximately 1,860 SRCs.[421] The proportion of SRCs among the affected registrants is expected to be similar to that which was reported at the time of the Proposing Release.[422] Among all registrants subject to the Federal proxy rules, we estimate that there are approximately 1,275 EGCs, of which approximately 1,065 are also SRCs, none of which will be subject to the final rules.[423]

2. Existing Disclosures and Analyses

The registrants that will be subject to the final rules must currently comply with Item 402 of Regulation S–K, which requires the disclosure of extensive information about the compensation of NEOs, and, except in the case of SRCs, with Item 201(e) of Regulation S–K, which requires graphical disclosure of registrant TSR and peer group TSR. They are also subject to financial statement and disclosure requirements under Regulation S–X. The underlying information necessary to provide the required pay-versus-performance disclosure is, with limited exceptions discussed below, already encompassed by these existing disclosure requirements. However, the existing disclosures might not present the underlying information in a format that allows investors to readily assess the alignment of pay and performance.

Under the final rules, the definition of executive compensation actually paid for a fiscal year is, generally,[424] total compensation as reported in the Summary Compensation Table for that year (i) less the change in the actuarial present value of pension benefits,[425] (ii) less the grant-date fair value of any stock and option awards granted during that year, (iii) plus the pension service cost for the year and, in the case of any plan amendments (or initiations), the associated prior service cost (or less any associated credit), and (iv) plus the change in fair value of outstanding and unvested stock and option awards during that year (or as of the vesting date or the date the registrant determines the award will not vest, if within the year) as well as the fair value of new stock and option awards granted during that year as of the end of the year (or as of the vesting date or the date the registrant determines the award will not vest, if within the year). Adjustments (i) and (iii) with respect to pension plans will not apply to SRCs because they are not otherwise required to disclose executive compensation related to pension plans.

Under the baseline, investors generally should already have the required data to compute a reasonable estimate of executive compensation actually paid as defined in the final rules, even though registrants are not required to compute or disclose this measure. Specifically, under existing requirements of Item 402 of Regulation S–K, registrants must report, in the Summary Compensation Table, the value of total compensation and each of its components,[426] including the aggregate grant-date fair value of equity awards and, for registrants other than SRCs, the total change (if positive) in actuarial present value of pension benefits, for each NEO. The total compensation and amounts required to be subtracted from this total in the computation of executive compensation actually paid for each NEO, or adjustments (i) and (ii) referenced above, are thus already available in the Summary Compensation Table.[427]

The amounts that must be added back in this computation, or adjustments (iii) and (iv) referenced above, are not required to be directly reported under existing disclosure requirements, but can be estimated based on existing disclosures. In particular, Item 402 of Regulation S–K requires further disclosure about equity awards and pension plans, such as, for non-SRCs, the Grant of Plan-Based Awards Table and the Pension Benefits Table and the associated narrative and footnotes, which include the detailed terms of these components of compensation and certain valuation assumptions. Using these existing disclosures and other public data, it is possible for investors to make reasonable (though perhaps not identical) estimates of the annual and vesting-date fair values of outstanding stock and option grants. In fact, various third parties, such as proxy advisory service providers and compensation consultants, currently make similar computations using existing disclosures in order to construct alternative pay measures as part of the services they provide to certain investors and/or registrants.[428] Market participants other

standards of an exchange, but may nevertheless solicit proxies as a result of an obligation under their charters, bylaws, or law of the jurisdiction in which they are incorporated. When Section 12 registrants that do not solicit proxies from any or all security holders are nevertheless authorized by security holders to take a corporate action at or in connection with an annual meeting or by written consent in lieu of such meeting, disclosure obligations also would arise under Item 402(v) of Regulation S–K due to the requirement to file and disseminate an information statement under Section 14(c).

[421] These estimates are based on a review of calendar year 2021 EDGAR filings. The final rules will apply to BDCs to the extent they are internally managed (*i.e.,* have named executive officers within the meaning of Item 402 of Regulation S–K) and are not EGCs. We estimate that there are approximately seven affected BDCs, which are included in the estimate of affected registrants.

[422] Based on 2021 filings, SRCs represent about 41% (1,860 out of 4,530) of the affected issuers, while the Proposing Release reported that, based on 2013 filings, about 2,430 out of 6,075, or 40%, of the affected issuers were expected to be SRCs. *See* Proposing Release at 30. The Commission amended the smaller reporting company definition effective September 2018, with the effect of expanding the number of registrants that qualified as SRCs. *See* Amendments to the Smaller Reporting Company Definition, Release No. 33–10513 (June 28, 2018) [83 FR 31992 (July 10, 2018)]. However, EGCs are not subject to the final rules, and the number of EGCs subject to the Federal proxy rules, including SRCs that are also EGCs, has grown more than three-fold since the time of the Proposing Release (from about 360, as reported in the Proposing Release, to about 1,275 based on our review of 2021 filings), offsetting any increase in the proportion of SRCs subject to the final rules.

[423] These estimates are based on a review of calendar year 2021 EDGAR filings.

[424] The required deductions and additions in computing executive compensation actually paid are provided in greater detail in Section II.C above.

[425] If the change in actuarial value of pension plans is not positive, it is not currently included in total compensation and therefore need not be deducted for the purpose of this adjustment.

[426] For registrants that are not SRCs, total compensation consists of the dollar value of the executive's base salary and bonus, plus the fair market value at the grant date of any new stock and option awards, the dollar value of any non-equity incentive plan award earnings, the change (if positive) in actuarial value of the accumulated benefit under all defined benefit and pension plans, any above-market interest or preferential earnings on deferred compensation and all other compensation. The all other compensation component includes, among other things, the value of perquisites and other personal benefits (unless less than $10,000 in aggregate) and registrant contributions to defined contribution plans.

[427] While the time period applicable for existing Item 402 of Regulation S–K disclosures (two years for SRCs and three years for other affected registrants) is shorter than will be required for the pay-versus-performance disclosure (three years for SRCs and five years for other affected registrants), the information required to make these computations for the additional years would be available in disclosures from previous years. New registrants would not be required to report data for years in which they were not reporting companies.

[428] *See, e.g.,* Institutional Shareholder Services, *ISS United States Compensation Policies: Frequently Asked Questions* (updated Dec. 17, 2021), *available at https://www.issgovernance.com/file/policy/active/americas/US-Compensation-Policies-FAQ.pdf* (''ISS FAQ'') (describing their computation of ''realizable pay'' as ''all non-incentive compensation paid [and] the value of equity or cash incentive awards earned or, if the award remains on-going, revalued at target level as of the end of the measurement period''); Glass Lewis, *Pay-for-Performance Methodology & FAQ* (Oct. 2020), *available at https://www.glasslewis.com/wp-content/uploads/2020/10/2020-NA-Compensation-Overview-FAQs.pdf* (''Glass Lewis Methodology'') (describing compensation computations in which the company ''performs its own stock and option valuations and excludes any cash severance or changes in pension value''); Equilar, *Pay for Performance* [Brochure] (Nov. 2020), *available at https://www.equilar.com/pay-for-performance* (providing screenshots of the their pay for performance profile, which presents compensation computed in numerous different

than those providing actuarial services may have less experience with the computations required with respect to pension plans. However, it is still possible to compute an estimate of pension service cost for the year (plus the prior service cost, or credit, associated with any plan amendments or initiations) by using existing disclosures and public data to construct the required actuarial assumptions and computations.[429]

That said, these computations can be complex and investors would bear costs to make such computations or obtain them from third parties. Further, if investors or third parties were to estimate executive compensation actually paid based on existing disclosures, these estimates may differ from each other and from similar estimates made by registrants themselves. For example, because registrants are not currently required to disclose the equity valuation assumptions that they would apply at any time after the grant date (which may differ from the grant-date assumptions), investors may not know how the registrant would apply its discretion in choosing from a range of reasonable assumptions to compute fair values at these other dates.[430] Estimates constructed by or on behalf of investors may also differ from registrant estimates if simplifications are made in order to more easily produce estimates for a large number of registrants.[431]

Information about registrant financial performance is readily available to investors under the baseline. The final rules require the disclosure of historical TSR, peer group TSR, and net income for up to five years. Disclosure of historical TSR and TSR of a particular peer group is already required under Item 201(e) of Regulation S–K: specifically, this item requires the disclosure of the TSR for the registrant as well as a peer group (a published industry or line-of-business index, peer issuers selected by the registrant, or issuers with similar market capitalizations), for the past five years, in annual reports.[432] The final rules allow registrants to choose to use either the peer group required under Item 201(e) of Regulation S–K or, if the registrant uses a peer group in benchmarking its compensation, the peer group disclosed in its CD&A in its pay versus performance disclosure. In the latter case, however, the components of such a peer group would be disclosed in the CD&A and the shareholder returns of these companies would be publicly available from many sources, if not already reported in the CD&A. Similarly, while SRCs are not required to comply with Item 201(e) of Regulation S–K or CD&A disclosure requirements and yet would still have to report their own TSR under the final rules, data about their returns is publicly available. The final rules do not require SRCs to present the TSR of a peer group. Finally, all of the affected registrants are currently required to disclose net income as part of their financial reports filed in Form 10–K, including three years of data for registrants other than SRCs, and two years of data for SRCs, with additional history generally available in previous filings.

We expect that the quantitative disclosure of Company-Selected Measures called for in the new disclosures is also generally encompassed by existing financial statement disclosure requirements or voluntarily disclosed in existing proxy statements. However, if registrants do not already disclose historical quantitative data for these measures over the past five years, the required disclosure may provide new information relative to the baseline to the extent that any computations required to derive the value of these measures from reported financial data may not always be straightforward for investors to replicate. The disclosure of a Company-Selected Measure may also provide investors with new information in the form of any insight gained based on the registrant's choice of which of the measures reported in the CD&A in this or previous years was deemed to be the most important with respect to the most recent fiscal year.

While the bulk of the information about compensation and registrant performance to be included in the new disclosure is currently available to investors elsewhere, not all of this information is accessible for large-scale analysis under the baseline. Currently, every affected registrant is, or will soon be, subject to Inline XBRL tagging requirements for a subset of its other Commission disclosures, including the financial statements and financial statement footnotes.[433] Thus, information that is already available from these sources—such as net income, some Company-Selected Measures or statistics used to compute these measures, and information in footnotes regarding inputs and assumptions used to compute pension liabilities and stock-based compensation expense—is already tagged and thus readily machine-readable. However, other information that will be reflected in the required pay-versus-performance disclosure, such as the compensation measures, as well as most of the information required to compute these measures, is not currently tagged,[434] and could therefore become more readily available for analysis as a result of the final rules.

For the affected registrants other than SRCs, Item 402 of Regulation S–K requires a description in the CD&A of how the registrant's compensation policy relates pay to performance, if

ways, including under multiple definitions of ''realizable pay'' that would require the revaluation of equity awards after the grant date).

[429] While service costs associated with defined benefit plans are currently disclosed in financial statement footnotes, these costs are currently not disaggregated by individual. Pension plan benefit formulas and certain pension-related assumptions (such as discount rates) are currently disclosed in proxy statements or financial statement footnotes. Additional assumptions required to compute service costs, such as expectations with respect to retirement age, mortality, and future compensation growth, may not be reported or may differ for this purpose from assumptions presented in, or implied by, existing disclosures. While an outsider may not be as well positioned to estimate some of these required inputs as management, deriving reasonable assumptions should be possible based on broader population statistics and trends.

[430] For SRCs, which are not required to provide the Grant of Plan-Based Awards Table and accompanying narrative and footnotes, investors may also not know all of the detailed terms of each equity award, which could affect the accuracy of fair value estimates constructed by, or on behalf of, investors.

[431] *See, e.g.,* Charlie Pontrelli (Equilar), *Proxy Advisors and Pay Calculations* (Sept. 29, 2019), Harv. L. F. on Corp. Governance Blog, *available at https://corpgov.law.harvard.edu/2019/09/29/proxy-advisors-and-pay-calculations* (noting that ''it is important to carefully consider the details of the [alternative pay] calculation in order to avoid misleading conclusions,'' and citing the example of a situation in which an alternative pay measure was constructed using a different option valuation model than that used by a company in its disclosures).

[432] Item 201(e) of Regulation S–K disclosure is only required in an annual report that precedes or accompanies a registrant's proxy or information statement relating to an annual meeting of security holders at which directors are to be elected (or special meeting or written consents in lieu of such meeting). As discussed above, an annual meeting could theoretically not include an election of directors, such that Item 201(e) of Regulation S–K disclosure would not be required, although pay-versus-performance disclosure would still be required in such years if action is to be taken with regard to executive compensation.

[433] *See* 17 CFR 229.601(b)(101) and 17 CFR 232.405 (for requirements related to tagging operating company and BDC financial statements (including footnotes and schedules), audit reports, and BDC prospectus disclosures, in Inline XBRL); 17 CFR 229.601(b)(104) and 17 CFR 232.406 (for requirements related to tagging cover page disclosures in Inline XBRL); and 17 CFR 229.601(b)(107) and 17 CFR 232.408 (for requirements related to tagging filing fee exhibit disclosures in Inline XBRL).

[434] Information currently provided in response to Item 201(e) of Regulation S–K, Item 402 of Regulation S–K, or voluntarily in proxy statements is not currently required to be tagged.

material to the registrant's compensation policies and decisions. This description must include information about any performance targets that are a material element of a company's executive compensation policies or decisions.[435] While the final rules will newly require registrants other than SRCs to name the top three to seven most important performance measures used by the registrant to link NEO pay to performance in the most recent fiscal year, these registrants likely already disclose these measures in the CD&A under existing requirements. However, as in the case of the Company-Selected Measure, the Tabular List may provide new information relative to the baseline in the form of any insight gained based on the registrant's choice of which of the measures reported in the CD&A were deemed to be the most important with respect to the last completed fiscal year.

Registrants are not currently required to disclose, in a side-by-side fashion, or report the actual historical relationship between, any measures of executive compensation and registrant financial performance. As discussed in the Proposing Release, some registrants voluntarily provide such disclosures, which are generally limited to analyses of the compensation of the PEO and which vary with regard to the compensation and performance measures used.[436] Such voluntary disclosures remain a minority practice, with the rate of such disclosures declining somewhat since the time of the Proposing Release,[437] and they remain highly varied.[438] Whether or not they directly disclose the relationship of pay with performance, some registrants disclose alternative measures of pay to demonstrate the variation in the value of pay after it is granted, but, again, this is a minority practice and the measures used vary.[439] Thus, even when voluntary disclosures are provided, their comparability is limited, which can make them difficult for investors to use.[440] Commenters and other observers have also raised concerns that registrants choose to present measures that make the alignment of pay and performance appear more favorable.[441]

Certain investors also have access to analyses of historical pay-versus-performance data produced by third parties, such as proxy advisory firms and compensation consultants. These analyses are based on compensation and performance information disclosed by registrants. Compared to voluntary disclosures by registrants, these third-party analyses are available for a larger number of registrants, and apply more consistent methodologies across registrants. However, this consistency has led to criticism that the analyses are not appropriately tailored to the circumstances of different kinds of registrants.[442] Further, these analyses are only available to investors who pay for these services, and the computations and analytical approaches used vary across the third-party information providers.[443] Some other investors generate their own pay-versus-performance analyses for the registrants in their portfolios, using a variety of approaches.[444] Given the resources required, smaller investors, particularly retail investors, are the least likely, under the baseline, to subscribe to third party services or to do their own detailed pay-versus-performance computations for each of their holdings.

As was the case at the time of the Proposing Release, there continues to be no consensus around the best approach to analyzing the alignment of pay and performance, and we do not have complete information about the approaches used by all investors. However, the varied statistics and analyses that we can observe[445] investors using may still shed some light on the type of information that they find to be useful for this purpose, particularly as many of the third-party analyses have evolved over time based on shareholder demand. For example, while many third party and shareholder analyses use a measure of pay based on grant date valuations of stock and options,[446] potentially because this has historically been the most readily available measure,[447] most of the recent

[435] A registrant may omit target levels with respect to specific quantitative or qualitative performance-related factors involving confidential trade secrets or confidential commercial or financial information from the CD&A only if the disclosure of these target levels would result in competitive harm. See Instruction 4 to Item 402(b) of Regulation S–K.

[436] *See* Proposing Release at 32. *See also, e.g.,* letters from CAP; CEC 2015; Hall; and PG 2015.

[437] In 2013, a compensation consulting firm found that, of 250 large public companies examined, 27% provided tabular or graphical information on the relationship between pay and performance in their CD&A; in 2021, the same firm found that 24% of the 200 large public companies examined included disclosures comparing pay and performance. *See* Proposing Release at n. 120 and Meridian Compensation Partners, *2021 Corporate Governance & Incentive Design Survey* (Fall 2021), *available at https://www.meridiancp.com/wp-content/uploads/2021/09/Meridian-2021-Governance-and-Design-Survey-2.pdf* (''Meridian 2021 Report''). A different compensation consulting firm found in 2021 that 14.1% of the 100 large public companies examined included a pay for performance graph in their most recent proxy statements, down from 21.6% five years earlier. *See* Equilar, *Preparing for Proxy Season 2022* (Nov. 2021), *available at https://info.equilar.com/preparing-for-proxy-season-2022-report-request.*

[438] *See, e.g.,* Meridian 2021 Report at 22.

[439] *See, e.g.,* Meridian 2021 Report at 23 (stating that 24% of the 200 large registrants reviewed included ''realized'' or ''realizable pay'' disclosure, with 58% of these using ''realizable pay'').

[440] *See, e.g.,* Kosmas Papadopoulos & John Roe (ISS Analytics), *Realizable Pay: Insights into Performance Alignment* (Apr. 29, 2019), Harv. L. Sch. F. on Corp. Governance Blog, *available at https://corpgov.law.harvard.edu/2019/04/29/realizable-pay-insights-into-performance-alignment/* (''ISS Realizable Pay Article'') (stating that ''[d]ifferent companies and different compensation consultants arrived at different ways of calculating and presenting these alternative [pay] measures, making it very difficult for investors to systematically use these disclosures in the analysis of pay and performance—much to the frustration of investors and companies alike''). *See also, e.g.,* letters from As You Sow 2015; CAP; and Public Citizen 2015.

[441] *See, e.g.,* letters from AFREF (stating that ''companies have chosen misleading metrics to justify excessive executive compensation in the past'') and As You Sow 2015 (stating that ''every company cherry-picks data that makes it appear in the best possible light''); and Dave Michaels, *Misleading CEO Pay-for-Performance Numbers Target of SEC,* Bloomberg (Dec. 17, 2013), *available at http://www.bloomberg.com/news/articles/2013-12-17/misleading-ceo-pay-for-performance-numbers-target-of-sec.*

[442] *See, e.g.,* Compensia, *The New ISS Pay-for-Performance Methodology—A Closer Look at the Gathering Storm* (Jun. 12, 2017), *available at https://compensia.com/the-new-iss-pay-for-performance-methodology-a-closer-look-at-the-gathering-storm/.*

[443] *See, e.g.,* Glass Lewis Methodology and Institutional Shareholder Services, *Pay-for-Performance Mechanics* (Dec. 2021), available at *https://www.issgovernance.com/file/policy/active/americas/Pay-for-Performance-Mechanics.pdf* (''ISS Methodology''), for the quantitative methodologies for evaluating pay and performance alignment used by two major proxy advisory firms.

[444] *See, e.g.,* disclosures about the evaluation of executive compensation by the California Public Employees Retirement System (''CalPERS''), *available at https://www.calpers.ca.gov/docs/executive-compensation-analysis-framework.pdf* (''CalPERS Methodology'') (describing an analysis involving CEO realizable pay and TSR, in each case for the company as well as its peers); as compared to the corresponding disclosures by Northern Trust Asset Management, *available at https://www.northerntrust.com/content/dam/northerntrust/pws/nt/documents/investment-management/scorecard-methodology.pdf* (''Northern Trust Methodology'') (describing an analysis involving the grant date value of CEO pay and nine unique fundamental performance indicators in addition to TSR, in all cases for the company as well as its peers). *See also* letter from BlackRock (providing detail on its say-on-pay analysis framework).

[445] We note that the analyses that are disclosed in detail, and which we are therefore able to observe, are likely among the more sophisticated that are currently in use.

[446] *See, e.g.,* ISS FAQ; Northern Trust Methodology; and Glass Lewis, *Understanding Glass Lewis' Approach to Say on Pay Analysis, available at https://www.glasslewis.com/say-on-pay/,* (last accessed Jun. 29, 2022) (''Glass Lewis Overview'').

[447] *See, e.g.,* Mercer, *The Role of Realized and Realizable Pay in Disclosure and Beyond* (2014), *available at* Mercer LLC's website (last accessed Aug. 9, 2022) (''Mercer Realizable Pay Article'') (stating that many investors ''favor [the use of realized and realizable pay] as an appropriate way

analyses that we have observed also include a ''realizable pay'' measure.[448] While there are various approaches to defining and computing ''realizable pay,'' it is generally intended to capture both pay that has been realized by an executive in the period as well as an updated value, to reflect actual company performance, of outstanding equity awards that could potentially be realized in the future.[449] A recent survey by one proxy advisory firm found that 84 percent of investors support the use of an outcomes-based pay measure such as realizable pay in a quantitative pay-for-performance evaluation,[450] further demonstrating investor demand for such computations.

With respect to performance measures, the analyses by or on behalf of investors that we observe all use TSR as a primary measure of performance.[451] However, most also supplement TSR with other measures of financial performance.[452] For example, some of the performance measures presented by third parties as part of pay-for-performance analyses in recent years include operating cash flow growth; earnings per share growth; growth in earnings before interest, taxes, depreciation and amortization (''EBITDA''); return on equity; return on invested capital; return on assets; and various ratios and growth rates using ''economic value added.'' [453] The inclusion of these measures may demonstrate investors' interest in additional measures of performance, particularly with respect to profitability, when considering compensation. Shareholder demand for such information is further supported by a recent survey by one proxy advisory firm, in which 84 percent of investors surveyed supported the continued reporting of some of the profitability measures listed above as part of the proxy advisory firm's proxy research in the area of pay-for-performance.[454]

Overall, we have observed, and commenters have identified, an increasing sophistication in how investors are evaluating executive compensation disclosures [455] as well as an increasing refinement in how registrants are crafting these disclosures,[456] particularly after about a decade of experience with ''say-on-pay'' votes. However, despite the significant amount of information about executive compensation disclosed by registrants under the baseline, investors have expressed some discontent with current disclosures. For example, commenters have indicated that existing disclosures can be challenging to review, in that investors find it difficult to collect or interpret the information in which they are interested.[457] Commenters also highlighted shareholder concerns about the length and complexity of existing compensation disclosures.[458] These disclosures have generally increased in length since the time of the Proposing Release.[459]

3. Executive Compensation Practices

The structure of executive compensation, and how it varies across the affected registrants, will influence the effects of the final rules and how those effects will vary across registrants. For example, because the final rules require that equity awards and compensation related to pension plans be reflected differently than in the Summary Compensation Table, the prevalence and variation in usage and design of these items in executive compensation packages may affect the benefits of the disclosures as well as the burden involved in making the required calculations to provide the disclosures. Similarly, variation in the number and nature of performance metrics in executive compensation plans may also affect the variation in costs and benefits of the final rules across registrants.

The final rules require that executive compensation actually paid include the annual change in fair value, through year-end or the vesting date, if earlier, of any outstanding stock and option awards. A majority of CEO direct compensation is delivered in the form of such equity awards, and their contribution to the total value of such compensation at the grant date has grown in recent years.[460] The use of

to measure and analyze executive pay'' but that ''[w]hen shareholders assess their companies' executive pay levels, they do so using the information most readily available, which includes the . . . summary compensation table and past performance'').

[448] *See, e.g.,* letter from BlackRock; CalPERS Methodology; ISS FAQ; and Glass Lewis Overview. Beginning in 2020, Glass Lewis changed its compensation analytics partner, and may no longer be reporting realizable pay in its proxy research reports for the US market, though it does report a measure of realized pay; it is unclear to us whether this shift is temporary or permanent. *See, e.g.,* Glass Lewis Sample Proxy Research Reports *available at https://www.glasslewis.com/sample-proxy-papers* (last accessed May 15, 2022) (including some samples for the US market that include realizable pay data and others that do not). *See also* Northern Trust Asset Management, *Executive Compensation Guide for Proxy Voting and Engagements* (Nov. 2018), available at *https://cdn.northerntrust.com/pws/nt/documents/investment-management/exec-compensation-guide-digital.pdf* (stating that companies should ''showcase realized versus realizable pay, preferably over five annualized performance periods'' in their disclosures, even though, per note 444 above, this shareholder focuses on grant date pay in its analysis of pay-for-performance alignment).

[449] Definitions vary as to whether, for example, options are valued at fair value or intrinsic value and pay is realized when awards are vested or exercised. *See, e.g.,* Mercer Realizable Pay Article and ISS Realizable Pay Article.

[450] *See* Institutional Shareholder Services, *2017–2018 Policy Application Survey: Summary of Results* (Oct. 19, 2017), *available at https://www.issgovernance.com/file/policy/2017-2018-Policy-Application-Survey-Results-Summary.pdf.*

[451] *See, e.g.,* letter from BlackRock; CalPERS Methodology; Glass Lewis Methodology; ISS FAQ; and Northern Trust Methodology.

[452] *See, e.g.,* letter from Blackrock; Glass Lewis Methodology; ISS FAQ; and Northern Trust Methodology.

[453] *See, e.g.,* Glass Lewis Methodology (listing the following performance measures besides TSR: change in operating cash flow, earnings per share growth, return on equity, and return on assets, with ''change in operating cash flow'' replaced with ''tangible book value per share growth'' for companies in the Banks, Diversified Financials and Insurance sectors, and with ''growth in funds from operations'' for certain REITs); and ISS Methodology (listing the following performance measures besides TSR: EVA Margin, EVA Spread, EVA Momentum vs. Sales, EVA Momentum vs. Capital, return on equity, return on assets, return on invested capital, and EBITDA growth, with EBITDA growth replaced by cash flow growth in certain industries). ''Economic value added'' (or ''EVA,'' which is a registered trademark of Stern Value Management, Ltd) is equal to net operating profit after taxes, less a cost of capital charge.

[454] *See* Institutional Shareholder Services, *2019 Global Policy Survey: Summary of Results* (Sept. 11, 2019), available at *https://www.issgovernance.com/file/policy/2019-2020-iss-policy-survey-results-report.pdf.*

[455] *See, e.g.,* letters from AFL–CIO 2022; IBC 2022; and PG 2022 (stating that ''the SEC's proposal, in contrast, appears to be out of step with these more sophisticated approaches of relating pay and performance'').

[456] *See, e.g.,* letters from Blackrock; NIRI; Pearl; and SCG.

[457] *See, e.g.,* letters from AFL–CIO 2022; Better Markets *et al.;* Dimensional; Barbara S. Mortenson, dated May 30, 2015; Public Citizen; SVA; and Teamsters. *See also* Council of Institutional Investors, *CII Roundtable Report: Real Talk on Executive Compensation* (March 27, 2018), *available at https://www.cii.org/special_reports,* at 10 (discussing concerns with the transparency of executive compensation).

[458] *See, e.g.,* letters from Allison; CCMC; and Ross. *See also* Stanford University, RR Donnelley & Equilar, *2015 Investor Survey: Deconstructing Proxy Statements—What Matters to Investors* (Feb. 2015), *available at http://www.sec.gov/comments/4-681/4681-3.pdf* (''Stanford 2015 Investor Survey'').

[459] *See, e.g.,* Equilar, *Preparing for Proxy Season 2020* (November 2019), *available at https://info.equilar.com/2019-0201-Proxy-Report-2020* (stating that the average CD&A length among the 100 large companies reviewed grew by almost 500 words from 2014 to 2017). Part of the increase in length of existing disclosures may be due to other regulatory mandates that have been adopted in the interim. *See, e.g., Pay Ratio Disclosure,* Release No. 33–9877 (Aug. 5, 2015) [80 FR 50103]; and *Disclosure of Hedging by Employees, Officers and Directors,* Release No. 33–10593 (Dec. 20, 2018) [84 FR 2402].

[460] *See, e.g.,* Gallagher, *CEO and Executive Compensation Practices Report: 2021 Edition* (Oct. 2021), available at *https://www.ajg.com/us/executive-compensation-report-2021/* (''Gallagher 2021 Study'') (stating that the portion of total direct compensation represented by equity awards grew to 71% in 2020 from 65% in 2016 for CEOs of registrants in the Russell 3000 index).

stock grants,[461] and the frequency of such grants to the CEO, by some of the potentially affected registrants is reported in the table below.[462]

TABLE 1—USE OF EXECUTIVE STOCK GRANTS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,694	497	393	580
Stock Grants to 2020 CEO:				
% of CEOs Granted Stock in 2020	81.0	87.5	85.0	82.2
Among subset of firms for which 2020 CEO was also CEO in 2019 and 2018:				
% of CEOs Granted Stock 0 out of Past 3 Years (2018–2020)	11.2%	8.7%	8.3%	11.7%
% of CEOs Granted Stock 1 out of Past 3 Years (2018–2020)	5.9%	4.6%	6.3%	5.5%
% of CEOs Granted Stock 2 out of Past 3 Years (2018–2020)	16.6%	14.2%	19.1%	16.3%
% of CEOs Granted Stock 3 out of Past 3 Years (2018–2020)	66.3%	72.5%	66.3%	66.5%
Stock Grants to Other 2020 NEOs:				
% of Firms that Granted Stock to Any NEO other than CEO in 2020	86.8	92.6	90.3	88.4
Among Firms that Made Such Grants, Average Number of Other NEOs Granted Stock in 2020	4.2	4.0	3.9	3.9

Per the first row of each panel of Table 1, roughly 80 to 90 percent of registrants, both large and small, make use of stock grants to CEOs and other NEOs in a given year. The last row of the first panel of Table 1 indicates that about two-thirds of registrants, and slightly more among the largest registrants, make such grants to the CEO every year. The prevalence and frequency of stock grants have not changed markedly since the time of the Proposing Release.[463]

The use of option grants,[464] and the frequency of such grants to the CEO, by some of the potentially affected registrants is reported in the table below.[465]

TABLE 2—USE OF EXECUTIVE STOCK OPTION GRANTS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,694	497	393	580
Option Grants to 2020 CEO:				
% of CEOs Granted Options in 2020	22.4	31.2	20.9	20.9
Among subset of firms for which 2020 CEO was also CEO in 2019 and 2018:				
% of CEOs Granted Options 0 out of Past 3 Years (2018–2020)	61.5	50.4	59.8	67.7
% of CEOs Granted Options 1 out of Past 3 Years (2018–2020)	13.0	12.3	15.8	12.4
% of CEOs Granted Options 2 out of Past 3 Years (2018–2020)	14.7	20.7	14.5	10.6
% of CEOs Granted Options 3 out of Past 3 Years (2018–2020)	10.8	16.6	9.9	9.3
Option Grants to Other 2020 NEOs:				
% of Firms that Granted Options to Any NEO other than CEO in 2020	31.2	42.1	28.5	29.1
Among Firms that Made Such Grants, Average Number of Other NEOs Granted Options in 2020	3.1	3.3	3.1	2.8

Per the first row of the first panel of Table 2, roughly 30 percent of the largest registrants, and about 20 percent of smaller registrants, grant options to their CEOs in a given year. This represents a significant drop, of greater than half, in the use of options to incentivize CEOs across all categories since the time of the Proposing Release.[466] The decline in option grants to CEOs has largely been offset by an increase in the number and size of performance-contingent stock grants,[467] marking the continuation of a trend also discussed in the Proposing Release.[468] Per the first row of the second panel of Table 2, the granting of options to any other NEO is a bit more prevalent, with

[461] Throughout this release, the term ''stock grant'' or ''stock award'' is used to refer to the award of instruments such as common stock, restricted stock, restricted stock units, phantom stock, phantom stock units, common stock equivalent units or any other similar instruments that do not have option-like features.

[462] These statistics are based on staff analyses of compensation data from the Standard & Poor's Execucomp database, which in turn is sourced from company proxy statements. Execucomp covers firms in the S&P Composite 1500 Index (which includes the S&P 500, S&P MidCap 400, and S&P SmallCap 600) as well as some firms that were previously removed from the index but are still trading and some requested by Execucomp clients. Years mentioned refer to fiscal years, under the convention that companies with fiscal closings after May 31 in a given year are assigned to that fiscal year while companies with fiscal closings on or before May 31 in a given year are assigned to the previous fiscal year. Use of the term ''CEO'' is based on the use of this term in the Execucomp database, and is believed to be equivalent to the term ''PEO'' used in this release and in the final rules.

[463] *See* Proposing Release at Table 1.

[464] Throughout this release, the term ''option'' is used to refer to instruments such as stock options, stock appreciation rights and similar instruments with option-like features.

[465] *See supra* note 462.

[466] *See* Proposing Release at Table 2, reporting that 64.1%, 49.0%, and 43.1% of S&P 500, S&P MidCap 400, and S&P SmallCap 600 constituents respectively granted options to their CEO in 2012.

[467] *See, e.g.,* Pay Governance, *S&P 500 CEO Compensation Increase Trends* (Jan. 13, 2021), *available at https://www.paygovernance.com/viewpoints/s-p-500-ceo-compensation-increase-trends-4;* and Gallagher, *CEO and Executive Compensation Practices Report: 2020 Edition* (February 2021), available at *https://www.ajg.com/us/news-and-insights/2021/feb/ceo-executive-compensation-practices-report-2020/.*

[468] *See* Proposing Release at n. 133 and the accompanying text (discussing the increased prevalence of performance-contingent equity grants).

roughly 40 percent of the largest and about 30 percent of smaller registrants using such grants in a given year, but these rates have also dropped significantly since the time of the Proposing Release.[469] In contrast to stock grants, option grants are also less frequent; per the last row of the first panel of Table 2, about 10 to 15 percent of registrants grant options to the CEO every year.

Because the final rules require the valuation of equity awards annually until the time of vesting, we have also considered the variation in vesting schedules. Equity awards may be subject to time-based or performance-based vesting, or a combination of the two. Awards with time-based vesting may vest in full at the end of their vesting period (''cliff vesting'') or in increments over the period of vesting (''graded vesting'').

Market practices regarding vesting schedules have remained relatively consistent since the time of the Proposing Release.[470] We estimate that about 45 percent of stock grants are subject to time-based vesting, though this has declined slightly (by about three percentage points) since the time of the Proposing Release with the growth in reliance on performance-contingent stock.[471] Of the time-vesting stock awards, roughly one-third have cliff-vesting schedules while the vast majority of the remaining have graded vesting in annual increments.[472] For the stock awards that vest based on achieving performance conditions (approximately 55 percent of stock awards), the vast majority have cliff-vesting schedules.[473] Approximately ten percent of awards with performance-based vesting also have an additional time-based vesting period at the end of the performance period.[474] For option awards, the vast majority have time-based, graded vesting in annual increments.[475] Given the decline in option awards (which tend to have graded vesting schedules) and the increasing prevalence of performance-contingent stock (which tends to cliff-vest) discussed above, there has been a corresponding increase in cliff-vesting overall.[476]

For affected registrants other than SRCs, compensation related to pension plans is also measured differently in executive compensation actually paid, as reported under the final rules, than it is in the Summary Compensation Table. The use of pension plans and the years of credited service at some of the potentially affected registrants are reported in the table below.[477]

TABLE 3—USE OF PENSION PLANS BY REGISTRANTS COVERED BY EXECUCOMP

	All firms in database	Firms in S&P 500	Firms in S&P MidCap 400	Firms in S&P SmallCap 600
Firms in Sample	1,694	497	393	580
2020 Pension Plans:				
% of CEOs with Pension Plans	22.5	36.4	24.4	14.3
Among Firms with CEO Plans, Median Years of Credited Service in Pension Plan	19.3	21.5	17.6	16.9
% Firms with Pension Plans for any NEO other than CEO	29.0	45.7	29.5	19.1
Among Firms with Other NEO Plans, Average Number of Other NEOs with Pension Plans	2.8	2.9	2.7	2.5

There has been a decrease of about ten percentage points in the prevalence of pension plans for CEOs or other NEOs since the time of the Proposing Release.[478] Per Table 3, such pension plans, and, for those with pension plans, a higher number of years of creditable service, remain more common among larger registrants. For the affected registrants other than SRCs, the final rules require that executive compensation actually paid include only the service cost for the year (and any prior service cost, or credit, associated with plan amendments or initiations), a value which is not currently required to be reported at this disaggregated level and which will usually differ from the total change in actuarial value of pension benefits included in total compensation reported in the Summary Compensation Table. In particular, the value currently included in total compensation reflects the change in actuarial pension value related to changes in the value of benefits accrued in prior years as well as the value of benefits earned during the applicable fiscal year. As such, the value currently included with respect to pensions in total compensation reported in the Summary Compensation Table will generally be more volatile (because of changes in interest rates and other actuarial assumptions) than the value to be included with respect to pensions in the executive compensation actually paid measure. The degree of difference between these two computations will generally increase with an executive's total number of years of credited service (and thus the extent of benefits already accumulated) under the pension plan.

Besides the decreased prevalence of option awards and pension plans, and the increased reliance on performance contingent-stock awards, there have also been changes since the time of the Proposing Release in the performance metrics used by registrants in their incentive plans. For example, as noted in the Reopening Release, there appears to have been a decline in the use of TSR as the sole metric used in long-term

[469] *See* Proposing Release at Table 2.

[470] *See* Proposing Release at 35 for additional estimates with respect to vesting structures at and prior to the time of the Proposing Release based on third-party studies. We were unable to obtain updated third-party studies, but have instead provided statistics based on staff analysis of available data. These statistics are largely consistent with the estimates presented in the Proposing Release.

[471] This estimate is based on staff analysis of data about equity grants by 1,100 large registrants from 2018 to 2020 (or, for estimates around the time of the Proposing Release, from 2012 to 2015) from the ISS IncentiveLab Database.

[472] *Id.* About 95% of the awards with graded vesting vest in annual increments. Results are similar if we compute such an estimate around the time of the Proposing Release.

[473] *See supra* note 471. About 85% (about 80% around the time of the Proposing Release) of the awards with performance-based vesting cliff-vest.

[474] *See supra* note 471. Results are similar if we compute such an estimate around the time of the Proposing Release.

[475] *See supra* note 471. About 95% of the option grants have time-based vesting, of which about 85% have graded vesting, of which about 95% vest in annual increments. Results are similar if we compute such estimates around the time of the Proposing Release.

[476] *See supra* note 471. At the time of the Proposing Release, roughly 45% of new equity awards cliff-vested; this rate has now increased to about 55%.

[477] *See supra* note 462.

[478] *See* Proposing Release at Table 3.

incentive plans, in those cases where the awards' vesting or quantities are contingent on one or more performance metrics.[479] Among large companies, most use one to three financial metrics in their CEO's long-term incentive plan, with two metrics being the most common number.[480] The most commonly used metric among these companies is still TSR, followed by profitability measures (particularly measures of operating income), and then scaled profitability measures (such as return on equity or return on invested capital).[481] Commenters pointed out that the metrics used are often non-GAAP financial measures.[482]

Some commenters indicated that another recent change in compensation practices has been an increased linkage of pay to ESG performance.[483] Our research confirms that this appears to be a growing practice, but that consideration of ESG metrics does not often seem to be tied to specific quantitative goals and that ESG metrics are generally used in short-term incentive plans.[484] These plans, such as annual bonus programs, generally make up a significantly smaller portion of total executive pay as compared to long-term incentive plans.[485] As in the case of metrics for long-term incentive plans, among large companies, most use one to three financial metrics in their CEO's short-term incentive plan, with two financial metrics being the most common.[486] The most commonly used metric among these companies is profitability (particularly measures of operating income), followed by revenues, and then measures of cash flow.[487] It is also common to include business unit performance goals and non-financial metrics, such as measures of individual performance, strategic goals, or ESG metrics.[488] There may be overlap in the measures used in executive's short-term incentive plans and those used in their long-term incentive plans, but more often than not these metrics are different.[489]

There is no consensus in the market on the number of metrics that should be used in designing executive compensation, with some advocating for the use of more metrics[490] and others advocating for fewer.[491]

Overall, it is clear that the structure of executive compensation continues to evolve, as noted by commenters,[492] and further changes may be on the horizon. For example, recent tax law changes[493] and concerns about the complexity and effectiveness of performance-contingent stock awards[494] could encourage registrants to reduce their reliance on such awards. Uncertainty in the wake of the COVID–19 pandemic[495] and lower say-on-pay approval[496] at large companies in recent years, as compared to previous years, could also drive changes in compensation structure,

[479] *See, e.g.,* Meridian 2020 Survey (summarizing responses to a survey from 108 companies, and discussing, among other developments, a decline in the use of TSR as the sole performance metric in long-term incentive plans, from 47% in 2016 to 30% in 2020, and the recent use by some companies of TSR as a modifier to results initially determined by one or more other financial metrics). However, as a result of the difficulty in setting absolute or accounting performance targets given recent uncertainty due to, *e.g.,* the COVID–19 pandemic, some market participants predict at least a temporary increase in the reliance on relative TSR as a performance metric. *See, e.g.,* Aon 2020 Study.

[480] *See, e.g.,* Meridian Compensation Partners, LLC, *2021 Trends and Developments in Executive Compensation* (April 30, 2020), *available at https://www.meridiancp.com/insights/2021-meridian-trends-and-developments-survey/* (''Meridian 2021 Survey'') (summarizing responses to a survey from 309 large companies, and indicating that 35%, 51%, and 12% of the respondents used one, two, and three metrics respectively in long-term incentive plans); and Aon 2020 Study (presenting, in Figure 8, the number of metrics used in the CEO's long-term incentive plan among S&P 500 companies, broken down by industry, with an average of two metrics used in every industry).

[481] *See, e.g.,* Meridian 2021 Survey (summarizing responses to a survey from 309 large companies, and indicating that TSR is the most commonly used long-term incentive performance metric, with use reported by 60% of the respondents); and Aon 2020 Study (indicating, in Figure 9, that TSR is the most commonly used metric in the CEO's long-term incentive plan among S&P 500 companies in most industries, where the use of TSR ranges from 22% to 61% of companies depending on the industry). Even when TSR is not used as an explicit performance metric, we note that these incentives are usually delivered in the form of stock awards, whose value will vary with the stock price.

[482] *See, e.g.,* letters from As You Sow 2022; CII 2022; IBC 2022; Nareit; Pawliczek; and Teamsters. *See also* Nicholas Guest, S.P. Kothari, and Robert Pozen, *Why Do Large Positive Non-GAAP Earnings Adjustments Predict Abnormally High CEO Pay?* Acct. Rev. (forthcoming 2022), *available at https://doi.org/10.2308/TAR-2019-0003.*

[483] *See, e.g.,* letters from Aon HCS; CII 2022; Georgiev; and Infinite.

[484] *See, e.g.,* Meridian Compensation Partners, LLC, *2021 Study on Environmental, Social and Governance Metrics in Incentive Plans* (Oct. 7, 2021), *available at https://www.meridiancp.com/wp-content/uploads/2021/10/Meridian-2021-ESG-Survey.pdf* (reporting the results of a review of the proxy statements of 315 large U.S. companies for the use of ESG metrics in incentive plans).

[485] *See, e.g.,* Gallagher 2021 Study (reporting, in Figure 1.4, that for Russell 3000 companies in the year 2020, long term incentives represented 71% of the value of total direct compensation to CEOs, compared to 17% of such value being attributed to annual bonuses).

[486] *See, e.g.,* Meridian 2021 Survey (summarizing responses to a survey from 309 large companies, and indicating that 37%, 46%, and 11% of the respondents used one, two, and three financial metrics respectively in short-term incentive plans); and Aon 2020 Study (presenting, in Figure 1, the number of financial metrics used in the CEO's short-term incentive plan among S&P 500 companies, broken down by industry, with an average of two metrics used in every industry except Energy, with an average of three metrics, and Real Estate, with an average of one metric).

[487] *See, e.g.,* Meridian 2021 Survey and Aon 2020 Study.

[488] *Id.*

[489] *See, e.g.,* Pearl Meyer & Partners, LLC, *Overlap of Executive Incentive Plan Performance Measures: Is the Concern Warranted?* (December 2019), *available at https://www.pearlmeyer.com/overlap-executive-incentive-plan-performance-measures-concern-warranted.pdf.*

[490] *See, e.g.,* letter from Better Markets 2022 (stating that any issuer using less than five performance metrics is ''likely focusing NEO performance on too small a group of metrics''); and Radhakrishnan Gopalan, John Horn, and Todd Milbourn, *Comp Targets That Work,* Harvard Bus. Rev., Sept. 2017, at 102, *available at https://hbr.org/2017/09/comp-targets-that-work* (indicating that using too few metrics can ''create opportunities to manage to the targets'' and suggesting that companies use multiple metrics that are not too closely correlated).

[491] *See, e.g.,* Norges Bank Investment Management, *CEO Remuneration Position Paper* (Apr. 7, 2017), *available at https://www.nbim.no/en/the-fund/responsible-investment/our-voting-records/position-papers/ceo-remuneration* (stating that shares awarded to a CEO should not be subject to any performance conditions, which ''are often ineffective and may result in unbalanced outcomes''); and Council of Institutional Investors, *Policies on Executive Compensation* (Sept. 17, 2019), *available at https://www.cii.org/files/ciicorporategovernancepolicies/20190918NewExecCompPolicies.pdf* (''CII 2019 Policies'') (criticizing the ''numerous and wide-ranging'' metrics that contribute to the complexity of performance-based pay).

[492] *See, e.g.,* letters from CEC 2022; Davis Polk; and SCG.

[493] *See* IRS Notice 2018–68, 2018–36 I.R.B. 418 (regarding, among other things, the revision to Section 162(m) that removed the exception for qualified performance-based compensation in determining the amount of remuneration for any covered employee that would not be deductible by a registrant for tax purposes). *See also* Kevin Murphy & Michael Jensen, *The Politics of Pay: The Unintended Consequences of Regulating Executive Compensation,* 3 J. L. Fin. & Acct. 189 (2018) (stating that amendments to Section 162(m) passed in 2017 would reduce or eliminate negative consequences of this rule, such as the ''recent (and ill-advised) escalation of performance-share plans''). However, recent studies have generally not found evidence of significant changes in compensation structure in reaction to this change in tax law. *See infra* note 596.

[494] *See, e.g.,* Marc Hodak, *Are Performance Shares Shareholder Friendly?* 31 J. App. Corp. Fin., No. 3, 126 (Summer 2019); and CII 2019 Policies.

[495] *See, e.g.,* Pay Governance, *The COVID–19 Pandemic's Fleeting and Lasting Impact on Executive Compensation* (Apr. 2022), *available at https://www.paygovernance.com/viewpoints/the-covid-19-pandemics-fleeting-and-lasting-impact-on-executive-compensation.*

[496] *See, e.g.,* Semler Brossy, *2022 Say on Pay & Proxy Results* (May 26, 2022), *available at https://semlerbrossy.com/insights/2022-say-on-pay-report/* (documenting a decline in say-on-pay voting support at S&P 500 companies in 2021 and 2022 relative to previous years).

though it remains difficult to predict whether these factors will have lasting effects and what such effects are likely to be.

C. Discussion of Economic Effects

The final rules require registrants to present, in one location, information that for the most part is disclosed in various other locations (and using different computations) under existing rules, and to tag the new disclosure using a machine-readable data language (Inline XBRL). The anticipated benefits and costs of the final rules are therefore driven by the impact that this additional format for presenting information may have on investors and registrants, rather than by the disclosure of new underlying informational content that investors could not already access or that would require registrants to collect significant new data. The economic benefits and costs of the final rules, including impacts on efficiency, competition and capital formation, are discussed below. We also discuss the relative benefits and costs of significant, reasonable alternatives to the implementation choices reflected in the final rules.

1. Introduction

As discussed in the Proposing Release, compensating executive officers with pay that varies with registrant performance may encourage executive officers, through financial incentives, to exert effort and make decisions that create shareholder value. However, there are also potential negative consequences of such compensation plans. For example, some such plans may cause executives to focus overly on short-term performance to the detriment of long-term performance, or may make some executives less likely to take on risky but (from a typical shareholder's perspective) valuable projects if they are unwilling to take the chance that the project could fail and result in lower compensation than would result from less risky projects.

An optimal compensation policy is generally considered to be one that maximizes shareholder [497] value in the long term by balancing the need to provide executives with the incentive to perform well against the monetary costs and potential detrimental effects of the compensation policy. What constitutes an optimal compensation policy, including which performance metrics should be considered and how much compensation should vary with these metrics, is difficult to ascertain and will vary with a registrant's individual circumstances. Academic research remains mixed as to whether prevailing compensation structures are optimal, are too closely linked to company performance, or should be more sensitive to company performance.[498] Thus, it is unclear whether changes that would more closely link executive pay with registrant performance than current compensation structures would have a positive, a negative, or no impact on shareholder value creation.

In addition to uncertainties about the optimality of pay-versus-performance alignment, there are challenges in measuring such alignment. For example, the available performance statistics may not adequately measure a given executive's contribution to a registrant's performance, such as when registrant performance is strongly related to market moves, sector opportunities, commodity prices, or other factors unrelated to managerial effort or skill.[499] Even if the performance measure were not subject to such concerns, it could be difficult to match registrant performance with the associated executive actions and, perhaps, related compensation because of timing differences. For example, an executive may be rewarded with extra compensation for an accomplishment in the year it is made, even though a registrant's expected profits related to this executive performance (such as an investment or restructuring decision) might not follow until several years later. Similarly, a registrant's stock price may rise at the announcement of a new PEO who is expected to add significant value to the registrant, even though he or she may not commence employment and begin receiving compensation until the following year. The alignment of an executive's financial incentives with registrant performance can also be difficult to evaluate without also considering holdings of vested equity which link an executive's wealth accumulation to the performance of the company whether or not they were obtained as compensation.[500] Such issues may lead to concerns with any standardized approach to presenting the relationship between pay and performance.

Despite the uncertainty and challenges involved in evaluating the relation of pay with performance, pay-versus-performance alignment is likely important to investors. In fact, academic research concludes that the incentives created for executives through the linkage of their pay with registrant performance outcomes may be the most value-relevant feature of current executive compensation plans, beyond even the level of executive pay.[501] Accordingly, investors may consider the optimality of pay-versus-performance alignment as part of their evaluation of executive compensation packages when making voting decisions relating to the compensation of the NEOs and the election of directors, as well as when making investment decisions.[502]

2. Benefits

For the most part, the final rules require a different presentation of certain existing information rather than the disclosure of new underlying informational content. The primary benefits of the final rules relative to the

[497] Some argue that optimal compensation would maximize broader stakeholder value, not just the value of shareholders, while others respond that long-term shareholder value incorporates effects on other stakeholders. *See, e.g.,* letter from TCA 2022.

[498] *See, e.g.,* Alex Edmans, Xavier Gabaix & Dirk Jenter, *Executive Compensation: A Survey of Theory and Evidence,* in Benjamin Hermalin & Michael Weisbach (eds.), Handbook Econ. Corp. Gov. (2017), at 383–539 (''Edmans *et al.* 2017 Survey Paper'') (summarizing theoretical and empirical research on executive compensation, including on its sensitivity to performance, and noting that the results are mixed, and that ''[e]ven seemingly fundamental questions, such as the causal effect of pay on firm outcomes, . . . remain largely unanswered''). For seminal studies presenting differing views, *see, e.g.,* Alex Edmans & Xavier Gabaix, *Is CEO Pay Really Inefficient? A Survey of New Optimal Contracting Theories.* 15 Eur. Fin. MGMT (2009), at 486–496; Michael Jensen & Kevin Murphy, *Performance Pay and Top-Management Incentives.* 98 J. Pol. Econ 225 (1990); and Lucian Bebchuk & Jesse Fried, Pay Without Performance: The Unfulfilled Promise of Executive Compensation, Harvard University Press (Oct. 2006).

[499] *See, e.g.,* Marianne Bertrand & Sendhil Mullainathan, *Are CEOS Rewarded for Luck? The Ones Without Principals Are,* 116 Q. J. of Econ. 901 (2001). Other situations in which registrant performance statistics may differ from an executive's performance include cases in which the statistics measure managerial effort but not of the particular manager in question (which may be particularly likely in the case of NEOs other than the PEO) and situations in which other factors such as registrant size affect the translation of a given level of managerial effort into the measured statistics.

[500] *See, e.g.,* Kevin J. Murphy, *Executive Compensation: Where We Are, and How We Got There,* Handbook Econ. Fin., Volume 2 (George Constantinides, Milton Harris & René Stulz eds., 2013), at 211–356 (''Murphy 2013 Study'') (stating that incentive compensation is negatively correlated with manager's vested equity interests, reflecting the redundancy of granting further equity awards to executives whose wealth is already substantially tied to the company's equity).

[501] *See, e.g.,* Edmans *et al.* 2017 Survey Paper (stating that ''[the] level of pay receives the most criticism, but usually amounts to only a small fraction of firm value. Badly structured incentives, on the other hand, can easily cause value losses that are orders of magnitudes larger.'').

[502] *See, e.g.,* Stanford 2015 Investor Survey (stating that 64% of institutional investors surveyed indicated that their firms used pay-for-performance alignment information from proxy statements to make voting decisions; 34% of those surveyed indicated that this information was used to make investment decisions).

baseline will therefore depend on the extent to which the computations provided or the format used for the required disclosure makes it easier or less costly for investors to evaluate how executive compensation relates to registrant performance.

As discussed above, investors currently have access to detailed information disclosed by registrants with respect to executive compensation and registrant financial performance, but some investors have expressed dissatisfaction with existing disclosures. Data from the currently required, standardized tables and accompanying information may require further computation and analysis before investors can evaluate actual historical pay-versus-performance alignment under the baseline. Also, voluntary disclosures that provide more direct measures of the historical pay-versus-performance relationship are provided by a minority of registrants and lack standardization and comparability, as discussed in the Baseline section above. The more standardized quantitative analyses of pay-versus-performance alignment provided by the major proxy advisory firms to their clients, as well as the analyses undertaken by certain large institutional investors on their own, demonstrate shareholder demand for additional computations regarding this relationship, beyond existing disclosures.[503]

Investors may therefore benefit from the final rules to the extent that the new presentation of data required by these final rules lowers their burden of analysis in evaluating the executive compensation policies of the affected registrants. If the repackaging of some of the information from existing disclosures into the required pay-versus-performance disclosure, and the Inline XBRL tagging of this disclosure, allows investors to more quickly or easily process the information accurately, the final rules may generate productive efficiencies by preventing duplicative analytical effort by investors. If the disclosure helps investors process and understand compensation data faster, this information may also be more quickly incorporated in market prices, marginally increasing the informational efficiency of markets.

The final rules should make it much easier for an investor reviewing a proxy statement to relate registrant performance with concurrent changes in the value of compensation, because the amount disclosed as executive compensation actually paid will more closely track these changes than currently required compensation disclosure. Further, for a number of reasons, the disclosure required under the final rules is expected to be significantly more comparable across registrants and across time than existing required disclosures in the CD&A regarding how pay relates to performance as well as current voluntary pay-versus-performance disclosures. This enhanced comparability will likely enable more efficient processing of the information. For example, the consistent tabular format will likely make the information easier to find, and standardization of the measures of pay, TSR, and net income will allow investors to understand what these measures represent without having to examine varying definitions used by different registrants. In addition, prescribing particular measures of pay and performance reduces the ability of registrants to only include measures that lead to more favorable pay-versus-performance disclosures, which, in turn, would reduce their utility and comparability. The specific definition of executive compensation actually paid under the final rules also enhances the comparability of the disclosures, as discussed in more detail below, as it treats similar economic situations relatively consistently, allowing investors to more easily evaluate the disclosure in the context of the disclosure of other registrants.

Some commenters agreed that such disclosures may reduce the time, effort, and/or cost required to review proxy statements,[504] with several noting that the proposed disclosure could be used by investors to more easily review disclosures to identify which registrants' compensation arrangements they should investigate in greater detail.[505] Also, many commenters supported the importance of the consistency and comparability of the disclosures.[506]

On the other hand, a number of commenters indicated that meaningful comparability of pay-versus-performance disclosure is not feasible or not desirable given, for example, the degree of variation in the circumstances of registrants and the vast, differing array of considerations that go into their compensation programs.[507] We acknowledge that perfect comparability may be impossible to achieve, and that some registrants may choose to supplement the required disclosures to better communicate their specific situation. However, compensation and performance, and their alignment, also cannot be properly evaluated in a vacuum. Broader economic conditions and the labor market for executive talent have significant effects on the appropriate level and performance-sensitivity of pay.[508] Pay-versus-performance disclosures that can be compared across registrants should facilitate investors' consideration of these factors. Registrants already have substantial flexibility to provide tailored disclosures in proxy statements with respect to the relation of pay with performance. However, as discussed above, many investors are obtaining standardized third-party analyses of pay-versus-performance across different registrants, or constructing their own, which demonstrates demand for more consistent, comparable disclosure.

Some commenters indicated that, whether or not comparability is desirable, the proposed amendments would not actually provide disclosures that could be compared across registrants.[509] These commenters stated that the proposed disclosure would not be comparable because, for example, equity granting and vesting practices vary across registrants,[510] valuation assumptions may vary across registrants,[511] and there is no single way to uniformly measure performance across different registrants.[512] We expect that the revised definition of executive compensation actually paid will increase the comparability of this measure across registrants with different compensation structures. In particular, for outstanding equity awards between their grant and vesting date, the change in value reported as part of this measure for a particular year is equal to the change in fair value during that particular year, and therefore may be associated with performance during the same year. This is true regardless of the grant and vesting patterns, such that similar economic exposure for

[503] *See, e.g., supra* notes 443 and 444.

[504] *See, e.g.,* letters from Farient; Hermes; LGIM; OPERS; SVA; and TIAA.

[505] *See, e.g.,* letters from Hermes and OPERS.

[506] *See, e.g.,* letters from American Tower; As You Sow 2015; Barnard 2015; Barnard 2022; CalSTRS; CAP; CFA; CII 2015; Farient; Hermes; Hook; KPMG; OPERS; PDI; PRI; Quirin; Teamsters; and TIAA.

[507] *See, e.g.,* letters from BorgWarner; Celanese; Exxon; FSR; NAM 2015; NIRI 2015; SCG; SCSGP; and Simpson Thacher.

[508] *See, e.g.,* Edmans *et al.* 2017 Survey Paper.

[509] *See, e.g.,* letters from Celanese; Hodak; Honeywell; IBC 2015; SCSGP; and Simpson Thacher.

[510] *See, e.g.,* letters from Celanese; Hodak; SCSGP; and Simpson Thacher.

[511] *See, e.g.,* letters from IBC 2015 and Simpson Thacher.

[512] *See, e.g.,* letters from Celanese and Honeywell.

executives across different registrants should be reflected more similarly than under the proposed amendments, even when the formal structure differs.

With respect to the concern about the lack of comparability of performance measures, several commenters agreed with our view that, despite certain concerns discussed below, TSR is the most comparable financial performance measure available.[513] Given that TSR is nonetheless an imperfect measure, the inclusion of peer group TSR, net income, and at least one Company-Selected Measure may provide useful context for investors when comparing the disclosed performance across registrants. Finally, with respect to the concern about varying valuation assumptions, the disclosure of equity award valuation assumptions when they differ materially from the disclosures of assumptions as of the grant date may help investors to identify if a particular registrant's approach to these assumptions appears to be an outlier. Overall, as noted above, perfect comparability is difficult to achieve. However, the final rules are intended to provide some basic standardized elements that can be more easily reviewed and compared across registrants. At the same time, they also include more tailored elements that may better reflect registrants' individual circumstances, such as additional registrant-specific context, significant latitude in how registrants describe the relationships between the measures in the prescribed table, and the option of supplemental disclosures in case, in the registrant's view, additional detail or clarifications would be helpful.

The overall size of the potential benefit to investors depends on the extent to which the required disclosure approximates or contributes to any of the calculations and analyses that investors would choose to perform in order to process the existing disclosures. That is, the benefits of consistency and comparability will apply only to the extent that investors find the prescribed measures to be useful. While the specific extent of benefits is difficult to ascertain, commenters as well as our observations of current analyses by or on behalf of investors provide support that the disclosures are likely to be useful to investors.

For example, the new measure of executive compensation actually paid will reflect new required computations (based on information in existing disclosures) that may be particularly relevant in the context of evaluating the relationship of pay with performance. These computations may make information of interest to investors more readily available than it is under the baseline. Commenters indicating that investors would find the proposed measure of executive compensation actually paid to be useful generally cited potential benefits discussed in the Proposing Release, such as the fact that this measure would reflect the change in value of equity awards based on performance outcomes after they are granted,[514] that it would focus on economic exposure due to compensation committee intent and not executives' personal investment decisions,[515] that it would reflect all elements of compensation for completeness and comparability,[516] and that it would eliminate noise caused by the revaluation of pension benefits earned in prior periods.[517] The revised definition of executive compensation actually paid preserves all of these features, while also mitigating concerns raised by a large number of commenters about a likely timing mismatch between the proposed measure of pay and the associated performance.[518] By requiring the revaluation of equity awards every year, the revised measure significantly improves the degree of matching between the period to which a change in pay is ascribed and the period of the associated performance, which should make the measure substantially more useful for investors.[519]

The revised measure is also very similar to the concept of realizable pay, discussed above. A number of commenters indicated that a realizable pay measure would be particularly appropriate for evaluating the alignment of pay and performance.[520] While definitions of realizable pay vary,[521] they reflect, like executive compensation actually paid, an attempt to measure the change in value of an executive's pay package—including outstanding awards that have not yet been realized—after the grant date, as performance outcomes are experienced. We believe that the increasing consideration of realizable pay (as computed by third parties) by investors when evaluating pay and performance alignment[522] is evidence that a measure with similar features,[523] such as the adopted measure of executive compensation actually paid, is likely to be useful to investors in this context.[524]

Although investors could estimate executive compensation actually paid using existing disclosures, and may already be making similar estimates on their own or relying on third party estimates of related measures, they may benefit from these computations becoming readily available in the prescribed compensation measure. The newly disclosed computations could reduce duplicative analytical effort by replacing or validating related investor or third party estimates. In addition, some investors or third parties hired by investors may be interested in leveraging the disclosures to more easily compute slightly different pay measures, whether these are the measures they currently use under the baseline or refined versions of these measures that are more feasible to construct due to the availability of the new disclosures, or in using parts of the required computations for other purposes.[525] In such cases they are

[513] *See, e.g.,* letters from Davis Polk 2022; Hodak; and TIAA.

[514] *See, e.g.,* letters from CII 2015; LGIM; Pawliczek; and TIAA.

[515] *See, e.g.,* letters from AFL–CIO 2015; CII 2015; Hall; OPERS; and Public Citizen.

[516] *See, e.g.,* letters from AFL–CIO 2015; Barnard 2015; Barnard 2022; and OPERS.

[517] *See, e.g.,* letters from Hall and TIAA.

[518] *See* Section IV.C.4.iii below for more detail on these concerns.

[519] *See, e.g.,* letter from TIAA (noting that addressing the alignment issue ''would greatly improve the clarity and value of the disclosure for investors'').

[520] *See, e.g.,* letters from CEC 2015; Pearl; PG 2015; PG 2022; and SCSGP (citing the conclusions of a broader working group led by the Conference Board). Others recommended the adopted approach or other variations similar to realizable pay. *See* letters from CAP; Farient; Hodak; Infinite; TCA 2015; and TCA 2022.

[521] Realizable pay generally reflects the end-of-period value of outstanding equity awards as well as the value of any cash and equity awards realized during the period, with a focus on equity awards that were granted within a particular horizon. Differences across definitions include whether outstanding options are valued at fair value or intrinsic (''in-the-money'') value, and whether the value of performance- or time-based awards is recognized when earned, when vested, or at the end of the period. *See, e.g.,* ISS Realizable Pay Article.

[522] See *supra* note 454.

[523] Differences between realizable pay measures and the adopted definition of executive compensation actually paid and associated costs and benefits for this purpose are discussed in more detail in Section IV.C.4.iii below.

[524] To the extent that some investors may be interested in considering the relationship of performance with a measure of pay that reflects the grant date value of equity awards, they would be able to refer to the Summary Compensation Table measure of total compensation required alongside executive compensation actually paid in the tabular disclosure. As discussed above, some of the existing pay-for-performance analyses by, or on behalf of, investors use such a measure, though most of the analyses that we observe also supplement this with a realizable pay measure. See *supra* notes 446 and 448.

[525] *See, e.g.,* letters from CII 2015 (stating that ''[s]ophisticated investors will make different adjustments to the compensation information. . . they are given''); and As You Sow 2015 (expressing interest in a cumulative measure of executive compensation actually paid, which we note could be constructed from the annual measures that will be disclosed).

likely to benefit from the required footnote disclosure of the adjustments made to compute executive compensation actually paid and the disclosure of equity valuation assumptions, if materially different from the grant date assumptions. Also, requiring that the disclosure be provided in a structured data language may benefit investors interested in extracting and analyzing some or all of the data in the disclosure across a large number of filings.

With respect to the performance information required in the new disclosures, as discussed above, there are challenges associated with measuring an executive's contribution to registrant performance that may lead to concerns with any performance measure. Commenters expressed a number of concerns with the use of TSR in particular in evaluating executive performance, such as its sensitivity to external factors outside of the control of executives,[526] a possible emphasis on short-term performance,[527] and the possibility of strategies that could artificially inflate TSR.[528] However, we are not aware of, and commenters did not identify, any standard, singular measure that would be a uniformly better alternative, and some commenters noted that TSR would be a useful measure. In particular, commenters that indicated that investors would find TSR to be useful noted that it is the ultimate measure of corporate success and shareholder value creation [529] and it is widely comparable across registrants.[530] We agree with these commenters that, despite its limitations, TSR is likely to be a useful measure in this context, particularly because it incorporates information about a variety of facets of registrant performance, including market expectations of the future impact of current executive actions, and it is responsible for a significant amount of the variation in compensation outcomes experienced by executives. Specifically, academic studies indicate that changes in the value of equity awards after the grant date, with the movement of stock prices, are the primary channel though which pay is linked to registrant performance.[531] TSR is mechanically a significant determinant of executive pay outcomes, as it is the most commonly used metric in long-term incentive plans, and, more importantly, a majority of CEO compensation is awarded in the form of equity awards, whose value is closely tied to stock prices even when TSR is not explicitly used as a performance metric.[532] Current market practices provide further evidence that TSR is likely to be useful to investors in this context: every investor and third-party analysis of pay-for-performance that we have observed incorporates TSR as a primary performance measure.[533]

However, even if TSR, despite the limitations noted above, is a particularly useful measure for the purpose of evaluating the relation of pay with registrant performance, it may not provide a complete picture of registrant performance. Further, relying solely on TSR to evaluate registrant and executive performance may even be misleading in certain situations, such as when expected outperformance is already reflected in the starting stock price,[534] when a stock is thinly traded,[535] or when market dynamics cause stock returns to become particularly disconnected from fundamental performance.[536] The required disclosure of additional financial performance measures may help to address these concerns by broadening the picture of registrant performance presented in the disclosure, providing additional detail and context that could enhance the usefulness of the disclosure by certain registrants or for certain investors.

For example, several investors commented that the inclusion of TSR of a peer group would enhance the comparability of TSR,[537] perhaps by providing a benchmark for some of the market- or industry-wide factors that may affect performance at each registrant. Some commenters indicated that the required inclusion of a Company-Selected Measure and net income would provide a more complete picture of registrant performance.[538] More specifically, commenters stated that a Company-Selected Measure would provide insight into the registrant's perspective [539] and a facet of performance that is directly relevant for understanding compensation,[540] and that net income would provide a more objective accounting benchmark that is not affected by items like non-GAAP adjustments [541] and stock buybacks.[542] Similarly, some commenters indicated that including a list of the most important performance measures used by the registrant to link compensation actually paid to company performance would provide useful context or a more complete view of pay-for-performance programs,[543] and may therefore help address concerns that the pay-versus-performance disclosure could otherwise ''mislead'' investors.[544] Finally, to the extent registrants include additional supplemental measures of performance, commenters indicated they generally expect investors to benefit from an even more complete picture of performance.[545]

As discussed in the Baseline section above, all of the required performance information is generally already available in existing disclosures in annual reports or the CD&A of proxy statements. However, including this performance information in the pay-versus-performance disclosure may be useful to investors to the extent it limits the time they need to spend referring to other disclosures [546] in order to interpret

[526] *See, e.g.,* letters from AFL–CIO 2015; Aspen; CalPERS 2015; CEC 2015; Celanese; Dimensional; FSR; Hay; IBC 2015; IBC 2022; McGuireWoods; Mercer; NACCO; NIRI 2015; NIRI 2022; PDI; Pearl; Samuelson; and SBA–FL.

[527] *See, e.g.,* letters from AFREF; ASA; Blackrock; BRT 2015; CCMC 2015; CEC 2015; Coalition; FedEx 2015; FSR; Hall; IBC 2015; IBC 2022; Mercer; NACCO; NACD 2015; NAM 2015; NIRI 2015; Samuelson; SCG; Simpson Thacher; and WorldatWork.

[528] *See, e.g.,* letters from Better Markets; Hodak; IBC 2022; McGuireWoods; NACCO; Pearl; and PDI.

[529] *See, e.g.,* letters from AFL–CIO 2015; CII 2015; Farient; Hermes; Hodak; and OPERS.

[530] *See, e.g.,* letters from Barnard 2015; Barnard 2022; CII 2015; Davis Polk 2022; Hodak; and TIAA.

[531] *See, e.g.,* Edmans *et al.* 2017 Survey Paper (presenting evidence that ''the vast majority of executive incentives stem from revaluations of stock and option holdings, rather than changes in annual pay''); and Murphy 2013 Study (stating that studies show that virtually all of the sensitivity of pay to corporate performance for the typical CEO is attributable to the direct link between stock price performance and the CEO's portfolio of stock and options). *See also* letter from Hodak (stating that, for the average company, ''upwards of 80 percent of the real variation in the value of pay would derive from unvested equity'').

[532] *See* Section IV.B.3 above. One commenter stated that the Proposing Release did not provide ''any compelling evidence that [TSR] is a metric commonly used by companies to measure performance or in setting compensation.'' *See* letter from CCMC 2015. Section IV.B.3 above provides more detail on the significant use of TSR as a performance metric as well as the heavy reliance on equity awards, whose value is closely tied to TSR, in compensating executives. However, as discussed in this section, there is also other evidence that TSR may be an appropriate measure for this purpose.

[533] *See supra* note 451.

[534] *See, e.g.,* letters from Aspen and SCSGP.

[535] *See, e.g.,* letters from Hyster-Yale and NACCO.

[536] *See, e.g.,* letters from McGuireWoods and SCG (citing the recent ''meme stocks'' phenomenon as an example of massive fluctuations in stock price which have little to do with fundamental performance).

[537] *See, e.g.,* letters from OPERS and TIAA.

[538] *See, e.g.,* with respect to the Company-Selected Measure, letters from Better Markets; CII 2022; and Dimensional; and with respect to net income, letters from CII 2022 and Teamsters.

[539] *See, e.g.,* letter from AFL–CIO 2022.

[540] *See, e.g.,* letters from CalPERS 2022; CalSTRS; and Infinite.

[541] *See, e.g.,* letters from As You Sow 2022 and Teamsters.

[542] *See, e.g.,* letters from Better Markets and CalSTRS.

[543] *See, e.g.,* letters from AFREF; Better Markets; and CII 2022.

[544] *See, e.g.,* letters from AFREF and CII 2022.

[545] *See, e.g.,* letters from AFL–CIO 2022; CalPERS 2015; CFA; CII 2022; and Hay.

[546] *See, e.g.,* letters from AFL–CIO 2022 (stating that shareholders must currently ''comb through the

the pay-versus-performance disclosure, or prevents some investors from overlooking important context about the broader performance or pay-for-performance programs of a registrant. The required description, in graphical or narrative form, of the relationship between pay and the performance measures in the prescribed table is not anticipated to provide significant additional information beyond the contents of the table, but if it presents this information effectively, it may help investors to more easily interpret the disclosure.

If the required disclosure is useful to investors, the benefits are likely to vary across investors of different types. For example, it may be particularly beneficial to those investors who do not have access to third-party analyses, have fewer analytical resources, or are less adept at interpreting current disclosures on their own.[547] That said, some such investors may limit their proxy statement review to items like a voluntarily-provided proxy summary section regardless of the existence of the new disclosure, in which case they are unlikely to benefit.[548] Among investors with more resources or sophistication, some may benefit by being able to more quickly review proxy statements to determine which to investigate in more detail,[549] and some may reduce their analytical burdens by relying on information from the new disclosure to replace, to validate, or to more easily construct the inputs for their existing analyses. To the extent third parties are able to similarly leverage information provided in the new disclosures in constructing their own quantitative analyses, they may pass on some of these benefits in the form of a lower cost or a more useful analysis to subscribing investors. On the other hand, some investors or the third parties they subscribe to may continue to independently construct their own analyses without using any elements of the new disclosure; these investors are unlikely to benefit from the disclosure.[550] For all of the investors that would benefit from the disclosures, they are likely to benefit the most in the case of (i) registrants with particularly complex compensation plans, and where the alignment of pay and performance may therefore be difficult to assess, and (ii) registrants that do not already provide useful pay-versus-performance disclosure on a voluntary basis.

Overall, the direct benefits of the final rules hinge on the new disclosures being relatively easy to review and including the information investors are most interested in when evaluating the relation of pay with performance. Therefore, if the included measures are significantly different from those investors would collect or construct on their own in order to evaluate executive compensation, or if the disclosure is too long or complicated to review quickly, benefits to investors could be limited. Some commenters expressed such concerns, indicating that the proposed disclosures would be of minimal or no benefit to investors.[551] However, as discussed above, there is evidence that the revised measure of executive compensation actually paid and TSR are similar to measures currently used by many investors in quantitative analyses of pay and performance alignment, which suggests that these elements of the new disclosure are likely to be at least somewhat useful to investors. It is less clear to what extent the overall effect of the additional required performance measures will be to enhance the utility of the new disclosures to investors, recognizing that the usefulness of these components may be reduced by their contribution to the overall length and complexity of the disclosures,[552] which may make it difficult to quickly interpret the basic elements of the disclosures. Any supplemental explanations registrants include may further increase the length and complexity of the new disclosures.[553] That said, the tabular disclosure of the underlying data will provide a degree of consistency and comparability, which can aid investors in quickly processing the information.

The final rules could also have indirect benefits if the required disclosures lead to more optimal compensation policies, perhaps as a result of increased attention on the level or structure of NEO compensation and/or registrant performance. Specifically, if, by virtue of the disclosure, NEOs become less likely to demand, or boards become less likely to approve, a compensation level or structure that is not optimal (in that, as discussed above, it does not maximize long-term shareholder value),[554] then benefits will arise to investors and registrants. The resulting pay packages may represent either a benefit or a cost to the NEOs depending on whether or not the more optimal compensation structure, including the level of compensation as well as the risk exposure, is preferred by the executives. The final rules could also indirectly benefit investors and registrants in the form of more optimal board composition, if, by virtue of the disclosure, shareholders make more informed voting decisions.

The likelihood of such indirect effects is difficult to estimate because the ideal pay-versus-performance analysis, as well as the optimal pay structure, is uncertain and may vary by company, and because reactions to the repackaging of information are difficult to predict. As discussed above, the disclosure is intended to facilitate investors' consideration of the alignment between pay and performance when making related voting decisions. Several commenters indicated that they anticipated that the proposed amendments would therefore result in improvements in compensation and/or corporate governance.[555] However, because the final rules do not require the disclosure of significant new underlying informational content, and given the high level of existing attention to pay practices—including increased engagement on these matters with institutional investors, and the sophisticated methods and processes that many investors and third parties have developed for evaluating pay—we believe that it is unlikely that the final rules will play a significant role in encouraging more optimal pay packages or corporate governance. We therefore believe that the final rules are likely to

narrative disclosure provided in the Compensation Discussion and Analysis and then separately match up the company's actual performance from financial statements''); and As You Sow 2015 (stating that they focus primarily on proxy statements from March to May, and would therefore support moving the Item 201(e) of Regulation S–K graph, which includes TSR and the TSR of a peer group, to the proxy statement from the annual report).

[547] *See, e.g.,* letters from OPERS and Teamsters.

[548] *See, e.g.,* letters from Axcelis and NIRI. *See* also Abt SRBI, *Mandatory Disclosure Documents Telephone Survey,* Commissioned by SEC's Office of Investor Education and Advocacy (July 30, 2008), *available at https://www.sec.gov/pdf/disclosuredocs.pdf,* at 38 (presenting survey evidence that, among individual investors that read proxy statements, 43% reported spending less than 10 minutes reading proxy statements).

[549] *See supra* note 505.

[550] *See, e.g.,* letters from Axcelis; IBC 2015; and SCG.

[551] *See, e.g.,* letters from BRT 2015; CAP; Celanese; FedEx 2015; NAM 2015; and Pearl.

[552] *See, e.g.,* letters from CEC 2015; McGuireWoods; Meridian; and TCA 2022.

[553] *See, e.g.,* letters from Aon HCS; Aspen; CEC 2022; Celanese; Coalition; Exxon; Hyster-Yale; IBC 2022; NACCO; NAM 2015; NIRI 2015; NIRI 2022; and PNC.

[554] It is important to note that, as mentioned above, a closer link between executive pay and stock performance than the current status of compensation could be either beneficial or detrimental to shareholder value creation.

[555] *See, e.g.,* letters from Better Markets and Sacred Heart.

have no material beneficial effects on competition or capital formation.

Lastly, we note that the required pay-versus-performance disclosure will provide some incremental information relative to the underlying informational content already available to the public in other formats, but that the extent of this information is limited. For example, the valuation of equity awards such as options and performance-contingent stock involve certain assumptions and expectations, and registrants are not currently required to disclose valuation assumptions for most [556] such awards on dates other than the grant date. Vesting-date values currently are provided for stock awards in the Stock Vested and Options Exercised Table, but the applicable fair values at times before these dates, other than the grant date, and for options at all dates other than the grant date, are not separately presented by registrants. That said, for some awards, additional assumptions are not required to compute their fair values at these other dates. Specifically, for stock awards, such as restricted stock, that only have service-based conditions, the fair value would generally simply equal the stock price at the time. For stock with performance-based conditions other than market conditions, determining the fair value would involve a reassessment of the probable outcome with respect to the performance metrics involved, but registrants are also required to reassess these probable outcomes each period for the purpose of financial statement reporting, and associated footnotes should provide insight into the registrant's evaluation to the extent the changes in estimates are material.

Computing the fair value of other awards, such as options and stock with market-based conditions, after the grant date would likely require new assumptions. Using existing disclosures, investors can themselves make estimates of the fair values of options and stock with market-based conditions at dates beyond the grant date based on the disclosed terms of these awards, and by using publicly available data to make reasonable valuation assumptions.[557] In contrast, a fair value estimate provided directly by the registrant would reflect its discretion in choosing a valuation methodology and estimating the inputs required, such as the expected option life and the expected volatility of the stock.[558] The grant-date valuations provided by registrants already demonstrate, to some extent, how the registrants choose to apply their discretion in the valuation process.[559] It is unclear to what extent investors would find information about what valuation assumptions registrants would apply at later dates, which would similarly reflect registrant discretion, to represent meaningful new information beyond what is available in existing disclosures (though investors may find the computations useful regardless of whether they reflect meaningful new information).

With respect to pensions, while aggregate service costs are reported in financial statement disclosures, and pension plan terms and assumptions are disclosed in detail, registrants are not currently required to separately report the service cost, or prior service cost due to any plan amendments or initiations, that is associated with each individual NEO, so the disclosure of these costs may reveal marginal new information about actuarial assumptions specific to the estimation of service costs for these individuals, such as any embedded assumptions about future compensation levels.

Additional potential sources of new information for investors include the Company-Selected Measure and the Tabular List. As discussed above, if registrants do not already disclose the historical outcomes for their Company-Selected Measure over the past five years, the disclosure may provide new information to the extent that any required adjustments or computations required to derive the value of these measures from reported financial data may not always be straightforward for investors to replicate. Finally, both the Company-Selected Measure and the Tabular List may provide new information in the form of any insight gained based on the registrant's choice of which of the measures reported in the CD&A were deemed to be the most important with respect to the last completed fiscal year.

Overall, the extent of new underlying informational content that could be made available in the disclosures is limited, and, while some investors may find the incremental information to be useful, it is unclear to what extent it would be meaningful to investors more broadly. We therefore believe that the potential benefits of the final rules derive primarily from the manner in which the information is presented rather than the disclosure of any significant new underlying informational content. The benefits of some specific implementation choices are discussed in more detail in the Implementation Alternatives section below.

3. Costs

The primary costs of complying with the final rules reside largely with registrants and include the time and expense to make the required computations; to select the tailored components of the required disclosure; to design a format for the required descriptions and create these elements of the disclosure; to draft the footnotes and any supplementary disclosures that are deemed necessary; to apply Inline XBRL data tagging; and to ensure appropriate review, such as by management, in-house counsel, outside counsel and members of the board of directors. The costs will be mitigated by phasing in the time periods for the disclosure for both new and existing registrants, thereby limiting the computations required when first producing the disclosure, and providing scaled requirements and a phased-in tagging requirement for SRCs.

In the Proposing Release, we indicated that we believed that the costs to registrants of complying with the proposed amendments likely would be relatively low, given that the required disclosures would not require the collection of any significant new information relative to the baseline and the required additional computations would be straightforward. Some commenters agreed that the compliance costs would be relatively low and/or

[556] A minority of option-like awards may be classified as liability awards under FASB ASC Topic 718, because of, *e.g.,* certain cash settlement features or conditions or other features that are indexed to conditions other than a market, performance, or service condition. In such cases, the entity is required to revalue the award at fair value each period and to adjust its cumulative cost in the financial statements, and the associated valuation assumptions would generally be available in financial statement footnote disclosures.

[557] Such data might include financial statement footnote disclosures relating to significant assumptions made by the registrant in arriving at disclosed grant-date valuations and information regarding the past exercise behavior at the registrant or a broader group of firms, as well as market information on bond and dividend yields and stock price volatilities.

[558] While FASB ASC Topic 718 requires that the assumptions used shall not represent the biases of a particular party, there will generally be a range of assumptions that could be considered to be reasonable, and so the choice of particular assumptions will reflect registrant discretion.

[559] An academic study of executive compensation among firms in the S&P 1500 from 1996 to 2001 found that the grant-date valuations of option awards by these registrants were, on average, understated. However, because this paper uses data from 1996 to 2001, it might not accurately reflect current practices. *See* David Aboody, Mary E. Barth & Ron Kasznik, *Do Firms Understate Stock-Based Compensation Expense Disclosed under SFAS 123?* 11 Rev. Acc. Stud., No. 4, 429 (2006). Notably, when evaluating executive compensation, two major proxy advisory firms use their own, standardized set of methodologies and assumptions to value option grants rather than relying on each registrant's estimate of grant-date value. *See* Glass Lewis Methodology and ISS Methodology.

that the required computations would not be difficult.[560] However, some other commenters indicated that the Proposing Release may not have fully accounted for the costs of the proposed disclosures,[561] particularly with respect to the expense of producing new option valuations [562] and supplemental disclosures that would be required to prevent confusion.[563] Also, we acknowledge that the compliance costs associated with the final rules will generally be higher than those that would have been associated with the approach set forth in the Proposing Release, given the revised definition of executive compensation actually paid and the disclosures with respect to additional performance measures that were not included in the proposal. We have, accordingly, revised our burden estimates for purposes of the Paperwork Reduction Act of 1995 [564] (''PRA''), as discussed below and in Section VI of this release. However, we believe that, given that the disclosures require the collection of minimal new information, the overall compliance costs of the final rules should be modest.

In particular, while some of the computations involved are more complex than simple arithmetic, existing models and established methodologies should aid in making the required calculations. For example, commenters indicated that the determination of pension service cost, disaggregated by executive, would require minimal effort by the actuaries who are already making the required computations to produce aggregate pension service cost for the financial statements.[565] While there may be an incremental charge to obtain these estimates,[566] or to make the required additional computations in the case of any plan amendments, we expect it to be low. The annual revaluation of restricted stock and performance-contingent stock should only require consideration of the prevailing stock price and any updates with respect to the probable outcome of performance conditions, which are already reassessed as of the end of each fiscal year for financial reporting purposes.[567] Finally, the annual revaluation of options (as well as any stock with market-based conditions) can generally be accomplished by reevaluating the appropriate inputs and entering these into the existing valuation models used to calculate currently disclosed values. Several commenters indicated that this process would be tedious and generate administrative burdens,[568] and that the appropriate models as well as inputs may need to be reconsidered when revaluing option awards beyond the grant date.[569]

We acknowledge that the revaluation of options, which will be required more frequently under the final rules than under the proposal, will likely be the most computationally-intensive requirement of the final rules. However, a minority of registrants utilizes option awards in compensating NEOs, and we agree with several commenters who indicated that annual computations of fair value of outstanding equity awards would not be overly burdensome.[570] Option valuation is a well-established discipline, and existing models and software,[571] as well as reliance on third-party experts when necessary, should aid the registrants that grant options to their NEOs in making the required calculations. Further, on an ongoing basis, the value of executive compensation actually paid will only need to be computed for a single fiscal year at a time (and, given the phase-in of requirements, for three fiscal years at inception, or two fiscal years in the case of SRCs), limiting the total computations required in order to update the disclosure each year. Also, as discussed above, some investors, or third parties on behalf of investors, are currently making similar computations. While the required computations may represent a burden for registrants, they may reduce such duplicative efforts and place responsibility for the calculations in the hands of registrants, who are best positioned to produce them.

Several commenters raised concerns about the extent of supplemental disclosure that would be required to clear up ''misconceptions'' that could result from the required elements of the proposed disclosure.[572] While we expect that some registrants may choose to provide supplemental disclosure, such as to clarify the required disclosure, and that producing such disclosure will be associated with further compliance costs, we believe that the revised definition of executive compensation actually paid should reduce the need for clarifying disclosures because, relative to the proposed measure of pay, it is less likely to require the reporting of pay in a different period than the associated performance.[573]

Commenters to the Reopening Release also raised concerns about the cost to include the additional information with respect to performance measures contemplated in that release. The final rules include modifications that should limit these costs. For example, some commenters indicated that the inclusion of net income and income or loss before income tax expense would increase the length and/or cost of disclosure.[574] The final rules require the inclusion of net income, but not income or loss before income tax expense, which should limit the size and costs of the associated disclosure. Similarly, some commenters indicated that the selection of a single Company-Selected Measure would be difficult [575] and result in substantial additional cost [576] to registrants, in part because of the prominence of this single measure and the resulting scrutiny required from board members and senior management, with input from outside advisors. The final rules require the inclusion of a Company-Selected Measure, but registrants will be permitted to include additional supplemental measures in the table, which may mitigate burdens in cases where it is difficult to isolate a single most important measure.

Finally, some commenters indicated that the list of the top five most important performance measures contemplated in the Reopening Release would be difficult to produce,[577] particularly because of the difficulty in ranking such measures, and that it would increase the length and complexity of disclosure [578] due to the additional explanations registrants might consider necessary for clarification. The final rules do not

[560] *See, e.g.,* letters from Aon HCS; Better Markets; Hodak; and Infinite.

[561] *See, e.g.,* letters from NAM 2015; Pearl; and TCA 2015. Some other commenters raised general concerns about the costs of the proposal. *See, e.g.,* letters from CEC 2022; NIRI; and WorldatWork.

[562] *See, e.g.,* letter from Pearl.

[563] *See, e.g.,* letter from TCA 2015.

[564] 44 U.S.C. 3501 *et seq.*

[565] *See, e.g.,* letters from Mercer and Towers.

[566] *See, e.g.,* letters from AON and NACCO.

[567] *See* FASB ASC Topic 718–10–30. *See also* letter from CAP.

[568] *See, e.g.,* letters from Cook; KPMG; Pearl; and WorldatWork.

[569] *See, e.g.,* letters from CAP; TCA 2015; and TCA 2022.

[570] *See, e.g.,* letters from Hodak; Infinite; TCA 2015; and TCA 2022.

[571] *See, e.g.,* letters from Hodak and ICGN.

[572] *See, e.g.,* letters from CCMC 2022; CEC 2015; and FSR. *See also* letters from BlackRock; Celanese; Cook; Exxon; NAM 2015; NAM 2022; NIRI 2015; TCA 2015; and TCA 2022.

[573] *See, e.g.,* letter from Cook (providing sample language that may have been required to address such a mismatch).

[574] *See, e.g.,* letters from FedEx 2022; McGuireWoods; NAM; and TCA 2022.

[575] *See, e.g.,* letters from Aon HCS; CEC 2022; Davis Polk 2022; LGIM; and NAM.

[576] *See, e.g.,* letter from Davis Polk 2022.

[577] *See, e.g.,* letters from ASA; Davis Polk 2022; LGIM; McGuireWoods; NAM 2022; and SCG.

[578] *See, e.g.,* letters from Aon HCS; CEC 2022; Davis Polk 2022; and IBC 2022.

include a ranking requirement and allow a variable number (from three to seven) of the most important measures, which may make it easier for registrants to find a more natural break-point in isolating a group of the measures they consider to be most important. This additional flexibility may thereby also limit the amount of additional explanatory disclosure that registrants choose to provide.

We also note that the number of relationships that the final rules will require registrants to describe in narrative or graphical form has increased to seven, for registrants other than SRCs, from the three that would have been required per the Proposing Release. For SRCs the number has increased from two to four. In particular, a registrant must describe the relationship of each required performance measure (TSR, net income, and, for non-SRCs, the Company-Selected Measure) with the PEO's compensation actually paid as well as with the average such pay of the other NEOs, and (for non-SRCs) they must also describe the relationship of TSR to peer group TSR. We acknowledge that these additional requirements will increase compliance costs, but we expect that the descriptions can be scaled depending on their relevance to a particular registrant. For example, if TSR or net income have little correlation, or only a spurious correlation,[579] with pay at a particular registrant, and is not a metric used in their compensation plans, a simple statement to this effect may suffice.

Overall, the expansion of the disclosures with respect to performance measures will increase the compliance costs of the final rules relative to the requirements reflected in the Proposing Release, but, as discussed above, these disclosures may provide helpful context to investors.

As discussed above, registrants will be required to file the pay-versus-performance disclosure in certain proxy or information statements. While much of the disclosure will be based on information that is otherwise disclosed, the new computations and new presentation of this underlying information, as well as the inclusion of existing measures—TSR and peer group TSR—that are otherwise ''furnished'' but not ''filed,'' may create an incremental risk of litigation under Section 18 of the Exchange Act (''Section 18'').[580] Several commenters indicated that this may increase the cost to registrants of the disclosures,[581] because of the need for additional assurance and because of litigation risks. However, we note that Section 18 does not provide for strict liability with respect to ''filed'' information.[582]

Compliance costs associated with the final rules are likely to vary among registrants depending on the complexity of their compensation structures. For example, the computation of executive compensation actually paid from total compensation reported in the Summary Compensation Table involves adjustments to the treatment of equity awards and pension benefits. Registrants that include these elements in their executive compensation plans are therefore expected to require more computations to produce the disclosure.[583] This is particularly the case for registrants that use options, both because the required computations are more involved, as discussed above, and also because options tend to vest ratably over time,[584] so registrants may need to track and value many different tranches of options in a given year. As shown in Tables 2 and 3 in the Baseline section above, the use of both options and pensions has declined since the time of the Proposing Release, but each still has a prevalence of roughly 20 percent among S&P 1500 CEOs (and 30 percent among their other NEOs). Overall, though, the registrants for whom the computations will be more burdensome—those with more complex compensation packages—are also generally those for which investors are expected to benefit most from the disclosure: in the absence of the disclosure, it is more difficult for investors to assess the alignment of pay and performance when compensation is more complex.

Large companies are more likely than smaller ones to have pension plans and grant stock and option awards to executives.[585] However, a significant fraction of mid-sized and smaller companies feature these components in their compensation plans as well.[586] Thus, while the compliance costs are likely to be relatively low, these costs may be slightly more burdensome for those affected registrants that have complex compensation packages and yet are small enough that the costs of the disclosure are relatively more consequential in comparison to their size. That said, SRCs will be subject to scaled requirements consistent with their existing disclosure requirements, including fewer years of disclosure; no requirement to report peer group performance, a Company-Selected Measure, or a list of the most important performance measures; and the exclusion of items related to pension plans in computing executive compensation actually paid. SRCs are not currently required to comply with Item 201(e) of Regulation S–K, so they may face a small incremental burden of computing their own TSR for the purpose of this disclosure as compared to other affected registrants.

Based on analysis for purposes of the PRA, as discussed in Section VI of this release, we estimate that the total incremental burden on all registrants of the final rules will be, annually, approximately 95,800 hours for internal company time, and about $12.8 million for the services of outside professionals. These estimates represent an increase in estimated burden hours per affected registrant of about 87 percent[587] (from 15 to 28 hours) for non-SRCs, and about 13 percent[588] (from 15 to 17 hours) for SRCs, relative to the estimates in the Proposing Release. As discussed above, these costs are expected to vary across registrants depending on the complexity of their compensation structures. Also, certain registrants—such as those whose executive compensation is not tied closely to TSR or net income—may be more likely to voluntarily supplement the disclosure with additional measures, explanations, or analyses in order to explain the patterns in the required disclosure, and may thus face higher overall costs. However, we do not believe that any of the variation in the compliance burden will be large enough to have a material detrimental effect on competition or capital formation.

While the new disclosure requirements are intended to make it

[579] A spurious correlation, in the context of statistics and related fields, is an apparent association between two variables that occurs, *e.g.,* by coincidence, and not because of a causal relationship.

[580] 15 U.S.C. 78r.

[581] *See, e.g.,* letters from Hodak; NAM 2015; and SCSGP.

[582] *See* Section 18. A plaintiff asserting a claim under Section 18 would need to meet the elements of the statute to establish a claim, including purchasing or selling a security in reliance on the misstatement, and damages caused by that reliance.

[583] *See, e.g.,* letter from Cook (discussing the preparation of five sample disclosures based on the proposed requirements, and finding that there was ''considerably more time and effort required for companies that grant stock options and/or have pension plans'').

[584] *See* Section IV.B.3 above.

[585] *Id.*

[586] *Id.*

[587] The incremental burden hours per filing estimated for PRA purposes is 28 hours for non-SRCs, compared to an estimate of 15 hours in the Proposing Release, representing an increase of (28/15—1) or about 87%.

[588] The incremental burden hours per filing estimated for PRA purposes is 17 hours for SRCs, compared to an estimate of 15 hours in the Proposing Release, representing an increase of (17/15—1) or about 13%.

easier for investors to assess the alignment of pay and performance, investors may instead bear increased information processing costs as a consequence of the final rules if they increase the length and complexity of existing disclosures without significantly adding to the ease of interpretation. Some commenters raised concerns that the proposed disclosures would result in such information overload.[589] The likelihood and extent of such costs resulting from the final rules may be a function of the degree of supplementary disclosures registrants choose to provide, as well as the complexity of and variation in presentation formats. The risk of information overload may also be exacerbated by the required disclosures with respect to additional performance measures,[590] which could provide helpful context for investors, or could end up complicating or obscuring the elements of the disclosure that would be most useful to investors. If the required disclosures complicate rather than facilitate the task of understanding executive pay policies, they may marginally decrease the informational efficiency of markets.

The final rules could confuse investors about the optimality of pay practices if they bring attention to a particular relationship that might not be relevant, given the facts and circumstances of a particular registrant, in evaluating the alignment of pay and performance at that particular registrant.[591] As discussed above, there are challenges in measuring pay-versus-performance alignment which are likely to impact any standardized approach to presenting this relationship. However, the required inclusion of additional context in the disclosure may help to mitigate potential confusion. For example, the inclusion of net income, a Company-Selected Measure, and a Tabular List could be helpful in limiting confusion stemming from differences in the timing of an executive's accomplishments and when they may be reflected in TSR, to the extent that other performance measures may better align with executive performance in such cases. Further, including peer group TSR in the disclosure may help investors to identify when registrant TSR could be driven by market moves, sector opportunities, commodity prices, or other factors unrelated to managerial effort or skill. That said, the required disclosure may be less meaningful at a particular registrant if TSR, even relative to peers, is very different from the contribution of the given NEO to performance, or if the disclosed relationship between compensation and TSR does not (*e.g.,* because of vested equity holdings that are not reflected in executive compensation actually paid) fully capture the economic relationship between the company's performance and the financial rewards to the NEO. Similarly, the required net income disclosure may be less meaningful at registrants at which net income is not particularly relevant to understanding executive performance.[592]

As discussed in the Proposing Release, the potential for confusion is especially concerning given that the new disclosure may be of particular interest to less sophisticated investors, who may be less likely to have access to third-party pay-versus-performance analyses or may be less adept at conducting their own such analyses. The possibility of confusion is mitigated by allowing registrants to provide supplemental measures of pay and performance, as well as the ability of registrants to provide further explanatory disclosures. Some commenters agreed that this flexibility to supplement the disclosure would improve investors' understanding or mitigate potential confusion.[593] However, such clarifying disclosures may be more likely to be provided when the disclosure is perceived by the registrant to incorrectly indicate the misalignment of pay and performance than when the disclosure is perceived to incorrectly indicate strong alignment. Further, as noted by other commenters, less sophisticated investors may be unlikely to consider these supplemental disclosures.[594] While some commenters were not convinced that a Company-Selected Measure or list of most important performance measures would help in such cases,[595] it is possible that these additional required elements of the disclosure may help mitigate confusion by providing a mandatory, prominent indicator of the broader performance landscape in the specific context of a given registrant.

The final rules could also lead to indirect costs if the required disclosures lead to changes in compensation packages that are not beneficial.[596] Registrants may make changes to avoid disclosure that they perceive indicates the misalignment of pay and performance, whether that indication is valid or merely due to limitations of the standardized approach. For example, by virtue of the disclosure, boards may become more likely to approve compensation structures that more strongly link pay to stock price performance,[597] even in situations in which this would not be optimal.[598] The inclusion of net income in the disclosure could mitigate this risk, or could instead encourage the use of net income as a performance metric in incentive programs, even when this is not beneficial.[599] Commenters raised concerns that such pressures on compensation design could lead to compensation that incentivizes short-termism and/or the inappropriate homogenization of compensation plans.[600] If such changes are indirectly encouraged by the final rules, they may entail costs to registrants and their shareholders. As in the case of any shifts towards more optimal compensation structures, discussed in the Benefits section above, the resulting pay packages may represent either a benefit or a cost to the NEOs themselves depending on whether or not the less

[589] *See, e.g.,* letters from BlackRock; BRT 2015; CCMC 2015; CEC 2015; Meridian; and TCA 2015.

[590] *See supra* notes 574 and 578. *See also* letters from BRT 2022 and IBC 2022.

[591] *See, e.g.,* letters from BlackRock; BorgWarner; CEC 2015; CCMC 2015; FSR; Honeywell; Hyster-Yale; NACCO; and Ross.

[592] *See, e.g.,* letters from Aon HCS; ASA; CEC 2022; Davis Polk 2022; Dimensional; FedEx 2022; IBC 2022; Nareit; NAM; NIRI 2022; PG 2022; and TCA 2022.

[593] *See, e.g.,* letters from CalPERS 2015; CAP; CFA; CII 2015; Farient; OPERS; and TIAA.

[594] *See, e.g.,* letters from Aspen; CEC 2015; Celanese; FSR; and NACCO.

[595] *See, e.g.,* letters from CCMC 2022; NAM 2022; and TCA 2022.

[596] *See, e.g.,* letter from Brian Cadman, dated Feb. 18, 2022 (discussing the potential unintended consequences of regulation of executive compensation disclosures). We note, however, that the research cited in this letter focuses on changes in a prior period, before registrants were regularly holding say on pay votes and engaging as heavily with investors on compensation. In contrast, more recent regulatory changes have not always been as impactful as expected, perhaps because of the offsetting effect of this heightened investor engagement on pay structure. *See, e.g.,* Lisa De Simone, Charles McClure & Bridget Stomberg, *Examining the Effects of the TCJA on Executive Compensation* (Apr. 15, 2022). Kelley School of Business Research Paper No. 19–28, *available at https://ssrn.com/abstract=3400877* (finding no evidence that the repeal of a long-standing exception under Section 162(m) of the tax code that allowed companies to deduct executives' qualified performance-based compensation in excess of $1 million reversed a related shift in executive compensation away from cash compensation and towards performance pay).

[597] *See, e.g.,* letters from CEC 2015; CCMC 2015; Hall; Hay; Hermes; Hodak; FSR; Georgiev; McGuireWoods; Mercer; Pearl; PNC; SCSGP; Simpson Thacher; and WorldatWork.

[598] *See supra* notes 498 and 499 regarding academic studies that find that a stronger link between pay and stock price performance may not be optimal. *See also* letter from Aspen (highlighting research indicating that financial incentives in general may be problematic ''when complex or creative mental tasks are required'').

[599] *See, e.g.,* letters from NAM and SCG.

[600] *See, e.g.,* letters from CEC 2022; Georgiev; Hay; NAM; and SCG.

optimal compensation structure, including the level of compensation as well as the risk exposure, is preferred by the executives.

As in the case of the potential benefits outlined above, many of these costs are difficult to quantify because the ideal pay-versus-performance analysis for investors, as well as the optimal pay structure, is uncertain and may vary by company and because reactions to the repackaging of information are difficult to predict. Still, because the final rules do not require the disclosure of significant new information, and given the high level of existing attention to pay practices—including the increased engagement on these matters with institutional investors, and the sophisticated methods and processes that many investors and third parties have developed for evaluating pay—we believe that it is unlikely that the final rules will play a significant role in encouraging sub-optimal pay practices.[601] We therefore believe that the final rules likely will have no material detrimental effects on competition or capital formation.

The costs of some specific implementation choices are discussed in more detail in the Implementation Alternatives section below.

4. Implementation Alternatives

In this section, we present significant implementation alternatives and a discussion of their benefits and costs relative to the implementation choices in the final rules.

i. Registrants and Filings Subject to the Disclosure Requirement

An alternative to the final rules would be to fully exempt SRCs from the disclosure requirement. Exempting SRCs generally would be consistent with the overall scaled disclosure requirements that apply to SRCs. While the final rules subject SRCs to scaled requirements in order to limit the incremental burdens such companies may face relative to other registrants, some such burdens remain. For example, SRCs are currently not required to disclose their TSR in annual reports, so they would face a higher burden than other registrants to calculate and include this measure in the pay-versus-performance disclosure. SRC pay-versus-performance disclosure, under the final rules, may also benefit investors to a lesser degree than that for other registrants, because the scaled requirements reduce the content and comparability of the disclosures. Also, in the absence of CD&A disclosure, investors will have less information with which to interpret pay-versus-performance disclosures from these registrants. As discussed above, some commenters agreed that SRC pay-versus-performance disclosure would generate greater burdens and/or lesser benefits than that for other registrants.[602]

On the other hand, it is possible that investors may particularly benefit from the required pay-versus-performance disclosure for SRCs, precisely because these registrants currently provide less extensive disclosure about compensation. For example, some investors may believe that the long-term performance of younger, high-growth companies may be highly sensitive to the design of executive compensation. Such investors may be particularly interested in compensation structures at SRCs but may find it difficult to assess these structures in the absence of CD&A disclosure for SRCs. These investors may benefit from SRC pay-versus-performance disclosures, even if these disclosures are not directly comparable with the disclosures of other affected registrants. Further, the data that SRCs do currently disclose is less likely to be available in aggregate form from data vendors that collect such data from the proxy statements of larger companies. Investors that are interested in comparing executive compensation across SRCs may particularly benefit from the data in the pay-versus-performance disclosure being tagged in Inline XBRL, to the extent this makes the data more accessible or increases the likelihood that more commercial databases expand their coverage to such registrants.[603] Some commenters agreed that there may be particular governance concerns at SRCs[604] and that investors would benefit from pay-versus-performance disclosures by these registrants.[605]

The final rules permit SRCs to present fewer years of information in the disclosure; to not include peer group performance, a Company-Selected Measure, or a Tabular List; and to exclude items related to pension plans in computing executive compensation actually paid. While these scaled requirements may reduce the benefits of the disclosure, these accommodations should substantially limit the incremental burdens faced by SRCs in providing pay-versus-performance disclosure, while preserving some benefits to investors interested in executive compensation at such registrants.

Another alternative with respect to the applicability of the final rules would be to expand the filings requiring pay-versus-performance disclosure, such as requiring that such disclosure accompany any Item 402 of Regulation S–K disclosure, including in Form 10–K or Form S–1. Such an approach would make pay-versus-performance disclosures more consistently available for Section 12(g) registrants subject to the final rules and broaden the disclosure requirement to include Section 15(d) registrants other than EGCs. However, the required disclosure may be most useful to shareholders when they are deciding whether to approve the compensation of the NEOs through the say-on-pay vote, voting on the election of directors or acting on a compensation plan. The adopted approach requires pay-versus-performance disclosure in proxy statements in each of these cases. As discussed above, one commenter agreed that this approach would provide ''relevant information'' when it is ''most useful.'' [606] Nonetheless, shareholders making voting decisions at a particular registrant may benefit from broader and more consistent availability of pay-versus-performance disclosures on an annual basis at other registrants. Specifically, these disclosures may allow shareholders to more easily compare pay practices across registrants when deciding how to vote at a particular registrant, particularly, for example, in the case of smaller companies whose peers may be more likely to be Section 12(g) or Section 15(d) registrants. Such disclosures may also be of use to some investors in making investment decisions, irrespective of any matters that are up for a vote.

However, registrants with reporting obligations only under Section 12(g) or Section 15(d) do not have securities that are registered on national securities exchanges, so the markets for their shares are likely to be comparatively less liquid. Estimates of share values and therefore of TSR for such registrants may be less precise and less readily available, potentially making pay-versus-performance comparisons based on this measure less meaningful across such registrants. Also, as in the case of

[601] *See supra* note 596.

[602] *See supra* notes 405 to 407 and accompanying text.

[603] *See* Y. Cong, H. Du & M.A. Vasarhelyi, Are XBRL Files Being Accessed? *Evidence from the SEC EDGAR Log File Dataset,* 32 J. Info. Sys. 3 (concluding that ''small company investors not only access XBRL files but also prefer them to the non-XBRL files when both are available to download for a filing'').

[604] *See, e.g.,* letters from Morrell and Troop.

[605] *See, e.g.,* letters from Better Markets; CalPERS 2015; and CalSTRS.

[606] *See* letter from OPERS.

SRCs, Section 15(d) registrants are not subject to Item 201(e) of Regulation S–K requirements for stock price performance disclosure. Similarly, Section 12(g) registrants may not be required to disclose Item 201(e) of Regulation S–K information in some or all years, so Section 15(d) registrants and some Section 12(g) registrants would bear an additional burden of calculating their own TSR and, except in the case of SRCs, the TSR of a peer group for this purpose. One commenter supported requiring the new pay-versus-performance disclosure in all filings that discuss compensation, but this commenter also acknowledged that shareholders would most likely only read those materials assembled for an annual meeting,[607] which would include the new disclosure under the final rules.

ii. General Disclosure Requirements

We have considered several reasonable alternatives to the general disclosure requirements of the final rules.

Many commenters recommended a more principles-based approach that would permit registrants to determine which measures of pay and performance to disclose or how to disclose the relationship between these measures based on what they deem to be appropriate for their individual situations.[608] Such an approach could have the potential to allow investors to more directly observe how management views the alignment of pay and performance at a given registrant, and might reduce reporting costs because registrants need only report what they believe to be appropriate given their unique circumstances. To the extent that the prescribed measures may be less meaningful at particular registrants, a principles-based approach could reduce shareholder confusion in understanding the relationship between pay and performance at a particular registrant. A principles-based approach would also reduce the risk that the disclosure requirements could lead registrants to change their compensation structures in ways that are less than optimal for the sake of achieving what they perceive to be more favorable pay-versus-performance disclosure.

On the other hand, a principles-based approach may reduce comparability of the disclosure and could increase shareholder confusion because the choice of pay and performance measures, and the disclosure time horizon, may vary significantly across registrants. Also, a principles-based approach may allow registrants to selectively choose the measures or time horizon that result in the most favorable disclosure. Several commenters indicated that scrutiny by sophisticated investors and proxy advisory firms, as well as the incentive effect of say-on-pay votes, would motivate registrants to produce effective disclosures within the flexibility of a principles-based regime.[609] However, we note that investors continue to express discontent with existing disclosures despite these factors.[610] The adopted approach of specifying some uniform requirements for the disclosure, requiring certain elements that will vary across registrants (the Company-Selected Measure and Tabular List), allowing registrants to choose the format for describing the relationship between different measures, and permitting the inclusion of additional measures, additional years of data, or other supplemental disclosure should promote comparability while preserving flexibility to tailor the disclosure to a registrant's individual situation. Registrants will also continue to have significant latitude in presenting additional compensation analyses, which provides further opportunity for registrants to clarify their unique circumstances and considerations in designing compensation.

Conversely, we also considered prescribing a uniform format or some minimum requirements for the descriptions of the relationships between different measures. Under the final rules, registrants may apply a wide range of formats when presenting these relationships. For example, some registrants may discuss percentage changes in the measures in narrative form while others may present the levels of the measures in graphical form. Investors' ability to easily interpret and compare the disclosure across registrants could be increased by requiring a uniform format for presenting the relationship, such as a standardized graphical presentation, or some minimum standards for the presentation format, such as a requirement that the disclosure be in the form of a graph. The cost of these more prescriptive approaches would be the restrictions on the ability of registrants to tailor the format of the required disclosures to best reflect their individual circumstances, which may vary significantly. For example, with a prescribed format, registrants might not be able to scale a required description to reflect the relevance of a particular measure at that particular registrant, which could result in lengthy disclosure about relationships that are not meaningful. Under the final rules, the tabular disclosure of the annual values of the required compensation and performance measures should facilitate comparisons of the underlying content of the disclosures across registrants regardless of the format for the required descriptions. It is also possible that these descriptions could become more comparable as registrants gain experience with the requirements; as one commenter predicted, ''[o]ver time best practices will emerge, and investors will encourage companies to follow those best practices.'' [611]

We also considered alternatives with respect to the extent of the required descriptions. As discussed above, the final rules require, for non-SRCs, the description of seven different relationships (and four in the case of SRCs) in graphical or narrative format. An alternative would be to not require the description of some of these relationships, such as that between net income and executive compensation actually paid of the PEO or the other NEOs. Such an approach could help to mitigate commenter concerns about the costs and length of the required disclosure,[612] given that the description of a specific relationship might require the application of significant discretion and involve more space in the proxy statement than a particular column in the required table. Reducing the number of mandated descriptions may reduce the extent of disclosure in cases where the measures in question may not be relevant in the context of a particular registrant. A more focused set of required descriptions could reduce compliance costs and make it easier for investors to more quickly review the disclosures. The underlying measures would still be available in tabular form for investors to consider; for example, investors might refer to net income as a benchmark to gauge the adjustments in a non-GAAP profitability measure presented as a Company-Selected Measure. However, investors may benefit from understanding the registrant's perspective on each performance measure, and, as discussed above, we expect that the descriptions

[607] *See* letter from Quirin.

[608] *See, e.g.,* letters from AB; ASA; Aspen; BlackRock; BorgWarner; BRT 2015; CCMC 2015; CCMC 2022; CEC 2015; CEC 2022; Celanese; Coalition; Exxon; FSR; Hall; Honeywell; Hyster-Yale; NACCO; Nareit; NAM 2022; NIRI 2015; NIRI 2022; PG 2015; Pearl; PNC; SCG; SCSGP; TCA 2015; TCA 2022; and WorldatWork.

[609] *See, e.g.,* letters from BorgWarner and Honeywell.

[610] *See* Section IV.B.2 above.

[611] *See* letter from CFA.

[612] *See* Section IV.C.3 above.

can be scaled depending on their relevance to a particular registrant.

We also considered alternative approaches to presenting the pay and performance data. For example, several commenters suggested that, instead of requiring the presentation of year-by-year data, we could require registrants to aggregate pay over a three to five year horizon and compute the cumulative TSR over a similar horizon, and then either present a single pair of statistics or a set of rolling values of these multi-year statistics.[613] As noted by these commenters, such an approach could help to smooth any lumpiness in pay (such as when certain awards or payments are not made every year) or short-term volatility in the performance measure. However, it would also make it harder to discern how pay has been associated with year-by-year changes in performance. Further, for investors preferring this approach, a form of aggregate analysis should be relatively straightforward to construct from the disclosure required under the final rules, by adding the values of executive compensation actually paid over multiple years and comparing this to the cumulative TSR over that horizon. In contrast, presenting aggregate statistics would not reduce compliance costs over time because new computations for the latest fiscal year would still be required each year that the disclosure is produced.

Other commenters suggested that we require registrants to isolate pay granted in a particular year and provide an updated valuation of that pay, for each grant year in the time horizon of the disclosure, at the end of the latest fiscal year (or possibly at vesting), and relate those updated values to cumulative performance.[614] Such a focus on the pay granted in a particular year, and how its value has changed, may provide insight specific to the compensation decisions by the board in each year. However, given that grants have overlapping performance periods, it may be difficult under this approach to judge the overall association of pay with performance, and the relationship between the performance in a particular period and all of the associated pay.

We also considered alternatives with respect to the required structuring of the disclosures. Alternatives to the adopted approach include not requiring that the underlying data disclosed in tabular form be provided using a structured data language (*i.e.,* tagged in Inline XBRL), requiring more or less of the information to be tagged, or requiring a different structured data language. Not requiring that the disclosure be provided in a structured data language would reduce the costs of compliance. Some commenters indicated that the tagging requirements would increase the costs and time to produce the disclosure or delay the filing process.[615] The affected registrants are familiar with Inline XBRL because they are required to provide information in other filings in this data language, but the exact specifications differ and, with limited exception, they are not required to provide any structured data in proxy or information statements.[616] The Inline XBRL requirements would impose additional burdens on registrants, beyond what they currently spend on producing structured data for other purposes, because their contracts with outside data tagging vendors and/or the responsibilities of their in-house staff that works on data tagging would have to be expanded to include the new tagging requirement. In addition, a few commenters anticipated some difficulties because staff preparing proxy statements would be unfamiliar with Inline XBRL.[617] One commenter stated the cost of XBRL tagging can be up to tens of thousands of dollars.[618] A few commenters remarked that the costs of XBRL tagging outweigh the benefit to investors,[619] and questioned whether there was sufficient evidence that such structured data was being used by, or would benefit, investors.[620]

Since the time of the Proposing Release, the market has had significantly more experience with structured data languages, including XBRL. We expect that this experience, along with the adoption of Inline XBRL, will reduce the costs of implementing the requirements and enhance the quality of the data made available.[621] While costs will remain, the Inline XBRL requirements should facilitate the extraction of the tagged data across large numbers of filings. These requirements may therefore benefit investors interested in analyzing and comparing the information in the disclosure across large numbers of registrants or, eventually, a large number of years.[622] The tagging of compensation information under the final rules may be particularly beneficial to investors, in that several widely-used commercial databases collect compensation data only for large companies.[623] Some commenters agreed that tagging the disclosures would enhance the benefits to investors, by increasing the efficiency with which large amounts of data could be filtered and analyzed,[624] by enhancing the ability of investors to compare the data across companies or over time,[625] and by allowing investors to obtain this data efficiently or at lower cost.[626] There is also increased evidence that structured data is used by investors and generates benefits. For example, one study found that XBRL has helped to reduce the informational advantage of large institutions over small ones, in that small institutions' trading

[613] *See, e.g.,* letters from Farient; Pearl; and Ross.

[614] *See, e.g.,* letters from CAP and PG 2015.

[615] *See, e.g.,* letters from CCMC 2015; Celanese; FedEx 2015; Hay; IBC 2015; and NACCO.

[616] BDCs were not previously required to provide their financial statements and financial statement footnotes in XBRL or Inline XBRL, and may thus be less familiar with data tagging than other registrants. However, all BDCs will be required to provide their financial statements and financial statement footnotes, as well as certain prospectus disclosures, in Inline XBRL from, at latest, February 1, 2023. Some BDCs may choose to incorporate prospectus disclosures by reference to their proxy or information statements, in which case those proxy or information statements would include Inline XBRL tagging. See *Securities Offering Reform for Closed-End Investment Companies,* Release No. IC–33836 (Apr. 8, 2020) [85 FR 28853 (May 5, 2020)]. We estimate that there are approximately seven BDCs that would be required to produce the pay-versus-performance disclosure.

[617] *See, e.g.,* letters from NACCO; Hyster-Yale; and XBRL US.

[618] *See* letter from CCMC 2015.

[619] *See, e.g.,* letters from CCMC 2015; Celanese; and NIRI 2015.

[620] *See, e.g.,* letters from CCMC 2015 and NIRI 2015.

[621] *See, e.g.,* Michael Cohn, *AICPA Sees 45% Drop in XBRL Costs for Small Companies,* Accounting Today (Aug. 15, 2018), *available at https://www.accountingtoday.com/news/aicpa-sees-45-drop-in-xbrl-costs-for-small-reporting-companies* (retrieved from Factiva database) (observing a 45% decline in average cost and a 69% decline in median cost of annual XBRL requirements for SRCs from 2014 to 2017); *see also* Ariel Markelevich, *The Quality and Usability of XBRL Filings in the US, 5 Int'l. J. Acct. Tax 2 (2017)* (with findings suggesting that, ''starting in 2012, there has been a steady improvement in the quality and usability of the XBRL filings in most aspects . . . consistent with the notion of companies moving along a learning curve and improving the quality and usability of the XBRL data as they gain more experience tagging'').

[622] Some investors that are interested in analyzing compensation data across a large number of filings may also wish to analyze the substantial amount of other information regarding compensation in the proxy statement. Because this other data is not currently provided in a structured data language, such investors would have to continue to purchase such data from a data vendor that aggregates this data or to electronically parse or hand-collect such data from filings. The incremental benefit of the structured data requirement is likely to be lower for such investors than for those primarily interested in the data to be tagged.

[623] For example, the Standard & Poor's Execucomp database covers the S&P 1500 and some additional registrants, and the ISS IncentiveLab database covers about 1,100 registrants, with coverage in both of these cases representing well under half of the affected registrants.

[624] *See, e.g.,* letters from CalPERS 2015 and XBRL US.

[625] *See, e.g.,* letters from AFL–CIO 2015; CII 2015; Public Citizen; SBA–FL; and XBRL US.

[626] *See, e.g.,* letters from CalPERS 2015 and XBRL US.

responsiveness to Form 10–K information and stock-picking skills improved relative to large institutions after the adoption of XBRL.[627] Other studies provide evidence consistent with XBRL tagging of financial statement disclosures leading to an increase in stock price informativeness (*i.e.,* the extent to which market prices reflect company-specific information).[628]

We considered not requiring some or all of the block tagging that the final rules will require, such as: the graphical or narrative disclosure that would follow the tabular disclosure; the disclosure of deductions and additions used to determine executive compensation actually paid; and the disclosure regarding vesting date valuation assumptions. While the nature and potential variation in format of these disclosures may make them less suitable for large-scale analysis than the numerical data in the main table, the incremental costs of tagging these disclosures as block-text should be low and such tagging could benefit investors interested in extracting these parts of the disclosure from a large number of filings We also considered, as proposed, not requiring that each numerical item in the deductions and additions used to determine executive compensation actually paid and the vesting date valuation assumptions be tagged separately. While such tagging will require incremental compliance costs, it may benefit investors interested in using this data, such as for constructing alternate pay measures.

We also considered requiring registrants to provide the data an XML-based data language specific to the pay-versus-performance disclosures (''custom XML'') rather than Inline XBRL.[629] As discussed in the Proposing Release, a custom XML requirement could increase the ease of implementation of the structured formatting requirement for the main table, and could thus reduce costs of structuring, particularly for smaller registrants. However, the Commission's custom XML data languages are generally unsuitable for tagging large blocks of information or implementing detail tags within such blocks, and are therefore not as appropriate for implementing the requirements of the final rules.

iii. Compensation Measures

We have considered several alternative approaches to the compensation measures to be included in the disclosure, particularly with respect to the definition of executive compensation actually paid. The final rules define this compensation measure generally in line with the approach described as ''incremental compensation earned'' in the discussion of implementation alternatives in the Proposing Release. We also considered adopting definitions that would treat equity awards and pensions differently, such as in the proposed definition, or that would include different elements of compensation.

With respect to equity awards, the proposed approach would have required registrants to include the fair value of stock and option awards in executive compensation actually paid at the time of vesting. As discussed in more detail above,[630] some commenters agreed with arguments in the Proposing Release that certain features of this approach, such as the fact that it would reflect the change in value of equity awards based on performance outcomes after they are granted, would be beneficial for this purpose. However, many commenters raised concerns that the proposed definition would generate a mismatch between the period in which pay was reported and the period of the associated performance,[631] and that this would significantly reduce the potential usefulness of the disclosure.[632]

Specifically, as discussed in the Proposing Release, under the proposed definition of executive compensation actually paid, the measure may be subject to volatility based not on performance but on the vesting pattern of equity awards, because it includes, in the year of vesting, the original grant-date value and all gains (or losses) related to returns in all years since the grant was made. A number of commenters highlighted concerns of this nature.[633] Similar issues that commenters noted include an exacerbation of the misalignment when the size of an award is intended to recognize performance in the year of grant (or prior);[634] when awards formally vest in a different year than the end of the performance period,[635] or when the vesting date of an award is distant from the end of the year.[636] Commenters also noted that the timing mismatch would not apply equally to different types of compensation or across different vesting patterns, leading to difficulties in comparisons across registrants or executives.[637] Consider, for example, a fiscal year in which one PEO receives a $1 million cash bonus and another instead receives a $1 million restricted stock award that vests after one year. Under the definition that was proposed, executive compensation actually paid would have been $1 million and zero, respectively, for the two PEOs in that fiscal year.[638]

As discussed above,[639] the treatment of equity awards in the adopted measure of executive compensation actually paid is expected to preserve the benefits noted by commenters of the proposed approach while substantially reducing the risk of a timing mismatch.[640] Under the adopted approach, the total value reflected in executive compensation actually paid for a given award, when summed across years, will be equivalent by the time of vesting to that which

[627] *See* Nilabhra Bhattacharya, Young Jun Cho & Jae B. Kim, *Leveling the Playing Field Between Large and Small Institutions: Evidence from the SEC's XBRL Mandate,* Acct. Rev., Sept. 2018, at 51.

[628] *See, e.g.,* Y. Huang, Y.G. Shan & J.W Yang, *Information Processing Costs and Stock Price Informativeness: Evidence from the XBRL Mandate,* 46 Aus. J. Mgmt. 1 (2021) (finding XBRL adoption ''leads to more informative stock price through two channels, the firm-specific information incorporation, and increased disclosures''); *see also* Y. Dong, O.Z. Li, Y. Lin & C. Ni, *Does Information Processing Cost Affect Firm-Specific Information Acquisition? Evidence from XBRL Adoption,* 51 J. Fin. Quant. Analys. 2 (2016) (finding ''evidence consistent with the SEC's statement that XBRL adoption helps market participants translate more firm-specific information into stock prices'').

[629] This would be consistent with the approach used for other XML-based structured data languages created by the Commission for certain forms, including the data languages used for reports on each of Form 13F, Form D and the Section 16 beneficial ownership reports (Forms 3, 4 and 5).

[630] *See* Section IV.C.2 above.

[631] *See, e.g.,* letters from Allison; CAP; CCMC 2015; CEC 2015; Celanese; Coalition; Cook; Davis Polk 2022; Farient; Faulkner; FSR; Georgiev; Hodak; Huddart; Hyster–Yale; Infinite; NACCO; NACD 2015; NAM 2015; NAM 2022; PG 2015; PG 2022; Pearl; Ross; SBA–FL; SVA; TCA 2015; TCA 2022; Teamsters; TIAA; and WorldatWork.

[632] *See, e.g.,* letters from CEC 2015; Celanese; Cook; NACCO; NAM 2022; Pearl; PG 2015; Ross; TIAA; TCA 2022; and WorldatWork.

[633] *See, e.g.,* letters from CEC 2015; Celanese; Cook; Faulkner; Hodak; Hyster–Yale; Infinite; NACCO; SVA; and TCA 2022.

[634] *See, e.g.,* CCMC 2015; McGuireWoods; and NAM 2022.

[635] *See, e.g.,* letters from Hall; PG 2015; PG 2022; and Towers.

[636] *See, e.g.,* letters from Celanese; Hyster–Yale; and NACCO.

[637] *See, e.g.,* letters from Hodak; Honeywell; Hyster–Yale; and NACCO.

[638] The Proposing Release also provides an example of comparability issues in the case of executives with asynchronous vesting dates.

[639] *See* Section IV.C.2 above.

[640] Some timing mismatches may remain, even under the adopted approach. For example, in the case of compensation contingent on a performance condition (*e.g.,* based on achieving a particular level of net income), that is later recovered (*i.e.,* clawed back) because of a restatement, the market stock price correction associated with the restatement may happen in a more recent period, while the historical accounting performance and compensation measure would be corrected retroactively. In this case, even after recovery of the erroneously awarded compensation, the effect on executive compensation actually paid is not likely to appear in the same period as the associated market reaction in TSR.

would have been included at vesting under the proposed approach. However, by attributing the change in an equity award's fair value in a given year—which would reflect performance in that same year—to that individual year, rather than ascribing the full value to the vesting date, the revised measure should better align pay with the associated performance.

This improved alignment will limit the volatility associated with vesting patterns, by distributing pay over the full vesting period, as it is earned. It will also reduce the sensitivity to small differences in formal vesting dates, by associating amounts of pay with particular years based on the changes in value attributable to those years rather than solely based on where the vesting date happens to fall. Attributing some of the value of equity awards to the grant year addresses the possibility that the size of awards may be designed to reward grant year performance.[641] The revised approach also improves comparability; for example, the two PEOs discussed above, who receive a $1 million cash bonus and a $1 million restricted stock award, will both be considered to receive $1 million of compensation actually paid in that year, while any change in the value of the second executive's stock until vesting would also be reflected in future years. Overall, the enhanced alignment resulting from the revised definition is expected to make it easier for investors to understand the relationship between pay and performance,[642] though this comes at the cost of increased compliance costs for registrants.

In valuing option awards in executive compensation actually paid, a number of commenters recommended that we use intrinsic values (*i.e.,* the ''in-the-moneyness,'' or the amount that would be gained upon immediate exercise) instead of fair values. Those commenters indicated that intrinsic values would be easier and less burdensome to calculate[643] or would more appropriately reflect compensation rather than the effect of an executive's investment decisions.[644] We acknowledge that fair values are more burdensome to compute than intrinsic values. However, intrinsic values can severely understate the values of options.[645] The fair value of an option provides a more accurate picture of the total value of the asset being transferred, which includes both the current intrinsic value and the ongoing time value of the option: the ability to potentially capture additional upside while not taking the commensurate downside risk. By granting an option with significant remaining time to maturity after vesting, boards are consciously awarding executives with value beyond the vesting-date intrinsic value. As such, this transfer of value may reasonably be considered to be compensation. While an executive might not wait until maturity to exercise an option, the fair value calculation should generally incorporate an assumption regarding typical exercise behavior. Whether the executive chooses to exercise earlier or later than is typical (and therefore expected by the board) can reasonably be considered an investment decision.

Some commenters also suggested that we consider valuing equity awards as of alternate dates, such as the grant date[646] or, for options, the exercise date.[647] Valuations as of these alternative dates may be less burdensome to calculate, as grant date fair values are already included in the Summary Compensation Table and the amount realized on exercise of options is already included in the Stock Vested and Options Exercised Table. However, grant date valuations would not reflect the performance sensitivity of unvested equity awards. As discussed above, because the empirical relationship between pay and performance is driven by changes in the value of executive stock and option holdings, considering only grant-date values may ignore one of the primary channels for relating pay and performance. Exercise date valuations, in turn, reflect the effect of performance after the grant date, but also reflect the executive's decision of when to exercise awards, which may reasonably be considered an investment decision rather than a compensation decision. For example, as one commenter noted, ''executives who hold their options to the full term before exercise may be unjustifiably seen as being overpaid compared to executives who exercise their options quickly.''[648]

With respect to pensions, the final rules require that executive compensation actually paid include the pension service cost for the year as well as the prior service cost (or credit) due to any plan amendments or initiations in the year, rather than just the pension service cost, as proposed. Some commenters alternatively suggested that we include the present value of pension benefits that were earned in the last fiscal year, or, similarly, the change in present value of accumulated pension benefits while holding the beginning and ending valuation assumptions constant.[649] All of these approaches—including what is being adopted, what was proposed, and the commenters' suggestions—should reduce the volatility in reported pay caused solely by changes in assumptions relative to the pension component of the Summary Compensation Table, because the latter includes the change in value of all previously accumulated benefits with changes in interest rates and other actuarial assumptions. Thus, any of these approaches should make it easier for investors to evaluate the relationship of pay with performance. We considered, as an alternative to the adopted approach, including only pension service cost (as proposed) or the present value of pension benefits that were earned in the last fiscal year (as suggested by, or similar to what was suggested by, various commenters).

Pension benefits may be a function of compensation levels, as in the case of pay-related, final-pay, final-average-pay, or career-average-pay plans. They are also a function of the terms of the plan. Service costs are based on estimates of future benefits that assume plan terms remain fixed and that may already incorporate projections about future compensation levels. Service costs are also smoothed over time relative to how the future benefits are actually earned or change over time. As a result, the effect of plan amendments and actual changes in current compensation levels on the value included for pensions under the proposed approach may be dampened.

[641] To the extent that registrants may use infrequent awards or so-called mega-grants in some years to award performance over multiple years (*see, e.g.,* letters from Cook and PG 2015), the revised definition of executive compensation may increase sharply in grant years regardless of performance. The inclusion of Summary Compensation Table total compensation (which reports the aggregate grant date fair value of all equity awards granted to the NEO during the fiscal year, and would therefore also reflect any differences in annual grant sizes) alongside executive compensation actually paid in the tabular disclosure may assist investors in filtering these effects out from the patterns in pay that are more likely to be driven by performance after the grant date.

[642] The revised definition may also reduce the unintended, indirect encouragement of shorter or more graduated vesting schedules in order to smooth executive compensation actually paid under the proposed definition. *See, e.g.,* letter from Pearl.

[643] *See, e.g.,* letters from CAP; Corning; Davis Polk 2015; Honeywell; Pearl; and WorldatWork.

[644] *See, e.g.,* letters from CEC 2015; CEC 2022; Honeywell; and Pearl.

[645] *See, e.g.,* Zvi Bodie, Robert S. Kaplan & Robert C. Merton, *For the Last Time, Stock Options are an Expense,* Harv. Bus. Rev. (Mar. 2003), available at *https://hbr.org/2003/03/for-the-last-time-stock-options-are-an-expense.*

[646] *See, e.g.,* letters from CAP and NAM 2022.

[647] *See, e.g.,* letters from CEC 2015; Corning; Coalition; and FSR.

[648] *See* letter from Honeywell.

[649] *See* letters from AON; Barnard; Exxon; Mercer; Towers; and WorldatWork.

For example, if a plan were amended, current and future service costs would be adjusted upwards, but there would be no corresponding adjustment for service costs reported for previous years. The adopted approach would more fully reflect the effect of any plan amendments by including a catch-up adjustment for the impact on service costs reported in previous years.

The adopted approach does not fully account for changes in actual compensation levels from the estimated compensation levels used to estimate service cost. Because actual changes in current compensation may be related to performance, and these changes in compensation may be magnified by pension benefits that are a function of compensation levels, the alternative approach of including the present value of pension benefits earned in a given year may be more useful in evaluating the relationship between pay and performance. This alternative approach would fully reflect plan amendments as well as unexpected increases in pay,[650] whose impact on pension benefits may reflect an important source of increased compensation.[651] Under this alternative, registrants may be able to make the required computations based on the information already available to them, rather than through their actuarial services provider, which could marginally reduce compliance costs. Such an approach may also further increase the comparability between compensation provided through defined benefit and defined contribution plans, because registrant contributions to defined benefit plans may also be directly related to current compensation levels or other such metrics with respect to the last fiscal year. However, the amount included with respect to pensions under this alternative would not have as direct of a relationship with the values included in the audited GAAP financial statements as the service cost (and prior service cost or credit) included under the adopted approach.

Some commenters suggested excluding components of pay that may be considered unrelated to performance—such as perquisites and values related to retirement benefits—from the definition of executive compensation actually paid.[652] As discussed in the Proposing Release, restricting the definition of executive compensation actually paid in such a way would not provide investors with a complete picture of compensation and how it relates to financial performance. While compensation committees may rely mainly on particular components of compensation in order to provide performance incentives, the other components of compensation may still vary with company performance and, even if they do not vary with performance, may be important to consider in order to understand how sensitive the totality of compensation is to performance.[653] Restricting the types of compensation included in executive compensation actually paid may also reduce the comparability of disclosures across registrants that rely more heavily on types of compensation that would be excluded from the prescribed measure versus those that rely more heavily on compensation types that would be included.

We also considered adjusting the definition of executive compensation actually paid to account for executives' continued exposure to registrant performance after an equity award vests, due to restrictions on the transfer or monetization of such equity,[654] by continuing to reflect such awards in executive compensation actually paid until these other restrictions lapse. In some cases, the relationship of executives' wealth accumulation to registrant performance may be driven by their vested holdings of equity. When such holdings are mandated, the resulting exposure to registrant performance after vesting may reflect a compensation decision rather than an active investment decision by the executives, and could be helpful to consider in order to better understand the total required sensitivity of an executive's income and financial assets to the registrant's performance.

However, different sets of restrictions on the transfer or monetization of equity can have different effects on the degree of continued required exposure. For example, some non-transferable holdings could be monetized by executives through contractual agreements with a broker-dealer, if the registrant's hedging policies permit such transactions. There is therefore uncertainty as to how best to reflect such restrictions for the purpose of the new disclosure. While the adopted definition of executive compensation actually paid does not include adjustments for restrictions on the transfer or monetization of equity awards, registrants can choose to provide supplemental measures of pay if they believe that those measures better demonstrate the effects of these features.

The final rules require registrants to include the Summary Compensation Table measure of total compensation together with executive compensation actually paid in the tabular disclosure of pay and performance measures. We considered excluding this measure. Some commenters indicated that it would be extraneous or confusing in the pay-versus-performance disclosure.[655] However, as discussed above, some current pay-for-performance analyses used by investors use grant-date measures of pay, similar to total compensation from the Summary Compensation Table.[656] To the extent that some investors may be interested in considering the relationship of performance with a measure of pay that excludes changes in the value of equity awards, they would be able to refer to the Summary Compensation Table measure of total compensation in the tabular disclosure. Further, as discussed above, this existing total compensation measure may be a useful benchmark for understanding executive compensation actually paid, such as in the case where infrequent grants designed to provide multi-year incentives may cause sharp increases in the latter measure in the years when such grants are made.[657]

We considered also requiring the disclosure of a measure of realizable pay, a type of measure that a number of commenters indicated may be useful in this context.[658] The adopted measure of executive compensation actually paid is quite similar conceptually to realizable pay measures, with a few key differences. For example, realizable pay is typically computed based on equity awards granted over a fixed period. This approach may make it easier to evaluate the compensation decisions made by a board over such fixed period. However, equity awards can have long vesting periods and typically have overlapping performance periods, so considering all

[650] *See, e.g.,* letter from Mercer.

[651] *See, e.g.,* Irina Stefanescu, Yupeng Wang, Kangzhen Xie & Jun Yang, *Pay Me Now (and Later): Pension Benefit Manipulation Before Plan Freezes and Executive Retirement,* 127 J. Fin. Econ. 152 (2018).

[652] *See, e.g.,* letters from AON; CEC 2015; Coalition; Corning; Honeywell; and PG 2015.

[653] *See, e.g.,* Lucian Bebchuk & Jesse Fried, *Stealth Compensation via Retirement Benefits,* 1 Berkeley Bus. L. J., 291 (2004).

[654] Such restrictions include delayed option exercisability as well as equity anti-hedging, holding, and mandatory deferral requirements. *See, e.g.,* letters from CEC 2015; CEC 2022; Davis Polk 2015; Hyster-Yale; and NACCO (describing awards to their executives consisting of ''immediately vested and taxable restricted stock'' that is ''non-transferrable and generally may not be hedged, pledged or transferred for a period of 10 years'').

[655] *See, e.g.,* letters from CEC 2015; Exxon; Hall; McGuireWoods; Meridian; PG 2015; TCA 2015; and TCA 2022.

[656] *See* Section IV.B.2 above.

[657] *See supra* note 641.

[658] *See supra* note 520.

unvested awards, regardless of when they were granted, may provide a more complete picture of pay for the purpose of evaluating its alignment with performance. Realizable pay is also typically computed over a multi-year period, with outstanding equity awards valued as of the end of the period (or sometimes at vesting or exercise, if earlier). As discussed above, such aggregated, multi-year pay measures can smooth certain outliers but can also obscure the year-to-year relationship of pay and performance. Registrants may voluntarily include measures of realized or realizable pay in the disclosure if they deem them to be helpful to explaining the relationship of their pay with performance.

Lastly, we considered also requiring the disclosure of peer group compensation. While TSR for a peer group is required to be included under the final rules, also incorporating pay information for a peer group in order to produce relative pay-versus-performance disclosures may be useful to investors as it would provide further context in which to evaluate the pay-versus-performance alignment of a registrant.[659] However, requiring further comparisons to a peer group may reduce the comparability of disclosures because of registrant discretion in selecting the peer group or variation in the availability of a closely comparable peer group. There are also practical implementation considerations, as peer compensation for the last fiscal year is not likely to be available at the time a registrant is compiling the disclosure. Further, even if these practical considerations could be mitigated (*e.g.,* by permitting peer information to be excluded when unavailable), requiring relative pay-versus-performance disclosures would most likely impose higher compliance costs. Under the final rules, investors can construct relative pay-versus-performance analyses on their own by comparing the separate pay-versus-performance disclosures of each of a registrant's peers, based on the peer group reported by a registrant under Item 201(e) of Regulation S–K or in the CD&A, if such peers have filed their disclosures as of the time of comparison.

iv. Performance Measures

We have considered several reasonable alternatives with respect to the performance measures to be included in the disclosures. For example, commenters raised, and we have considered, many different approaches to computing and presenting TSR. As discussed above, common suggestions included, among others, presenting a rolling average of TSR (*i.e.,* for each year, registrants would report the cumulative TSR for the previous five years) or an annualized TSR (*i.e.,* for each year, registrants would report TSR for that single year).[660] While a rolling average could present a broader view of performance to those taking a longer-term perspective, it could also obscure the performance specific to a given year. A five-year rolling average TSR could change from year to year because of performance in the current year being newly included in the rolling average or because of the performance six years ago being newly excluded from the rolling average. An annualized TSR would provide greater clarity and align with the revised definition of executive compensation actually paid, which will reflect, in a given year, changes in the value of outstanding equity awards over that specific year. Also, according to one commenter, ''most investors and proxy advisors generally look to an annualized approach when they assess a company's TSR.'' [661]

However, the adopted approach of computing cumulative TSR, and presenting it as the changing value of an initial fixed dollar investment, will be familiar to both investors and registrants because it aligns with the Item 201(e) of Regulation S–K performance graph requirement. We also expect this approach will make the trend in performance easier to understand for less sophisticated investors, given concerns about financial literacy among investors [662] and, particularly, a common difficulty in appropriately combining percentage changes [663] (*e.g.,* recognizing that a negative 50 percent return followed by a positive 50 percent return represents a negative 25 percent return on a cumulative basis). A cumulative return, scaled to a fixed investment, will still make the return attributable to a given year apparent, and sophisticated investors can easily use this return to compute other variations of TSR that they may prefer.

We also considered not requiring any registrants, including non-SRCs, to include peer group TSR in the disclosure. As discussed above, a number of commenters had concerns about the peer group TSR requirement,[664] including that it would be costly and yet the benefits could be limited because variation in peer group selection, and in the degree of relevance of peer group performance, could reduce comparability and mislead investors. We acknowledge that peer group TSR will not provide an equally relevant benchmark across all registrants. However, it may nonetheless provide helpful context for assessing registrant TSR by providing some indication of broader market or industry conditions, and may help to address the concerns of commenters that registrant TSR could reflect a number of factors outside of the control of the executives of the registrant.[665] We continue to expect the costs of including peer group TSR to be limited, even if a registrant does not use the same peer group as in the Item 201(e) of Regulation S–K peer group TSR disclosure, because the required data is readily available and the required computations are relatively straightforward.

Another alternative to the final rules would be, as in the proposed rules, to not require any other prescriptive performance measures, beyond TSR and peer group TSR, to be included in the disclosure. As some commenters noted, it is not clear that any single measure other than TSR would be relevant across most registrants.[666] Declining to prescribe additional measures would reduce costs and limit the risk that registrants would have to include and discuss a measure that could be misleading or which investors may not find to be useful. This approach could thereby increase the likelihood that investors could process the disclosures quickly, while not decreasing the total amount of underlying information available from public disclosures. At the same time, if the addition of another performance measure would better explain the pattern in executive compensation actually paid, registrants would be able to voluntarily provide such measures, and would likely be motivated to do so.[667]

[659] *See, e.g.,* letter from Cook.

[660] *See supra* notes 254 to 257 and accompanying text.

[661] *See* letter from Towers.

[662] *See, e.g., SEC Staff Study Regarding Financial Literacy Among Investors,* as required by Section 917 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (August 2012), *available at https://www.sec.gov/files/917-financial-literacy-study-part1.pdf;* and Annamaria Lusardi & Olivia Mitchell, *The Economic Importance of Financial Literacy: Theory and Evidence,* 52 J. Econ. Lit., No. 1, 5 (2014).

[663] *See, e.g.,* Haipeng Chen & Akshay Rao, *When Two Plus Two is Not Equal to Four: Errors in Processing Multiple Percentage Changes,* 34 J. Consumer Rsch. 327 (Oct. 2007).

[664] *See supra* notes 261 to 269 and accompanying text.

[665] *See supra* note 526.

[666] *See, e.g.,* letters from AB; BlackRock; Davis Polk 2022; and TIAA.

[667] *See, e.g.,* letters from CFA; CII 2015; Davis Polk 2022; and SCG.

However, as discussed in the Benefits section above, the inclusion of net income as an additional measure may provide investors with useful context for interpreting the disclosure. Even if required to include a Company-Selected Measure, registrants might not always provide a measure of profitability, in which case net income may help to provide a more complete picture of registrant performance. Further, as discussed above, measures of profitability are commonly used as performance metrics in executive compensation contracts.[668] Yet, if registrants provide measures of profitability in the disclosure, they may be non-GAAP or adjusted measures, and investors may benefit from having net income beside these measures as a benchmark to better understand the effects of such adjustments. Finally, limiting the additional prescribed measures to a single, readily available measure should help to contain the costs and risks of expanding the required measures that are noted above.

We also considered other financial measures as alternatives to net income. As discussed in the Baseline section above, the measures presented by third parties as part of pay-for-performance analyses in recent years—which may reflect investor interest in or demand for the measures—include operating cash flow growth, earnings per share growth, EBITDA growth, return on equity, return on invested capital, return on assets, and various ratios and growth rates using ''economic value added.'' [669] Measures that commenters suggested we consider include EBITDA,[670] free cash flow,[671] revenue or profit growth,[672] return on investment,[673] shareholder value added,[674] or the ratio of enterprise value to either EBITDA or earnings before interest and taxes (''EBIT'').[675] Overall, these suggestions and the measures presented in third party analyses differ from net income in that many involve some form of scaling—that is, some are ratios, which can help to account for the capital or assets used to generate profits, while others are growth rates—and many include adjustments to focus on operating items or cash flows. It is possible that investors may benefit more from a prescribed measure with these characteristics, rather than net income. However, it is not obvious that there is a single preferred measure, and net income has the benefit of being a clearly-defined, widely-understood measure. Registrants may supplement the disclosure with other measures if they feel they would be useful or if their investors demand them.

Another alternative to the final rules would be, as in the proposed rules, to give registrants the option to include additional performance measures but not to require a Company-Selected Measure of any registrant. As discussed above, if the addition of another performance measure would better explain the pattern in executive compensation actually paid, registrants would likely be motivated to include such a measure on a voluntary basis. Not requiring a Company-Selected Measure would also eliminate any costs or difficulties associated with isolating a single most important measure and give registrants more flexibility to include only the measures that they expect may be most useful to investors. For example, investors may benefit if registrants are able to present a different measure than the Company-Selected Measure in cases where the measure that drove compensation in the last fiscal year may not be the most important for explaining the pattern in executive compensation actually paid over the full five-year horizon of the disclosure. On the other hand, requiring a Company-Selected Measure may elicit additional helpful context in cases where registrants would not otherwise supplement the required performance measures.

As an alternative to the Tabular List, we also considered other approaches to providing context about the measures that were critical in linking pay to performance at a given registrant. For example, we could have required registrants to disclose all of the measures actually used to link pay to performance, with or without quantitative disclosure of the outcomes of the quantifiable measures, any applicable thresholds and targets, and the associated payouts. Such disclosure may provide a more complete view of how pay is linked to performance at a given registrant, and the potential quantitative element may allow investors to more readily assess the sensitivity of pay to particular measures and the rigor of performance goals. Some investors commented that they would benefit from this information being more readily available.[676] However, depending on the specific requirements, such disclosure could be more costly to produce than the Tabular List and may take more time for investors to review, rather than providing simple context and framing for an investor's review of the main table and associated descriptions. There may also be implications of increased transparency of quantitative targets and thresholds, such as pressuring registrants to limit discretion in their pay programs, which may or may not be beneficial. Finally, we note that several commenters mentioned that some registrants are already providing such disclosures,[677] with one indicating that the market does not seem to have coalesced around a consistent format for such disclosures.[678] We expect that market practices in this area may continue to develop.

VI. Paperwork Reduction Act

A. Background

Certain provisions of our regulations and schedules that would be affected by the final rules contain a ''collection of information'' within the meaning of the PRA. The Commission is submitting the final rules to the Office of Management and Budget (''OMB'') for review in accordance with the PRA.[679] The Commission published a notice requesting comment on changes to these collection of information requirements in the Proposing Release and submitted these requirements to the OMB for review in accordance with the PRA.[680] The hours and costs associated with preparing, filing, and distributing the schedules constitute reporting and cost burdens imposed by each collection of information. An agency may not conduct or sponsor, and a person is not required to comply with, a collection of information unless it displays a currently valid OMB control number. Compliance with the final rules is mandatory. Responses to the information collections will not be kept confidential and there is no mandatory retention period for the information disclosed.

The titles for the collections of information are:

''Regulation 14A and Schedule 14A'' (OMB Control No. 3235–0059); and

''Regulation 14C and Schedule 14C'' (OMB Control No. 3235–0065).

We adopted the above-referenced regulations and schedules pursuant to the Securities Act or the Exchange Act. The regulations and schedules set forth

[668] *See* Section IV.B.3 above.

[669] *See supra* note 453.

[670] *See* letter from Dimensional.

[671] *See* letters from Dimensional and Quirin.

[672] *See* letter from Grier.

[673] *See* letter from Quirin.

[674] *See* letter from Quirin.

[675] *See* letter from PDI.

[676] *See, e.g.,* letters from AFL–CIO 2015; AFL–CIO 2022; CalPERS 2022; CII 2015; CII 2022; and SBA–FL.

[677] *See, e.g.,* letters from PG 2022 and SBA–FL.

[678] *See* letter from PG 2022.

[679] 44 U.S.C. 3507(d) and 5 CFR 1320.11.

[680] *Id.*

the disclosure requirements for proxy and information statements filed by registrants to help investors make informed investment and voting decisions. The final rules are intended to satisfy the requirements of Section 14(i).

A description of the final amendments, including the need for the information and its use, as well as a description of the likely respondents, can be found in Section II above, and a discussion of the expected economic effects of the final amendments can be found in Section V above.

B. Summary of Comment Letters and Revisions to PRA Estimates

In the Proposing Release, the Commission requested comment on the PRA burden hour and cost estimates and the analysis used to derive such estimates. While several commenters provided comments on the potential costs of the proposed rules and of the potential requirements discussed and analyzed in the Reopening Release, only one commenter specifically addressed our PRA estimates, stating that the Commission's estimates of the man hour and cost burden of the rule on companies were ''grossly underestimated.'' [681] As discussed, above, we have made some changes to the proposed amendments as a result of comments received in response to the Proposing Release and the Reopening Release. We have revised our estimates from the Proposing Release accordingly, taking into account the changes and the comments received.

C. Summary of Collection of Information Requirements

We are adding new Item 402(v) to Regulation S–K. This item requires registrants to provide a table containing the Summary Compensation Table measure of total compensation and the values of the prescribed measure of executive compensation actually paid for the PEO and as an average for the other NEOs, TSR both for the registrant and its peer group, the registrant's net income, and a Company-Selected Measure. Item 402(v) of Regulation S–K also requires a registrant to provide a clear description of (i) the relationships between executive compensation actually paid to its PEOs and, on average, to its other NEOs and the registrant's TSR, (ii) the relationship between executive compensation actually paid to the registrant's PEOs and, on average, its other NEOs, and the net income of the registrant, (iii) the relationships between executive compensation actually paid to the registrant's PEOs and, on average, its other NEOs and the registrant's Company-Selected Measure, and (iv) the relationship between the registrant's TSR and its peer group TSR, in each case over the registrant's five most recently completed fiscal years. A registrant will also be required to disclose an unranked Tabular List of its most important financial performance measures used by it to link executive compensation actually paid to its PEOs and other NEOs during the fiscal year to registrant performance. The final rules require registrants to separately tag the values disclosed in the table in Inline XBRL, block-text tag the footnote and relationship disclosure and the Tabular List in Inline XBRL, and tag specific data points (such as quantitative amounts) within the footnote disclosures in Inline XBRL.

The disclosure is required in proxy statements on Schedule 14A and information statements on Schedule 14C in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required. EGCs, registered investment companies, and foreign private issuers are not required to provide the disclosure. SRCs are subject to scaled disclosure requirements, under which they will not be required to provide a peer group TSR or a Company-Selected Measure (or any related relationship disclosures), nor will they be required to provide a Tabular List or disclose amounts related to pensions; and will only be required to provide three (two in the first applicable filing after the rules become effective) years of disclosure. SRCs must provide the Inline XBRL data beginning in the third filing in which they provide the required pay-versus-performance disclosure.

Much of the information required to produce the pay-versus-performance disclosure is based on items that are already required elsewhere in the executive compensation disclosure and financial statements provided by registrants. In particular, we believe that using as a starting point the total compensation that registrants already are required to report in the Summary Compensation Table and making adjustments to those figures will help reduce the burden on registrants in preparing the disclosure required by new Item 402(v) of Regulation S–K. As discussed above, the final rules are not expected to require registrants to collect significant new data, relative to current disclosure requirements.[682] All of the individual components needed to calculate executive compensation actually paid already must be reported under existing disclosure requirements, with the exception of the values to be included with respect to equity awards and the values to be included with respect to pension benefits for registrants other than SRCs, which are not required to include such pension amounts in their calculation of executive compensation actually paid. Information about net income for all registrants is already required to be disclosed in the registrant's financial statements. Further, information about TSR and peer group TSR is already required to be disclosed in a registrant's annual report to shareholders under Item 201(e) of Regulation S–K, and the measures that make up the Tabular List and the Company-Selected Measure are already considered by registrants when making executive compensation determinations, and may already be discussed, in a different form, in the CD&A. SRCs are not required to provide disclosure under Item 201(e) of Regulation S–K or a CD&A, but also are not required under the final rules to provide disclosure of peer group TSR, the Tabular List, or the Company-Selected Measure. However, SRCs, which currently are not required to disclose their TSR in annual reports, will need to calculate this measure under the final rules.

We arrived at the estimates discussed below by reviewing our burden estimates for similar disclosure and considering our experience with other tagged data initiatives. In addition, the estimates discussed below reflect our belief that much of the information required to prepare the pay-versus-performance disclosure will be readily available to registrants because the information is required to be gathered, determined, or prepared in order to satisfy the other disclosure requirements of our rules, including Item 402 of Regulation S–K. We believe that the amendments regarding pay-versus-performance disclosure will enhance the already required compensation disclosure.

The following PRA Table 1 summarizes the estimated effects of the final amendments on the paperwork burdens associated with the affected collections of information listed in Section VI.A.

[681] *See* letter from NAM 2015. Another commenter contended that the Reopening Release should have included an updated PRA analysis. *See* letter from Toomey/Shelby. That letter is discussed in footnote 8, *supra.*

[682] *See supra* Section V.C.

PRA TABLE 1—ESTIMATED PAPERWORK BURDEN EFFECTS OF THE FINAL AMENDMENTS

Final amendments and effects	Estimated burden effect *
Pay-versus-Performance Table: • *Registrants other than SRCs:* Requiring a table containing the Summary Compensation Table measure of total compensation and the values of the prescribed measure of executive compensation actually paid for the PEO and as an average for the other NEOs, TSR for both the registrant and its peer group, the registrant's net income, and a Company-Selected Measure. The calculation of executive compensation actually paid includes adjustments from the Summary Compensation Table amounts with respect to equity awards and pension benefits. Related footnote disclosure of the amounts that were deducted from, and added to, the Summary Compensation Table total and of valuation assumptions also required. Registrants required to separately tag the values disclosed in the table, block-text tag the footnote disclosure, and tag specific data points (such as quantitative amounts) within the footnote disclosures, all in Inline XBRL. *Estimated burden increase: 20 hours per schedule.* • *SRCs:* Requiring a table containing the Summary Compensation Table measure of total compensation and the values of the prescribed measures of executive compensation actually paid for the PEO and as an average for the other NEOs, TSR for the registrant, and the registrant's net income. The calculation of executive compensation actually paid includes adjustments from the Summary Compensation Table amounts with respect to equity awards. Related footnote disclosure of the amounts that were deducted from, and added to, the Summary Compensation Table total and of valuation assumptions also required. Registrants required to separately tag the values disclosed in the table, block-text tag the footnote disclosure, and tag specific data points (such as quantitative amounts) within the footnote disclosures, all in Inline XBRL. *Estimated burden increase: 15 hours per schedule.*	• 28 hour increase in compliance burden per schedule for registrants other than SRCs • 17 hour increase in compliance burden per schedule for SRCs.
Relationship Disclosure: • *Registrants other than SRCs:* Requiring a clear description of (i) the relationships between executive compensation actually paid to its PEOs and, on average, its other NEOs and the registrant's TSR, (ii) the relationships between executive compensation actually paid to the registrant's PEOs and, on average, its other NEOs and the net income of the registrant, (iii) the relationships between executive compensation actually paid to the registrant's PEOs and, on average, its other NEOs and the registrant's Company-Selected Measure, and (iv) the relationships between the registrant's TSR and its peer group TSR, in each case over the registrant's five most recently completed fiscal years. Registrants required to block-text tag the relationship disclosure in Inline XBRL. *Estimated burden increase: 4 hours per schedule.* • *SRCs:* Requiring a clear description of (i) the relationships between executive compensation actually paid to its PEOs and, on average, its other NEOs and the registrant's TSR and (ii) the relationships between executive compensation actually paid to the registrant's PEOs and, on average, its other NEOs and the net income of the registrant, in each case over the registrant's three most recently completed fiscal years. Registrants required to block-text tag the relationship disclosure in Inline XBRL. *Estimated burden increase: 2 hours per schedule.*	
Tabular List: • Requiring a registrant that is not an SRC to disclose an unranked Tabular List of the most important financial performance measures used by it to link executive compensation actually paid to its PEOs and NEOs during the fiscal year to company performance. Registrants required to block-text tag the Tabular List in Inline XBRL. *Estimated burden increase: 4 hours per schedule.*	

* Estimated effect expressed as an increase of burden hours on average and derived from Commission staff review of samples of relevant sections of the affected forms and schedules.

The estimated burden increase associated with the final rules for both SRCs and non-SRCs reflects an increase from the estimated average burden increase of 15 hours for all registrants that was included in the Proposing Release.[683] The increase reflects adjustments made due to comments received and accounts for several modifications relative to the proposed rules, including with respect to the calculation of executive compensation actually paid, the addition of net income and the Company-Selected Measure as performance measures to be included in the table, and related relationship disclosures with respect to those performance measures, and the requirement to provide the Tabular List. Because these estimates are averages of the burdens for all such companies in each respective category, the burden could be more or less for any particular company, and may vary depending on a variety of factors, such as the complexity of companies' compensation plans or the degree to which companies use the services of outside professionals, or internal staff and resources, to tag the data in Inline XBRL. This burden, as discussed in more detail below, will be added to the current burdens for Schedule 14A and Schedule 14C.

D. Incremental and Aggregate Burden and Cost Estimates for the Final Amendments

We anticipate that new disclosure requirements will increase the burdens and costs for the affected registrants. We derived our new burden hour and cost estimates by estimating the total amount of time it would take a registrant to prepare and review the disclosure requirements contained in the final rules, as well as the average hourly rate for outside professionals who assist with such preparation. The burden estimates were calculated by multiplying the estimated number of responses by the estimated average amount of time it would take a registrant to prepare and review disclosure required under the final amendments. For purposes of the PRA, the burden is to be allocated between internal burden hours and outside professional costs. For the proxy and information statements on Schedule 14A and Schedule 14C, we estimate that 75% of the burden of preparation is carried by the company internally and that 25% of the burden of preparation is carried by outside professionals retained by the company at an average cost of $400 per hour.[684] The portion of

[683] *See* Section V.C of the Proposing Release.

[684] We recognize that the costs of retaining outside professionals may vary depending on the nature of the professional services, but for purposes

Continued

the burden carried by outside professionals is reflected as a cost, while the portion of the burden carried by the company internally is reflected in hours.

We estimate that about 1,275 EGCs are required to file proxy statements on Schedule 14A or information statements on Schedule 14C, in which executive compensation disclosure pursuant to Item 402 of Regulation S–K is required. We have adjusted the estimates to deduct the filings attributed to these companies from our estimate because EGCs are not subject to the final rules.[685] The table below sets forth our estimates of the number of current filings on the schedules that will be affected by the final rules. We used this data to extrapolate the effect of these changes on the paperwork burden for the listed collections of information.

PRA TABLE 2—ESTIMATED NUMBER OF AFFECTED FILINGS

Form	Current annual responses in PRA inventory *	Estimated number of affected filings **
Schedule 14A	6,369	4,968
Schedule 14C	569	444

* The number of responses reflected in the table equals the three-year average of the number of schedules filed with the Commission and currently reported by the Commission to OMB.

** Based on the approximately 1,275 EGCs that we estimate are required to file proxy statements on Schedule 14A or information statements on Schedule 14C relative to the estimated total number of approximately 4,530 registrants subject to the final rules, we estimate that approximately 22% of the registrants filing Schedules 14A or 14C are EGCs, which are not subject to the final rules. In estimating the hours and service costs, we have removed those filers from the Current Annual Responses totals for Schedule 14A and Schedule 14C. As a result, we expect the final rules to affect approximately 4,968 Schedule 14A filings [6,369 × 0.22 = 1,401; 6,369 − 1,401 = 4,968] and approximately 444 Schedule 14C filings [569 × 0.22 = 125; 569 − 125 = 444].

In deriving our estimates, we recognize that the burdens will likely vary among individual registrants based on a number of factors, including the size and complexity of their executive compensation arrangements. We believe that some registrants will experience costs in excess of this average (particularly in the first year of compliance with the final rules) and some registrants may experience less than the average costs. PRA Table 3 below illustrates the incremental change to the total annual compliance burden of affected collections of information, in hours and in costs, as a result of the final amendments.

PRA TABLE 3—CALCULATION OF THE INCREMENTAL CHANGE IN BURDEN ESTIMATES OF CURRENT RESPONSES RESULTING FROM THE FINAL AMENDMENTS

Collection of information	Filed by *	Estimated number of affected responses (A)	Burden hour increase per affected response (B)	Increase in burden hours for current affected responses (C) = (A) × (B)	Increase in company hours for current affected responses (D) = (C) × 0.75	Increase in professional hours for current affected responses (E) = (C) × 0.25	Increase in professional costs for current affected responses (F) = (E) × $400
Schedule 14A	Non-SRC	2,981	28	83,468			
Schedule 14A	SRC	1,987	17	33,779			
Schedule 14A (Total).		4,968		117,247	87,935	29,312	$11,724,800
Schedule 14C	Non-SRC	266	28	7,448			
Schedule 14C	SRC	178	17	3,026			
Schedule 14C (Total).		444		10,474	7,856	2,619	$1,047,600

* Based on 2021 filings, SRCs represent about 41 percent (1,860 out of 4,530) of the affected registrants. We assume for purposes of our PRA estimates that 60 percent of each affected collection of information was filed by non-SRCs and 40 percent by SRCs.

The following PRA Table 4 summarizes the requested paperwork burden, including the estimated total reporting burdens and costs, under the final amendments.

of this PRA analysis, we estimate that such costs would be an average of $400 per hour. This estimate is based on consultations with several issuers, law firms, and other persons who regularly assist issuers in preparing and filing reports with the Commission.

[685] *See supra* note 23. Although EGCs would not have been subject to the proposed amendments, the estimates included in the Proposing Release were not adjusted to deduct the number of EGCs because at the time the precise number of these filers was difficult to determine.

PRA TABLE 4—REQUESTED PAPERWORK BURDEN UNDER THE FINAL AMENDMENTS

	Current burden			Program change			Revised burden		
Collection of information	Current annual responses	Current burden hours	Current cost burden	Number of affected responses	Increase in company hours	Increase in professional costs	Annual responses	Burden hours	Cost burden
	(A)	(B)	(C)	(D)	(E) †	(F) ‡	(G) = (A)	(H) = (B) + (E)	(I) = (C) + (F)
Schedule 14A	6,369	778,802	$103,805,312	4,968	87,935	$11,724,800	6,369	866,737	$115,530,112
Schedule 14C	569	56,356	7,514,944	444	7,856	1,047,600	569	64,212	8,562,544

† From Column (D) in PRA Table 3.
‡ From Column (F) in PRA Table 3.

VII. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (''RFA'')[686] requires the Commission, in promulgating rules under Section 553 of the Administrative Procedure Act,[687] to consider the impact of those rules on small entities. We have prepared this Final Regulatory Flexibility Analysis (''FRFA'') in accordance with Section 604 of the RFA.[688] An Initial Regulatory Flexibility Analysis (''IRFA'') was prepared in accordance with the RFA and was included in the Proposing Release. This FRFA relates to the amendments to Item 402 of Regulation S–K, Item 405 of Regulation S–T, Schedule 14A, and Schedule 14C.

A. Need For, and Objectives of, the Final Rules

The final rules are designed to implement the requirements of Section 14(i), which was added by Section 953(a) of the Dodd-Frank Act. Section 14(i) mandates that the Commission adopt rules addressing specified disclosure requirements. Specifically, as described in detail in Section II above, the final rules will require registrants (other than EGCs, registered investment companies, and foreign private issuers) to disclose in any proxy or information statement for which disclosure under Item 402 of Regulation S–K is required, the relationship between executive compensation actually paid to the registrant's PEO and, on average, its other NEOs and the financial performance of the registrant for the three most recently completed fiscal years in the case of a registrant that qualifies as an SRC (or the five most recently completed fiscal years in the case of a non-SRC), taking into account any change in the value of the shares of stock and dividends of the registrant and any distributions.

The final rules require registrants to present pay-versus-performance disclosure that can be readily compared across registrants, while also providing investors with disclosure reflecting the specific situation of the registrant. We believe that the final rules will, among other things, allow investors to assess a registrant's executive compensation actually paid relative to its financial performance more easily and at a lower cost to investors. The need for, and objectives of, the final rules are described in greater detail in Sections I and II.

B. Significant Issues Raised by Public Comments

In the Proposing Release, we requested comment on all aspects of the IRFA, including the nature of any impact on small entities and empirical data to support the extent of the impact. In addition, the Reopening Release included a discussion of the potential impact on SRCs of requiring disclosure of the additional performance measures discussed in that release and also requested comment on a number of matters with respect to SRCs in relation to the proposed rules and the additional requirements considered in that release. We did not receive any comments specifically addressing the IRFA.[689] However, we received a number of comments on the proposed rules generally,[690] and have considered these comments in developing the FRFA. In addition, as discussed in detail above in Section II.G.2, we received a variety of comments on whether SRCs should be subject to the proposed rules.[691] Some commenters supported fully exempting SRCs from the pay-versus-performance disclosure requirements,[692] while another suggested that the pay-versus-performance disclosure be voluntary for SRCs.[693] Other commenters stated that we should not exempt SRCs from the disclosure requirements,[694] some noting that a lack of transparency could have negative market effects for SRCs.[695] Commenters also made a variety of suggestions with respect to the timing of the disclosure for SRCs, including that SRCs be subject to the full pay-versus-performance disclosure requirement but with a one year ''grace period,''[696] or that SRCs provide five years of data, but with a three year transition period.[697] One commenter also suggested that the Commission exempt SRCs from the disclosure requirements for five years so that the Commission could first analyze the impact of the disclosure requirements on larger registrants.[698]

C. Small Entities Subject to the Final Amendments

The final rules will affect some companies that are small entities. For purposes of the RFA, under our rules, an issuer, other than an investment company,[699] is a ''small business'' or ''small organization'' if it had total assets of $5 million or less on the last day of its most recent fiscal year.[700] The final rules will affect issuers that have a class of securities that are registered under Section 12 of the Exchange Act but are not foreign private issuers, registered investment companies, or EGCs. We estimate that there are approximately 450 issuers that may be considered small entities and are potentially subject to the final amendments. An investment company,

686 5 U.S.C. 601 *et seq.*

687 5 U.S.C. 553.

688 5 U.S.C. 604.

689 As discussed in footnote 8, *supra,* one comment letter noted that the Commission did not update the RFA analysis in the Reopening Release, and ''urge[d]'' the Commission to ''re-propose'' with an updated RFA analysis. *See* letter from Toomey/Shelby.

690 *See supra* Section II.

691 *See supra* notes 399–406 and accompanying text.

692 *See* letters from CCMC 2015; Mercer; Pearl; TCA 2015; and TCA 2022.

693 *See* letter from ICGN.

694 *See* letters from AB; Better Markets; CalPERS 2015; CalSTRS; CII 2015; Morrell; SBA–FL; and Troop.

695 *See* letter from CalPERS 2015.

696 *See* letter from AB.

697 *See* letter from Hermes.

698 *See* letters from NIRI 2015 and NIRI 2022.

699 For purposes of the RFA, an investment company is a ''small business'' or ''small organization'' that, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year. [17 CFR 270.0–10].

700 See Exchange Act Rule 0–10(a) [17 CFR 240.0–10(a)].

including a BDC, is considered to be a ''small business'' if it, together with other investment companies in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[701] We believe that the final rules will affect some small entities that are BDCs that have a class of securities registered under Section 12 of the Exchange Act. We estimate that one affected BDC may be considered a small entity.[702]

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

We expect the final rules to have an incremental effect on existing reporting, recordkeeping and other compliance burdens for all issuers, including small entities. Under the final rules, SRCs are permitted to provide disclosure in accordance with Item 402(v) of Regulation S–K that is scaled for small companies, consistent with SRCs' existing scaled executive compensation disclosure requirements. Specifically, SRCs are not required to provide a peer group TSR, a Company-Selected Measure, a Tabular List, or to disclose amounts related to pensions. Because SRCs are not required to provide a peer group TSR or Company-Selected Measure, they are similarly not required to provide relationship disclosure with respect to those performance measures. In addition, because the existing scaled definition of NEO in Item 402 of Regulation S–K applicable to SRCs applies for purposes of the new Item 402(v) disclosure, SRCs are required to provide disclosure about fewer NEOs than non-SRC registrants. SRCs also will only be required to provide three years of disclosure (two in the first applicable filing after the rules become effective). Both SRCs and non-SRC registrants are required to separately tag the values disclosed in the table in Inline XBRL, block-text tag the footnote and relationship disclosure and the Tabular List in Inline XBRL, and tag specific data points (such as quantitative amounts) within the footnote disclosures in Inline XBRL, but SRCs are required to provide the required Inline XBRL data beginning in the third filing in which they provide pay-versus-performance disclosure.

Much of the information required in the pay-versus-performance disclosure is based on items that are already required elsewhere in the executive compensation disclosure and financial statements provided by registrants, and the final rules are not expected to require registrants to collect significant new data, relative to current disclosure requirements.[703] Compliance with certain provisions affected by the amendments will require the use of professional skills, including accounting, legal, and technical skills. The final amendments are discussed in detail in Sections I and II above. We discuss the economic impact, including the estimated compliance costs and burdens of the final rules on all registrants, including small entities, in Sections V and VI above.

E. Agency Action To Minimize Effect on Small Entities

The RFA directs us to consider alternatives that would accomplish our stated objectives, while minimizing any significant adverse impact on small entities. In connection with the final rules, we considered the following alternatives:

- Establishing different compliance or reporting requirements or timetables that take into account the resources available to small entities;
- Clarifying, consolidating or simplifying compliance and reporting requirements under the rules for small entities;
- Using performance rather than design standards; and
- Exempting small entities from all or part of the final rules.

As noted above, the final rules will require clear disclosure of prescribed measures of executive compensation actually paid and the company's financial performance and the relationship between these measures. All of the individual components needed for SRCs to calculate executive compensation actually paid already must be reported by SRCs under current disclosure rules, with the exception of the values to be included with respect to equity awards. In addition, net income is required under existing financial disclosure. As discussed above, we do not believe that it is necessary to exempt small entities from the final rules entirely, as we believe the benefit to investors of small entities providing pay-versus-performance disclosure outweighs the costs to them of preparing the scaled disclosure.[704] We have provided some different and simplified compliance requirements for small entities, taking into account their resources. In particular, we have scaled the disclosure requirements for SRCs in an attempt to limit the compliance burden to which such companies will be subject. Accordingly, registrants that are SRCs will be subject to the final rules, but will be permitted to provide only three years of disclosure, instead of five years as required for all other registrants. Also, the final rules will require SRCs to disclose their company TSR and their net income, but they will not be required to disclose peer group TSR, a Company-Selected Measure, or a Tabular List. In addition, because the scaled compensation disclosure that applies to SRCs under existing Item 402 of Regulation S–K does not include pension plans, the pension plan adjustment otherwise required under the final rules will not apply to SRCs. To the extent that a small entity is a registrant, we believe that there are few, if any, small entities that do not qualify as SRCs because it is unlikely that an entity with total assets of $5 million or less would have a public float of $75 million or more. Under the final rules, a small entity, therefore, will likely be subject to the scaled disclosure requirements described above that will apply to SRCs.[705] We believe this will minimize any adverse impact on small entities of providing new disclosures which they generally do not currently provide.

With respect to compliance timetables, the final rules also provide SRCs with transitional relief under which they may provide two years of disclosure, instead of three, in the first applicable filing after the rules become effective, and three years of disclosure in subsequent proxy and information statement filings. The final rules also provide SRCs with a phase-in of the requirement to provide the disclosure in Inline XBRL, under which SRCs need not comply with the Inline XBRL requirement until the third filing in which they provide pay-versus-performance disclosure.

Although the final rules will require disclosure of prescribed measures of executive compensation actually paid and registrant financial performance, they will permit issuers significant flexibility in presenting the relationship between these measures. For example, issuers, including small entities, can describe the relationships in narrative form or by means of a graph or chart, or a combination of both forms. In this respect, the final rules make use of both design and performance standards as a means of balancing the investors' need for uniform disclosure across registrants while also providing registrants,

[701] 17 CFR 270.0–10(a).

[702] Of the seven BDCs that will be subject to the final amendments, one may be considered a small entity for purposes of the RFA.

[703] *See supra* Section V.C.

[704] The alternative of exempting SRCs in their entirety from the final rules is discussed above in Section V.C.4.i.

[705] *See supra* Section II.G.3.

including small entities, with flexibility to describe their pay-versus-performance relationship in a format that is best suited to their particular circumstances.

Statutory Authority and Text of Amendments

The final amendments contained in this release are being adopted under the authority set forth in Section 953(a) of the Dodd-Frank Act and Sections 3(b), 14, 23(a) and 36 of the Exchange Act.

List of Subjects in 17 CFR Parts 229, 232, and 240

Reporting and Recordkeeping requirements; Securities.

For the reasons set out in the preamble, we are amending title 17, chapter II, of the Code of Federal Regulations as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

■ 1. The authority citation for part 229 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77n, 77s, 77z–2, 77z–3, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78j–3, 78*l,* 78m, 78n, 78n–1, 78o, 78u–5, 78w, 78*ll,* 78mm, 80a–8, 80a–9, 80a–20, 80a–29, 80a–30, 80a–31(c), 80a–37, 80a–38(a), 80a–39, 80b–11, and 7201 *et seq.;* 18 U.S.C. 1350; sec. 953(a), Pub. L. 111–203, 124 Stat. 1904 (2010); sec. 953(b), Pub. L. 111–203, 124 Stat. 1904 (2010); and sec. 102(c), Pub. L. 112–106, 126 Stat. 310 (2012).

■ 2. Amend § 229.402 by adding paragraph (v) to read as follows:

§ 229.402 (Item 402) Executive compensation.

* * * * *

(v) *Pay versus performance.* In connection with any proxy or information statement for which the rules of the Commission require executive compensation disclosure pursuant to this section (excluding any proxy or information statement of an ''emerging growth company,'' as defined in § 230.405 of this chapter or § 240.12b–2 of this chapter):

(1) Provide the information specified in paragraph (v)(2) of this section for each of the registrant's last five completed fiscal years in the following tabular format:

PAY VERSUS PERFORMANCE

Year	Summary compensation table total for PEO	Compensation actually paid to PEO	Average summary compensation table total for non-PEO named executive officers	Average compensation actually paid to non-PEO named executive officers	Value of initial fixed $100 investment based on:		Net income	[Company-selected measure]
					Total shareholder return	Peer group total shareholder return		
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)

(2) The table required by paragraph (v)(1) of this section must include:

(i) The fiscal year covered (column (a)).

(ii) The PEO's (as defined in paragraph (a)(3) of this section) total compensation for the covered fiscal year as reported in the Summary Compensation Table pursuant to paragraph (c)(2)(x) of this section, or paragraph (n)(2)(x) of this section for smaller reporting companies (column (b)), and the average total compensation reported for the remaining named executive officers collectively reported pursuant to such applicable paragraph (column (d)). If more than one person served as the registrant's PEO during the covered fiscal year, provide the total compensation, as reported in accordance with the immediately preceding sentence, for each person who served as the PEO during that period separately in an additional column (b) for each such person.

(iii) The executive compensation actually paid to the PEO (column (c)) and the average executive compensation actually paid to the remaining named executive officers collectively (column (e)). If more than one person served as the registrant's PEO during the covered fiscal year, provide the compensation actually paid to each person who served as PEO during that period separately in an additional column (c) for each such person. For purposes of columns (c) and (e) of the table required by paragraph (v)(1) of this section, executive compensation actually paid must be the total compensation for the covered fiscal year for each named executive officer as provided in paragraph (c)(2)(x) of this section, or paragraph (n)(2)(x) of this section for smaller reporting companies, adjusted to:

(A) Deduct the aggregate change in the actuarial present value of the named executive officer's accumulated benefit under all defined benefit and actuarial pension plans reported in the Summary Compensation Table in accordance with paragraph (c)(2)(viii)(A) of this section;

(B)(*1*) Add, for all defined benefit and actuarial pension plans reported in the Summary Compensation Table in accordance with paragraph (c)(2)(viii)(A) of this section, the aggregate of:

(*i*) Service cost, calculated as the actuarial present value of each named executive officer's benefit under all such plans attributable to services rendered during the covered fiscal year; and

(*ii*) Prior service cost, calculated as the entire cost of benefits granted (or credit for benefits reduced) in a plan amendment (or initiation) during the covered fiscal year that are attributed by the benefit formula to services rendered in periods prior to the amendment.

(*2*) ''Service cost'' and ''prior service cost'' must be calculated using the same methodology as used for the registrant's financial statements under generally accepted accounting principles.

(C)(*1*) Deduct the amounts reported in the Summary Compensation Table pursuant to paragraphs (c)(2)(v) and (vi) of this section and then include an amount calculated as follows for all stock awards, and all option awards, with or without tandem SARs (as defined in paragraph (a)(6)(i) of this section) (including awards that subsequently have been transferred):

(*i*) Add the fair value as of the end of the covered fiscal year of all awards granted during the covered fiscal year that are outstanding and unvested as of the end of the covered fiscal year;

(*ii*) Add the amount equal to the change as of the end of the covered fiscal year (from the end of the prior fiscal year) in fair value (whether positive or negative) of any awards

granted in any prior fiscal year that are outstanding and unvested as of the end of the covered fiscal year;

(*iii*) Add, for awards that are granted and vest in the same year, the fair value as of the vesting date;

(*iv*) Add the amount equal to the change as of the vesting date (from the end of the prior fiscal year) in fair value (whether positive or negative) of any awards granted in any prior fiscal year for which all applicable vesting conditions were satisfied at the end of or during the covered fiscal year;

(*v*) Subtract, for any awards granted in any prior fiscal year that fail to meet the applicable vesting conditions during the covered fiscal year, the amount equal to the fair value at the end of the prior fiscal year; and

(*vi*) Add the dollar value of any dividends or other earnings paid on stock or option awards in the covered fiscal year prior to the vesting date that are not otherwise included in the total compensation for the covered fiscal year.

(*2*) If at any time during the last completed fiscal year, the registrant has adjusted or amended the exercise price of options or SARs held by a named executive officer, whether through amendment, cancellation or replacement grants, or any other means, or otherwise has materially modified such awards, the changes in fair value included pursuant to this paragraph (v)(2)(iii)(C) must take into account the excess fair value, if any, of any such modified award over the fair value of the original award as of the date of such modification.

(*3*) Fair value amounts must be computed in a manner consistent with the fair value methodology used to account for share-based payments in the registrant's financial statements under generally accepted accounting principles. For any awards that are subject to performance conditions, calculate the change in fair value as of the end of the covered fiscal year based upon the probable outcome of such conditions as of the last day of the fiscal year.

(iv) For purposes of columns (f) and (g) of the table required by paragraph (v)(1) of this section, for each fiscal year disclose the cumulative total shareholder return of the registrant (column (f)) and peer group cumulative total shareholder return (column (g)) calculated, except as set forth below, in the same manner as under § 229.201(e) of this chapter (Item 201(e) of Regulation S–K). For purposes of calculating the cumulative total shareholder return of the registrant and peer group cumulative total shareholder return, the term ''measurement period'' must be the period beginning at the ''measurement point'' established by the market close on the last trading day before the registrant's earliest fiscal year in the table, through and including the end of the fiscal year for which cumulative total shareholder return of the registrant or peer group cumulative total shareholder return is being calculated. The closing price at the measurement point must be converted into a fixed investment of one hundred dollars, stated in dollars, in the registrant's stock (or in the stocks represented by the peer group). For each fiscal year, the amount included in the table must be the value of such fixed investment based on the cumulative total shareholder return as of the end of that year. The same methodology must be used in calculating both the registrant's total shareholder return and that of the peer group. For purposes of determining the total shareholder return of the registrant's peer group, the registrant must use the same index or issuers used by it for purposes of § 229.201(e)(1)(ii) of this chapter or, if applicable, the companies it uses as a peer group for purposes of its disclosures under paragraph (b) of this section. If the peer group is not a published industry or line-of-business index, the identity of the issuers composing the group must be disclosed in a footnote. The returns of each component issuer of the group must be weighted according to the respective issuers' stock market capitalization at the beginning of each period for which a return is indicated. If the registrant selects or otherwise uses a different peer group from the peer group used by it for the immediately preceding fiscal year, explain, in a footnote, the reason(s) for this change and compare the registrant's cumulative total return with that of both the newly selected peer group and the peer group used in the immediately preceding fiscal year.

(v) The registrant's net income for each fiscal year (column (h)).

(vi) An amount for each fiscal year attributable to an additional financial performance measure included in the Tabular List provided pursuant to paragraph (v)(6) of this section, designated as the Company-Selected Measure, which in the registrant's assessment represents the most important financial performance measure (that is not otherwise required to be disclosed in the table) used by the registrant to link compensation actually paid to the registrant's named executive officers, for the most recently completed fiscal year, to company performance (column (i)). For purposes of this paragraph (v) of this section, ''financial performance measures'' means measures that are determined and presented in accordance with the accounting principles used in preparing the issuer's financial statements, any measures that are derived wholly or in part from such measures, and stock price and total shareholder return. A financial performance measure need not be presented within the registrant's financial statements or otherwise included in a filing with the Commission to be a Company-Selected Measure. Disclosure of any Company-Selected Measure, or any additional measure that the registrant elects to provide, that is not a financial measure under generally accepted accounting principles will not be subject to §§ 244.100 through 102 of this chapter (Regulation G) and § 229.10(e) of this chapter (Item 10(e)); however, disclosure must be provided as to how the number is calculated from the registrant's audited financial statements.

(3) For each amount disclosed in columns (c) and (e) of the table required by paragraph (v)(1) of this section, disclose in footnotes to the table each of the amounts deducted and added pursuant to paragraph (v)(2)(iii) of this section, the name of each named executive officer included as a PEO or in the calculation of the average remaining named executive officer compensation, and the fiscal years in which such persons are included. For disclosure of the executive compensation actually paid to named executive officers other than the PEO, provide the amounts required under this paragraph as averages.

(4) For the value of equity awards added pursuant to paragraph (v)(2)(iii)(C) of this section, disclose in a footnote to the table required by paragraph (v)(1) of this section any assumption made in the valuation that differs materially from those disclosed as of the grant date of such equity awards.

(5) In proxy or information statements in which disclosure is required pursuant to this Item, use the information provided in the table required by paragraph (v)(1) of this section to provide a clear description (graphically, narratively, or a combination of the two) of the relationships:

(i) Between:

(A) The executive compensation actually paid by the registrant to the PEO (column (c)) and the average of the executive compensation actually paid to the named executive officers other than the PEO (column (e)) included in the Summary Compensation Table; and

(B) The cumulative total shareholder return of the registrant (column (f)), across the registrant's last five completed fiscal years;

(ii) Between:

(A) The executive compensation actually paid by the registrant to the PEO (column (c)) and the average of the executive compensation actually paid to the named executive officers other than the PEO (column (e)) included in the Summary Compensation Table; and

(B) Net income of the registrant (column (h)), across the registrant's last five completed fiscal years; and

(iii) Between:

(A) The executive compensation actually paid by the registrant to the PEO (column (c)) and the average of the executive compensation actually paid to the named executive officers other than the PEO (column (e)) included in the Summary Compensation Table; and

(B) The Company-Selected Measure (column (i)), across the registrant's last five completed fiscal years.

(iv) The description provided in response to paragraph (v)(5)(i) of this section must also include a comparison of the cumulative total shareholder return of the registrant (column (f)) and cumulative total shareholder return of the registrant's peer group (column (g)) over the same period. If a registrant elects to provide any additional measures in the table, each additional measure must be accompanied by a clear description of the relationship between:

(A) The executive compensation actually paid by the registrant to the PEO (column (c)) and the average of the executive compensation actually paid to the named executive officers other than the PEO (column (e)) included in the Summary Compensation Table; and

(B) That additional measure, across the registrant's last five completed fiscal years. (6) Subject to paragraph (v)(6)(iii) of this section, provide a tabular list of at least three, and up to seven, financial performance measures, which in the registrant's assessment represent the most important financial performance measures used by the registrant to link compensation actually paid to the registrant's named executive officers, for the most recently completed fiscal year, to company performance (''Tabular List'').

(i) The registrant may provide the Tabular List disclosure either as one tabular list, as two separate tabular lists (one for the PEO, and one for all named executive officers other than the PEO), or as separate tabular lists for the PEO and each named executive officer other than the PEO. If the registrant elects to provide multiple tabular lists in accordance with the immediately preceding sentence, each tabular list must include at least three, and up to seven, financial performance measures, which in the registrant's assessment represent the most important financial performance measures used by the registrant to link compensation actually paid to that, or those, particular named executive officer, or officers, for the most recently completed fiscal year, to company performance.

(ii) If fewer than three financial performance measures were used by the registrant to link compensation actually paid to the registrant's named executive officers, for the most recently completed fiscal year, to company performance, the Tabular List must include all such measures that were used, if any.

(iii) A registrant may include non-financial performance measures (*i.e.,* performance measures other than those that fall within the definition of financial performance measures) used by the registrant to link compensation actually paid to the registrant's named executive officers, for the most recently completed fiscal year, to company performance in the Tabular List, if it determines that such measures are among its three to seven most important performance measures, and it has disclosed its most important three (or fewer, if the registrant only uses fewer) financial performance measures, in accordance with this paragraph (v)(6).

(iv) The Tabular List may include a maximum of seven performance measures, regardless of whether the registrant elects to include non-financial performance measures in the Tabular List.

(7) The disclosure provided pursuant to this paragraph (v), including, but not limited to, any disclosure provided pursuant to paragraphs (v)(3) and (6) of this section, must appear with, and in the same format as, the rest of the disclosure required to be provided pursuant to this section and, in addition, must be provided in an Interactive Data File in accordance with § 232.405 of this chapter and the EDGAR Filer Manual (referenced in § 232.301 of this chapter).

(8) A registrant that qualifies as a ''smaller reporting company,'' as defined by § 229.10(f)(1) of this chapter, may provide the information required by this paragraph (v) for three years, instead of five years. A smaller reporting company may provide the disclosure required by this paragraph (v) for only two fiscal years in the first filing in which it provides this disclosure, and is not required to provide the disclosure required by paragraph (v)(2)(iv) or (v)(5) of this section with respect to the total shareholder return of any peer group, or the Company-Selected Measure disclosure required by paragraph (v)(2)(vi) of this section, or the Tabular List provided pursuant to paragraph (v)(6) of this section. For purposes of paragraph (v)(2)(iii) of this section with respect to smaller reporting companies, executive compensation actually paid must be the total compensation for the covered fiscal year for each named executive officer as provided in paragraph (n)(2)(x) of this section, adjusted to deduct the amounts reported in the Summary Compensation Table pursuant to paragraphs (n)(2)(v) and (vi) of this section, and to add in their place the fair value of the amounts added in paragraph (v)(2)(iii)(C) of this section. Disclose in a footnote to the table required pursuant to paragraph (v)(1) of this section for the PEO and average remaining named executive officer compensation the amounts deducted from, and added to, the Summary Compensation Table pursuant to this instruction, the name of each named executive officer included as a PEO or in the calculation of the average remaining named executive officer compensation, and the fiscal years in which they are included. A smaller reporting company is required to comply with paragraph (v)(7) of this section in the third filing in which it provides the disclosure required by this paragraph (v).

Instructions to paragraph (v).

1. *Transitional relief.* A registrant may provide the disclosure required by this paragraph (v) for three years, instead of five years, in the first filing in which it provides this disclosure, and may provide disclosure for an additional year in each of the two subsequent annual filings in which this disclosure is required.

2. *New registrants.* Information for fiscal years prior to the last completed fiscal year will not be required if the registrant was not required to report pursuant to Section 13(a) or 15(d) of the Exchange Act (15 U.S.C. 78m(a) or 78o(d)) at any time during that year.

3. *Incorporation by reference.* The information required by paragraph (v) of this section will not be deemed to be incorporated by reference into any filing under the Securities Act or the Exchange Act, except to the extent that the registrant specifically incorporates it by reference.

PART 232—REGULATION S–T—GENERAL RULES AND REGULATIONS FOR ELECTRONIC FILINGS

■ 3. The general authority citation for part 232 continues to read as follows:

Authority: 15 U.S.C. 77c, 77f, 77g, 77h, 77j, 77s(a), 77z–3, 77sss(a), 78c(b), 78*l,* 78m, 78n, 78o(d), 78w(a), 78*ll,* 80a–6(c), 80a–8, 80a–29, 80a–30, 80a–37, 80b–4, 80b–10, 80b–11, 7201 *et seq.;* and 18 U.S.C. 1350, unless otherwise noted.

* * * * *

■ 4. Amend § 232.405 by:
■ a. Revising the introductory text and paragraphs (a)(2) and (4).
■ b. In paragraph (b)(1)(i), removing the word ''and'' from the end of the sentence;
■ c. In paragraph (b)(1)(ii), removing the period from the end of the sentence, and adding ''; and'' in its place;
■ d. Adding paragraph (b)(1)(iii);
■ e. In paragraph (b)(3)(i)(A), removing the word ''and'' from the end of the sentence;
■ f. In paragraph (b)(3)(i)(B), adding ''and'' at the end;
■ g. Adding paragraphs (b)(3)(i)(C) and (b)(4); and
■ h. Revising Note 1 to § 232.405.

The additions and revisions read as follows:

§ 232.405 Interactive Data File submissions.

This section applies to electronic filers that submit Interactive Data Files. Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of Form 11–K (§ 249.311), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Note D.5 of Rule 14a–101 under the Exchange Act (§ 240.14a–101 of this chapter), Item 1 of Rule 14c–101 under the Exchange Act (§ 240.14c–101 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter) specify when electronic filers are required or permitted to submit an Interactive Data File (§ 232.11), as further described in note 1 to this section. This section imposes content, format and submission requirements for an Interactive Data File, but does not change the substantive content requirements for the financial and other disclosures in the Related Official Filing (§ 232.11).

(a) * * *

(2) Be submitted only by an electronic filer either required or permitted to submit an Interactive Data File as specified by § 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K), General Instruction F of Form 11–K (§ 249.311), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Note D.5 of Rule 14a–101 under the Exchange Act (§ 240.14a–101 of this chapter), Item 1 of Rule 14c–101 under the Exchange Act (§ 240.14c–101 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable;

* * * * *

(4) Be submitted in accordance with the EDGAR Filer Manual and, as applicable, Item 601(b)(101) of Regulation S–K (§ 229.601(b)(101) of this chapter), General Instruction F of Form 11–K (§ 249.311 of this chapter), paragraph (101) of Part II—Information Not Required to be Delivered to Offerees or Purchasers of Form F–10 (§ 239.40 of this chapter), paragraph 101 of the Instructions as to Exhibits of Form 20–F (§ 249.220f of this chapter), paragraph B.(15) of the General Instructions to Form 40–F (§ 249.240f of this chapter), paragraph C.(6) of the General Instructions to Form 6–K (§ 249.306 of this chapter), Note D.5 of Rule 14a–101 under the Exchange Act (§ 240.14a–101 of this chapter), Item 1 of Rule 14c–101 under the Exchange Act (§ 240.14c–101 of this chapter), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter); or General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter).

(b) * * *

(1) * * *

(iii) The disclosure set forth in paragraph (b)(4) of this section.

* * * * *

(3) * * *

(i) * * *

(C) The disclosure set forth in paragraph (b)(4) of this section.

* * * * *

(4) The disclosure provided under 17 CFR part 229 (Regulation S–K) and related provisions that is required to be tagged, including, as applicable:

(i) The information provided pursuant to § 229.402(v) of this chapter (Item 402(v) of Regulation S–K).

(ii) [Reserved].

* * * * *

Note 1 to § 232.405: Section 229.601(b)(101) of this chapter (Item 601(b)(101) of Regulation S–K) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 239.11 of this chapter (Form S–1), § 239.13 of this chapter (Form S–3), § 239.25 of this chapter (Form S–4), § 239.18 of this chapter (Form S–11), § 239.31 of this chapter (Form F–1), § 239.33 of this chapter (Form F–3), § 239.34 of this chapter (Form F–4), § 249.310 of this chapter (Form 10–K), § 249.308a of this chapter (Form 10–Q), and § 249.308 of this chapter (Form 8–K). General Instruction F of § 249.311 of this chapter (Form 11–K) specifies the circumstances under which an Interactive Data File must be submitted, and the circumstances under which it is permitted to be submitted, with respect to Form 11–K. Paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of § 239.40 of this chapter (Form F–10) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form F–10. Paragraph 101 of the Instructions as to Exhibits of § 249.220f of this chapter (Form 20–F) specifies the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to Form 20–F. Paragraph B.(15) of the General Instructions to § 249.240f of this chapter (Form 40–F) and Paragraph C.(6) of the General Instructions to § 249.306 of this chapter

(Form 6–K) specify the circumstances under which an Interactive Data File must be submitted and the circumstances under which it is permitted to be submitted, with respect to § 249.240f of this chapter (Form 40–F) and § 249.306 of this chapter (Form 6–K). Note D.5 of § 240.14a–101 of this chapter (Schedule 14A) and Item 1 of § 240.14c–101 of this chapter (Schedule 14C) specify the circumstances under which an Interactive Data File must be submitted with respect to Schedules 14A and 14C. Section 229.601(b)(101) (Item 601(b)(101) of Regulation S–K), paragraph (101) of Part II—Information not Required to be Delivered to Offerees or Purchasers of Form F–10, paragraph 101 of the Instructions as to Exhibits of Form 20–F, paragraph B.(15) of the General Instructions to Form 40–F, and paragraph C.(6) of the General Instructions to Form 6–K all prohibit submission of an Interactive Data File by an issuer that prepares its financial statements in accordance with 17 CFR 210.6–01 through 210.6–10 (Article 6 of Regulation S–X). For an issuer that is a management investment company or separate account registered under the Investment Company Act of 1940 (15 U.S.C. 80a *et seq.*) or a business development company as defined in Section 2(a)(48) of the Investment Company Act of 1940 (15 U.S.C. 80a–2(a)(48)), General Instruction C.3.(g) of Form N–1A (§§ 239.15A and 274.11A of this chapter), General Instruction I of Form N–2 (§§ 239.14 and 274.11a–1 of this chapter), General Instruction C.3.(h) of Form N–3 (§§ 239.17a and 274.11b of this chapter), General Instruction C.3.(h) of Form N–4 (§§ 239.17b and 274.11c of this chapter), General Instruction C.3.(h) of Form N–6 (§§ 239.17c and 274.11d of this chapter), and General Instruction C.4 of Form N–CSR (§§ 249.331 and 274.128 of this chapter), as applicable, specifies the circumstances under which an Interactive Data File must be submitted.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

■ 5. The general authority citation for part 240 continues to read as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78c–3, 78c–5, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78*l,* 78m, 78n, 78n–1, 78o, 78o–4, 78o–10, 78p, 78q, 78q–1, 78s, 78u–5, 78w, 78x, 78dd, 78*ll,* 78mm, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4, 80b–11, and 7210 *et seq.,* and 8302; 7 U.S.C. 2(c)(2)(E); 12 U.S.C. 5521(e)(3); 18 U.S.C. 1350; and Pub. L. 111–203, 939A, 124 Stat. 1376, (2010); and Pub. L. 112–106, sec. 503 and 602, 126 Stat. 326 (2012), unless otherwise noted.

* * * * *

■ 6. Amend § 240.14a–101 by adding paragraph D.5 to the Notes to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

Schedule 14A Information

* * * * *

Notes

* * * * *

D. * * *

5. *Interactive Data File.* An Interactive Data File must be included in accordance with § 232.405 of this chapter and the EDGAR Filer Manual where applicable pursuant to § 232.405(b) of this chapter.

* * * * *

■ 7. Amend § 240.14c–101 by revising Item 1 to read as follows:

§ 240.14c–101 Schedule 14C. Information required in information statement.

Schedule 14C Information

* * * * *

Item 1. Information required by Items of Schedule 14A (17 CFR 240.14a–101). Furnish the information called for by all of the items of Schedule 14A of Regulation 14A (17 CFR 240.14a–101) (other than Items 1(c), 2, 4 and 5 thereof) which would be applicable to any matter to be acted upon at the meeting if proxies were to be solicited in connection with the meeting. Notes A, C, D, and E to Schedule 14A (including the requirement in Note D.5 to provide an Interactive Data File in accordance with § 232.405 of this chapter and the EDGAR Filer Manual where applicable pursuant to § 232.405(b) of this chapter) are also applicable to Schedule 14C.

* * * * *

By the Commission.

Dated: August 25, 2022.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2022–18771 Filed 9–7–22; 8:45 am]

BILLING CODE 8011–01–P

FEDERAL REGISTER

Vol. 87 Thursday,

No. 173 September 8, 2022

Part IV

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Part 223

Endangered and Threatened Wildlife and Plants: Proposed Rule To List the Queen Conch as Threatened Under the Endangered Species Act (ESA); Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 220830–0177; RTID 0648–XR071]

Endangered and Threatened Wildlife and Plants: Proposed Rule to List the Queen Conch as Threatened Under the Endangered Species Act (ESA)

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

ACTION: Proposed rule; request for comments.

SUMMARY: We, NMFS, announce a proposed rule to list the queen conch (*Aliger gigas,* previously known as *Strombus gigas*) as a threatened species under the Endangered Species Act (ESA). We have completed a comprehensive status review for the queen conch. After considering the status review report, and after taking into account efforts being made to protect the species, we have determined that the queen conch is likely to become an endangered species within the foreseeable future throughout its range. Therefore, we propose to list the queen conch as a threatened species under the ESA. Any protective regulations determined to be necessary and advisable for the conservation of the queen conch under ESA would be proposed in a subsequent **Federal Register** announcement. We solicit information to assist this listing determination, the development of proposed protective regulations, and designation of critical habitat within U.S jurisdiction.

DATES: Information and comments on this proposed rule must be received by November 7, 2022. Public hearing requests must be requested by October 24, 2022.

ADDRESSES: You may submit comments, information, or data on this document, identified by the code NOAA–NMFS–2019–0141 by any of the following methods:

- *Electronic Submissions:* Submit all electronic comments via the Federal eRulemaking Portal. Go to *www.regulations.gov* and enter NOAA–NMFS–2019–0141 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.
- *Mail:* NMFS, Southeast Regional Office, 263 13th Avenue South, St. Petersburg, FL 33701;
- *Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous). You can find the petition, status review report, **Federal Register** notices, and the list of references electronically on our website at *https://www.fisheries.noaa.gov/species/queen-conch*

FOR FURTHER INFORMATION CONTACT: Calusa Horn, NMFS Southeast Regional Office, 727–551–5782 or *Calusa.Horn@noaa.gov,* or Maggie Miller, NMFS Office of Protected Resources, 301–427–8457 or *Margaret.H.Miller@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Background

On February 27, 2012, we received a petition from WildEarth Guardians to list the queen conch as threatened or endangered throughout all or a significant portion of its range under the ESA. We determined that the petitioned action may be warranted and published a positive 90-day finding in the **Federal Register** (77 FR 51763; August 27, 2012). After conducting a status review, we determined that listing queen conch as threatened or endangered under the ESA was not warranted and published our determination in the **Federal Register** (79 FR 65628; November 5, 2014). In making that determination, we first concluded that the queen conch was not presently in danger of extinction, nor was it likely to become so in the foreseeable future. We also evaluated whether there was a portion of the queen conch's range that was ''significant,'' applying the definition of that term from the joint U.S. Fish and Wildlife Service/NMFS Policy on Interpretation of the Phrase ''Significant Portion of Its Range'' (SPR Policy; 79 FR 37580, July 1, 2014). We concluded that available information did not indicate any ''portion's contribution to the viability of the species is so important that, without the members in that portion, the species would be in danger of extinction, or likely to become so in the foreseeable future, throughout all of its range.''

WildEarth Guardians and Friends of Animals filed suit on July 27, 2016, in the U.S. District Court for the District of Columbia, challenging our decision not to list queen conch as threatened or endangered under the ESA. On August 26, 2019, the court vacated our determination that listing queen conch under the ESA was not warranted and remanded the determination back to the NMFS based on our reliance on the SPR Policy's particular threshold for defining ''significant,'' which was vacated nationwide in 2018 (though other aspects of the policy remain in effect). See *Desert Survivors* v. *U.S. Dep't of Interior,* 321 F. Supp. 3d 1011 (N.D. Cal. 2018). Following the 2019 ruling of the U.S. District Court for the District of Columbia, we announced the initiation of a new status review of queen conch and requested scientific and commercial information from the public (84 FR 66885, December 6, 2019). We received 12 public comments in response to this request. We also provided notice and requested information from jurisdictions through the Western Central Atlantic Fishery Commission (WECAFC), Caribbean Regional Fisheries Mechanism (CRFM), and the Convention on the International Trade in Endangered Species of Wild Fauna and Flora (CITES) Authorities. All relevant, new information was incorporated as appropriate in the status review report and in this proposed rule. In particular, new information considered in the status review report includes: (1) fisheries landings data (1950–2018) from the Food and Agriculture Organization (FAO); (2) reconstructed landing histories (1950–2016) from the Sea Around Us (SAU) project; (3) results from recent genetic studies; and (4) the results from regional hydrodynamics and population connectivity modeling.

Listing Determinations Under the ESA

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a ''species'' under section 3 of the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines species to include ''any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.'' Because the queen conch is an invertebrate, we do not have the authority to list individual populations as distinct population segments.

Section 3 of the ESA defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range'' and a threatened species as one ''which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.'' Thus, in the context of the ESA, the Services interpret an ''endangered species'' to be one that is presently at risk of extinction. A ''threatened species,'' on the other hand, is not currently at risk of extinction, but is likely to become so in the foreseeable future. In other words, a key statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either now (endangered) or in the foreseeable future (threatened). Additionally, as the definition of ''endangered species'' and ''threatened species'' makes clear, the determination of extinction risk can be based on either the range-wide status of the species, or the status of the species in a ''significant portion of its range.'' A species may be endangered or threatened throughout all of its range or a species may be endangered or threatened within a significant portion of its range (SPR).

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened as a result of any of the following five factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) the inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence (section 4(a)(1)(A)–(E)). Section 4(b)(1)(A) of the ESA requires us to make listing determinations based solely on the best scientific and commercial data available after conducting a review of the status of the species and after taking into account conservation efforts being made by any State or foreign nation or political subdivision thereof to protect the species.

Status Review

We convened a team of seven agency scientists to conduct a new status review for the queen conch and prepare a report. The status review team (SRT) was comprised of natural resource management specialists and fishery biologists from the NMFS Southeast Regional Office, West Coast Regional Office, Office of Protected Resources, and Southeast Fisheries Science Center (SEFSC). The SRT had group expertise in queen conch life history and ecology, population dynamics, connectivity modeling, fisheries management and stock assessment science, and protected species management and conservation. The status review report presents the SRT's professional judgment of the extinction risk facing the queen conch but makes no recommendation as to the listing status of the species. The status review report was subjected to independent peer review as required by the Office of Management and Budget Final Information Quality Bulletin for Peer Review (M–05–03; December 16, 2004). The status review report was peer reviewed by three independent specialists selected from the scientific community, with expertise in queen conch biology and ecology, conservation and management, and specific knowledge of threats to queen conch. The peer reviewers were asked to evaluate the adequacy, appropriateness, and application of data used in the status review as well as the findings resulting from that data. All peer reviewer comments were addressed prior to finalizing the status review report.

We subsequently reviewed the status review report, its cited references, and public and peer reviewer comments. We determined the status review report, upon which this proposed rule is based, provides the best available scientific and commercial information on the queen conch. Much of the information discussed below on queen conch biology and ecology, distribution and connectivity, density and abundance, threats, and extinction risk is taken from the status review report. However, we have independently applied the statutory provisions of the ESA, including evaluation of the factors set forth in section 4(a)(1)(A)–(E), our regulations regarding listing determinations, conservation efforts, and the aspects of our SPR Policy that remain valid in making our determination that the queen conch meets the definition of a threatened species under the ESA.

Life History, Ecology, and Status of the Petitioned Species

Taxonomy and Species Description

Aliger gigas, originally known as *Strombus gigas* or more recently as *Lobatus gigas,* is commonly known as the queen conch. The queen conch belongs to the family Strombidae and the most recent classification places the queen conch under the genus *Aliger* (Maxwell *et al.* 2020) in the class Gastropoda, order Neotaenioglossa, and family Strombidae. Other accepted synonyms include: *Strombus gigas* (Linnaeus, 1758); *Lobatus gigas* (Linnaeus, 1758); *Strombus lucifer* (Linnaeus, 1758); *Eustrombus gigas* (Linnaeus, 1758); *Pyramea lucifer* (Linnaeus, 1758); *Strombus samba* (Clench 1937); *Strombus. horridus* (Smith 1940); *Strombus verrilli* (McGinty 1946); *Strombus canaliculatus* (Burry 1949); and *Strombus pahayokee* (Petuch 1994), as cited in (Landau *et al.* 2009).

The queen conch is a large marine gastropod mollusk. Adult queen conch have a heavy shell (5 pounds, 2.3 kilograms (kg)) with spines on each whorl of the spire and flared aperture. The shell grows as the mollusk grows, forming into a spiral shape with a glossy pink interior. The outside of the shell becomes covered by an organic periostracum (''around the shell'') layer as the queen conch matures that can be much darker than the natural color of the shell. Characteristics used to distinguish queen conch from other family members include: (1) large, heavy shell; (2) short, sharp spires; (3) brown and horny operculum; and (4) pink interior of the shell (Prada *et al.* 2009).

Distribution, Movements, and Habitat Use

The queen conch is distributed throughout the Caribbean Sea, the Gulf of Mexico, and around Bermuda. Its range includes the following countries, territories, and areas: Anguilla, Antigua and Barbuda, Aruba, Barbados, The Bahamas, Belize, Bermuda, Bonaire, British Virgin Islands, Brazil, Cayman Islands, Colombia, Costa Rica, Cuba, Curaçao, Dominican Republic, Grenada, Guadeloupe and Martinique, Guatemala, Haiti, Honduras, Jamaica, Mexico, Montserrat, Nicaragua, Panama, Puerto Rico, Saba, St. Barthelemy, St. Martin, St. Eustatius, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago, Turks and Caicos, U.S. Virgin Islands, the United States (Florida), and Venezuela (Theile 2001; see File S1 in Horn *et al.* 2022).

As conch develop they use different habitat types including seagrass beds, sand flats, algal beds, and rubble areas from a few centimeters deep to approximately 30 meters (m) (Brownell and Stevely 1981). After the eggs of queen conch hatch, the veligers (larvae) drift in the water column for up to 30 days depending on phytoplankton concentration, temperature, and the proximity of settlement habitat. The minimum pelagic duration is reported from four field studies to be 16 days (Brownell 1977; Davis 1994, 1996;

Salley 1986), but can range from 21 days to 30 days (Brownell 1977; D'Asaro 1965; Davis 1994; Paris *et al.* 2008; Salley 1986) with a mean of approximately 25 days. These veligers are found primarily in the upper few meters of the water column (Paris *et al.* 2008; Posada and Appeldoorn 1994; Stoner 2003; Stoner and Davis 1997) where they feed on phytoplankton. When the veligers are morphologically and physiologically ready, they metamorphose into benthic animals in response to trophic cues from their seagrass habitat (Davis 2005). The key trophic cues shown to induce metamorphosis are epiphytes associated with macroalgae and sediment (Davis and Stoner 1994). Settlement locations are usually areas that have sufficient tidal circulation and high macroalgae production. Upon metamorphosis, veligers settle to the bottom and bury completely into the sediment where they spend much of their first year of life. They emerge about a year later as juveniles measuring around 60 millimeters (mm) shell length (Stoner 1989b). When juvenile conch first emerge from the sediment and move to nearby seagrass beds, densities can be as high as 200–2000 conch/hectare (Stoner 1989a; Stoner and Lally 1994; Stoner 2003). A hectare (ha) is an area 100 meters by 100 meters, equivalent to 2.471 acres.

Queen conch nursery areas primarily occur in back reef areas (*i.e.,* shallow sheltered areas, lagoons, behind emergent reefs or cays) of medium seagrass density, at depths between 2 to 4 m, with strong tidal currents of at least 50 centimeters (cm)/second (Stoner 1989a), and frequent tidal water exchanges (Stoner *et al.* 1996; Stoner and Waite 1991). Seagrass is thought to provide both nutrition and protection from predators (Ray and Stoner 1995; Stoner and Davis 2010). The structure of the seagrass beds decreases the risk of predation (Ray and Stoner 1995), which is very high for juveniles (Appeldoorn 1988c; Stoner and Glazer 1998; Stoner *et al.* 2019). Posada *et al.* (1997) observed that the most productive nurseries for queen conch tend to occur in shallow (< 5–6 m deep) seagrass meadows. Jones and Stoner (1997) found that optimal nursery habitat occurred in areas of medium density seagrass, particularly areas associated with strong ocean currents or hydrographic conditions. Boman *et al.* (2019) observed a significantly higher probability of positive growth in juvenile conch in native seagrass compared to invasive seagrass. In The Bahamas, juveniles were found only in areas within 5 km from the Exuma Sound inlet, emphasizing the importance of currents and frequent tidal water exchange that affects both larval supply and growth of their algal food (Jones and Stoner, 1997). However, there are certain exceptions, such as in Florida, where many juveniles are found on shallow algal flats, or in Jamaica, where they can be found on deep banks such as Pedro Bank.

While the early life stages of queen conch primarily occur in shallow waters with dense seagrass meadows, adult queen conch can be found in a wider range of environments (Stoner *et al.* 1994), including sand, algal flats, or coral rubble (Acosta 2001; Stoner and Davis 2010). Queen conch are rarely, if ever, found on soft bottoms composed of silt or mud, or in areas with high coral cover (Acosta 2006). The movements of adult queen conch are associated with factors like changes in temperature, food availability, and predation. Adult conch are typically found in shallow, clear water of oceanic or near-oceanic salinities at depths generally less than 75 m, but are most common in waters less than 30 m (McCarthy 2007). Depth limitation is based mostly on light attenuation limiting their photosynthetic food source (*e.g.,* filamentous alga) (McCarthy 2007; Creswell, 1994; Ray and Stoner 1994; Randall 1964). The average home range size for an individual queen conch is variable and has been measured at 5.98 ha in Florida (Glazer *et al.* 2003), 0.6 to 1.2 ha in Barbados (Phillips *et al.* 2010), and 0.15 to 0.5 ha in the Turks and Caicos Islands (Hesse 1979). Studies have suggested that adult conch move to different habitat types during their reproductive season, but afterwards return to feeding grounds (Glazer *et al.* 2003; Stoner and Sandt 1992; Hesse 1979). In general, adult conch do not move very far from their feeding grounds during their reproductive season (Stoner and Sandt 1992).

Diet and Feeding

Queen conch are herbivores and primarily feed on macroalgae and seagrass detritus (Ray and Stoner 1995; Creswell 1994). The production of red and green algae, which can be highly variable, has been shown to directly affect the growth of juvenile conch (Stoner 2003; Stoner *et al.* 1995; Stoner *et al.* 1994). Organic material in the sediment (benthic diatoms and particulate organic matter and cyanobacteria) has also been suggested to be a source of nutrition to juvenile conch (Boman *et al.* 2019; Serviere-Zaragoza *et al.* 2009; Stoner *et al.* 1995; Stoner and Waite 1991). Stoner and Waite (1991) also showed that macroalgae were the most likely food source of juvenile conch (shell length 120–140 mm) in native seagrass beds in The Bahamas. Several studies have indicated that seagrass detritus is an important secondary food source for juvenile queen conch, in particular detritus of *T. testudinum* (Stoner and Waite 1991; Stoner 1989a). In sand habitats, juveniles can also feed on diatoms and cyanobacteria that are found in the benthos (Creswell 1994; Ray and Stoner 1995).

Age and Growth

Queen conch are estimated to have a life span of 25–30 years (Davis 2005; McCarthy 2007). As with many gastropods, growth in queen conch is determinate and strongly influenced by the environment (Martín-Mora *et al.* 1995; Alcolado, 1976). The species has determinate growth and reaches maximum shell length before sexual maturation; thereafter the shell grows only in thickness (Stoner *et al.* 2012; Appeldoorn 1988a). Conch are often considered to be mature when the lip is flared, however Appeldoorn (1988c) observed that the verge (the male reproductive organ) of thin-lipped males in Puerto Rico was not yet functional, and true reproductive maturity did not occur until at least two months after the lip flared outward at about 3.6 years of age. The result is that thin-lipped individuals probably do not mate or spawn in the first reproductive season after the shell lip flares, and are at least 4 years old before first mating. Once the shell lip is formed, the shell does not increase in length (Appeldoorn 1996; Tewfik *et al.* 1998). Because the shell lip continues to thicken upon the onset of maturity (Appeldoorn 1988a), studies have found that shell lip thickness is a better indicator of sexual maturity rather than the formation of the flared lip (Appeldoorn 1994b; Clerveaux *et al.* 2005; Stoner *et al.* 2012c). With the onset of sexual maturity, tissue growth decreases and switches from primarily thickening of the meat to increasing the weight of the gonads. Once the conch is around ten years of age, the shell volume starts to decrease, as layers of the shell mantle are laid down from the inside (Randall 1964). Eventually, the room inside the shell can no longer accommodate the tissue and the conch will start to decrease its tissue weight (CFMC and CFRAMP 1999). Stoner *et al.* (2012c) found that after shell lip thickness reached 22 to 25 mm, both soft tissue and gonad weight decreased.

Reproductive Biology

Queen conch reproduce via internal fertilization. Males and females are distinguished by either a verge (the male reproductive organ) or egg groove. Approximately three weeks after copulation the female lays a demersal egg mass on coarse sand of low organic content, completing deposition within 24–36 hours (D'Asaro 1965; Randall 1964). The egg mass consists of a long, continuous, egg-filled tube that folds and sticks together in a compact crescent shape, adhering to sand grains that provide camouflage and discourage predation. After an incubation period of approximately five days, the larvae emerge and assume a pelagic lifestyle (Weil and Laughlin 1984; D'Asaro 1965).

Assessments of fecundity require knowledge of the population sex ratio, spawning season duration, rate of spawning during the season, number of eggs per egg mass, and the relationship between body mass and age (Appeldoorn 1988c). Few studies have investigated these factors concurrently, and the variability reported in these metrics is high. For example, estimates of the number of eggs contained within each egg mass range from 150,000 to 1,649,000 (Appeldoorn 2020; Delgado and Glazer 2020; Appeldoorn 1993; Berg Jr. and Olsen 1989; Mianmanus 1988; Weil and Laughlin 1984; D'Asaro 1965; Randall 1964; Robertson 1959). Additionally, females are capable of storing eggs for several weeks before laying an egg mass, which means it is possible that multiple males have fertilized the same eggs (Medley 2008). The ability to store sperm is advantageous for conch populations since females are still capable of laying egg masses without encountering another male. The number of egg masses produced per female is also highly variable and ranges between 1 and 25 per female per season for experiments performed in different areas throughout the queen conch range (Appeldoorn 1993; Berg Jr. and Olsen 1989; Davis *et al.* 1984; Weil and Laughlin 1984; Davis and Hesse 1983).

The number of masses produced as well as the number of eggs per mass may decrease toward the end of the reproductive season (Weil and Laughlin 1984), but individual variability may also be influenced by spawning frequency and the size and number of egg masses produced during the season (Appeldoorn 2020). Differences in spawning rates have been attributed to spawning site selection, population densities, and food selection and availability, among other variables. Variability in spawning activity may also be correlated to water temperature and weather conditions. For example, reproductive activity decreased with increasing water turbulence (Davis *et al.* 1984) and reproduction peaked with longer days, warmer water temperatures, and relatively stable circulation patterns (Stoner *et al.* 1992).

Seasonal movements, usually associated with the initiation of the reproductive season, are widely known for queen conch. Weil and Laughlin (1984) reported that adult conch at Los Roques, Venezuela, moved from offshore feeding areas in the winter to summer spawning grounds in shallow, inshore sand habitats. In the Turks and Caicos, adult conch moved from seagrass to sand-algal flats with the onset of winter (Hesse 1979). Movements to shallower habitats have also been reported for deep-water populations at St. Croix, U.S. Virgin Islands (Coulston *et al.* 1987). Increasing water temperature and photoperiod are thought to trigger large-scale migrations and the subsequent initiation of mating. In locations where adult conch are abundant, these migrations culminate in the formation of reproductive aggregations. These aggregations generally form in the same locations each year (Marshak *et al.* 2006; Glazer and Kidney 2004; Posada *et al.* 1997) and are dominated by older individuals that produce viable egg masses (Berg Jr. *et al.* 1992). However, in some areas large-scale movements do not occur. For example, in the United States (Florida Keys), adult aggregations are relatively persistent throughout the year, although reproductive activity does not occur year-round (Glazer and Kidney 2004; Glazer *et al.* 2003). Queen conch found in the deep waters near Puerto Rico are geographically isolated from nearshore, shallow habitats and remain offshore during the spawning season (García-Sais *et al.* 2012). The distribution of feeding and spawning habitats may also be an important factor in the timing and extent of adult movements.

Multiple studies involving visual surveys of mating and spawning events and histological examinations of gonadic activity show that the duration and intensity of the spawning season varies extensively throughout the queen conch's range (Table 1 in Horn *et al.* 2022). External variables such as temperature, photoperiod, and weather events interact to mediate seasonality in reproductive and spawning behaviors. Generally, reproductive activity begins earlier and extends later into the year with decreasing latitude. Visual surveys of reproductive activity have reported the reproductive season to extend from May to September in Florida (D'Asaro 1965), May to November in Puerto Rico (Appeldoorn 1985), March to September in the Turks and Caicos (Davis *et al.* 1984; Hesse 1976), and February through November in the U.S. Virgin Islands (Coulston *et al.* 1987; Randall 1964). In warmer regions such as Cuba and Mexico's Banco Chinchorro, reproductive activity can occur throughout the year (Cala *et al.* 2013; Corral and Ogawa 1987; Cruz S. 1986); however, there is a seasonal peak in activity in most areas during the warmest months, usually from July to September (Aldana-Aranda *et al.* 2014).

Spawning Density

Depensatory mechanisms have been implicated as a major factor limiting the recovery of depleted queen conch populations (Stoner *et al.* 2012c; Appeldoorn 1995). Depensation occurs when a population's decreased abundance or density leads to a reduced per capita growth rate, thereby reducing the population's ability to recover. Reproductive potential is primarily reduced by the removal of mature adults from the population (Appeldoorn 1995). Empirical observations have suggested mating and egg-laying in queen conch are directly related to the density of mature adults (Stoner *et al.* 2012c; Stoner *et al.* 2011; Stoner and Ray-Culp 2000). In animals that aggregate to reproduce, low population densities can make it difficult or impossible to find a mate (Stoner and Ray-Culp 2000; Erisman *et al.* 2017; Rossetto *et al.* 2015; Stephens *et al.* 1999; Appeldoorn 1995). Challenges associated with mate finding are likely exacerbated for slow-moving animals such as the queen conch (Doerr and Hill 2013; Glazer *et al.* 2003). This limitation directly impacts the species' ability to increase its population size because increased ''search time'' depletes energy resources, reducing the rate of gametogenesis and the overall reproductive potential of the population. Simulations by Farmer and Doerr (in review) confirm that limitations on mate finding associated with density are the primary driver behind observed patterns in queen conch mating and spawning activity, but similar to field observations by Gascoigne and Lipcius (2004), it is unlikely to be the only explanation for lack of reproductive activity at low densities.

An additional postulated depensatory mechanism is the breakdown of a positive feedback loop between contact with males and the rate of gametogenesis and spawning in females, where copulation stimulates oocyte development and maturation, leading to

more frequent spawning (Appeldoorn 1995). Copulation in conch is more likely in spawning than non-spawning females, providing an additional positive feedback mechanism that amplifies the effect at high densities (Appeldoorn 1988a). Evidence supporting this idea has been provided by several studies that reported a consistent lag at the start of the reproductive season between first observations of copulation and first spawning (Weil and Laughlin 1984; Brownell 1977; Hesse 1976; Randall 1964). This lag period, averaging three weeks, may represent the time required to achieve oocyte maturation after first copulation. Farmer and Doerr (in review) considered differences in adult density, movement speeds, scent-tracking, barriers to movement, interbreeding rest periods, perception distance, and sexual facilitation. Sexual facilitation was the only mechanism explaining the lack of empirical observations of mating at relatively low population densities, providing statistical confirmation that the reductions of densities caused by overfishing of spawning aggregations increases the probability of recruitment failure beyond what would be anticipated from delays in mate finding alone. This is consistent with observations by Gascoigne and Lipcius (2004), which indicate that in addition to depensatory mechanisms associated with mate finding, delayed functional maturity at low density sites can explain declines in reproductive activity.

Because direct physical contact is necessary for copulation and queen conch are slow moving, the density of mature adults within localized queen conch populations is a critical and complex factor governing mating success and population sustainability. Although many surveys of conch populations have been completed over the last half century, few studies have simultaneously investigated the relationship between adult density and reproductive rates. Of these, the reported rates of reproductive activity associated with surveys of adult populations have varied extensively across multiple jurisdiction as density is dependent on the scale of measurement and the targeted area surveyed. For example, in The Bahamas where queen conch populations are at densities near 200 adults per hectare, Stoner and Ray-Culp (2000) reported mating and spawning rates of approximately 13 percent and 10 percent, respectively. During continued surveys in fished areas (Berry and Andros Islands) and a no-take reserve (Exuma Cays Land and Sea Park) of The Bahamas, Stoner *et al.* (2012c) observed that, at a mean adult density of 60 conch/ha within the Exuma Cays Land and Sea Park, 9.8 percent of adult queen conch were mating, while at 118 adult conch/ha at Andros Island, approximately 2.4 percent were mating, and at 131 adult conch/ha at the Berry Islands, only 5.9 percent were involved in mating activity. Doerr and Hill (2018) reported reproductive activity in 2.4 percent of adult conch located across the shelf of St. Croix, U.S. Virgin Islands, with the lowest mean density of adult queen conch at survey sites, where reproductive activity occurred, was 63.7 adult conch/ha. Of these studies, the highest densities were reported from Cuba, where at one protected site with densities of 223 adult conch/ha only 0.3 percent of adult queen conch were mating, while at another site with a reported adult density of 497 conch/ha, 3.7 percent of conch were mating, and 2.5 percent were involved in spawning (Cala *et al.* 2013). In Colombia, however, reproductive activity demonstrated by the presence of egg masses was reported in areas with population densities as low as 24 and 11 conch/ha (Gómez-Campo *et al.* 2010). The scale over which these observations were recorded and subsequent interpretation of the spatial dispersion of queen conch are critical to understanding differences among study conclusions.

As previously discussed, queen conch life history traits make them vulnerable to depensatory mechanisms. When reproductive fitness declines such that per capita population growth rate becomes negative, localized extinction may result (Courchamp *et al.* 1999; Allee 1931). Appeldoorn (1988a) initially suggested that queen conch may have a critical density for egg production, and Stoner and Ray-Culp (2000) provided evidence for demographic effects in queen conch populations, reporting a complete absence of mating and spawning in population densities less than 56 and 48 adult conch/ha, respectively. They concluded that the absence of reproduction in low-density populations was primarily related to encounter rate and noted that reproductive activity reached an asymptotic level near 200 adult conch/ha (Stoner and Ray-Culp 2000). Based on these studies, 50 adult conch/ha is generally accepted as the minimum threshold required to achieve some level of reproductive activity within a given conch population (Gascoigne and Lipcius 2004; Stoner and Ray-Culp 2000; Stephens and Sutherland 1999; Appeldoorn 1995). Conversely, Delgado and Glazer (2020) reported the highest adult queen conch threshold densities below which no reproduction was observed, with no mating occurring at aggregation densities below 204 adult conch/ha and no spawning at aggregation densities below 90 adult conch/ha. Given the highly aggregated nature of queen conch (Glazer and Kidney 2004; Glazer *et al.* 2003), managing for minimum cross-shelf densities (*i.e.,* 100 adult conch/ha) does not specifically protect the high-density spawning aggregations where most reproduction occurs. Thus, the Delgado and Glazer (2020) contend that queen conch fishery managers should identify and protect high density queen conch spawning aggregations irrespective of cross-shelf densities.

The persistent formation of adult queen conch aggregations may help to sustain some populations as evidenced by long-term intra-aggregation surveys conducted by Delgado and Glazer (2020) in Florida, which show that, as aggregation densities increase both mating and spawning increase, correspondingly. Delgado and Glazer (2020) observed an increase in mating activity, peaking at 71 percent of the aggregation at densities greater than 800 adult conch/ha. In addition, a greater portion of the aggregations were found to have egg-laying females as aggregation density increased. The percentage of aggregations with spawning females reached a peak of just over 84 percent at aggregation densities greater than 600 adult conch/ha (Delgado and Glazer 2020). Similarly, Stoner *et al.* (2012b) reported that mating frequency increased at higher densities of adults in The Bahamas, with a maximum of 34 percent of the population mating at approximately 2,500 adult conch/ha. Repeat visual surveys in the same sites in The Bahamas have provided evidence of this susceptibility, revealing that adult densities in the Exuma Cays Land and Sea Park have declined significantly over 22 years due to lack of recruitment (Stoner *et al.* 2019). Stoner *et al.* (2019) further concluded that most conch populations in The Bahamas are currently at or below critical densities for successful mating and reproduction and that significant management measures are needed to preserve the stock. Similar long-term declines of reproductively active adult conch have been reported within the Port Honduras Marine Reserve in southern Belize. Densities of conch in the Port Honduras Marine Reserve (no-take zone) have been declining since 2009, falling below

88 conch/ha by 2013, decreasing further to fewer than 56 adult conch/ha in 2014 (Foley 2016, unpublished. cited in, Foley and Takahashi 2017). If queen conch, particularly females, do not have the opportunity to mate and spawn to their full potential, fewer offspring are produced per individual, which is likely to lead to a decrease in the per capita population growth rate (Gascoigne *et al.* 2009). Therefore this is a critical consideration in assessing the sustainability of conch populations. As discussed above, although the observed minimum reproductive density thresholds are highly variable, queen conch populations are recommended to be managed to maintain a threshold density of 100 adult conch/ha (Prada 2017). A density value of 100 adult conch/ha is recommended as a minimum reference threshold for successful reproduction, following a recommendation from the Queen Conch Expert Workshop, held in May 2012 in Miami, Florida (FAO 2012). The Regional Queen Conch Fisheries Management and Conservation Plan (Prada 2017) and the United Nations Environment Programme (UNEP) have both adopted 100 adult conch/ha as the minimum density threshold to avoid significant impacts to recruitment (UNEP 2012). Unfortunately, many queen conch populations do not meet the conditions necessary for successful reproduction and sustainability because adult queen conch densities in most jurisdictions are below 100 adult conch/ha (see *Status of the Population* below).

Population Structure and Genetics

Early studies using allozymes (variant forms of the same enzyme) to examine the genetic structure of queen conch implied high levels of gene flow, but also showed isolated genetic structure for populations either at isolated sites or at the microscale level.

Mitton *et al.* (1989) collected samples from nine locations across the Caribbean including Bermuda, Turks and Caicos, St. Kitts (St. Christopher) and Nevis, St. Lucia, the Grenadines, Bequia Island, Barbados, and Belize, and reported high gene flow as well as genetic differentiation at all spatial scales. For example, they found that queen conch in Bermuda and Barbados were genetically isolated from the rest of the sampled locations. Yet, they also found that conch sampled at two geographically close locations (*i.e.,* Gros Inlet and Vieux Fort) in St. Lucia had significant genetic differentiation despite being separated by only 40 km (Mitton *et al.* 1989). Conch sampled in the United States (Florida Keys) also demonstrated significant spatial and temporal genetic variation, although genetic similarity among populations was high (Campton *et al.* 1992). Tello-Cetina *et al.* (2005) sampled conch from four sites along the Yucatan Peninsula and reported relatively high levels of intrapopulation diversity and little geographic differentiation, with the population from the Alacranes Reef having the furthest genetic distance from the other three sites.

Several studies conducted in Jamaica reported similar levels of connectivity and genetic differentiation. Blythe-Mallett *et al.* (2021) sampled multiple zones across Pedro Bank, an important commercial fishing ground southwest of Jamaica, and identified two possible subpopulations, one on the heavily exploited eastern end of the bank and another on the central and western end. Pedro Bank is directly impacted by the westward flow of the Caribbean current and could serve as the primary recruitment area of queen conch larvae from upstream locations (Blythe-Mallett *et al.* 2021). Pedro Bank is geographically isolated and receives limited gene flow from mainland Jamaica and other historically important offshore populations within the Jamaican Exclusive Economic Zone (EEZ) (Kitson-Walters *et al.* 2018). The high degree of genetic relatedness within conch sampled from Pedro Bank likely indicates that the populations are sufficiently self-sustaining (Kitson-Walters *et al.* 2018), but still receive larvae from upstream sources that contribute to the population on the eastern end of the bank (Blythe-Mallett *et al.* 2021).

Studies conducted in the Mexican Caribbean have also detected a spatial genetic structure for queen conch populations. Pérez-Enriquez *et al.* (2011) identified a genetic cline along the southern Mexican Caribbean to north of the Yucatan Peninsula, with a reduced gene flow observed between the two most distant locations, representing an increase in genetic differences as geographic distance increased. These authors suggested that since the overall genetic diversity varied from medium to high values, the queen conch had not reached genetic level indicative of a population bottleneck (Pérez-Enriquez *et al.* 2011). Machkour-M'Rabet *et al.* (2017) used updated molecular markers to analyze queen conch from seven sites within the same area and observed similar results with the exception of the apparent genetic isolation of queen conch collected on Isla Cozumel, which was not detected by Pérez-Enriquez *et al.* (2011). The results of this study led Machkour-M'Rabet *et al.* (2017) to conclude that populations of queen conch along the Mesoamerican Reef are not panmictic and demonstrate genetic patchiness indicative of homogeneity among sample areas, providing further evidence for the pattern of isolation by distance.

Márquez-Pretel *et al.* (2013) found four genetic stocks reflecting heterogeneous spatial mosaics of marine dispersion between the San Andres archipelago and the Colombian coastal areas. Queen conch in these areas exhibited an overall deficit of heterozygosity related to assortative mating or inbreeding, potentially leading to a loss in genetic variation (Márquez-Pretel *et al.* 2013).

A broad-ranging spatial genetic study of queen conch across the greater Caribbean using nine microsatellite DNA markers (Truelove *et al.* 2017) found that basin-wide gene flow was constrained by oceanic distance that served to isolate local populations. Truelove *et al.* (2017) genetically characterize 643 individuals from 19 locations including Florida, The Bahamas, Anguilla, the Caribbean Netherlands (*i.e.,* Bonaire, St Eustatius, and Saba), Jamaica, Honduras, Belize, and Mexico, and determined that queen conch do not form a single panmictic population in the greater Caribbean. The authors reported significant differentiation between and within jurisdictions and among sites irrespective of geographic location. Gene flow was constrained by oceanic distance and local populations tended to be genetically isolated.

Recently, Douglas *et al.* (2020) conducted a genomic analysis using single nucleotide polymorphisms from two northeast Caribbean Basin Islands (Grand Bahama to the north and Eleuthera to the south). The authors identified distinct populations on the south side of Grand Bahama Island and the west side of Eleuthera Island potentially due to larval separation by the Great Bahama Canyon. Despite extensive spatial separation of sampled populations around Puerto Rico, Beltrán (2019) concluded that there was little genetic structure in the conch population. However, genetic analyses of four visually characterized phenotypes showed that one morph (designated as Flin) was slightly differentiated from the other phenotypes sampled. Further research into this aspect of queen conch biology is needed to examine the degree of differentiation between phenotypes and to determine if they share the same distribution across the Caribbean region. The results presented in all of these studies provide evidence that variation in marine currents, surface winds, and

meteorological events can either promote larval dispersal or act as barriers enhancing larval retention.

Status of the Population

The SRT reviewed data from 39 jurisdictions throughout the species' range and developed several interrelated assessments that were used to inform the status of the queen conch. First, the SRT compiled cross-shelf adult conch density estimates for each jurisdiction in the species' range (see *Density Estimates* below). Second, the SRT developed spatially explicit habitat estimates (see *Conch Habitat Estimate* below) for each jurisdiction. The habitat estimates were necessary for the SRT to be able to estimate total abundance and evaluate population connectivity. Third, the SRT extrapolated each jurisdiction's conch density estimate in the surveyed areas to the jurisdiction's total estimated habitat area to generate population abundance estimates at a jurisdiction-level (see *Abundance Estimates* below). Last, the SRT evaluated population connectivity to elucidate the potential impacts of localized low conch densities on population-wide connectivity patterns (see *Population Connectivity* below). As described above, queen conch reproductive failure has been attributed in many cases to declines in population densities. There are two density thresholds (*i.e.,* <50 adult conch/ha and >100 adult conch/ha) that are well established in the scientific literature and are generally accepted by fisheries managers. The scientific literature indicates that when adult queen conch numbers decline to fewer than 50 adult conch/ha there are significant implications for finding a mate and thus reproductive activity and population growth. When adult queen conch density are reduced to this degree, reproductive activity is limited or non-existent. Along those same lines, the available literature suggests that populations with adult queen conch densities greater than 100 adult conch/ha are sufficient in most cases to promote successful mate finding and thus reproductive activity and population growth. The 100 adult conch/ha density threshold recommendation was prepared by the Queen Conch Expert Working Group (Miami, Florida, May 2012), and subsequently accepted by consensus by fisheries managers participating in the WECAFC/Caribbean Fishery Management Council (CFMC)/Organization of the Fisheries and Aquaculture Sector of the Central American (OSPESCA)/CRFM Working Group, as minimum reference point or ''precautionary principle'' required to sustain conch populations (Prada *et al.* 2017).

Considering this information, including the best available scientific and commercial information on queen conch reproduction, depensatory processes, and population growth, the SRT applied the following density thresholds to queen conch populations:

- Populations with densities below the 50 adult conch/ha threshold are considered to be not reproductively active due to low adult encounter rates or mate finding. This threshold is largely recognized as an absolute minimum required to support mate finding and thus reproduction.
- Populations with densities between 50–99 adult conch/ha are considered to have reduced reproductive activity resulting in minimal population growth.
- Populations with densities above 100 adult conch/ha are considered to be at a density that supports reproductive activity resulting in population growth.

These density thresholds were used to evaluate the status of queen conch populations in each jurisdiction, and to assess how heterogeneous fishing pressure and localized depletion (*i.e.,* low adult queen conch densities, leading to reduced egg and larval production) effect population connectivity throughout the species' range. The results of these assessments are described in the following sections.

Density Estimates

In order to develop estimates of queen conch density, the SRT conducted a comprehensive, jurisdiction-by-jurisdiction search to identify literature pertaining to the status of queen conch throughout its range. The SRT reviewed the best scientific and commercial information including all relevant published and gray literature, databases, and reports. The SRT organized this information and data by jurisdiction and searched systematically for information on queen conch densities. The SRT also considered relevant information provided during the public comment period (84 FR 66885, December 6, 2019). The SRT's goal was to compile robust, cross-shelf adult queen conch density estimates for each jurisdiction. To the extent possible, the SRT focused on the most recent studies where randomized sampling was conducted across broad areas of the shelf, including a range of habitats and depths. For jurisdictions where such studies were not available, the SRT used available density information. For example, in some cases the only available data were single point estimates from a study or workshop report. For nine jurisdictions where no density information was available (*i.e.,* Curaçao, Costa Rica, Dominica, Grenada, Montserrat, St. Kitts and Nevis, St. Martin, St. Barthelemy, and Trinidad and Tobago), the SRT approximated queen conch density estimates based on density estimates for the nearest neighboring jurisdiction that had information available. The SRT used available qualitative information on the general population status (*e.g.,* severely depleted, moderately fished, and lightly exploited) to ensure that approximating queen conch densities based on a jurisdiction's nearest neighbor was reasonable (for detailed discussion on methods see Horn *et al.* 2022).

From each study or report compiled, the SRT noted the location, year of the survey (1996 to 2022), total area surveyed, status of the area surveyed (fished or unfished), and the survey methods used (see Table 2 in Horn *et al.* 2022). The SRT extracted information on the overall density or the adult density (or both) of queen conch, and recorded these in a spreadsheet and standardized to a per hectare (ha) unit (see S5 in Horn *et al.* 2022). For jurisdictions with large shelf areas (*e.g.,* The Bahamas, Belize, Mexico) densities were recorded at the sub-jurisdiction level (*e.g.,* as defined by region, bank, or cardinal direction from an island). For smaller jurisdictions (*e.g.,* those within the Lesser Antilles), queen conch densities were typically reported for an entire island or group of islands. The status review report (Horn *et al.* 2022) provides additional detail on how the SRT estimated queen conch population densities.

The adult queen conch density estimates were also plotted by their geographical locations (see Figure 6 in Horn *et al.* 2022). The results revealed that several jurisdictions, mostly located in the north-central to the southwestern Caribbean (*i.e.,* Turks and Caicos, The Bahamas' Cay Sal Bank and Jumentos and Ragged Cays, Cuba, Jamaica, Nicaragua, Costa Rica), tended to have higher adult conch population densities (>100 adult conch/ha) indicating that these populations are reproductively active and are supporting successful population growth. There are a two jurisdictions (*i.e.,* St. Eustatius and St. Kitts and Nevis) within the eastern Caribbean region and a single jurisdiction (*i.e.,* Cayman Islands) in the central Caribbean region, that have moderate adult conch population densities (<100 adult conch/ha, but >50 adult conch/ha). In the eastern Caribbean only two jurisdictions (St. Lucia and Saba) have queen conch densities greater than 100 adult conch/ha. With a few exceptions, the rest of

the jurisdictions not previously mentioned above (*i.e.,* Aruba, Anguilla, Antigua and Barbuda, Barbados, Belize, Bermuda, Bonaire, The Bahamas' Western and Central Great Banks and Little Bahama Bank, British Virgin Islands, Colombia's Serranilia and Quitasueno Banks, Curaçao, Dominica, Dominican Republic, Grenada, Guadeloupe, Haiti, Martinique, Mexico, Montserrat, Panama, Puerto Rico, St, Barthelemy, St. Martin, St. Vincent and Grenadines, Trinidad and Tobago, United States (Florida), U.S. Virgin Islands, and Venezuela), have queen conch densities near or below the minimum adult queen conch density threshold (<50 adult conch/ha) required to support reproductive activity. These jurisdictions represent approximately 27 percent (19,626 km^2) of the estimated habitat available in the Caribbean region.

Conch Habitat Estimate

To increase the SRT's understanding of the status of queen conch throughout its range, the SRT estimated conch habitat and prepared a spatially explicit map for the Caribbean region. This spatially explicit conch habitat estimate was necessary in order for the SRT to estimate total abundance and conduct the population connectivity analysis. To develop an estimate of habitat area, the SRT conducted an extensive search for the best available habitat information, including estimated conch fishing bank areas, and contacted researchers and institutions involved in various mapping efforts. The SRT determined that a 0–20 m depth habitat area represented a best estimate because the available information indicates that conch are found in shallow waters generally less than 20 m depth (Berg Jr. *et al.* 1992; Boidron-Metairon 1992; Delgado and Glazer 2020; Salley 1986; Stoner and Sandt 1992; Stoner and Schwarte 1994). The most comprehensive and suitable publicly-available habitat map that could be found was the Millennium Coral Mapping Project, which specifies 1,359 8-km by 8-km polygons based on coral reefs locations (Andréfouët *et al.* 2001). The polygons included seagrass and coral reef locations where queen conch occur (Kough 2019; Souza Jr. and Kough 2020). To ensure that all spawning sites, including deep water spawning sites (*i.e.,* at depths greater than 20 m), were included in the dataset, the SRT verified the habitat map with spawning sites reported in the available literature (Berg Jr. *et al.* 1992; Brownell 1977; Cala *et al.* 2013; Coulston *et al.* 1987; D'Asaro 1965; Davis *et al.* 1984; de Graaf *et al.* 2014; García E. *et al.* 1992; Gracia-Escobar *et al.* 1992; Lagos-Bayona *et al.* 1996; Márquez-Pretel *et al.* 1994; Meijer zu Schlochtern 2014; Pérez-Pérez and Aldana-Aranda 2003; Randall 1964; Stoner *et al.* 1992; Truelove *et al.* 2017; Weil and Laughlin 1984; Wicklund *et al.* 1991; Wilkins *et al.* 1987; Wynne *et al.* 2016).

Following this review, the SRT included 13 additional deep spawning sites for Venezuela, Cuba, The Bahamas, U.S. Virgin Islands, Turks and Caicos, Saba, Colombia, Belize, Honduras, and Jamaica (Brownell 1977; Cala *et al.* 2013; Davis *et al.* 1984; De Graaf *et al.* 2014; Lagos-Bayona *et al.* 1996; Randall 1964; Stoner *et al.* 1992; Truelove *et al.* 2017; Weil and Laughlin 1984; Wicklund *et al.* 1991). The SRT also incorporated 13 shallow polygons not initially present in the dataset for St. Eustatius, U.S. Virgin Islands, Colombia, United States (Florida), Mexico, Jamaica, Saba, Bonaire and The Bahamas (Meijer zu Schlochtern 2014; Randall 1964; Coulston *et al.* 1987; Gracia-Escobar *et al.* 1992; Márquez-Pretel *et al.* 1994, Truelove *et al.* 2017). Overall, the habitat area estimates from the data source selected by the SRT were much lower than total seagrass area estimates, and generally ranged from approximately 30 to 100 percent of the estimated conch fishing banks and incorporated known deep-water spawning sites (see Figure 5 in Horn *et al.* 2022). Thus, the SRT concluded, and we agree, that its habitat estimates were likely conservative, but suitable for analysis of general connectivity patterns and population abundance estimates.

Abundance Estimates

The SRT estimated abundance by extrapolating adult queen conch density estimates across the estimated habitat areas. However, the SRT used these abundance estimates with caution because the available density estimates on which they are based were dated, had sparse data, or were conducted in small areas. In some cases, the number of available surveys with queen conch densities were also limited. For example, the very high estimated queen conch abundance from Cuba is particularly questionable due to the small sample size of survey and the large shelf area over which the survey density data was expanded. Where no survey data were available (*i.e.,* Costa Rica, Curaçao, Dominica, Grenada. St. Kitts and Nevis, St. Barthelemy, St. Martin, Monserrat, and Trinidad and Tobago), density estimates were approximated from the nearest neighboring jurisdiction, and thus their abundance estimates are highly uncertain. The estimated conch habitat areas also introduce some uncertainty in the estimates, and the resolution of the SRT's habitat map is coarse (for additional discussion on methods see Horn *et al.* 2022).

Despite the aforementioned constraints, the SRT estimated jurisdiction-level conch abundance by multiplying available conch density estimates by estimated habitat areas. This approach assumed the range of jurisdiction-level survey-generated conch density estimates is representative of the range of conch densities across the entirety of each jurisdiction's estimated habitat area. When available, multiple surveys were used to better capture the substantial uncertainty inherent in this approach. In jurisdictions where comprehensive surveys were carried out across all areas of the shelf, the mean estimates reported from each survey typically take into account any sub-jurisdiction level variability in conch densities; however, in cases where extrapolations were based on only a few reported density estimates or sampling that was done over a small area, this assumption may be violated. In most studies, conch densities were surveyed across various habitat types (including those types supporting few or no conch) and weighted averages were reported. Thus, those survey means account for areas of both high and low density. The SRT also made efforts to quantify the uncertainty inherent in basing the abundance estimates on surveys that used different methodologies, occurred over a wide time span and over a range of spatial scales. The results suggest that adult queen conch abundance is estimated (*i.e.,* the sum of median estimated abundance across all jurisdictions) to be about 743 million individuals (90 percent confidence interval of 450 million to 1.492 billion). Adult queen conch abundance was estimated to be between ten and 100 million individuals in six jurisdictions, and 15 jurisdictions had median estimated abundances between one and ten million adults. The estimated adult abundance was less than one million adults in each of 20 jurisdictions, with three of those jurisdictions estimated to have populations of fewer than 100,000 adult queen conch. Seven jurisdictions (*i.e.,* Cuba, The Bahamas, Nicaragua, Jamaica, Honduras, the Turks and Caicos Islands, and Mexico) accounted for 95 percent of the population of adult queen conch. Within the species' range, Cuba, The Bahamas, and Nicaragua, are estimated to have the most conch habitat area (56 percent) and the majority of adult queen conch

population abundance (84.1 percent). In addition, Jamaica, Honduras, Turks and Caicos, and Mexico are the other major contributors, in terms of both habitat area and conch abundance (see Figures 10, 11, in Horn *et al.* 2022). Twenty-one jurisdictions make up 95 percent of the total estimated conch habitat area, while only seven jurisdictions (i.*e.,* Cuba, the Bahamas, Nicaragua, Jamaica, Honduras, Turks and Caicos, and Mexico) make up 95 percent of the total estimated abundance. This indicates that conch are depleted in many jurisdictions with large habitat areas, and the remaining populations are concentrated in just a few jurisdictions (Horn *et al.* 2022).

Population Connectivity

To elucidate the potential impacts of localized low adult conch densities on population-wide connectivity patterns, the SRT evaluated queen conch population connectivity. The population connectivity model was based on a simulation of the entire pelagic phase of the conch early life cycle, from the hatching of eggs to the settlement of conch veligers in suitable habitats (Vaz *et al.* 2022). This population connectivity evaluation offers insights into how overall exchange of larvae across the species' range has been impacted by overexploitation of adult conch in certain areas. Two sets of simulations were conducted. First, the connectivity patterns were simulated for uniform egg releases across the entire Caribbean region (from 8°N to 37°N and from 98°W to 59°W); this represents an ''unexploited spawning'' historical density scenario in which all jurisdictions have the same potential for reproductive levels, on a per-area basis. A second simulation of connectivity patterns representing an ''exploited'' scenario, incorporated realistic localized density patterns by scaling the number of eggs released (on a per-area basis, by jurisdiction or region) by the adult conch densities, and accounts for Allee effects at very low densities (<50 adult conch/ha). Two different hydrodynamic models were used to simulate larvae dispersal through oceanic processes (*e.g.,* oceanic circulation, velocities, sea surface temperatures) (For detailed discussion on methods see Horn *et al.* 2022).

The comparison of the two sets of simulations illustrates the population-level impact of heterogeneous patterns in densities of adult conch (see Figure 12 in Horn *et al.* 2022). The most apparent differences in the two sets of simulations emerged from the fact that many of the jurisdictions had conch densities well below the critical threshold for reproduction (<50 adult conch/ha) and were considered to be reproductively non-viable. Within the ''exploited'' scenario, the SRT assumed no larvae were spawned from these jurisdictions; subsequently they could only act as sinks (*e.g.,* populations that are not contributing or receiving larvae) for queen conch larvae to settle, but were not sources for themselves or other locations. Connectivity patterns emerging from ''exploited'' scenario were thus drastically different (see Figure 12 in Horn *et al.* 2022). For example, due to their position up current and their small shelf areas, the Lesser Antilles (*i.e.,* Leeward and Windward Islands) were estimated to be historically important for contributing larval input to other jurisdictions downstream (*i.e.,* to the west). However, due to low adult conch densities in many of these jurisdictions, they are no longer expected to contribute larvae in the ''exploited'' scenario, resulting in reduced larval input into the Greater Antilles and Colombia.

Other patterns in comparing the ''unexploited'' versus and ''exploited'' simulations were more subtle, but would be locally significant. For example, historically the Turks and Caicos Islands were estimated to have received many larvae from the Dominican Republic and Haiti, which would have been important given its low local retention rate (see Figure 12 in Horn *et al.* 2022). However, due to low adult conch densities in these source jurisdictions, the ''exploited'' scenario suggests that Turks and Caicos Islands are now entirely dependent on local production, and a substantial percentage of larvae are exported to The Bahamas. Likewise, the ''unexploited'' simulation suggests that the United States (Florida) was dependent on relatively high local retention, with the most significant external source of larvae coming from Mexico (see Figure 12, left column in Horn *et al.* 2022). Both Florida and Mexico are thought to now have very low adult queen conch densities (<50 conch/ha) unable to support any reproductive activity; in other words, Florida currently has no significant upstream or local sources of larvae. This could explain why, despite a moratorium on fishing for several decades, queen conch in Florida waters have been slow to recover (Glazer and Delgado 2020).

The SRT also found that some jurisdictions acted as important ''connectors'' between different regions of the population as a whole, and could be important for maintaining genetic diversity. The importance of a jurisdiction as a ''connector'' was quantified mathematically as a Betweenness Centrality (BC) value on a scale of 0 to 1. The BC value measures the relative influence of a jurisdiction's conch reproductive output on the flow of larvae (*e.g.,* larvae dispersed and retained) among jurisdictions range wide. The median of all calculated BC values (approximately 0.05–0.06) was selected to distinguish between high versus low BC values (Vaz *et al.* 2022), which is appropriate given that the BC values are a relative scale of non-normally distributed values. Jurisdictions with high BC values (above the median) act as ecological corridors that facilitate larval flow and are essential to preserve population connectivity. The ''unexploited'' scenario identified Jamaica, Cuba, and the Dominican Republic as having a high BC value, and to a lesser extent Puerto Rico and Colombia (see Figure 13 in Horn *et al.* 2022). This was not surprising given the relative central location of these jurisdictions and the exposure of their shelves to a diversity of ocean currents, which allows them to be ''connectors'' of larval flow. In contrast, jurisdictions located at the most up current (*e.g.,* Lesser Antilles) or down current locations (*e.g.,* Florida, Bermuda), or those located at the fringes of the region (*e.g.,* Panama, Bermuda) were not identified as important connectors of larval flow and, as expected, had low BC values (below the median) (see Figure 13 in Horn *et al.* 2022).

Jurisdictions with documented low adult conch densities influenced the estimated connections between jurisdictions when comparing the ''unexploited'' to ''exploited'' scenarios. One of the biggest differences was the absence of reproductive output (*e.g.,* larval recruits) from Puerto Rico, Dominican Republic, and Haiti. These jurisdictions had a high BC value (*i.e.,* above 0.05–0.06) under the ''unexploited'' scenario, but have a low BC value (*i.e.,* below 0.05) under the ''exploited'' scenario because they no longer function as important connectors (see Figure 13a in Horn *et al.* 2022). An almost complete break in the connectivity between the eastern and western Caribbean region was apparent in the ''exploited'' scenario, with the Dominican Republic receiving limited larvae from Cuba, Turks and Caicos, and from a deep mesophotic reef off the west coast of Puerto Rico. When those jurisdictions were removed from the chain of larval supply in the ''exploited'' scenario, Jamaica and Cuba remained important connectors in the

western portion of the range, and some of the offshore banks in Colombia remained functional connectors (see Figure 13 in Horn *et al.* 2022). While Vaz *et al.* (2022) indicates that connections have been lost in several locations due to the existence of low adult conch densities, points of connection likely still exist, albeit reduced, which allow some exchange of larvae and maintenance of some genetic diversity.

Localized patterns of conch overfishing can also influence genetics. The SRT estimated genetic distance between jurisdictions and then compared those to a Caribbean-wide genetic study (Vaz *et al.* 2022; Truelove *et al.* 2017). The ''unexploited'' scenario corresponded well to the patterns observed by Truelove *et al.* (2017) given that larvae within each region identified by the Truelove *et al.* (2017) were most likely locally originated. The exception was the high probability of larval exchange between The Bahamas and Turks and Caicos Islands and the Greater Antilles (see Figure 12 in Horn *et al.* 2022). In the ''exploited'' scenario, six of the 12 jurisdictions sampled by Truelove *et al.* (2017) were not reproductively active (Vaz *et al.* 2022). Due to the lack of spawning, it was expected that not all connectivity patterns could be reproduced. Indeed, in this case, the high self-settlement observed for Mexico, Belize, and Florida was absent due to the lack of reproductive activity (Vaz *et al.* 2022). Subsequently, the genetic evaluation focused only on the results of the ''unexploited'' scenario since the results of the ''exploited'' scenario were insignificant due to the reduced number of data points (*i.e.,* jurisdictions). The results suggest that queen conch populations exhibit an isolation-by-distance pattern (Vaz *et al.* 2022).

Summary of Factors Affecting Queen Conch

As described above, section 4(a)(1) of the ESA and NMFS' implementing regulations (50 CFR 424.11(c)) state that we must determine whether a species is endangered or threatened because of any one or a combination of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) overutilization for commercial, recreational, scientific, or educational purposes; (C) disease or predation; (D) inadequacy of existing regulatory mechanisms; or (E) other natural or manmade factors affecting its continued existence. The SRT summarized information regarding each of these threats according to the factors specified in section 4(a)(1) of the ESA. We conclude the SRT's findings with respect to the ESA section 4(a)(1) listing factors are well-considered and based on the best available scientific information, and we concur with their assessment. Available information does not indicate that destruction, modification or curtailment of the species' habitat or range and disease or predation are operative threats on this species; therefore, we do not discuss those further here. More details with respect to the available information on these topics can be found in the status review report (Horn *et al.* 2022). This section briefly summarizes the SRT's findings regarding the following factors: overutilization for commercial, recreational, scientific, or educational purposes, inadequacy of existing regulatory mechanisms; and other natural or manmade factors affecting its continued existence.

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Description of the Fishery

Queen conch have been harvested for centuries and are an important fishery resource for many nations in the Caribbean and Central America. The most common product in trade is queen conch meat. The FAO landings data indicate that the total annual landings in 2018 (most recent year data are available) for all jurisdictions is estimated to be 33,797 metric tons (mt) (see S1; Horn *et al.* 2022). Prada *et al.* (2017) estimated production of queen conch meat for most jurisdictions is approximately 7,800 mt annually. However, total conch production is difficult to estimate because of incomplete and incomparable data across jurisdictions (Prada *et al.* 2017). The majority of the queen conch meat is landed in Belize, The Bahamas, Honduras, Jamaica, Nicaragua, and Turks and Caicos. In the artisanal fishery, queen conch are sometimes landed with the shell, but mostly as unclean meat with the majority of organs still attached. Additionally, local markets and subsistence fishing of queen conch is often not monitored or not included in catch data. In some jurisdictions, the subsistence and locally marketed catches are small, but they can be high in some jurisdictions (Prada *et al.* 2017). Furthermore, the best estimates of unreported catch and illegal harvest is most likely an underestimate, yet accounts for about 15 percent of total annual catch (Horn *et al.* 2022; Pauly *et al.* 2020). Queen conch meat production shows a negative trend over time and the decrease can largely be attributed to overfishing (Prada *et al.* 2017). Some stocks have collapsed and have yet to recover (Theile 2005; Aldana-Aranda *et al.* 2003; Appeldoorn 1994b).

Queen conch shells are also used as curios and in jewelry, but are generally of secondary economic importance. Shells may be offered to tourists in its natural or polished form (Prada *et al.* 2017). The large pinkish queen conch shells are brought to landing sites in only a few places. In most cases, shells are discarded at sea, generating several underwater sites with piles of empty conch shells. According to Theile (2001) from 1992 to 1999, a total of 1,628,436 individual queen conch shells, plus 131,275 kg of shells were recorded in international trade. Assuming that each queen conch shell weighs between 700 and 1500 g, the total reported volume of conch shells from 1992 to 1999 may have been equivalent to between 1,720,000 and 1,816,000 shells (Prada *et al.* 2017). In addition, queen conch pearls are valuable and rare, but their production and trade remain largely unknown across the region. In Colombia, one of the few jurisdictions with relevant data, exports of 4,074 pearls, valued around USD 2.2 million, were reported between 2000 and 2003 (Prada *et al.* 2009). With the reduction of the fishing effort in Colombia, the number of exported queen conch pearls declined from 732 units in 2000 to 123 units in 2010 (Castro-González *et al.* 2011). Japan, Switzerland, and the United States are the main queen conch pearl importers (Prada *et al.* 2017). Lastly, in recent years, operculum trade has developed, but similarly little is known about it. China is the major importer and it is believed opercula are used in traditional Chinese medicine. In 2020, the U.S. Fish and Wildlife Service (USFWS) confiscated a shipment in-transit from Miami, Florida to China (weighing 1 mt) of conch products, consisting largely of opercula. The shipment was confiscated by USFWS for CITES and U.S. Lacey Act violations (GCFINET, June 10, 2020).

Indications of Overutilization

In broad terms, a sustainable fishery is based on fishing ''excess production'' and supported by a stable standing stock or population. In a sustainable fishery, the abundance of the fished population is not diminished by fishing (*i.e.,* new production replaces the portion of the population removed by fishing). Under ideal conditions, the age structure of a fished population is also stable, for example, without truncation of the largest, most productive members of the

population. There are a variety of indications when a fishery resources is overutilized. Declines in fishing catches or landings with the same amount of fishing effort (*i.e.,* CPUE) can indicate a population is being over-utilized. Similarly, changes in spatial distribution (*e.g.,* depletions near fishing centers or depletions in more easily accessible shallow water habitats) likely indicate overutilization. Additionally, a reduction of genetic diversity or a reduction in maximum size achieved can indicate severe overutilization. Drastic differences between population densities found in protected, non-fishing reserves and those found in fishing areas can also indicate overutilization, even though the reserve may serve to moderate the effects of overutilization to a certain extent. These factors were all considered in the SRT's assessment of the threat and impact of overutilization on the status of the queen conch. Reductions in distribution as well as overall population levels can be especially problematic for queen conch because they require a minimum local adult density to support reproductive activity.

In particular, available density estimates provide an initial indication that queen conch may be suffering from overutilization. Approximately 25 (of 39) jurisdictions have adult conch densities below the minimum cross-shelf density (50 adult conch/ha) at which reproductive activity largely ceases. It should be noted, however, that this minimum density pertains to density within reproductive populations and not necessarily cross-shelf densities. Overall, however, the available data suggest that queen conch has been significantly depleted throughout its range with only a few exceptions. The jurisdictions of Saba, St. Lucia, Colombia's Serrana Bank, Nicaragua, Jamaica's Pedro Bank, Costa Rica, Cuba, The Bahamas' Cay Sal Bank and Jumentos and Ragged Cays, and Turks and Caicos are the only jurisdictions that have cross-shelf densities above the 100 adult conch/ha threshold to support reproductive activity resulting in population growth discussed above. It is likely that populations residing in inaccessible areas (difficult to fish) may support some level of mating success and therefore recruitment. However, in these jurisdictions surveys are not comprehensively performed, and there is evidence of local overutilization of some populations.

The Landings Data

The SRT evaluated landings data from two international databases. The FAO maintains data supplied by member nations in their FishStat database. The queen conch data represent the landings of commercial fisheries, generally artisanal and industrial, in the Western Tropical Atlantic; however, discussions are continuing among scientific working groups regarding the inadequacy and inconsistency of reporting in this database (FAO Western Central Atlantic Fishery Commission 2020). For example, the reports from each jurisdiction vary depending on how much processing has been done (FAO Western Central Atlantic Fishery Commission 2020). Data are reported either in live weight, which equates to whole animals, or in various grades of cleaned weight (*e.g.,* dirty conch (unprocessed, removed from shell), 50 percent (operculum and viscera removed), 65 percent (operculum, viscera, and ''head'' (*i.e.,* eyes, stalks, and proboscis) removed), 85 percent (all of the above plus verge, mantle, and part of the skin removed) and 100 percent cleaned (fillet, *i.e.,* only the pure white meat remains)). The types of submitted landings have not always been clearly defined and there is a continuing effort to encourage jurisdictions to submit consistent queen conch fisheries data and use standardized conversion factors so data from different reports can be compared more reliably (FAO Western Central Atlantic Fishery Commission 2020).

Additional complications in interpreting FishStat data relate to unexplained changes in local conditions or influences on the fisheries. Interannual changes in landings may be due to changes in availability of queen conch (*i.e.,* lowered CPUE), but they may also be due to changes in regulations or enforcement or unfavorable environmental conditions (*e.g.,* hurricane disruptions of fishing). Without some concomitant data on fishing effort, it is difficult to interpret changing landings.

The second international repository of conch data is maintained by the CITES. The CITES database records exports and imports of internationally traded queen conch. The CITES data do not include commercial catches for local markets and can suffer from many of the same shortcomings as the FAO FishStat data. Neither database includes spatial information that allows analysis of local effects on populations. In addition to providing data for international obligations, most jurisdictions have widely varying capabilities for collecting complete data that would adequately characterize all fishing sectors. They primarily have focused on commercial fishing, either industrial or artisanal. Jurisdictions have typically inadequately recorded data from the artisanal commercial fishing sector since landing sites can be too numerous to effectively monitor with the limited number of fishing inspectors employed, and self-reporting is often incomplete. Generally, information is lacking from most jurisdiction throughout the Caribbean region on recreational or subsistence fishing, which includes sectors that generally fish for personal consumption, as well as minor sales or barter of catches. Gaps also occur in some data collected on catches destined for local consumption, either by family, neighbors or restaurants. An additional complication with interpreting ecological and fishery independent data is that different metrics tend to be used. Commercial landings are reported in weight and ecological surveys typically count numbers and estimate or measure lengths of queen conch. Conversion factors may be jurisdiction- or site-specific, so comparing reported landings to density surveys has inherent difficulties and opportunities for miscalculation.

In an effort to fill the gaps in total reported queen conch landings, the SAU program (Fisheries Centre, Univ. of British Columbia, *www.seaaroundus.org*) developed a protocol to reconstruct landings histories for most of the jurisdictions where queen conch is fished. The SAU scientists assembled available data on landings, supplemented with additional sociological and fishing data and identified alternative information sources for missing data by consulting with local experts and additional literature, to produce their best estimates of total landings from all fishing sectors. The SAU data includes subsistence fishing, recreational fishing, and small-scale artisanal fishing that are generally poorly documented by other sources. For these reasons, the SRT concluded the SAU data are the most comprehensive and is the best available data for understanding the magnitude and impact of all fishing pressure including subsistence, recreational, and artisanal fishing on local stocks of queen conch. The SRT compared the reconstructed landings from the SAU project (Pauly *et al.* 2020) to the reported FAO landings for queen conch in the western Caribbean to examine the magnitude of potential differences (see Figure 14 in Horn *et al.* 2022). Based on this comparison, early reports of FAO

landings were greatly underestimated. From 1950–59, unreported landings averaged 93.8 percent of the total SAU-reconstructed queen conch landings (see Figure 14 in Horn *et al.* 2022). For regional landings, the mean percent of unreported landings varied in each decade, 1960–69: 72.1 percent, 1970–79: 53.0 percent, 1980–89: 42.0 percent, 1990–99: 15.8 percent, 2000–09: 23.0 percent, 2010–16: 23.7 percent. Since about 1990, there were improvements in the correlation between FAO and the SAU-reconstructed landings (ranging from 15–25 percent unreported), but the FAO landings are unlikely to include all of the fishing sectors in each jurisdiction, for the reasons discussed above.

To provide a more meaningful comparison with population estimates, the SAU-reconstructed landings were converted to estimated abundance. For this region-wide comparison, a standard regional conversion factor was used (live weight: 1.283 kg/individual, Thiele 2001); subsequent analyses for specific jurisdictions used location-specific conversion factors where available. When no jurisdiction or site-specific information was available, the SRT used the same standard regional conversion factor. At the peak, regional landings translated into about 32–33 million queen conch per year and, after a slight dip in 2005–2006, landings remained about 30–31 million queen conch per year from 2012–2016, which is the most recent years with complete data (see Figure 14 in Horn *et al.* 2022). Repeatedly in the reports of SAU-reconstructed landings, the landings are stated as conservative, underestimating the likely actual landings. The information cited by the SRT (see S1 in Horn *et al.* 2022) also provides evidence that many jurisdictions are landing significant amounts of juvenile or sub-adult conch, which would be expected to weigh less than 1.283 kg/individual, thus, the converted abundance figures should also be considered an underestimation.

The SRT chose to use the SAU-reconstructed landings, when available, as the best estimate of total landings and used them to compare exploitation rates (*e.g.,* individuals removed) and stock size estimates. If SAU-reconstructed landings data were not available, the SRT used FAO landings data for the comparisons. These data give some indication of the full magnitude of fishing on queen conch across the species' range. The mean landings per year from 1950–2016 show that the 12 highest producing jurisdictions have produced 95 percent of the landings across the region (*i.e.,* Turks and Caicos, The Bahamas, Honduras, and Jamaica, followed by Belize and Nicaragua, and then Dominican Republic, Mexico, Cuba, Antigua and Barbuda, Colombia, and Guadeloupe).

Estimates of Exploitation Rate

Traditional fishery stock assessments use fishery landings data and indices of relative stock abundance to determine exploitation rates. However, few jurisdictions collect adequate information (*e.g.,* catch-per-unit effort data, landings data encompassing all removals) from their queen conch fisheries to develop traditional stock assessment models and associated recommendations for sustainable harvest. An alternative metric using a combination of landings and density surveys has been recommended by expert working groups and fisheries managers to estimate exploitation rates. Using this alternative metric, the working groups and fisheries managers recommend limiting fishing to no more than 8 percent of mean or median fishable biomass (*i.e.,* standing stock) as a precautionary sustainable yield, if the stock density can support successful reproduction (*i.e.,* 100 adult conch/ha) (FAO Western Central Atlantic Fishery Commission 2013). The 8 percent exploitation target seeks to ensure that the population per capita growth rate exceeds the exploitation rate, which in turn ensures population sustainability under controlled harvest. Using exploitation rates as a proxy for sustainable yield targets uses fishery-independent estimates of abundance and fishery-dependent landings data as a substitute for full stock assessments in data-poor fisheries. Additionally, using exploitation rates as a proxy depends on statistically valid sampling to ensure that population extrapolations are an accurate indicator of population status. This approach also depends on quantifying or mapping depths and habitats on which to base extrapolations. The FAO also recommends that the 8 percent exploitation rate be adjusted downward if the mean conch density is below the level required to support successful reproductive activity (100 adult conch/ha) (FAO Western Central Atlantic Fishery Commission 2013).

In an effort to better understand whether adult conch densities can support current exploitation rates, the SRT plotted the estimated adult conch densities against recent landings (maximum of either FAO or SAU) to evaluate regional trends in resource usage (see Figures 18, 19 in Horn *et al.* 2022). Exploitation rates for each jurisdiction were calculated by the SRT as the average numbers landed per year divided by the total abundance (adults only) across the shelf for the period 2010–2018 (For additional information on methods, see Horn *et al.* 2022). The SRT's analysis suggests that the highest producers in the region, Dominican Republic, Antigua and Barbuda, Belize, Turks and Caicos, and Mexico, significantly exceed the 8 percent exploitation rate target. Additionally, of these jurisdictions, all but Turks and Caicos, have adult conch densities below the absolute minimum adult density (*i.e.,* 50 adult conch/ha) required to support any level of reproductive activity. The fact that these jurisdictions have exceeded the 8 percent exploitation rate, have adult conch densities below 50 adult conch/ha, and have not lowered the exploitation rate, indicates harvest is unsustainable and overutilization is likely occurring. Nicaragua, Honduras, and Jamaica are fishing near the 8 percent exploitation rate target. However, while Honduras fishes near the 8 percent exploitation rate, the adult conch densities are also below the minimum density threshold (50 adult conch/ha), which also indicates that harvest is unsustainable and overutilization is likely occurring. The majority of other conch meat producers within the Caribbean region (*e.g.,* St. Vincent and the Grenadines, Puerto Rico, Panama, Guadeloupe, Anguilla, St. Lucia, St. Kitts and Nevis, St. Barthelemy, St. Martin, Curaçao, U.S. Virgin Islands, and Haiti), are fishing well above the 8 percent rate and their adult conch densities are well below the minimum density threshold (50 adult conch/ha), indicating overutilization is likely occurring. Notably, Aruba, Barbados, Colombia, The Bahamas, Bonaire, British Virgin Islands, Martinique, Venezuela, and Grenada, all fish below the 8 percent exploitation rate, but also have very low adult densities (<50 adult conch/ha), which suggests that these populations are experiencing recruitment failure due to depensatory processes, despite the low exploitation rate.

Summary of Findings

Queen conch has been fished in the western tropical Atlantic for hundreds of years, but in the last four decades, fishing has increased and industrial scale fishing has developed (CITES 2003). In most jurisdictions, conch fishing continues although population densities are very low, with conch populations either experiencing reduced reproductive activity or having densities so low that reproductive activity has ceased.

Several indicators suggest that overfishing is affecting abundances, densities, spatial distributions, and reproductive outputs (FAO 2007). In addition, many jurisdictions cite the loss of queen conch from shallow waters and the need for their fisheries to pursue conch with SCUBA or hookah in deeper waters (see S1 in Horn *et al.* 2022).

Efforts to assess the status of queen conch across its range are hampered by the lack of data collection for all fishing sectors. While many jurisdictions make an effort to collect data on the main commercial fisheries, including both industrial and artisanal, the collections are difficult in artisanal conch fisheries. Artisanal fisheries typically land queen conch at a wide variety of locations, lack adequate centralized marketing outlets that can be monitored as a check on landings, and lack enforcement resources to ensure compliance with size, quotas, and other regulations. To cope with the short-comings of data collection, the SAU project implemented an approach to reconstruct catches for most of the jurisdictions where queen conch is fished. The SRT relied on these reconstructed landings as best available scientific information to examine changes in landings over time and comparisons of landings with standing stock.

The results from the SRT's analysis provide substantial evidence indicating that overutilization is occurring throughout the species' range. Only 10 percent (4 jurisdictions) of the 39 jurisdictions reviewed are fishing at or below the 8 percent exploitation rate and have adult conch densities that are capable of supporting successful reproduction (>100 conch/ha), and therefore recruitment (Horn *et al.* 2022). Forty-one percent of the jurisdictions reviewed are exceeding the 8 percent exploitation rate and have a median conch densities below the 100 adult conch/ha threshold required for successful reproductive activity, while 33 percent of the jurisdictions reviewed are exceeding the 8 percent exploitation rate and have median conch densities below the minimum threshold required to support any reproductive activity (<50 adult conch/ha). Thus, the best available commercial and scientific information indicates that exploitation levels have resulted in the overutilization of the species throughout its range and represents the most significant threat to species.

Inadequacy of Existing Regulatory Mechanisms

The SRT evaluated each jurisdiction's regulations specific to queen conch, including fisheries management, implementation and enforcement, to determine the adequacy of existing regulatory mechanisms in controlling the main threat of overutilization of the species throughout its range. The SRT identified some common minimum size regulations that are intended to restrict legal harvest with some form of size-related criterion. The general goal of the size restrictions is to offer protection to at least some proportion of queen conch (*e.g.,* juveniles or immature conch) that are not yet sexually mature to preserve reproductive potential. A more detailed summary that includes the best available information on queen conch populations, fisheries, and their management in each jurisdictions is presented in its entirety in the status review report (see S1 in Horn *et al.* 2022).

Common Queen Conch Minimum Size Regulations

Minimum size regulations are often implemented to help prevent the harvest of juvenile or immature conch. These minimum size requirements rely on lip thickness, lip flare, shell length, and meat weight as indicators of maturity.

Lip thickness is the most reliable indicator for maturity in queen conch. The best available information indicates that shell lip thickness for mature queen conch ranges from 17.5 to 26.2 mm for females, and 13 to 24 mm for males (Stoner *et al.* 2012; Bissada 2011; Aldana-Aranda and Frenkiel 2007; Avila-Poveda and Barqueiro-Cardenas 2006). Boman *et al.* (2018) suggested that a 15 mm minimum lip thickness would be appropriate for most of the Caribbean region. The primary goal of a minimum lip thickness is that queen conch will have at least one season after reaching sexual maturity to mate and spawn. However, many of the lip thickness requirements discussed below are set too low to ensure the maturity of the harvested conch.

Regulations that simply require a flared lip to be harvested are based on a long-outdated idea that maturity occurs at the time of the flared lip develops (Stoner *et al.* 2021). Flared shell lips are an unreliable independent indicator of maturity because as discussed above, the shell lip can flare a full reproductive season before an individual can mate or spawn. Similarly, it is well established that shell length is a poor predictor of maturity in queen conch because maturity occurs following the termination of growth in shell length, and final shell length is highly variable with location and environmental conditions (Tewfik *et al.* 2019; Appeldoorn *et al.* 2017; Foley and Takahashi 2017; Stoner *et al.* 2012c; Buckland 1989 Appeldoorn 1988a).

Moreover, regulations that impose shell requirements (*e.g.,* shell length, flared lip or lip thickness) are not enforceable if the shell is discarded at sea and the conch can be landed out of its shell. Meat weight is the only maturity measure not associated with the shell and it is also not a reliable criterion of maturity in queen conch. As previously discussed, large immature conch can have larger shells (sometimes with a flared lip) and weigh more than adults. Further, meat weight requirements that are enforced after the animal is removed from its shell have reduced effectiveness in limiting the harvest or protecting reproductive potential because the animal cannot be returned.

Bermuda

Queen conch were relatively abundant in Bermuda up until the late 1960s, but by the late 1970s populations had reached very low levels (Sarkis and Ward 2009). Bermuda subsequently closed the queen conch fishery in 1978 and queen conch is currently listed as endangered under the Bermuda Protected Species Act 2003. The Bermuda Department of Conservation Services has developed a recovery plan for queen conch with the primary goal to promote and enhance self-sustainability of the queen conch in Bermuda waters. Despite closure of the fishery over 40 years ago, adult densities across the shelf remain low (and below the 50 adult conch/ha required to support any reproductive activity) suggesting additional regulations or management measures, such as those aimed at protecting local habitat or water quality, may be warranted. The SRT's connectivity model (Vaz *et al.* 2022) indicates that the queen conch population in Bermuda relies entirely on self-recruitment. Thus, without management or regulatory measures that not only protect, but also help grow the adult breeding population, queen conch densities will likely decline in the future.

Cayman Islands

Concerns about overfishing of queen conch in the Cayman Islands began in the early 1980s, and in 1988 the Department of Environment began conducting surveys to monitor the status of queen conch. Available survey data indicate persistently low queen conch densities from 1999 to 2006; followed by a decline in 2007 and a modest increase in 2008 (Bothwell

2009). The Cayman Islands import the majority of their conch meat, but there is a small fishery that harvests queen conch for domestic consumption (Bothwell 2009). The Cayman Islands' 1978 Marine Conservation Law established a closed fishing season (May 1 through October 31), during which no conch may be taken from Cayman waters, and a 5 conch per person or 10 conch per vessel per day bag limit during the open season. Queen conch fishing is prohibited in Marine Park Replenishment Zones. There are no minimum size regulations to prevent harvest of juvenile conch. The use of Self-Contained Underwater Breathing Apparatus (SCUBA) and hookah diving gear to harvest marine life is prohibited in the Cayman Islands (Bothwell 2009; Ehrhardt and Valle-Esquivel 2008). Local Illegal, Unreported, Underreported (IUU) fishing is a significant issue and regularly occurs in protected areas by neighboring countries (Bothwell 2009). Given the Caymans' small shelf area, Bothwell (2009) concluded that even a single poacher, who requires only simple fishing gear (*i.e.,* mask and fins), can cause severe problems. In addition to local illegal fishing, the Cayman Islands also receive IUU queen conch meat fished or exported from neighboring jurisdictions, and border control has been identified as a severe weakness (Bothwell 2009). The SRT's connectivity model indicates (Vaz *et al.* 2022) that the Cayman Islands are largely a source for queen conch larvae to other jurisdictions (particularly Cuba), so as queen conch in the Cayman islands are depleted, other jurisdictions are less likely to receive recruits from the Cayman Islands (see Figure 12 in Horn *et al.* 2022). Given the persistently low queen conch densities over the last decade, lack of minimum size regulations to prevent juvenile harvest, lack of enforcement, and evidence of significant IUU fishing, existing regulatory measures within the Cayman Islands are likely inadequate to protect queen conch from overutilization and further decline in the future.

Colombia

The queen conch commercial fishery in Colombia shifted to the continental shelf Archipelago of San Andrés, Providencia, and Santa Catalina (ASPC), including its associated banks (Quitasueño, Serrana, Serranilla, and Roncador) in the 1970s when conch populations in San Bernardo and Rosario became severely depleted due to inadequate regulatory mechanisms (Mora 1994). Even with the declaration of San Bernardo and Rosario as national parks that allow subsistence fishing only, densities further declined to very low levels by 2005 (0.9–12.8 adult conch/ha, 0.2–12.9 juvenile conch/ha), suggesting recruitment failure (Prada *et al.* 2009). Prada *et al.* (2009) noted that illegal queen conch harvest might represent 2–14 percent of total harvest (approximately 1.4–21.8 mt of clean meat). During the 1980s and 1990s, a suite of regulatory measures was put in place to protect populations in the ASPC because it constituted almost all of Colombia's production. Regulations include area closures, prohibition on the use of SCUBA gear, a minimum of 225 g meat weight, and a minimum of 5 mm shell lip thickness (Prada *et al.* 2009). In addition, the CITES listing in 1992 established international trade rules. Despite these measures, fishery-dependent data collected through the mid-1990s and early 2000s masked continued population declines due to biases associated with reporting CPUE, incomplete data reporting (*e.g.,* inconsistent reporting of landings in versus out of the shell and incomplete or absent key spatial information), and illegal trade both into and out of Colombia. For example, in 2008, illegal queen conch meat exports were traced back to Colombia (as well as other jurisdictions previously mentioned) during the Operation Shell Game investigation (U.S. House, Committee on Natural Resources, 2008). Ultimately, management measures were ineffective as evidenced by decreased landings, increased effort, and low densities reported by diver-based visual surveys at two of the three offshore banks: 2.4 conch/ha at Quitasueño and 33.7 conch/ha at Roncador (Valderrama and Hernández, 2000). The Colombian government responded by closing the fisheries at Serrana and Roncador, and reducing the export quota by 50 percent (CITES 2003). Still these measures were inadequate and the entire ASPC closed from 2004–2007 due to illegal trade, conflicts between industrial and artisanal fishers, and discrepancies between landings and exports (Castro-González *et al.* 2009). In 2008 the fishery at ASPC partially reopened at Roncador and Serrana Banks, with annual production set at 100 mt (Castro-González *et al.* 2011), only to close the fishery at Serrana Bank again in 2012.

The overall adult queen conch densities remain below the critical threshold required to support any reproductive activity throughout much of the jurisdiction. Despite very low adult densities (fewer than 50 adult conch/ha in all locations, except at Serrana bank), the queen conch fishery continues to operate in Colombia. Because the ASPC is unlikely to receive significant larval input from source populations outside the area (Vaz *et al.* 2022), the region may not recover with current regulatory measures without sufficient adult densities in local populations. The lack of information for populations in deeper areas throughout the ASPC, which may be particularly important for recovery (Castro *et al.* 2011 unpublished), hinders Colombia's ability to make comprehensive management decisions and illegal fishing continues to plague the region. Furthermore, while regulations require a minimum shell lip thickness of 5 mm and shell lip thickness is a reliable indicator for maturity in queen conch, this value is likely too low to protect immature queen conch harvest. Finally, when the shell is discarded at sea the lip thickness requirement is not enforceable, and any protective value of the meat weight regulations is diminished.

Costa Rica

Queen conch harvest in Costa Rica was prohibited in 1989 (CITES 2003; Mora 2012). In 2000, the commercial sale of incidentally captured queen conch was also prohibited, but queen conch caught as bycatch could be kept for personal consumption. Population declines were reported in 2001, but there is limited information available related to those declines (CITES 2003). The adequacy of existing regulatory measures in protecting queen conch from threats, such as IUU fishing is unknown.

Cuba

The current status of queen conch populations in Cuba is questionable due to a lack of available information; however, the few published surveys suggest relatively high densities, particularly in protected national parks (*e.g.,* Jardines de la Reina National Park: 1,108 conch/ha in 2005; Formoso *et al.* 2007; National Park Desembarco del Granma: 511 conch/ha to 1,723 conch/ha in 2009 to 2010; Cala *et al.* 2013). The SRT was unable to locate more recent population assessments or surveys. The commercial harvest of queen conch began in Cuba in the 1960s and the harvest level increased considerably in the mid to late 1970s. However, due to the largely unregulated and unmanaged harvest, the queen conch population collapsed, and the fishery was closed in 1978. It reopened in the 1982 with a 555 mt harvest quota, which increased to 780 mt in 1984 (Munoz *et al.* 1987). Conch populations continued to decrease at an accelerated

rate despite the newly established quota system and size based regulations (Grau and Alcolado as cited in Munoz *et al.* 1987). Munoz *et al.* (1987) attributed the continued population declines to harvest quotas being set too high and illegal harvest. In 1998 the fishery was closed again for a year to conduct an abundance survey (Formoso 2001) and update quotas. Since then, the queen conch fishery has been managed under a catch quota system that is established by ''zones'' and set between 15 and 20 percent of the adult queen conch biomass, according to population assessments and monitoring. The most recent FAO landings data indicates that queen conch landings have ranged from 475 mt landed in 2018, 405 mt in 2017, and 477 mt in 2016 (see S2 in Horn *et al.* 2022); however, no population assessments or surveys were available for these years. The regulations also include seasonal closures that co-occur with peak spawning, depth limits on diving operations, a prohibition on SCUBA gear, and a minimum lip thickness of greater than 10 mm. While shell lip thickness is a reliable indicator for maturity in queen conch, the minimum 10 mm shell lip thickness regulation likely does not prevent the harvest of immature queen conch. Additionally, compliance and enforcement of these regulations appears to be a problem. For example, two fishing ''zones'' were closed in 2012 because fishermen were not complying with the regulatory requirements (FAO Western Central Atlantic Fishery Commission 2013).

Despite the lack of available information on illegal harvest of conch in Cuba, there is evidence that some limited illegal conch harvest likely occurs. A recent news article estimated that around one thousand vessels involving approximately 2,500 people were engaged in the illegal harvest of marine species, including conch, lobster, and shrimp (14ymedio 2019). In 2019, Cuba passed new fishery laws aimed at curbing illegal fishing by instituting a new licensing system (14ymedio 2019). There is currently no information available on the implementation and enforcement of these new regulations, and the only survey data available are from surveys of protected areas in 2009. In addition, Cuba's regulations are meant to implement a catch quota system that is based on adult biomass estimates, which are obtained through population assessment, and the most recent population assessments available are more than 10 years old. Without additional information on the status of the queen conch population in Cuba or the effectiveness of the new regulations, the adequacy of existing regulations is unknown. However, given the history of the conch fishery, including the rate at which declines can occur with unsustainable quotas, and the rate of illegal harvest, effective enforcement of existing regulations, particularly in the protected areas, is important to protect the queen conch in Cuba from overutilization in the future.

Dominican Republic and Haiti

Queen conch in the Dominican Republic and Haiti have been overfished since the 1970s (Wood 2010; Mateo Pérez and Tejeda 2008; Brownell and Stevely 1981). In 2003, Haiti established regulations that include a ban on harvesting queen conch without a flared lip, and the use of SCUBA and hookah gears (CITES 2003). However, the available information indicates that queen conch are still fished in Haiti using SCUBA gear (FAO 2020; Wood 2010). Similarly, while the regulations for a closed season from April 1 through September 30 exist, the available information indicates that enforcement is limited (FAO 2020).

The Dominican Republic established regulations for a minimum shell size in 1986, a closed season in 1999, and no fishing areas in 2002. But these regulations are reported to be ineffective due to inadequate enforcement (CITES 2003, 2012). Illegal trade is also common. For example, from 1999 to 2001, the Dominican Republic almost doubled its queen conch production, elevating concerns about illegal fishing, which resulted in the imposition of a CITES moratorium. More recently, in 2008, both Haiti and the Dominican Republic, in addition to Jamaica, Honduras, and Colombia, were implicated in illegal exports of more than 119 mt of queen conch meat during the Operation Shell Game investigation (Congress, U.S. House, Committee on Natural Resources, 2008).

Although dated (*i.e.,* more than 10 years old), the available information indicates that adult queen conch densities are below the minimum density threshold for any reproductive activity (50 adult conch/ha). The status of queen conch in the Dominican Republic is concerning because under historical conditions it likely functioned as an important ecological corridor, facilitating species connectivity throughout the region (Vaz *et al.* 2022). Although there is evidence that the rates of decline may have slowed in some areas since 2000 (Torres and Sullivan-Sealey 2002) and that some locations have reproductive activity (Wood 2010), there is no evidence that regulations have been effectively implemented or enforced (CITES 2003, 2012; Wood 2010; Figueroa and González 2012). In addition, detailed, accurate, consistent, and unbiased reporting of fisheries data is a challenge and creates a barrier to recognizing and understanding the current status of populations (FAO Western Central Atlantic Fishery Commission 2020). Thus, the SRT concluded that adult queen conch densities are well below what is required for healthy spawning populations at most locations (Posada *et al.* 1999; Wood 2010) and continued declines may be irreversible without human intervention even if fishing pressure is significantly reduced or halted (Torres and Sullivan-Sealey 2002). Based on the foregoing, existing regulations are likely inadequate to address the threat of overutilization and reverse the decline of populations in the Dominican Republic and Haiti.

Jamaica

Jamaica has been a major producer for the queen conch fishery since the 1990s (Aiken *et al.* 1999; Appeldoorn 1994a; Prada *et al.* 2009). The commercial fishery is focused around Pedro Bank, located approximately 80 km southwest of Jamaica. Fisheries-independent diver-based surveys began on Pedro Bank in 1994 and these surveys have helped establish total allowable catch (TAC) limits for the fishery. Queen conch surveys are conducted about every 3 to 4 years (*e.g.,* 1994, 1997, 2002, 2007, 2011, 2015, and 2018). Queen conch density estimates for all life stages and depth strata from 1994 to 2018 have remained at a level that supports successful reproductive activity (142–203 conch/ha; NEPA 2020). However, surveys in 2018 recorded low enough densities (203 conch/ha, age classes was not provided) such that the National Fisheries Authority of Jamaica implemented a closure of the queen conch fishery from 2019 to 2020. Due to the lack of funding to conduct a new survey, the closure was extended to February 2021 (Jamaica Gleaner, Ban on Conch Fishing Extended to February 2021, April 6, 2020).

In 1994 the queen conch fishery management plan established guidelines for management measures including a national TAC and individual quota system (Morris 2012), a closed commercial season generally extends from August 1 through February 28 (FAO 2022), and a prohibition on fishing queen conch at depths greater than 30 m (Morris 2012). These regulations are intended to conserve nursery and breeding areas as well as

deep spawning stocks (Morris 2012). There are no minimum size based regulations to prevent harvest of immature conch. There is no closed season for the recreational fishery, but harvesting is limited to three conch per person per day (CITES 2003). Currently, annual quotas for Pedro Bank are determined through a control rule based on harvesting 8 percent of the estimated exploitable biomass (Smikle 2010). Under this scenario, the maximum catch is fixed when densities are above 100 adult conch/ha and are progressively reduced if the population density is reduced. Quotas cannot be increased unless supported by the results of an in-water survey; however, quotas can be lowered if there is evidence of problems, such as a drop in catch per unit effort or a survey indicating a lack of juveniles for future recruitment, and field surveys are mandated at regular intervals. Additional management measures include the designation of the South West Cay Special Fisheries Conservation Area (SWCSFCA) in 2012. Queen conch fishing is prohibited within the SWCSFCA, which extends in a 2-km radius around Bird Key on Pedro Bank. Even so, regulations have not been able to address illegal fishing, which is thought to be problematic based on a spike in catch statistics reported by Honduras and the Dominican Republic during two discrete periods between 2000 and 2002 when Jamaica's fishery on Pedro Bank was closed (CITES 2012). According to the FAO Western Central Atlantic Fishery Commission (2020), a Jamaican national fisheries authority was established, but had an unfunded compliance branch that receives assistance from the Jamaican Coast Guard and Marine Police, though fisheries issues are not a priority. Thus, illegal fishing is thought to remain a serious problem, as further evidenced by the FAO Western Central Atlantic Fishery Commission (2020) observation that ''. . . there is intense IUU fishing by vessels from jurisdictions such as Honduras, Dominican Republic and Nicaragua'' within the large Jamaican EEZ.

Effective conservation management measures are particularly important for the Pedro Bank queen conch fishery because it is geographically isolated and receives little gene flow from external areas. Thus, the future of Pedro Bank's queen conch fishery likely depends on local recruitment for sustaining its stocks (Kitson-Walters *et al.* 2018). The health of the Pedro Bank conch population may also be important to species connectivity throughout the Caribbean region, as Jamaica has been identified as an important ecological corridor and a source of larvae to down current jurisdictions (Vaz *et al.* 2022).

In summary, management actions to date have maintained queen conch populations on Pedro Bank, on average, at levels above the necessary threshold required to support successful reproduction (*i.e.,* greater than 100 adult conch/ha); however, existing regulations do not protect immature conch from harvest and may not be adequate to control illegal fishing, prevent habitat degradation, or reverse the decline of queen conch in shallower areas.

Leeward Antilles (Aruba, Curaçao, and Bonaire)

No historical or current fisheries data from the Leeward Antilles islands are available. However, in Bonaire, Lac Bay historically was considered to have been ''plentiful in conch.'' (STINPA 2019, as cited in Patitas 2010). Fisheries were closed in Bonaire and Aruba in 1985 and 1987, respectively, but enforcement of the closure did not begin in Bonaire until the mid-1990s (van Baren 2013). Limited permits, allowing take of adult conch over 18 cm shell length or meat weight over 225 grams (g), were issued in Bonaire through the 1990s. But a moratorium on permit issuance was reported in 2012 due to concern over the extremely low adult population size at that time (van Baren 2013). The limited fisheries-independent monitoring suggests that the island-wide density of conch in Bonaire is very low 21.8 conch/ha. Current densities are too low to support fisheries, despite being closed for more than 30 years in two of the three islands (*i.e.,* Aruba and Bonaire). Queen conch are imported legally from Jamaica and Colombia and illegally from Venezuela to markets in Curaçao and Bonaire (FAO 2007).

The most recent study to assess the status of queen conch in Bonaire was conducted in 2010 in Lac Bay (Patitsas 2010). Within Lac Bay, overall conch density was recorded to be 11.24 conch/ha. The majority of conchs in Lac Bay were adults, constituting 85 percent of the total found (Patitsas 2010). The previous conch density study in Lac Bay was conducted in 1999, and estimated the overall population to be around 22 conch/ha with an average age of 2.5 years (Lott 2001, as cited in Patitsas 2010). Patitsas (2010) concluded the densities in Lac Bay are below the Allee effect threshold of 50 adult conch/ha (Stoner and Culp 2000). No surveys have been done to determine the density and the conditions of the populations in the island of Curaçao (Sanchez, 2017). The only information of the populations in the island of Curaçao located by the SRT is presented in a 2017 thesis on the diet and size of queen conch around the island of Curaçao (Sanchez 2017). While, Sanchez (2017) did not provide conch density data, the author concluded that adult queen conch are very rare surrounding the island, and appear to only occur in restricted places, like the Sea Aquarium Basins, where illegal fishing and predation is limited (Sanchez 2017). The average density of queen conch on the west side of Aruba was 11.3 conch/ha from 2009 to 2011, and the population was dominated by juveniles, suggesting Aruba populations on the west side of the island are not large enough for successful reproduction, though there are isolated areas of higher conch densities (Ho 2011). There is evidence that illegal fishing continues and is further contributing to declines (van Baren 2013; Ho 2011; FAO 2011).

Despite fisheries closures in Bonaire and Aruba since the 1980s, the best available information indicates that there has been limited or no recovery. The most recent available survey, although dated (*i.e.,* more than 10 years old) and discussed above, reported very low conch densities and suggest further decline in Lac Bay, Bonaire. There is limited evidence of improvements to management, enforcement, and conservation planning strategies in Aruba, Curaçao, and Bonaire. The lack of recovery in the respective conch populations despite the complete closures of the conch fisheries, indicates that the closures were likely implemented too late because adult conch densities were too low to support reproductive activity. In addition, Aruba, Curacao, and Bonaire appear to have historically relied on larval subsidies of local origin and from Venezuela, and are mostly isolated from other sources of larval supply. Therefore, their ability to recover post overutilization is limited.

Leeward Islands (Anguilla, Antigua and Barbuda, British Virgin Islands, Guadeloupe and Martinique, Montserrat, Saba, St. Barthélemy, St. Martin, St. Eustatius, St. Kitts and Nevis, U.S. Virgin Islands)

Based on the available data, as described in Horn *et al.* (2022), indicates that the majority of the Leeward Islands (*i.e.,* Anguilla, Antigua and Barbuda, British Virgin Islands, Guadeloupe and Martinique, Montserrat, St. Barthélemy, St. Eustatius, St. Martin, St. Kitts and Nevis, and U.S. Virgin Islands) have queen conch populations that are overexploited, with estimated population densities that are below that

which is necessary for reproductive success (100 adult conch/ha). The existing regulatory mechanisms largely appear inadequate, resulting in overexploitation and illegal fishing, and have likely contributed to the decline in these populations and reproductive failure. For example, in Anguilla, surveys conducted in 2015 and 2016 found 26 adult conch/ha, which is well below the minimum density threshold for any reproductive activity (50 adult conch/ha) and may not be supporting any reproductive activity (Izioka 2016). Despite low adult densities, fishing for queen conch is still allowed. In addition, existing regulatory mechanisms do not prevent immature queen conch from being harvested. Currently, the minimum landing size for queen conch in Anguilla is 18 cm shell length; however, Wynne *et al.* (2016) found that up to 94 percent of queen conch harvested at that size were immature.

In Antigua and Barbuda, surveys of populations also show low densities and low proportions of adult conch, suggesting that fishing pressure has significantly reduced the adult population to the point where Allee effects are occurring (Ruttenberg *et al.* 2018; Tewfik *et al.* 2001). For example, Tewfik *et al.* (2001) conducted 34 visual surveys (12.84 hectares total) off the southwestern side of Antigua. These surveys recorded 3.7 adult conch/ha, significantly below the 50 adult conch/ha threshold required to support any reproductive activity. Overall conch density (adults and juveniles) for Antigua were 17.2 conch/ha, with juveniles making up about 78.4 percent of the entire population. Reported conch densities in Barbuda are also very low. Ruttenberg *et al.* (2018) reports 29 ± 12 adult conch/ha and 96 ± 30 juvenile conch/ha (mean ± SE). In terms of regulations, both jurisdictions prohibit harvesting of queen conch without a flared lip, or a shell length less than 180 mm, or animals whose meat is less than 225 g without the digestive gland. In addition, Horsford (2019) found over 20 percent of landed conch meat samples were below the minimum legal meat weight in 2018 and 2019, including conch harvested within marine reserves. Evidence of the harvest of undersized and immature queen conch suggests that the existing regulations are either inadequate or are not enforced, or both. Based on the size distribution of queen conch in Barbuda, existing regulations do not necessarily prevent harvesting of immature queen conch. In 2003 the British Virgin Islands implemented regulations that require an 18 cm minimum shell length, a flared lip, a meat weight of at least 226 g, and established a closed season (June 1 through September 30) and prohibited SCUBA gear. However, enforcement of these regulations is questionable as the fishery appears to be essentially unmonitored (Gore and Llewellyn 2005). In addition, as previously discussed shell length and flared shell lip are not reliable indicators of maturity and likely do not prevent immature queen conch from harvest. Given that surveys of queen conch populations in 1993 and 2003 both showed densities of queen conch on the order of less than 0.07 conch/ha, existing regulatory mechanisms may not adequately protect queen conch in the British Virgin Islands from overexploitation (CITES 2003; Ehrhardt and Valle-Esquivel 2008; Gore and Llewellyn 2005).

In Guadeloupe and Martinique, demand is high for local consumption of queen conch (CITES 2003). In 1986, Martinique passed regulations to prohibit the harvest of queen conch with a shell length of less than 22 cm, or shells without a flared lip, or animals whose meat weighs less than 250 g. The majority of landings in Martinique are meat only (FAO 2020), which means that immature queen conch can potentially be harvested as long as the meat weight is greater than 250 g. In Martinique, a closed season runs from January 1 through June 30, and the use of SCUBA gear to harvest conch is prohibited. Studies on the reproductive cycle of queen conch in Martinique and Guadeloupe have concluded that the minimum shell length size is not an effective criterion to base sexual maturity (Frenkiel *et al.* 2009; Reynal *et al.* 2009). Thus, the best available information indicates that these regulatory measures are inadequate to prevent the harvest of immature queen conch. Given the increasing demand, with the price of queen conch meat having doubled over the past 25 years (FAO 2020; FAO Western Central Atlantic Fishery Commission 2013), the existing regulations will likely continue to contribute to harvesting of immature queen conch and declines in the queen conch population in the future.

The island of Saba supported large conch fisheries until the mid-1990s. Intensive and unsustainable harvest during the mid-1980s and throughout the 1990s led to the declines on Saba Bank. The Saba Bank was also overfished by several foreign vessels (van Baren 2013). In 1996, fishery legislation prohibited the harvest of queen conch for commercial purposes, and allowed only Saban individuals to harvest queen conch for private use and consumption. These regulations limit Saban individuals to no more than 20 conch per person per year and require that catch be reported to the manager of the Saba Marine Park (van Baren 2013). Nonetheless, collection and reporting laws are not enforced (van Baren 2013). Additional regulations require a 19 cm minimum shell length or a ''well-developed lip,'' and prohibit SCUBA and hookah gears (van Baren 2013). No surveys have been conducted to determine the status of queen conch or if the commercial closure has been effective in rebuilding queen conch stocks (van Baren 2013). Anecdotal evidence indicates that queen conch on the Saba Bank are fished by foreign vessels (FAO Western Central Atlantic Fishery Commission 2013). The island of St. Eustatius had a small commercial conch fishery that exported to St. Maarten. In 2010 the fishery was curtailed because St. Maarten began to require CITES permits for their imports (van Baren 2013).

In the U.S. Virgin Islands, the U.S. Federal government has jurisdiction within the U.S. Virgin Island EEZ (*i.e.,* those waters from 3–200 nautical miles (4.8–370 km) from the coast) and the CFMC and NMFS are responsible for management measures for U.S. Caribbean federal fisheries. The Government of the U.S. Virgin Islands manages marine resources from the shore out to the 3 nautical miles. At present, the U.S. Virgin Islands manages fisheries resources cooperatively with the CFMC, although not all regulations are consistent across the state-Federal boundary. Recently, the Secretary of Commerce approved three new fishery management plans (FMP) for the fishery resources managed by the CFMC in Federal waters of each of St. Thomas, St. John, and St. Croix. The St. Thomas and St. John FMP and the St. Croix FMP will transition fisheries management in the respective EEZ from the historical U.S. Caribbean-wide approach to an island-based approach; however, this change does not alter existing regulations for the queen conch fishery. In the U.S. Caribbean EEZ, no person may fish for or possess a queen conch in or from the EEZ, except from November 1 through May 31 in the area east of 64°34′ W longitude which includes Lang Bank east of St. Croix, U.S. Virgin Islands (50 CFR 622.491(a)). Fishing for queen conch is allowed in territorial waters of St. Croix, St. Thomas, and St. John from November 1 through May 31, or until the queen conch annual quota is reached. The annual quota is 22.7 mt (50,000 lbs) for St. Croix territorial

waters and 22.7 mt (50,000 lbs) for St. Thomas and St. John territorial waters (combined). The CFMC established a comparable annual catch limit (ACL) for harvest of queen conch within the EEZ around St. Croix east of 64°34′ W longitude, which includes Lang Bank. When the ACL is reached or projected to be reached across territorial and Federal waters, the Federal queen conch fishery within the EEZ around St. Croix is closed. From 2012 to 2020, commercial fishermen in St. Croix landed between 24 and 74 percent of their ACL; therefore, there were no closures of the queen conch fishery during this time period. In addition to the harvest quotas, commercial trip limits and recreational bag limits for queen conch harvest apply in both territorial waters and Federal waters of the U.S. Virgin Islands. The commercial trip limit in territorial waters and in the U.S. Caribbean EEZ around St. Croix is 200 queen conch per vessel per day (50 CFR 622.495). The recreational bag limit from the EEZ around St. Croix is three per person per day or, if more than four persons are aboard, 12 per vessel per day (50 CFR 622.494). The recreational bag limit in territorial waters is six conch per person per day, not to exceed 24 conch per vessel per day. In the EEZ around St. Croix and in U.S. Virgin Islands territorial waters, regulations require a 22.9 cm minimum shell length or 9.5 mm lip thickness (50 CFR 622.492). In the EEZ around St. Croix and in U.S. Virgin Islands territorial waters, queen conch must be landed alive with meat and shell intact. Finally, Federal regulations at 50 CFR 622.490(a) prohibit the harvest of queen conch in the EEZ around St. Croix by diving while using a device that provides a continuous air supply from the surface.

Surveys of queen conch were conducted in the U.S. Virgin Islands in 2008–2010. The median cross shelf adult density estimate for the three island groups is 44 adult conch/ha, suggesting that densities are too low to support reproductive activity (Horn *et al.* 2022). However, queen conch densities (at all the island groups) were higher in 2008 through 2010 than those observed in the 1980s and 1990s (Boulon 1987; Friedlander 1997; Friedlander *et al.* 1994; Gordon 2002; Wood and Olsen 1983). For example, the mean adult queen conch density estimated for St. Thomas was five times that of adult conch in 2001 (24.2 adult conch/ha) and four times that in 1996 (32.2 adult conch/ha) and ten times that in 1990 (11.8 adult conch/ha) (Gordon 2010). In the 2008–2010 surveys, the population was composed mainly of juveniles (greater than 50 percent) with the remainder of the population spread evenly among the older age classes. Similarly, a more recent survey conducted in Buck Island Reef National Monument (a no-take reserve) estimated 68.5 adult conch/ha and 233.5 juvenile conch/ha (Doerr and Hill, 2018). This age class structure suggests some successful recruitment in this area. However, due to the age of the data from the 2008–2010 surveys, a more recent assessment could better inform stock status. NMFS's 2022 second quarter update to its Report to Congress on the Status of U.S. Fisheries identifies the queen conch stock in the Caribbean as overfished, but not currently undergoing overfishing.

Overall, while queen conch regulations exist within the Leeward Islands to prohibit the harvesting of immature queen conch and manage fisheries, many of these regulations use inadequate proxy measures for maturity, are poorly enforced, and lack effective monitoring controls. For example, minimum shell length, flared lip, and meat weight regulations are unreliable measures to protect immature conch. While lip thickness is a more reliable indicator of maturity for queen conch, values set too low do not ensure that only mature conch are harvested (Doerr and Hill, 2018; Frenkiel *et al.* 2009; Reynal *et al.* 2009; Horsford 2019). The connectivity models (Vaz *et al.* 2022) show a reliance on self-recruitment for the Leeward Islands, with larval transport mainly away from the islands. Thus, queen conch populations throughout the Leeward Islands may continue to decline in the future due to the inadequacy of many of the existing regulatory measures in protecting the Leeward Island conch populations from overutilization and limited larval supply from other locations.

Nicaragua

In Nicaragua, the queen conch fishery was not considered a major fishery until the mid 1990s (CITES 2012). The majority of the queen conch harvest is caught by fishermen targeting lobster, with the remainder made by divers during the lobster closed season (Barnutty Navarro and Salvador Castellon 2013) or incidentally (Escoto García 2004). Landings, quotas, and exports have all increased significantly since the 1990s (Sánchez Baquero 2009). In 2003, Nicaragua implemented regulations that established a 20 cm minimum shell length, a minimal lip thickness of 9.5 mm, a seasonal closure from June 1 through September 30, and set the export quota at 45 mt (Barnutty Navarro and Salvador Castellon 2013; FAO Western Central Atlantic Fishery Commission 2020). Since then, the export quota has increased significantly. In 2009, the export quota was set at 341 mt of clean fillet and 41 mt for research purposes. In 2012, Nicaragua gained additional conch fishing grounds through the resolution of a maritime dispute with Honduras (International Court of Justice 2012), and increased its export quota to 345 mt (Barnutty Navarro and Salvador Castellon 2013; FAO Western Central Atlantic Fishery Commission 2013). By 2019, this quota had almost doubled to an annual export quota of 638 mt (FAO Western Central Atlantic Fishery Commission 2020). The 2020 export quota increased again to 680 mt (see CITES Export Quota). Whether these regulations are adequate to protect the queen conch population from overexploitation is unclear, but a comparison of queen conch densities over the years suggests the current quota may be set too high. For example, results from a 2009 systematic cross-shelf scientific survey conducted by SCUBA divers showed densities ranging from 176–267 adult conch/ha depending on the month (April, July, or November), location, and depth (10–30 m) (Barnutty Navarro and Salvador Castellon 2013). More recent surveys, conducted in October 2016, March 2018, and October 2019, show a decrease in densities to 70–109 conch/ha (FAO Western Central Atlantic Fishery Commission 2020). However, details on these surveys were unavailable and it is unclear if these are adult queen conch densities. Regardless, the available information suggests that overall densities have decreased substantially since 2009, presumably due to the significant increases in the export quota over the past few years. While the densities, if they reflect adult conch densities, may still support some reproductive activity within the queen conch population, the existing regulatory measures, including the current quota, may not be adequate to prevent further queen conch declines in the future. If these trends continue this population is vulnerable to collapse, as the connectivity model (Vaz *et al.* 2022) indicates that Nicaragua's queen conch population is mostly reliant on self-recruitment.

Panama

There is little information available on the status of queen conch or harvest of queen conch in Panama. Georges *et al.* (2010) suggested that the queen conch fishery in Panama may not have specific regulations, but recognized harvest using SCUBA gear is prohibited. In the 1970s, a subsistence fishery was

centered in the San Blas Islands (Brownell and Stevely 1981). By the late 1990s, landings data suggest that the queen conch population had collapsed (CITES 2003; Georges *et al.* 2010). In 2000, extremely low adult densities were observed at Bocas del Toro archipelago (approximately 0.2 conch/ha; CITES 2003). The most recent information, although dated, indicates that the fishery was closed for 5 years in 2004 (CITES 2012) and a ''permanent closed season'' remains in place as of 2019 (FAO 2019). The SAU data suggests that queen conch harvest has continued during the closure with unreported landings likely occurring for subsistence and by the artisan fishery (Pauly *et al.* 2020). In Panama, queen conch appear to be largely self-recruiting (Vaz *et al.* 2022) and more vulnerable to depletion as the population likely does not receive larval recruits from other jurisdictions. The best available information suggests that Panama does not have adequate regulatory measures in place to manage queen conch harvest. While it appears that the harvest is limited to subsistence, the available information suggests that the population has collapsed, and without additional regulations and appropriate conservation planning, it is unlikely that Panama's severely depleted queen conch population will recover.

Puerto Rico

Queen conch populations in Puerto Rico showed signs of steady decline beginning in the 1980s (CITES 2012). Estimated fishing mortality exceeded estimates of natural mortality, catch continued to decline while effort increased through 2011 (CITES 2012), and the catch became increasingly skewed to smaller sizes, all suggesting that Puerto Rican populations have been overfished for decades (Appeldoorn 1993; SEDAR 2007). Surveys conducted in 2013 observed larger size distributions, higher adult queen conch densities (compared to three previous studies, but lower than the density reported in 2006), an increase in the proportion of older adults, and evidence of sustained recruitment, suggesting that Puerto Rico's conch populations are recovering to some extent (Jiménez 2007, Baker *et al.* 2016).

There are several regulations associated with the Queen Conch Resources Fishery Management Plan of Puerto Rico and the U.S. Virgin Islands (CFMC 1996). Recently, the Secretary of Commerce approved new FMPs for the fishery resources managed by the CFMC in Federal waters of U.S. Caribbean. The Puerto Rico FMP will transition fisheries management to an island-based approach.

In 1997, the U.S. Caribbean EEZ (with the exception of St. Croix, U.S. Virgin Islands) was closed to queen conch fishing and a closed season (July 1 through September 30) for territorial waters was implemented. In 2004, additional regulations implemented in local waters included a 22.86 cm minimum shell length or a 9.5 mm minimum lip thickness requirement, daily bag limits of 150 per person and 450 per boat, and a requirement to land queen conch intact in the shell. In 2012, the territorial waters seasonal closure was amended to begin on August 1 and extend until October 31.

In 2013, the Puerto Rico Department of Natural Resources implemented an administrative order that lifted the prohibition on extracting conch meat from the shell while underwater (Puerto Rico Department of Natural and Environmental Resources Administrative Order 2013–14). The administrative order remains valid today. The elimination of an important accountability mechanism to ensure compliance and enforcement with the minimum size regulations (*i.e.,* the requirement that conch be landed whole), occurred while populations were still considered severely depleted and subjected to continued fishing pressure. Furthermore, shell length is not a reliable indicator of maturity in queen conch. As previously discussed, shell lip thickness is the most reliable indicator of maturity in queen conch; however, the available information indicates that the 9.5 mm lip thickness regulation is not high enough to prevent immature conch from being harvested. Lastly, the mesophotic reef off the west coast of Puerto Rico is likely an important ecological corridor for maintaining connectivity between the Windward Islands and the western Caribbean (Vaz *et al.* 2022; Truelove *et al.* 2017), which means that a decline in queen conch could implicate other jurisdictions down-current. Based on the foregoing, existing regulations are likely inadequate to reverse the decline of queen conch in Puerto Rico.

The Bahamas

Landings data from the 1950s through 2018 have ranged between approximately 750–6,000 mt, with a steadily increasing trend over that period. Prior to 1992, the export of queen conch from The Bahamas was illegal. More recently, at least 51 percent of the landings are exported, with export amounts and values increasing over time, and the bulk of the product exported (99 percent) going to the United States (Posada *et al.* 1997, Gittens and Braynen 2012). The Bahamian government began implementing an export quota system in 1995 and more recently additional protective measures have been implemented including: a SCUBA ban, limited use of compressed air, establishment of a network of marine protected areas, and restricting take to conch with well-formed flared lips (FAO 2007; Gittens and Braynen 2012). The Bahamas also established closed areas, but not closed seasons (Prada *et al.* 2017). Concerns continue regarding IUU fishing, which is likely exacerbating the serial depletion that queen conch are experiencing throughout most of The Bahamas (Stoner *et al.* 2019).

Several fishery-independent studies in both fished and unfished areas within The Bahamas have reported one or more of the following trends since the late 1990s: declines in adult queen conch densities, a reduction in the size of adults on mating grounds, a reduction in the average age of individuals within populations, and a reduction in the number of immature queen conch within nursery grounds (Stoner *et al.* 2019). Recent surveys suggest adult queen conch densities are too low to support any reproductive activity (*i.e.,* <50 adult conch/ha), except in the most remote areas (Stoner *et al.* 2019). Substantial decreases in adult conch densities (up to 74 percent) observed in repeated surveys in three fishing grounds indicate that the conch population is collapsing. In fact, Stoner *et al.* (2019) found that only one location of the 17 locations surveyed in 2011 and 2018, had reproductively-viable adult conch densities. Declines in juvenile populations were reported near Lee Stocking Island where aggregations associated with nursery grounds were estimated to have decreased by more than half between surveys conducted in the early 1990s and 2011 (Stoner *et al.* 2011; Stoner *et al.* 2019). Visual surveys spanning two decades show that densities of adult queen conch had a significant negative relationship with an index of fishing pressure. These surveys also reveal that average shell length in a population was not related to fishing pressure, but that shell lip thickness declined significantly with fishing pressure (Stoner *et al.* 2019). Other less quantitative observations on changing queen conch populations, have been observed over the decades in several nursery grounds (*e.g.,* Vigilant Cay and Bird Cay). While, juvenile aggregations are subject to large inter-annual shifts in conch recruitment (Stoner 2003), these

nurseries are typically inhabited by three year classes or more at any one time. However, the near total loss of queen conch at these sites indicates a multi-year recruitment failure or heavy illegal fishing on the nursery grounds (Stoner *et al.* 2019; Stoner *et al.* 2009).

Densities have also declined significantly in three repeated surveys conducted over 22 years in a large no-take fishery reserve (Stoner *et al.* 2019). Unlike fished populations, the protected population has aged and appears to be declining because of lack of recruitment (Stoner *et al.* 2019). Queen conch populations around Andros Island, the Berry Islands, Cape Eleuthera, and Exuma Cays are at or below critical densities for successful reproduction (*i.e.,* >100 adult conch/ha). A fishery closure in the Exuma Cays Land and Sea Park since 1986 has been ineffective in reversing the collapse of the stock in this area (Stoner *et al.* 2019). Some areas of the southern Bahamas, including Cay Sal and Jumentos and Ragged Cays, have maintained queen conch densities greater than 100 adult conch/ha (Souza Jr. and Kough 2020; Stoner *et al.* 2019). However, fishing grounds in the central and northern Bahamas, including the Western and Central Great Bahamian Banks and Little Bahamian Bank, are depleted and regulatory measures are needed to reverse the downward trend (Souza and Kough 2020). Media reports from 2010 through 2020 indicate that remote Bahamian banks are increasingly threatened by illegal fishing as fishers deplete more accessible areas (Souza Jr. and Kough 2020).

The Bahamas is largely self-recruiting, retaining the majority of conch larvae (Vaz *et al.* 2022). The Bahamas does not export a significant amount of larvae to most jurisdictions; however, it does receive a substantial amount of larvae from Turks and Caicos, and to a lesser extent Cuba (Vaz *et al.* 2022). The sustainability of queen conch populations in The Bahamas relies heavily on domestic regulations. Based on the foregoing, the current status and trends of queen conch in The Bahamas indicates that existing regulatory measures in The Bahamas are inadequate to protect queen conch from overutilization and further declines.

Turks and Caicos

The Turks and Caicos one of the largest producers of queen conch meat, providing roughly 35 percent of the total landings reported for the Caribbean region from 1950–2016. In 1994, regulatory measures prohibited the use of SCUBA gear, established annual quotas, set a minimum shell length of no less than 18 cm or a minimum meat weight of no less than 225 g, and stated that all conch landed must have a flared lip. In 2000, a closed season to exports (July 15 through October 15) was established, although queen conch can still be harvested for local consumption during the closed season (DEMA 2012). As previously noted, shell length, flared lip, and meat weight requirements are not reliable indicators of maturity. The existing regulations do not include a minimum lip thickness requirement. It is also notable that queen conch are not required to be landed whole, but the meat may be removed from the shell at sea (Ulman *et al.* 2016), which undermines the effectiveness of most minimum size-based regulations. In addition, while a closed season to exports may decrease demand during the species' reproductive season, it does not fully prohibit the harvest of spawning adult conch.

Two recent studies suggest that the level of exploitation of conch populations in Turks and Caicos may be higher than previously thought. The first study by Ulman *et al.* (2016) performed catch reconstructions that identified a significant problem with underreported fishery landings data from 1950 to 2012. The authors found that the total reconstructed catch was approximately 2.8 times higher than that reported by the Turks and Caicos to the FAO, and 86 percent higher than the export-adjusted national reported baseline. The discrepancies arose because local consumption was not reported and in fact, the total local consumption of queen conch accounted for almost the entire total allowable catch before exported amounts were considered. In response to this study, the catch quota was lowered in 2013.

The last available queen conch survey was completed in 2001. While dated, this survey recorded queen conch densities at 250 adult conch/ha (DEMA 2012). Queen conch harvest is prohibited in the Admiral Cockburn Land and Sea National Park and in the East Harbor Conch and Lobster Reserve. Both protected areas are located in South Caicos (CITES 2012). A study by Schultz and Lockhart (2017) examined the demographics of conch populations inside and outside the East Harbor Conch and Lobster Reserve. The authors identified a lack of algal plain habitat, smaller conch, and lower densities of conch in the reserve. Only one of 118 sites examined inside the reserve contained densities of more than 50 adult conch/ha and none of the sites had densities of more than 100 adult conch/ha. Outside of the reserve, only four of 96 sites had densities of more than 50 adult conch/ha and only one site had a density of more than 100 adult conch/ha. Overall, the densities inside and outside the reserve were similar and had declined by at least an order of magnitude since 2000. The authors cite a lack of habitat inside the reserve and continued fishing pressure within the reserve due to low enforcement presence, as the most likely reasons for an underperformance of the reserve for queen conch conservation.

The Turks and Caicos likely supplies larvae to The Bahamas, and is unlikely to receive larvae from overfished populations up current, and is largely self-recruiting (Vaz *et al.* 2022). Thus, local reproduction is critical for sustaining queen conch in Turks and Caicos. The Turks and Caicos has been one of the largest producers of queen conch meat for decades; however, recent density trends suggest that existing regulations may be inadequate to sustain viable populations.

United States (Florida)

Within the continental United States, queen conch only occur in Florida, where the historical queen conch harvest supported both commercial and recreational fisheries. Regulatory measures were put in place in the 1970s, 1980s, and 1990s (Florida Administrative Code, 1971, 1985, 1990) to first limit and then prohibit commercial and recreational take of queen conch in order to reverse the downward trend of queen conch populations in Florida (Florida Department of State 2021; Glazer and Berg Jr. 1994). The 1990 regulations also provided a stricter framework for shell possession. Habitat loss resulting from coastal developmental contributed to the decline of queen conch populations during the 1980s, and since that time, multiple state and Federal regulations (*e.g.,* Florida Department of Environmental Planning and the Florida Keys National Marine Sanctuary) have limited discharge, development, and other anthropogenic activities that may influence water quality and degrade coastal habitat.

Queen conch are grouped into three ''subpopulations'' within the Florida Keys based on their spatial distribution (*i.e.,* nearshore, back-reef, and deep-water) (Glazer and Delgado 2020). To date, none of the above measures have been effective in restoring subpopulations in the nearshore, shallow water, and hard bottom habitats immediately adjacent to the Florida Keys island chain. In fact, three populations known to exist in the 1990s remain locally extinct despite 35 years of fishery closure (Glazer and Delgado 2020). Most queen conch in the

nearshore areas are not capable of reproduction, which in part, may be due to deficiencies in their gonadal development (Glazer *et al.* 2008; Spade *et al.* 2010; Delgado *et al.* 2019), and very low densities. While the reason for reproductive failure in the nearshore areas has not been clearly identified, contaminants may also play a role in the reproductive failure. In addition, low adult densities, high water temperatures, and natural geographic barriers to movement (*e.g.,* Hawks Channel) appear to limit opportunities for the formation of spawning aggregations that could restore viable populations in nearshore areas. Therefore, it is likely that these populations will continue to decline without additional intervention, despite the protective measures that have been in place for 50 years.

The Florida Keys' back-reef subpopulation is located in shallow water reef flats in habitats primarily consisting of coral rubble, sand, and seagrass (Glazer and Kidney 2004), and has been the focus of fishery-independent surveys since 1993 (Delgado and Glazer 2020). These surveys confirm that the adult abundance of queen conch on back reefs in the Florida Keys has been increasing slowly but steadily since 2007. By 2013, with a few setbacks due to major hurricanes in 2004 and 2005, adult abundance reached approximately 65,000 individuals (Glazer and Delgado 2020). Delgado and Glazer (2020) have confirmed that adult spawning densities in the back-reef are high enough (exceeding 100 adult conch/ha) to support successful reproduction, although the authors never observed mating when aggregation density was less than 204 adult conch/ha, and spawning was not observed when densities were less 90 adult conch/ha.

In summary, queen conch in Florida have experienced large declines since the 1970s due to fisheries harvest and habitat degradation, despite protective regulations being put in place in the 1970s, 1980s, and 1990s. The best available data indicate that the density of large adults is still too low and compromised (*i.e.,* non-reproductive adults in nearshore areas) to restore healthy subpopulations in the Florida Keys: nearshore, back reef, and deep-water. The median adult queen conch density in Florida is less than 50 conch/ha, which is too low for successful reproduction to be maintained throughout the region and for Florida to have a healthy self-recruiting population. Evidence of increasing abundance on back reefs and the restoration of the reproductive capacity of nearshore adult conch following translocation is promising. Fishery closures and other regulatory measures implemented up until the early 2000s may be partially responsible for some of the positive trends that have been observed within the last decade. Recent restoration measures through translocation implemented by the State suggest that queen conch populations may have the capacity to recover with sustained human intervention. Additional regulatory measures outside of Florida are unlikely to have a positive impact on queen conch occurring within Florida because connectivity modeling (Vaz *et al.* 2022) and genetic analysis (Truelove *et al.* 2017) suggest that Florida is largely a self-recruiting population. The commercial and recreational fishery closures in Florida are likely adequate to prevent further overutilization, but, given the longevity of the closures and lack of recovery observed, particularly in nearshore, additional restoration measures are likely needed.

Venezuela

The commercial conch fishery in Venezuela occurred almost exclusively in the insular region, with the archipelagos of La Orchila, Los Roques, Los Testigos, and Las Aves all having significant conch densities (Schweizer and Posada 2006). Until the mid 1980s queen conch were predominantly harvested in Los Roques Archipelago. Studies of the queen conch population around Los Roques Archipelago in the 1980s (Guevara *et al.* 1985) showed the population to be severely overfished, and subsequently the Los Roques Archipelago conch fishery was closed in 1985. Despite the closure, high landings continued (*e.g.,* 360 mt in 1988) and in 1991, the entire commercial queen conch fishery closed (CITES 2003). Most recently, the FAO reported the following annual landings data at 2 mt, in 2016, 2017, and 2018 (see S2 in Horn *et al.* 2022). This illegal harvest of queen conch despite the closure, as well as illegal fishing by other jurisdictions, is thought to be the cause of the low densities and lack of recovery of the Venezuelan queen conch population (CITES 2003). Connectivity models show Venezuela is largely self-recruiting (Vaz *et al.* 2022); thus, queen conch in Venezuelan waters must maintain relatively high adult densities to support recruitment and population growth. Therefore, without adequate enforcement of current regulations prohibiting the harvest of the local queen conch population, which are already depleted and unlikely to be successfully reproducing, densities will likely continue to decline into the future.

Western Caribbean (Mexico, Belize, Honduras)

The jurisdictions in the western Caribbean have a history of industrial-scale exploitation of queen conch. In Mexico and Belize, the queen conch fisheries grew rapidly during the 1970s, which was followed by subsequent declines in queen conch population and densities (CFMC and CFRAMP 1999). In Mexico, the government responded to these declines by implementing temporary and permanent fishery closures in various areas in the 1990s (CITES 2012). Despite these closures and the more recent implementation of size limits, closed seasons, and quotas, Mexico's queen conch population has largely failed (CITES 2012). Density surveys conducted in 2009 show a population that is unlikely to be reproductively viable (De Jesús-Navarrete and Valencia-Hernández 2013). While Mexico reported in 2018 that there have been no legal exports of wild queen conch from Mexico during the previous 7 years (CITES 2018), the FAO data show queen conch exports from Mexico increasing from 204 mt in 2003 to 623 mt in 2018 (see S2 in Horn *et al.* 2022). Given that harvest and export of the already depleted queen conch population in Mexico is still occurring, existing regulatory measures are inadequate to protect the species from overutilization and further decline. Additionally, illegal fishing of queen conch at both the Chinchorro and the Cozumel Banks and at Alacranes Reef is thought to be a significant factor inhibiting recovery (CITES 2012).

In Belize, the heavy exploitation of queen conch almost led to a stock collapse in 1996 (CITES 2003). In response, the government prohibited the selling of diced conch (Government of Belize 2013), instituted minimum shell length (178 mm) and clean meat weight requirements (85 g) to prevent the harvest of immature conch, prohibited harvest by SCUBA gear, and established a TAC limit based on biennial surveys (Gongora *et al.* 2020). While the biennial surveys to determine TAC show relative stability in queen conch size classes over several years, there is evidence of potential overutilization. For example, Foley and Takahashi (2017) found that only 50 percent of female conch were mature at 199 g (clean market meat), which is significantly higher than the current minimum 85 g weight requirement, indicating that this requirement is too low to protect immature conch. In addition, Tewfik *et al.* (2019) documented a significant 15-

year decline in the mean shell length of adult and sub-adult queen conch at Glover's Atoll, likely due to the selective harvest of conch with a certain shell length size. This decline in the size distribution may impact productivity because smaller adults tend to have lower mating frequencies and smaller gonads (Tewfik *et al.* 2019), thereby leading to a decline in overall reproductive output.

Tewfik *et al.* (2019) found evidence that indicates Belize's minimum shell length size (178 mm) and market clean meat (85 g) regulations are inadequate to protect juveniles from harvest. Tewfik *et al.* (2019) also found a significant amount of immature conch with shell length sizes over 178 mm and suggest lip thickness should be used as a proxy for maturity, rather than shell length. Based on surveys of queen conch at Glover's Atoll, Tewfik *et al.* (2019) calculated a threshold for the size at 50 percent maturity to be a 10 mm thick shell lip and an associated 192 g market clean meat. However, in Belize, queen conch are not required to be landed intact with the shell. Because most conch meat is removed at sea and the shell discarded, it is the minimum shell size regulations are difficult to enforce and meat weight requirements have diminished value in protecting undersized conch from harvest. Based on the preceding, existing regulations are likely inadequate to protect immature queen conch from harvest and may lead to a decline in recruitment and growth in the future. In fact, the fishing of immature queen conch has been confirmed directly by fishermen and fishery managers, who note that imposing a lip thickness requirement would significantly affect their landings as ''the majority of conch that is fished are juveniles'' (Arzu 2019; FAO Western Central Atlantic Fishery Commission 2020). In addition, a study conducted by Huitric (2005) presented a historical review of conch fisheries and sequential exploitation. The overall objective of this study was to analyze how Belize's conch fisheries have developed and responded to changes in resource abundance. Huitric (2005) suggests that the use of new technology over time and space (by increasing the area of the fishing grounds), together with fossil fuel dependence and fuel cost, have sustained yields at the expense of depleted stocks, preventing learning about resource and ecosystem dynamics, and removing incentives to change fishing behavior and regulation.

Belize has established a network of marine reserves along the Belize Barrier Reef and two offshore atolls that are divided up into zones of varying levels of protection; however, enforcement of protected areas is limited. For example, long-term declines of reproductively active adult conch have been reported within the Port Honduras Marine Reserve (PHMR) in southern Belize, a no-take zone for queen conch. In fact, densities of conch have been continuously declining since 2009, falling below 88 conch/ha by 2013, and decreasing further to less than 56 conch/ha in 2014 (Foley 2016, unpublished cited in Foley and Takahashi 2017). There have also been reports of illegal fishing near Belize's border with Guatemala as well as reports of Honduras fishermen illegally selling seafood products from Belize (Arzu 2019). In 2017, the Belize Fisheries Department reported confiscating around 4.1 mt of queen conch meat that was harvested out of season (San Pedro Sun 2018). The existing regulations appear adequate to maintain a conch fishery in the short-term because there at least some large mature conch that are protected from fishing located below the depths usually accessed by free-diving (Tewfik *et al.* 2019; Singh-Renton *et al.* 2006). But the existing regulations will likely be inadequate to prevent overutilization of the species in the future, in light of the evidence of significant harvesting of immature queen conch, the decreasing size of adult queen conch in the population, ongoing reports of IUU fishing, and lack of enforcement. Further, Tewfik *et al.* (2019) found that the deep water sites (*i.e.,* fore-reef sites at Glovers Atoll), which are generally protected from fishing due to their location, displayed the lowest overall density (14–4 conch/ha) and were dominated by significantly older individuals (lip thickness >20 mm) that have lower fecundity.

Honduras is one of the largest producers of queen conch meat, with some population monitoring and evidence of general compliance with existing regulations; however, there is also substantial evidence of IUU fishing. In 1996, visual surveys resulted in an overall juvenile and adult density of 14.6 conch/ha (Tewfik *et al.* 1998b). These low densities were attributed to intensive exploitation that had taken place over the previous decades (CITES 2012). However, the most recent survey available conducted in 2011 reported overall conch densities that should be able to sustain successful reproductive activity at two of the three major banks: 134 conch/ha at Roselind; 196 conch/ha at Oneida; and 93 conch/ha at Gorda Banks (Regalado 2012). However, no age structure data was provided with this survey, and therefore the SRT was unable to determine what proportion of the population surveyed are adult queen conch. However, the densities increased with depth, which is most likely the result of fishing effort focused in shallow areas (Regalado 2012). In the early 2000s, there was also evidence that a significant portion of the queen conch meat landed in and exported from Honduras was fished illegally from neighboring jurisdictions. In particular, concerns were raised about a period when Jamaica's fishery at Pedro Bank was closed (2000–2002), which led to an increase in illegal fishing by foreign vessels (including Honduran vessels) and coincided with an increase in queen conch meat exports from Honduras (CITES 2003; CITES 2012). From 1999 to 2001, Honduras almost doubled its queen conch production, elevating concerns about IUU fishing (FAO 2016). Honduras, in addition to other jurisdictions, was also implicated in unlawful queen conch exports that were confiscated in 2008 during the Operation Shell Game investigation (U.S. House, Committee on Natural Resources, 2008). Illegal fishing has been connected to illegal drug trafficking, increasing the complexity of the issue for fisheries managers and the enforcement challenges (FAO 2016; *canadianbusiness.com,* Illegal trade: raiders of the lost conch, April 28, 2008).

Due to the high amount of exports, lack of landings records, evidence of illegal activity, and low population densities, Honduras was placed under a CITES trade suspension in 2003, and the Honduran government declared a moratorium on conch fishing from 2003 to 2006. From 2006 to 2012, export quotas were set annually for queen conch meat that was taken during scientific surveys (CITES 2012; Regalado 2012). However, based on surveys in 2009–2011 at the three main queen conch fishing banks (Regalado 2012), the mean queen conch landings from 2010 through 2018 represented about 12.3 percent of the standing stock, or more than 50 percent above the recommendation to fish at 8 percent of standing stock, indicating that quotas are being set too high to sustain fishing of these queen conch populations (Horn *et al.* 2022). In 2012, Honduras lost a substantial portion of its conch fishing grounds to Nicaragua in a marine dispute resolution (Grossman 2013). Subsequent to that determination, Honduras terminated its queen conch research program and temporarily ceased generating scientific reports to inform the annual quota allocation.

In 2017, Honduras developed and adopted a formal fishery management

plan aimed at establishing legal and technical regulations contributing to the sustainable use of its queen conch populations. Regulations implemented in the plan established a quota of 310 mt of 100 percent clean conch meat to be distributed among 11 industrial fishing vessels. In 2018 and 2019, the total quota increased to 416 mt and was allocated among 13 vessels. Each vessel must carry a satellite monitoring and tracking system during operations and carry one inspector onboard. Minimum size limits were also established at 210 mm shell length, 18 mm shell lip thickness, and a minimum meat weight of 125 g. As previously noted, minimum shell length and meat weight regulations are unreliable since large juveniles can have larger shells and more meat than mature adults. The minimum shell lip thickness of 18 mm likely prohibits immature queen conch from harvest. However, shells are commonly discarded at sea, as the existing regulations do not require queen conch to be landed with the shell intact, which makes it difficult to ensure compliance and enforcement of most size-based regulations. The most recent data (for 2018–2019) show that approximately 416 mt of clean conch meat was landed (Ortiz-Lobo 2019). However, 0.6 mt of conch meat was seized by the Honduran Navy from an unauthorized vessel in November 2018 (Ortiz-Lobo 2019), indicating IUU fishing is still a problem. In addition, fishermen, who agreed to conduct population abundance and density surveys as part of a condition to fish for queen conch under CITES, reversed their decision (Ortiz-Lobo 2019), and abundance surveys from which harvest quotas are established have not been conducted since 2011. The evidence of IUU fishing and the failure to conduct required stock surveys, while increasing export quotas, suggests the existing regulatory measures, including the current allowable quota, are likely inadequate to prevent further declines of the Honduran population of queen conch in the future.

Windward Islands (Barbados, Dominica, Grenada, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago)

In the Windward Islands, queen conch populations appear to be following the same trend as the Leeward Islands, likely due to Allee effects and lack of self-recruitment. Connectivity models (Vaz *et al.* 2022) demonstrate that queen conch in the southern Windward Islands (*i.e.,* Barbados, Grenada, and Trinidad and Tobago) are mostly self-recruiting with larvae hatching and being retained locally; however, it is likely that little to no recruitment is occurring due to the relatively low adult queen conch densities observed throughout the Windward Islands. These low conch densities appear to be the result of overexploitation through sustained and unregulated or inadequately regulated queen conch fishing over the last several decades.

In Barbados and Trinidad and Tobago, there is no management of the queen conch fishery or regulations pertaining specifically to queen conch harvests or sales. While there are no queen conch surveys or assessment for Trinidad and Tobago, declines in abundance were noted as early as the 1970s and 1980s (Georges *et al.* 2010; van Bochove *et al.* 2009; Luckhust and Marshalleck 2004; Lovelace 2002; Brownell and Stevely 1981; Percharde 1968). In a 2010 technical report, 71 percent of fishers interviewed reported declines in queen conch abundance (Georges *et al.* 2010). Queen conch have been overfished and considered depleted in Trinidad and Tobago since the 1990s (CITES 2012). In Barbados, the queen conch catch is mainly comprised of immature individuals, with an estimate as high as 96 percent (Oxenford and Willoughby 2013), indicating highly unsustainable fishing of queen conch. While there is limited information available on queen conch in Dominica, the Significant Trade Review undertaken in 1995 resulted in a CITES suspension of exports from Dominica (Theile 2001).

Grenada has been under a CITES trade suspension since May 2006 due to failure to implement Article IV of the Convention, which requires that the scientific authority of the state has advised that exports will not be detrimental to the survival of the species (a determination known as a 'non-detriment finding'). During this trade suspension, Grenada has continued to export conch to Trinidad and Tobago, and Martinique (exporting 249 mt from 2007–2018; see S2 in Horn *et al.* 2022). However, Grenada recently indicated that it would be working towards a regional action plan for queen conch in an effort to overcome the CITES trade suspension (Blue BioTrade Opportunities in the Caribbean, March 22–23, 2021).

St. Vincent and the Grenadines have regulations in place intended to ensure sustainable conch fishing (FAO 2016). However, regulations have not been updated since they were established in 1987 (Isaacs 2014), and queen conch density has continued to decline since the late 1970s, with estimates of 73 to 78 percent declines, depending on depth area, from 2013 to 2016 (Rodriguez and Fanning 2018). Overall, adult conch density estimates (10.4 conch/ha) are well below the minimum adult density required to support any reproductive activity. Divers have begun using SCUBA gear to reach deep waters as populations have become depleted (CITES 2012). Current regulations prohibit the harvest of queen conch with a shell length less than 18 cm, or without a flared lip, or animals whose total meat weighs less than 225 g. Seasonal closures have not been established and divers fish conch year round (Rodriguez and Fanning 2018; CITES 2012). An export quota was established, based on one of the highest export years recorded in 2002; however, there appears to be no scientific basis for the establishment of the export quota (CITES 2012). In fact, the high level of exports that occurred in 2002 and 2004, was stated to be ''influenced by market forces rather than stock abundance'' (Management Authority of St. Vincent and the Grenadines *in litt.* to CITES Secretariat, 2004, as cited in CITES 2012). The best available information indicates that existing regulatory measures are inadequate to protect spawning adults, as there is no seasonal closure, and deep water locations are being fished with SCUBA gear. The existing regulations do not include a minimum lip thickness requirement, a more reliable indicator of maturity, to prevent harvest of immature conch and protect spawning. Furthermore, because the existing quota system does not appear to be based on population assessments or surveys, effective monitoring of the fishery is lacking, which has likely contributed to the continued depletion of the queen conch population.

In St. Lucia, the Department of Fisheries implemented regulations in 1996 that prohibit the harvest of queen conch with a shell length less than 18 cm, or without a flared lip, or animals whose total meat weighs less than 280 g without digestive gland (Hubert-Medar and Peter 2012). Conch are harvested in St. Lucia mainly with SCUBA gear. There are no lip thickness regulations to prohibit the harvest of juveniles, and as previously described, shell length and flared lip are not reliable indicators for maturity in conch. In addition, although the Department of Fisheries requires queen conch to be landed whole in the shell, it appears the majority of conch meat is extracted at sea and the shell discarded (Williams-Peter 2021), making the shell length, flared lip and meat weight requirements ineffective mechanisms for protecting the fishery. Queen conch are also fished year round;

thus, fishing of spawning adults during their reproductive season is likely occurring (Williams-Peter 2021). Information on stocks is still scarce, especially information on density, abundance, and distribution (Williams-Peter 2021). However, CPUE and landings data (1996–2007) shows that stock have been in a steady decline (Williams-Peter, 2021; Hubert-Medar and Peter 2012) indicating inadequate regulatory controls.

The best available information suggests that most jurisdictions within the Windward Islands use inadequate proxy measures (*i.e.,* shell length, flared lip, and meat weight) to indicate maturity, allowing for immature conch to be harvested. In addition, there is a general lack monitoring of these fisheries to form the basis for their fishing quotas, poor enforcement, and evidence IUU fishing. The connectivity model (Vaz *et al.* 2022) indicates a strong reliance on self-recruitment for these jurisdictions (although there is some exchange within islands), with many of these jurisdictions acting as sources rather than sinks for queen conch larva. Thus, it is likely that queen conch throughout the Windward Islands will continue to decline due to overutilization and the inadequacy of the existing regulatory measures to address this threat.

Summary of Findings

Given the ongoing demand for queen conch, the lack of compliance with and enforcement of existing regulatory measures, size-based regulations that do not effectively protect juveniles from harvest, and continued illegal fishing and international trade of the species, combined with the observed low densities and declining trends in most of the queen conch populations, the best available scientific and commercial information indicates that existing regulatory mechanisms are generally inadequate to control the threat of harvest and overutilization of queen conch throughout its range. Our review of minimum meat weight, shell length, and flared lip regulations indicates that immature queen conch are being legally harvested in 20 jurisdictions, which is partially responsible for observed low densities and declining populations. Shell lip thickness is considered the most effective criterion for preventing the legal harvest of immature queen conch (Appeldoorn 1994; Clerveaux *et al.* 2005; Cala *et al.* 2013; Stoner *et al.* 2012; Foley and Takahashi 2017), while flared shell lip and minimum shell length requirements do not guarantee sexual maturity. Furthermore, there is general agreement among fisheries managers that no individuals should be harvested before they have had the opportunity to reproduce during at least one season (Stoner *et al.* 2012). Thus, the intent of the minimum size regulations is to protect individuals until they have had the chance to reproduce at least once, assuming that this will return a sustainable supply of new recruits into the population. Nevertheless, only six jurisdictions (*i.e.,* Colombia, Puerto Rico, Nicaragua, U.S. Virgin Islands, Cuba, and Honduras) have minimum shell lip thickness regulations, but only Honduras has a minimum shell lip thickness of at least 18 mm, which is likely the most effective criteria for prohibiting the harvest of immature conch; the other five jurisdictions require a minimum lip thickness that may not ensure maturity (*i.e.,* 5 mm, Colombia; 9.5 mm, Puerto Rico; 9.5 mm, Nicaragua; and 10 mm, Cuba). While historical studies report that some queen conch mature with relatively thin lips (less than 7 mm) (Egan 1985, Appeldoorn 1988), more recent studies indicate that maturation occurs later, at larger sizes, and differs by gender (Doerr and Hill 2018). Several more recent studies indicate that shell lip thickness values at maturity for queen conch range from 17.5 to 26.2 mm for females, and 13 to 24 mm for males (Avila-Poveda and Barqueiro-Cardenas 2006; Aldana-Aranda and Frenkiel 2007; Bissada 2011; Stoner *et al.* 2012). These studies have advocated for increases in the minimum shell lip thickness for legal harvest. Avila-Poveda & Baqueiro-Cárdenas (2006) suggests a minimum up to 13.5 mm by and Stoner *et al.* (2012) suggests 15 mm. While, we recognize that the relationships between shell lip thickness, age, and maturity vary geographically, the best available information demonstrates that the value established for minimum shell lip thickness by most jurisdictions is inadequate to prevent immature conch from being harvested. In addition, the majority of queen conch fisheries (except St. Lucia and the U.S. Virgin Islands) do not have requirements to land queen conch in the shell. Queen conch meat is typically removed and shell is discarded at sea, which undermines enforcement and compliance with regulations for a minimum shell length, shell lip thickness, and flared shell lip. Furthermore, most jurisdictions require a minimum meat weights (125 g to 280 g); however, meat weight is more applicable to catch data, and generally does not constitute a reliable indicator of queen conch maturity (FAO 2017). In addition, 15 jurisdictions do not have regulations that include a seasonal closure, which is essential to prevent the harvest of spawning adults. Similarly, 21 jurisdictions do not have regulations that prohibit the use of SCUBA gear, which could aid in protecting putative deep-water populations. Only a fraction of the jurisdictions (*i.e.,* Belize, The Bahamas, Jamaica, Nicaragua, and Colombia) that have conch fisheries are conducting periodic surveys to gather relevant information on the status of their queen conch populations to inform their national management (*e.g.,* TACs). Available landings data indicate that substantial commercial harvest has led to declines in many queen conch populations to the point where reproductive activity and recruitment has been significantly impacted, particularly throughout the eastern, southern, and northern Caribbean region. Furthermore, several jurisdictions (*e.g.* Curacao and Trinidad and Tobago) have no regulations despite having queen conch fisheries (see S1 in Horn *et al.* 2022). Finally, Aruba (closed 1987), Bermuda (closed 1978), Costa Rica (closed 1989), Florida (closed 1975), Panama (closed 2004), and Venezuela (closed 2000) have completely closed their respective queen conch fisheries. We conclude that fishery closures are likely adequate, if enforced, to prevent further overutilization. However, based on the longevity of the closures, and the lack of recovery observed in each population, it is likely additional measures will be necessary to restore those queen conch populations.

In summation, in some jurisdictions, regulatory controls are non-existent. In other jurisdictions, fishery management regulations aimed at controlling commercial harvest have fallen short of their goals, largely due to a lack of population surveys, assessments, and monitoring, and a reliance on minimum size-based regulations that likely do not prevent the harvest of immature conch or protect spawning stocks. In addition, poor enforcement and compliance with existing regulations combined with significant IUU fishing has greatly reduced the effectiveness of existing regulations. Based on the above, we conclude that the best available information demonstrates that the existing regulatory mechanisms throughout the range of the species are inadequate to achieve their purpose of protecting the queen conch from unsustainable harvest and continued populations decline.

Other Natural and Manmade Factors Affecting Its Continued Existence

Direct Impacts to Queen Conch From Climate Change

Queen conch reproduction is dependent on water temperature (Aladana Aranda *et al.* 2014; Randall 1964), and therefore alteration to water temperature regimes may limit the window for successful reproduction. An increase in mean sea-surface temperatures may have direct effects on the timing and length of the reproductive season for queen conch and ultimately decrease reproductive output during peak spawning periods (Appeldoorn *et al.* 2011; Randall 1964). Queen conch reproduction begins at around 26–27 °C. Aldana-Aranda and Manzano (2017) observed that nearly all reproduction ceased when temperatures reached 31 °C. Early life history stages of queen conch are particularly sensitive to ocean temperature (Brierley and Kingsford 2009; Byrne *et al.* 2011; Harley *et al.* 2006), and rising water temperatures may have a direct impact on larval and egg development (Aldana-Aranda and Manzano 2017; Chávez Villegas *et al.* 2017; Boettcher *et al.* 2003). Aldana-Aranda and Manzano (2017) tested the influence of climate change on queen conch, larval development, growth, survival rate, and calcification by exposing egg masses and larvae to increased temperatures (28, 28.5, 29, 29.5 and 30 °C, for 30 days. Queen conch egg masses exposed to water temperatures greater than 30 °C resulted in the highest larval growth rate, but also higher larval mortality (76 percent; Aldana-Aranda and Manzano 2017). This study found no link between elevated water temperatures and the calcification process in queen conch larvae. Furthermore, heat stress can induce premature metamorphosis of queen conch leading to developmental abnormalities and lower survival (Boettcher *et al.* 2003). Higher temperatures also accelerate growth rates and decrease the amount of time queen conch spend in vulnerable early stages. For example, faster growth of juvenile queen conch offers earlier protection from predators and shortens the time to reach sexual maturity. While growth may be optimized at higher temperatures up to a certain point, the evidence to date suggests that warming ocean conditions will also lead to higher queen conch mortality rates for early life stages and possible disruption of the shell biomineralization process (Aldana-Aranda and Manzano 2017; Chávez Villegas *et al.* 2017). In addition, other studies have indicated that queen conch veligers developed normally at 28 °C, decrease growth at 24 °C and have 100 percent mortality at 32 °C (Glazer pers. comm, as cited in Davis 2000; Aldana Aranda *et al.* 1989; Aldana Aranda and Torrentera 1987.). However, Davis (2000) found that a temperature of 32 °C provided conditions for fast growth and high survival of veligers, but also noted this temperature is probably near the upper physiological tolerance for these veligers. These findings suggest that future water temperatures in the Caribbean Sea are likely to impact survival rates of queen conch during its early life stages.

Climate change will also adversely impact the Caribbean region through ocean acidification, which affects the calcification process of organisms with calcareous structures, like the shells of queen conch. Ocean acidification impedes calcareous shell formation, and thereby impacts shell development (Aldana-Aranda and Manzano 2017; Parker *et al.* 2013). Many mollusks, like queen conch, deposit shells made from calcium carbonate ($CaCO_{3\geqq}$ in the form of aragonite and high-magnesium calcite) and these shells play a vital role in protection from predators, parasites, and unfavorable environmental conditions. Low pH is known to have a strong negative impact on larval development in mollusks, like queen conch, and the very thin shells of queen conch veligers may be especially vulnerable (Chavez-Villegas *et al.* 2017).

The absorption of CO_2 into the surface ocean has led to a global decline in mean pH levels of more than 0.1 units compared with pre-industrial levels (Raven *et al.* 2005, Parker *et al.* 2013). A further 0.3 to 0.4 unit decline is expected over this century as the partial pressure of CO_2 (pCO_2) reaches 800 ppm (Raven *et al.* 2005; Feely *et al.* 2004). At the same time there will be a reduction in the concentration of carbonate ions ($CO_3{}^2$), which will lower the $CaCO_3$ saturation state in seawater, making it less available to organisms that use $CaCO_3$ for shells development (Cooley *et al.* 2009; as cited in Parker *et al.* 2013). Ocean acidification impacts to larval queen conch could have major impacts on recruitment to the adult age class, including reproductive populations, throughout the species' distribution (Stoner *et al.* 2021). Whether the impacts of ocean acidification persist over multiple generations and at large enough spatial scales to affect the long-term viability of queen conch populations remains uncertain (Aldana-Aranda and Manzano 2017; Gazeau *et al.* 2013). While changes to ocean pH will likely upset the shell biomineralization processes, and challenge metabolic processes and energetic partitioning, acidic ocean conditions can be patchy in space and time and may develop slowly (Aldana-Aranda and Manzano 2017). Research conducted by Aldana-Aranda and Manzano (2017) observed that acidification conditions produced a 50 percent decrease in aragonite in queen conch larval shell calcification at pH 7.6 and 31 °C (see Figure 21 in Horn *et al.* 2022). As previously mentioned, aragonite and high-magnesium calcite are the primary ingredients in queen conch shell formation. Uncertainty with regard to the queen conch's ability to adapt to predicted changing climate conditions, the potential costs of those adaptations, and the projections of future carbon dioxide emissions make it difficult to assess the severity and magnitude of this threat to the species. Recent studies and reviews have stressed the importance of conducting multi-stressor (*e.g.,* elevated water temperature and ocean acidity), multi-generational, and multi-predicted scenario experiments using animals from different areas in order to better understand the impacts of climate change on mollusks at species-wide levels (Aldana-Aranda and Manzano 2017; Parker *et al.* 2013).

Indirect Impacts to Queen Conch From Climate Change

Queen conch nursery habitat includes shallow and sheltered back reef areas that contain moderate amounts of seagrass. These areas are characterized by strong tidal currents and frequent exchange of clear seawater (Stoner *et al.* 1996). Sea level rise, erosion, sea surface temperatures, eutrophication, turbidity, siltation, and severity of hurricanes and tropical storms resulting from climate change can have both short- and long-term impacts on the water quality and health of seagrass meadows (Boman *et al.* 2019; Cullen-Unsworth *et al.* 2014; Grech *et al.* 2012; Burkholder *et al.* 2007; Orth *et al.* 2006; Duarte 2002; Short and Neckles 1999). Depending on the frequency, severity, and scale of climate change-induced conditions, seagrass meadow biomass may decrease at local and over larger scales, reducing conch larvae encounter rates with appropriate queen conch veliger settlement cues (*i.e., Thalassia testudinum* detritus and associated epiphytes; Davis and Stoner 1994). In addition, high water temperatures (greater than 30 °C) in the shallow flats where queen conch nurseries occur can result in low oxygen concentrations, which would reduce queen conch growth and may lead to maturation at smaller than normal length, thereby impacting reproductive output (Stoner

et al. 2021). Juvenile queen conch may experience lower growth and higher mortality rates if they have limited access to adequate food sources and shelter from predators, which are also provided by seagrass meadow communities (Appeldoorn and Baker 2013). Deposits of fine sediment or sediment with high organic content in a wider variety of habitats that adults depend upon (*e.g.,* algal plains, coarse sand, coral rubble, and seagrass meadows) could smother the algae queen conch graze on, thus limiting the nutritional value, and making these habitats unsuitable (Appeldoorn and Baker 2013).

Queen conch are described as stenohaline (Stoner 2003), meaning they tolerate a narrow range of salinities (approximately 34–36 ppt). The species' ability to adapt to short- or long-term intrusions of lower salinity water is uncertain; however, in at least one groundwater-fed coastal area on the Yucatan Peninsula, queen conch movement and growth was not different from core habitat areas with more stable salinity and temperature signatures (Dujon *et al.* 2019; Stieglitz *et al.* 2020). Hypoxic or anoxic conditions may also affect the movement of juvenile queen conch (Dujon *et al.* 2019), which could make them more vulnerable to predation. Changing climate may have subtler effects that could impact tidal flow, circulation patterns, the frequency and intensity of storm events, and larger scale current patterns (Franco *et al.* 2020; van Gennip *et al.* 2017). Changes in tidal flow and current patterns could alter the rate and condition of larval dispersal and the cycle of source and sink dynamics of queen conch populations throughout the Caribbean region. Changes in circulation patterns within the Caribbean Sea would have significant implications for the species.

Summary of Findings

The most significant impacts to queen conch resulting from climate change are increased ocean temperature, ocean acidification, and possible changes in Caribbean circulation patterns. According to several studies, previously discussed, an increase in CO_2 expected by the year 2100 is likely to negatively impact shell formation, since water conditions will be more acidic and potentially dissolve the shells of many mollusks. These studies have also suggested that decreases in aragonite and larval shell calcification occur at a pH 7.6–7.7, which is projected to occur by 2100 under the very high greenhouse gas emissions scenario (SSP5–8.5; IPCC 2021). These changes in water parameters are likely to result in significantly weaker and thinner shells, which may increase predation rates, thereby contributing to another source of mortality for the species in the foreseeable future. Similarly, changes to other water parameters (*e.g.,* salinity and dissolved oxygen) outside the range of those typically experienced by queen conch can impact their growth and survival and have negative consequences on the seagrass habitat upon which they depend.

The most recent Intergovernmental Panel on Climate Change (IPCC) projections indicate that mean sea surface temperature will warm by 3.55 °C by 2100, with the increase in sea surface temperature ranging from 2.45 °C to 4.85 °C. The available information indicates that the Caribbean Sea will follow the global mean temperature (IPCC 2021; Figure SPM.5). The temperature of the Caribbean Sea has warmed to approximately 28 °C at present (Bove *et al.* 2022). Thus, based on the IPCC projections for mean sea surface temperature, it appears that water temperature may increase by approximately 3.55 °C suggesting that Caribbean Sea surface temperatures will exceed 31 °C under scenario SSP5–8.5 by 2100 (IPCC 2021). A mean sea surface temperature in the Caribbean Sea in excess of 31 °C may have negative implications for early life stages and queen conch reproduction. The impacts of acidification on conch larvae could also have significant impacts on recruitment to the adult class, including reproductive populations, throughout the species' range. In addition, possible changes in Caribbean Sea circulation patterns would have significant implications for queen conch recruitment processes and reproduction, but the extent of the impacts from changes in circulation patterns to queen conch is not well understood. Even so, the information is alarming as it indicates that the reproduction, growth, and survival of queen conch will likely be impacted by climate change in the future.

Assessment of Extinction Risk

The ESA (section 3) defines an endangered species as ''any species which is in danger of extinction throughout all or a significant portion of its range.'' A threatened species is defined as ''any species which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range'' (16 U.S.C. 1532). Implementing regulations in place at the time the status review was completed described the ''foreseeable future'' as the extending only so far into the future as we can reasonably determine that both the future threats and the species' responses to those threats are likely. These regulations instructed us to describe the foreseeable future on a case-by-case basis, using the best available data and taking into account considerations such as the species' life-history characteristics, threat-projection timeframes, and environmental variability. The regulations also indicated that we need not identify the foreseeable future in terms of a specific period of time. Although these regulations were vacated on July 5, 2022, by the United States District Court for the Northern District of California and are thus no longer in effect, this approach for determining the ''foreseeable future'' is consistent with NMFS's longstanding interpretation of this term in use prior to the issuance of these regulations in 2019 (see 84 FR 45020, August 27, 2019).

For the assessment of extinction risk for the queen conch, the ''foreseeable future'' was considered to extend out several decades (approximately 30 years). Given the species' life history (*i.e.,* density dependent reproduction and longevity estimated to be 30 years), it would likely take more than several decades and multiple generations for management actions to be reflected in population status. Similarly, the impact of present threats to the species could be realized in the form of noticeable population declines within this time frame, as demonstrated in the available survey and fisheries data. We also acknowledge that population recovery is likely dependent on when a protective regulatory measure, such as a closure, is implemented and the status of the population at the time of the closure. For example, Florida, Bermuda, and Aruba prohibited all conch harvest in the mid 1980's (more than 35 years ago), yet their respective populations have yet to recover. Other recovery efforts such as those in Cuba and on Colombia's Serrana Bank were started earlier and recoveries occurred over a shorter timeframe. In addition, in order to fully assess the longer-term threats stemming from climate change and their impacts on queen conch, we considered these threats over a time horizon that extended out to 2100, which is the timeframe over which both climate change threats and impacts to queen conch could be reasonably determined, with increasing uncertainty in climate change projections over that time period. Thus, while precise conditions during the year 2100 are not reasonably foreseeable, the general trend in conditions during the period of time

from now to 2100 is reasonably foreseeable as a whole, although less so through time.

Demographic Risk Analysis

In determining the extinction risk of a species, it is important to consider not only the current and potential threats impacting the species' status but also the species' demographic status and vulnerability. A demographic risk analysis is an assessment of the manifestation of past threats that have contributed to the species' current status and informs the consideration of the biological response of the species to present and future threats. The SRT's demographic analysis evaluated the viability characteristics and trends available for the queen conch (*i.e.,* growth rate and productivity, abundance, spatial distribution and connectivity, and diversity) to determine the potential risks these demographic factors pose. The SRT considered the demographic risk analysis alongside the Threats Assessment to determine an overall risk of extinction for the queen conch.

Spatial Distribution and Connectivity

The connectivity modeling considered by the SRT (Vaz *et al.* 2022) indicates that Allee effects are affecting queen conch dispersal rates throughout the Caribbean. Compared to the simulation that showed uniform spawning, it is clear that many important connections for queen conch dispersal have been lost over the past 30 years (see Figures 12, 13, in Horn *et al.* 2022). Many of the larval connections between the Leeward Antilles, which include the Windward and Leeward Islands, and a portion of the Greater Antilles are no longer occurring due to the decreased reproduction, and in some cases, reproductive failure of the queen conch populations within those areas. Many of the Leeward Antilles that once served as source populations are no longer able to contribute to recruitment as their densities are likely too low to support reproductive activity. The model simulations show that conch populations in waters of the Dominican Republic, Puerto Rico, Colombia, Jamaica, and Cuba are integral for larval dispersal and important to maintain connectivity throughout the species' range. The loss (or significant reduction in larvae contributions) of critical up-current source populations (*e.g.,* Leeward Antilles) has placed the species at an increased risk of extinction. The Dominican Republic, Puerto Rico, and Colombia all have populations with cross-shelf densities that are below the critical threshold required to support any reproductive activity. Therefore, it is likely that these populations that are important to facilitate connectivity may be lost in the foreseeable future, contributing to an increase in the species' extinction risk by significantly altering natural dispersal rates. Furthermore, the best available information indicates that historically important source populations within many of the Central American reefs (specifically Quitasueno Bank, Serrana Bank, Serranilla Bank) are likely overexploited, as those populations have low adult densities, and are likely experiencing Allee effects. Based on the results from the connectivity model (Vaz *et al.* 2022) and genetic studies (Truelove *et al.* 2017), these Central American reefs appear to be important for facilitating connectivity within the Caribbean region. In addition, the connectivity model indicates that the eastern Caribbean historically functioned as a source of larvae (and genetic exchange) for the western Caribbean. However, presently, it appears that only the mesophotic population in Puerto Rico is maintaining this connection and is currently at densities that put this recruitment and genetic exchange at significant risk (Vaz *et al.* 2022). Populations in Cuba, Jamaica's Pedro Bank, Nicaragua, Turks and Caicos, and The Bahamas' Cay Sal Bank and Jumentos and Ragged Cays all appear to have queen conch populations that achieve some level of reproductive activity, but they also appear to be largely self-recruiting, offering limited larval dispersal to neighboring jurisdictions, and subsequently providing limited genetic exchange (Vaz *et al.* 2022). While the connectivity model (Vaz *et al.* 2022) suggests that genetic exchange still occurs between populations within the central and southwestern Caribbean, the continued overutilization and inadequacy of existing regulatory measures are likely to reduce queen conch connectivity, placing the species at increased risk of extinction in the foreseeable future. The SRT recognized that there is uncertainty associated with connectivity model because it uses some density estimates that are dated or in some cases, estimates based on unknown survey methodology, though they were the only surveys available (Horn *et al.* 2022). Thus, the SRT assumed that some level of reduced reproduction might continue in areas the connectivity model found to have no larval production.

Overall, depensatory processes are likely limiting queen conch reproduction throughout the species' range. The loss of reproductively viable queen conch populations appears to have likely occurred in most areas throughout the Caribbean. The subsequent reduced larval production has likely resulted in the loss of connectivity among many queen conch populations, further contributing to declines in those populations dependent on source larvae. Thus, based on the best available information, the loss of population connectivity throughout the species' range is likely significantly contributing to the species extinction risk currently and in the foreseeable future.

Growth Rate/Productivity

As discussed previously, queen conch require an absolute minimum density for successful reproduction (see *Spawning Density* section). However, many queen conch populations are presently below the densities required to support any reproductive activity due to low adult queen conch encounter rates. Based on the available data, it is likely that recruitment failure is occurring throughout the species' range. Continued declines in abundance and evidence of overfishing suggests that population growth rates are below the rate of replacement. Of the 39 jurisdictions reviewed, 64 percent (25 jurisdictions), consisting of approximately 27 percent of the estimated habitat available, are below the minimum density threshold required to support any reproductive activity (<50 adult conch/ha). Twenty-three percent (9 jurisdictions), consisting of approximately 61 percent of estimated habitat, are above the 100 adult conch/ha threshold required to support successful reproductive activity. The remaining 13 percent (4 jurisdictions), consisting of approximately 5.5 percent of estimated habitat, had populations with densities that ranged between 50 to 100 adult conch/ha and are likely experiencing reduced reproductive activity resulting in minimal population growth. In other words, queen conch population growth rates in the majority of jurisdictions are likely below replacement levels given their lower densities, and thus, are at increased risk for negative impacts due to depensatory processes. There is also evidence that artificial selection is occurring in some jurisdictions (*e.g.,* Belize and The Bahamas) with fishing pressure leading to the development of smaller adult queen conch. Smaller adult queen conch are thought to be less productive (*e.g.,* lower mating frequencies, smaller gonads, and fewer eggs) than larger queen conch. Thus, queen conch populations that are

showing evidence of overfishing, and decreasing adult size will likely result in declines in abundance and lower densities, further contributing to declines in those populations in the foreseeable future. Several SRT members also noted that queen conch could likely withstand moderate harvest levels, as the species is very productive when at sufficient densities and may have the ability to compensate. However, given the extremely high levels of harvest occurring throughout the species' range, including high levels of illegal fishing, harvesting of juveniles, and evidence of significant population declines throughout most of the Caribbean, the majority of SRT members concluded, and we agree, that current population growth and productivity rates are contributing to the species extinction risk currently and in the foreseeable future.

Abundance

There are no region-wide population estimates for queen conch. To assess the species abundance, the SRT considered numerous sources of information including abundance estimates, stock assessments, surveys, landings and trends, habitat availability, and other biological indicators. Total population abundance estimates ranged from 451 million to 1.49 billion individuals, based on the 10th and 90th percentile abundance estimated across jurisdictions. These estimates, however, required numerous assumptions, in particular the assumed extent of conch habitat. In addition, for many areas, available survey data were limited, outdated (may have been collected decades ago), or unavailable. In addition, many density estimates were also unavailable or unable to be calculated because the survey methods and data collected were poorly described (*e.g.,* unknown whether an abundance reported adult conch or juvenile and adult conch). These data limitations and analytical assumptions contribute to high uncertainty in the SRT's abundance estimates.

Considering these limitations, the best available data suggest queen conch populations are experiencing Allee effects, with densities that are consistently very low and insufficient to support reproductive activity and mate finding. While several populations of queen conch appear to remain reproductively active based on the available survey data, these populations are limited to St. Lucia, Saba, Jamaica's Pedro Bank, Cuba, Turks and Caicos, Nicaragua, Costa Rica, The Bahamas' Cay Sal Bank and Jumentos and Ragged Cay, and Colombia's Serrana Bank, and the population surveys for some of these locations are outdated or unavailable (see Table 2; Figure 7 in Horn *et al.* 2022). In addition, some of the exploitation rates are significantly above the recommended maximum harvest rate of 8 percent of the standing stock for population densities capable of supporting successful reproduction (*i.e.,* >100 adult conch/ha). The SRT found that of the 9 jurisdictions that have populations above the 100 adult conch/ha threshold, four are experiencing exploitation rates that exceed the 8 percent target: Jamaica (8.7 percent exploitation rate), Nicaragua (8.8 percent exploitation rate), St. Lucia (16 percent exploitation rate), and Turks and Caicos (30 percent exploitation rate). Overall, of the 39 jurisdictions reviewed, approximately 20 jurisdictions (51 percent) had exploitation rates significantly above the recommended maximum 8 percent harvest for healthy populations (see S4 in Horn *et al.* 2022), despite a lack of evidence that those populations are capable of supporting successful reproductive activity.

Moreover, significant harvest levels and regulatory enforcement issues (*e.g.,* illegal fishing and harvest of juveniles) will continue to negatively impact population growth and recruitment, thereby decreasing abundances and potentially leading to extirpations in the foreseeable future. Any local disturbances (natural or anthropogenic), or environmental catastrophes (*e.g.,* hurricanes) that affect those jurisdictions in the future could result in population declines that would have extensive negative implications for the species overall given the depensatory issues occurring throughout the Caribbean region.

The SRT's extrapolated abundances are based on density estimates and habitat estimates. The SRT made efforts to quantify the uncertainty inherent in basing the abundance estimates on survey data reported using different methodologies, over a wide time span, and range of spatial scales. The majority of the SRT concluded that low and declining abundances and densities significantly increases the species' extinction risk currently and over the foreseeable future. Members of the SRT acknowledged that Cuba, The Bahamas' Cay Sal Bank and Jumentos and Ragged Cay, Turks and Caicos, Jamaica's Pedro Bank, and Nicaragua likely have populations with higher abundance and densities that indicate successful reproductive activity is occurring. However, approximately 25 jurisdictions (64 percent) have very low densities (<50 adult conch/ha) that are insufficient to support any reproductive activity or population growth. While another 5 jurisdictions (13 percent) have adult queen conch population densities between 50 and 100 conch/ha and are likely experiencing reduced reproductive activity, resulting in minimum population growth. Only 9 jurisdictions (23 percent) have adult queen conch densities at or greater than 100 conch/ha, which is required for successful reproduction and recruitment (UNEP 2012). Thus, the best available information on abundance reveals that declines throughout the species' range is likely significantly contributing to the species extinction risk currently and in the foreseeable future.

Diversity

As discussed above, early genetic studies of queen conch found a high degree of gene flow among populations dispersed over the species' geographic distribution, with definitive separation observed only between populations in Bermuda and those in the Caribbean basin (Mitton *et al.* 1989). More recent studies have found low genetic differentiation among locations in the Mexican Caribbean, the Florida Keys and Bimini (Pérez-Enriquez *et al.* 2011; Zamora-Bustillos *et al.* 2011; Campton *et al.* 1992). Mitton *et al.* (1989) hypothesized that the complex ocean currents of the Caribbean may restrict gene flow among Caribbean populations, even though larvae may disperse long distances throughout the Caribbean during their 16–28 day pelagic larval duration. Truelove *et al.* (2017) identified significant levels of genetic differentiation among Caribbean sub regions (*e.g.,* Florida Keys, Mesoamerican Barrier Reef, Lesser Antilles, Honduras, Jamaica, Greater Antilles, and The Bahamas) and between the eastern and western Caribbean regions (Truelove *et al.* 2017).

The connectivity model (Vaz *et al.* 2022) indicates there are several important jurisdictions that act as ecological corridors in facilitating population connectivity in the Caribbean region. For example, loss of Puerto Rico mesophotic populations would likely result in the loss of the genetic connectivity between the southeastern and western Caribbean. Furthermore, the connectivity model and literature suggest that the Nicaraguan rise, which includes the territorial seas of Honduras, Nicaragua, Colombia, and Jamaica, is likely to be an important region for maintaining population connectivity over larger spatial scales. These findings are consistent with those observed in Truelove *et al.* (2017). Many of these

jurisdictions are currently overexploiting their conch populations. However, at this time, the best available information does not suggest that significant changes in or loss of phenotypic or genetic traits are altering genetic diversity to the extent that it is significantly contributing to the species' extinction risk. Therefore, we conclude that diversity is unlikely to be significantly contributing to the species' extinction risk currently or in the foreseeable future.

Threats Assessment

As described above, section 4(a)(1) of the ESA and NMFS's implementing regulations (50 CFR 424.11(c)) state that we must determine whether a species is endangered or threatened because of any one or a combination of the ESA section 4(a)(1)(A)–(E)) factors. We provide here our findings and conclusions regarding threats to the queen conch described previously in this document, and their impact on the overall all extinction risk of the species. More details can be found in the status review report (Horn *et al.* 2022).

Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The most significant threat to queen conch is overutilization (through commercial, artisanal, and IUU fishing) for commercial purposes. Fishing for queen conch substantially increased in the 1970s and 1980s, reaching peak landings in the mid 1990s (Horn *et al.* 2022). It was during this time that many of the conch fisheries collapsed due to overfishing of the populations. In shallow waters, where conch are most accessible to both subsistence and commercial fishing, significant depletions have been recorded, with fishermen having to pursue the species into progressively deeper waters. Overfishing has caused population collapses throughout the range of the conch, contributing to known or likely reproductive failure in many locations (*i.e.,* Anguilla, Antigua and Barbuda, Aruba, central and northern Bahamas, Belize, Bermuda, Bonaire, British Virgin Islands, Cayman Islands, portions of Colombia, Dominican Republic, Guadeloupe, Haiti, Martinique, Mexico, Panama, St. Vincent and the Grenadines, Puerto Rico, U.S. Virgin Islands, Unities States (Florida), and Venezuela). Only a handful of jurisdictions in the Caribbean have conch populations with densities high enough to support successful reproduction (*i.e.,* Cuba, Costa Rica, Saba, St. Lucia, Turks and Caicos, Nicaragua, Jamaica's Pedro Banks, Colombia's Serrana Bank, and The Bahamas' Cay Sal Bank and Jumentos and Ragged Cay), with the viability of the species likely dependent on the persistence of those queen conch populations. Historically, the Leeward Islands (*i.e.,* Anguilla, Antigua and Barbuda, British Virgin Islands, Guadeloupe, Montserrat, Saba, St. Barthélemy, St. Martin, St. Eustatius, St. Kitts and Nevis, and U.S. Virgin Islands) and Windward Islands (*i.e.,* Barbados, Dominica, Grenada, Martinique, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago) in the eastern Caribbean likely served as important sources of larvae to the central and western Caribbean (Vaz *et al.* 2022). Although recruitment from undescribed deep-water populations is possible, queen conch populations in the Leeward Islands are unlikely to recover given they are primarily self-recruiting and up-current from most larval sources.

According to the SAU database there are 12 jurisdictions that have produced 95 percent of the conch landings from 1950 through present: Turks and Caicos, The Bahamas, Honduras, Jamaica, Belize, Nicaragua, Dominican Republic, Mexico, Cuba, Antigua and Barbuda, Colombia, and Guadeloupe (in order from highest landings producers to lower producers) (see Figure 17 in Horn *et al.* 2022). The exploitation rate analysis indicates that queen conch populations in The Bahamas, Honduras, Jamaica's Pedro Bank, and Nicaragua are likely exploited very near the targeted 8 percent rate of standing stock to maintain a healthy population. Of the other top-producing jurisdictions in the region, Dominican Republic, Antigua and Barbuda, Belize, Turks and Caicos, and Mexico's landings significantly exceed the 8 percent exploitation rate target (see Figure 18 in Horn *et al.* 2022). For example, the estimated exploitation rate for the Turks and Caicos is 30 percent of the stock, nearly quadruple the recommended rate. These unsustainable fishing rates are of particular concern because many of these jurisdictions (*i.e.,* Dominican Republic, Antigua and Barbuda, Belize, and Mexico) have adult queen conch densities below the minimum levels required to support any reproductive activity. Furthermore, we share the SRT's concerns about incomplete, inadequate and inconsistent data, such as self-reported landings data. Additionally, recreational and subsistence fishing are rarely tracked during data collection efforts, and the collective impacts of these activities, and IUU fishing (discussed below) can at times, be equal to or greater than the pressure from commercial fisheries. Without more accurate population assessments and harvest level estimates, there is a lack of reliable evidence that queen conch populations are fished at sustainable levels.

Illegal, unreported and unregulated (IUU) fishing, in particular, is a threat that is significantly contributing to the species' extinction risk currently and in the foreseeable future, although there is uncertainty regarding the magnitude of this threat. The best estimates of IUU fishing are most likely underestimated and may account for a significant portion (greater than 15 percent) of total catch. IUU fishing of queen conch is a significant problem throughout the range of the species, and particularly within Nicaragua, Honduras, Jamaica, the Dominican Republic, Haiti, and Colombia (see S1 in Horn *et al.* 2022). Illegal, unreported and unregulated fishing has led to declines in queen conch abundance and is thought to have prevented recovery of several populations (*e.g.,* Bonaire, Cayman Islands, and St. Eustatius). In the few jurisdictions with reproductively active queen conch populations (adult densities >100 conch/ha), illegal fishing is a serious threat as these removals are not considered in the management of fishing quotas. Thus, overall harvest levels likely exceed what is sustainable for the species.

The threat posed by IUU fishing on those reproductively active populations (densities >100 adult conch/ha) will likely be exacerbated by decreasing adult densities and reproductive failure (as observed elsewhere) in the long-term. There is no evidence to suggest that IUU fishing will decline in the foreseeable future. In fact, it will likely intensify as queen conch populations become depleted and more queen conch fisheries close.

Based on the aforementioned assessments, we conclude that overutilization is significantly contributing to the species' risk of extinction currently and in the foreseeable future. In general, the best available information indicates that queen conch harvest data are likely underreported due to incomplete and inconsistent data collection as well as IUU fishing. These facts, coupled with evidence of significant population declines that have resulted in Allee effects which limit reproduction and requirement indicate that queen conch are overexploited throughout most of its range and will likely continue to decline in the foreseeable future.

Inadequacy of Existing Regulatory Mechanisms

Queen conch populations have declined throughout a large portion of the species' range, and the best available information indicates that many populations continue to decline, particularly in the eastern and central southern Caribbean. There are still some jurisdictions throughout the species' range that have not implemented any regulatory mechanisms, and of those that have, many regulations are insufficient to prevent further declines in existing conch stocks (*e.g.,* Dominican Republic, Haiti, and Puerto Rico). In general, regulations in most jurisdictions are aimed at prohibiting the take, sale, or possession of immature queen conch and they rely on a minimum shell length, meat weight, shell lip thickness, and flared shell lip criteria or some combination of these. As previously discussed, studies conducted on established maturation criteria have demonstrated that in most jurisdictions the minimum lip thickness value is not set high enough prevent the harvest of immature conch. Similarly, minimum shell length and meat weight criteria are unreliable because large immature queen conch can have larger shells and more meat than adults. In addition, the flared shell lip, which occurs at about 3.5 years of age, is frequently used as a criteria to ensure that immature conch are not harvested. However, the available information indicates that maturity lags substantially behind the formation of the flared shell lip (Cala *et al.* 2013; Stoner et al, 2012b; Clerveaux *et al.* 2005; Appeldoorn, 1994; Appeldoorn 1988; Buckland 1989; Eglan 1985). Therefore, it is unlikely that the flared shell lip criteria is preventing harvest of immature conch in most jurisdictions throughout the species' range. Moreover, St. Lucia and the U.S. Virgin Islands are the only jurisdictions that have regulations requiring queen conch be landed in the shell. No other jurisdictions require queen conch to be landed whole in its shell, which undermines the effectiveness of existing morphometric regulations that cannot be enforced after the shell has been discarded at sea.

The SRT noted that seasonal and area closures can be effective regulatory controls if they are established in appropriate habitats, encompass reproductive seasons, and are effectively enforced. Reproductive seasons vary in timing and duration in different regions of the Caribbean, spanning between 4 to 9 month periods between April and October, but most often between June and September. Many jurisdictions (16) have a closed season for some time during the calendar year with the intent to protect spawning and reproduction. These seasonal closures range from 2 to 6 months and most occur during the months of July, August, and September because these are peak months for reproduction (Stoner *et al.* 2021; Horn *et al.* 2022). This is generally consistent with the recommendation made by Aldana-Aranda *et al.* (2014) that a ''biologically meaningful period for a closed season for the entire western central Atlantic would need to incorporate the months of June to September, at a minimum, to offer regional protection for spawners.'' More recently, Boman *et al.* (2018) recommended a slightly longer region-wide closure from May through September. The only jurisdictions with a closed season extending 5 months are the Cayman Islands, Cuba, and Jamaica. Several jurisdictions begin closed seasons somewhat late *(e.g.,* July), leaving some periods with highest reproductive potential vulnerable to harvest (Stoner *et al.* 2021). In addition, evidence suggests in some cases, closed seasons for queen conch are decided with respect to closure dates for other species. For example, the timing of the Jamaica closed season is not related to peak spawning season but is determined by timing of the lobster season.

SCUBA and hookah gear restrictions provide some auxiliary protection for putative deep water populations, but they are often triggered by diving accidents and causalities in the queen conch fishery. Only a few jurisdictions currently prohibit the use of SCUBA gear in their queen conch fishery. Jurisdictions that establish appropriate regulations are often plagued by poor enforcement and illegal fishing. Queen conch, in particular, tend to be harvested by individual divers, and the large shelf habitats and remote fishing grounds make it is difficult to patrol these areas to enforce conch harvesting regulations. Furthermore, the available jurisdiction-specific information make significant reference to illegal conch fishing, as it is a well-documented problem throughout the Caribbean. Illegal, unreported, and unregulated fishing is acknowledged by most, if not all, regional and international management organizations (CFMC, OPSECA, FAO, CITES, *etc.*).

In light of the ongoing demand for queen conch, the problems identified with the appropriateness of certain morphometric regulations, the challenges associated with compliance and enforcement of regulations (including IUU), combined with the observed low densities and declining trends in most queen conch populations, existing regulatory mechanisms are inadequate to control the harvest and overutilization of queen conch throughout its range. Therefore, based on the best available information, we conclude that the existing regulatory mechanisms are significantly contributing to the species extension risk currently and in the foreseeable future.

Other Natural or Manmade Factors Affecting Its Continued Existence

Increasing ocean temperature, ocean acidification, and altered circulation patterns are consequences of climate change, that are likely to impact queen conch. Queen conch reproduction is dependent on temperature, thus changes in water temperature may limit the window for successful reproduction. A recent study found that nearly all queen conch reproduction stopped when temperatures reached 31 °C. The temperature of the Caribbean Ocean at present is approximately 28 °C (Bove *et al.* 2022). The Intergovernmental Panel on Climate Change projections for mean sea surface temperature indicates that sea surface temperatures are expected to exceed 31 °C by 2100 under scenario SSP5–8.5 (IPCC 2021). These findings suggest that future sea temperatures will significantly decrease queen conch reproduction. In addition, larval growth and mortality are also likely to be impacted by the increased sea surface temperatures expected to occur by 2100 (*i.e.,* exceeding 31 °C). Laboratory studies showed that increased ocean temperatures resulted in high growth rates for queen conch, but also higher mortality rates (of up to 76 percent). However, it is difficult to predict how queen conch may adapt to these changing environmental conditions and whether higher growth rates would partially offset increased mortality. In addition, the predicted increased acidity associated with oceanic CO_2 uptake will likely impact shell biomineralization processes as well, potentially leading to weaker, thinner shells for queen conch. Recent studies have suggested a 50 percent decrease in aragonite in the larval shell calcification at conditions expected to occur by 2100 (pH 7.6–7.7; IPCC 2021). Weaker shells may increase predation rates, thereby increasing mortality for the species in the foreseeable future. Higher mortality rates will likely have significant implications for conch populations that rely significantly on self-recruitment. In addition, the best available information indicates climate change will likely influence ocean circulation patterns in the Caribbean (van Westen *et al.* 2020;

Goni and Johns 2001; Paris *et al.* 2002), which may have substantial consequences for queen conch. While no direct studies have been conducted for queen conch, several studies focusing on reef fish and corals indicate that changes to ocean circulation have the potential to impact marine reef organisms through altered larval dispersal, survival, and population connectivity (Munday *et al.* 2009; Cowen *et al.* 2003). Changes to ocean circulation patterns are also likely to influence larval supply dynamics, pelagic larval stage survival, as well as their condition upon settlement. Information is lacking on how changes in circulation patterns will impact local populations or how it will alter population connectivity on a regional scale. While there is uncertainty surrounding the extent of climate change impacts to the species in the foreseeable future, the best available scientific information indicates that queen conch will likely be impacted by increases in sea surface temperature, ocean acidification, and altered circulation patterns resulting from climate change. Thus, we conclude that the best available information indicates that climate change is significantly contributing to the species extinction risk in the foreseeable future.

Overall Extinction Risk Analysis

Guided by the results from the demographics risk analysis as well as threats assessment, the SRT members used their informed professional judgment to make an overall extinction risk assessment for the queen conch. Here, we first review the SRT's findings and next discuss our conclusions regarding the risk of extinction to queen conch. The SRT used a ''likelihood point'' (Forest Ecosystem Management Assessment Team 1993) method to evaluate the overall risk of extinction and express uncertainty. Each SRT member distributed 10 ''likelihood points'' among three extinction risk categories:

Low risk: A species is at low risk of extinction if it is not at moderate or high level of extinction risk (see ''moderate risk'' and ''high risk'' below). A species may be at low risk of extinction if it is not facing threats that result in declining trends in abundance, productivity, spatial structure, or diversity. A species at low risk of extinction is likely to show stable or increasing trends in abundance and productivity with connected, diverse populations.

Moderate risk: A species is at moderate risk of extinction if it is on a trajectory that puts it at a high level of extinction risk in the foreseeable future (see description of ''high risk'' below). A species may be at moderate risk of extinction due to current and/or projected threats or declining trends in abundance, productivity, spatial structure, or diversity. The appropriate time horizon for evaluating whether a species is more likely than not to be at high risk in the foreseeable future depends on various case- and species-specific factors.

High risk: A species with a high risk of extinction is at or near a level of abundance, productivity, spatial distribution/connectivity, and/or diversity that places its continued persistence in question. The demographics of a species at such a high level of risk may be highly uncertain and strongly influenced by stochastic or depensatory processes. Similarly, a species may be at high risk of extinction if it faces clear and present threats (*e.g.,* confinement to a small geographic area; imminent destruction, modification, or curtailment of its habitat; or disease epidemic) that are likely to create imminent and substantial demographic risks.

The SRT placed 59 percent of their likelihood points in the ''moderate risk'' category. Due to uncertainty, particularly regarding consistent reporting of landings and survey methodologies, the SRT also placed some of their likelihood points in the ''low risk'' (30 percent) and ''high risk'' (11 percent) categories. The SRT concluded that the queen conch is currently at a ''moderate risk'' of extinction. We consider the SRT's approach to assessing the extinction risk for queen conch appropriate, consistent with our agency practice, and based on the best scientific and commercial information available.

One of the most critical factors in the long-term survival of the species is localized densities of reproductively active adults. The results of our analysis revealed that 25 jurisdictions (*i.e.,* Anguilla, Antigua and Barbuda, Aruba, the central and northern Bahamas, Barbados, Belize, Bermuda, Bonaire, British Virgin Islands, Colombia's mainland, Quitasueño, and Serranilla Banks, Curaçao, Dominica, Dominica Republic, Grenada, Guadeloupe, Haiti, Martinique, Mexico, Monserrat, Panama, St. Vincent and the Grenadines, St. Barthelemy, Trinidad and Tobago, United States (Florida), Puerto Rico, U.S. Virgin Islands, and Venezuela) have adult densities below the critical threshold of 50 conch/ha required for any reproductive activity. These jurisdictions equate to approximately 27 percent (19,625 km^2) of the estimated habitat available in the Caribbean region. Another 5 jurisdictions (*i.e.,* Cayman Islands, Honduras, St. Eustatius, St. Kitts and Nevis, and Puerto Rico's mesophotric reef) have adult densities that are below the 100 conch/ha minimum threshold for successful reproductive activity. There are 9 jurisdictions (*i.e.,* Costa Rica, Cuba, Colombia's Serrana Bank, The Bahamas' Cay Sal Bank and Jumentos and Ragged Cays, Jamaica's Pedro Bank, Nicaragua, Saba, St. Lucia, and Turks and Caicos) that have adult conch densities (>100 conch/ha) sufficient to sustain successful reproductive activity. These jurisdictions contain approximately 61 percent (44,589 km^2) of the estimated habitat available in the Caribbean region. Additionally, modeling indicates connectivity has been significantly impacted across the Caribbean region (Vaz *et al.* 2022). A number of historically important ecological corridors for larval flow are no longer functional, and most of the queen conch populations that historically served as sources of larvae have collapsed.

Available density data can be difficult to interpret for several reasons, including because survey methods varied, surveys were lacking from many areas and, in some cases, surveys were decades old. In addition, conch are not distributed evenly across space; even in jurisdictions with very low densities there likely exist some areas above the critical density threshold where some reproduction continues to take place (*e.g.,* Florida). In terms of the extrapolated total abundance estimates, which suggest there are millions of conch in the Caribbean, the SRT noted that this was primarily based on highly uncertain population estimates from 7 jurisdictions (*i.e.,* The Bahamas, Jamaica, Turks and Caicos, Cuba, Nicaragua, Honduras, and Mexico), which account for 95 percent of all adult conch. Furthermore, density is a stronger indicator of a population's status than total abundance, as adult conch density directly influences the probability of locating a receptive mate. If high numbers of queen conch exist, but are widely distributed over a large geographic area, the species' low mobility reduces the likelihood of a reproductive encounter between two adults, thus limiting overall productivity and sustainability of the population. The best available density and abundance information, despite its limitations, suggests that there are localized depletions in most jurisdictions that have led to near-reproductive failure. Therefore, the

population growth rate is likely below the rate of replacement and recruitment failure is likely occurring in most populations.

Further declines of queen conch are expected into the foreseeable future as the species remains at risk due to overutilization and the inadequacy of existing regulatory mechanisms. Overfishing has been the main threat to queen conch for several decades, creating patchy, disconnected populations and resulting in low local densities, with little indication that existing regulatory measures are capable of reversing this trend in the Caribbean region, as many regulations use inappropriate morphometric metrics and are poorly enforced. In fact, the combination of overutilization and inadequate regulations has led to the decline of many queen conch populations, particularly those in the eastern and southern parts of the Caribbean, where queen conch populations have become so depleted they can no longer support fisheries and are likely experiencing recruitment failure. The best available information indicates that the viability of the species is currently reliant on the queen conch populations predominantly located in the central and western parts of the Caribbean, specifically those queen conch populations found in Cuba, The Bahamas' Cay Sal Bank and Jumentos and Ragged Cay, Turks and Caicos, Jamaica's Pedro Bank, and Nicaragua. While these jurisdictions likely support reproductive queen conch populations (based on best available adult density estimates), they also operate queen conch fisheries that are unlikely to remain sustainable over the next 30 years, based on the estimated exploitation rates. As these jurisdictions are largely self-recruiting, overfishing of these populations will result in further declines, which will have significant impacts on the reproductive output, and overall viability of the species in the foreseeable future. This is particularly concerning as Jamaica's Pedro Bank is an important ecological corridor that supports larvae exchange throughout the region. Thus, if Jamaica's queen conch population were to become reproductively impaired, it would further reduce population connectivity, creating additional susceptibilities for the remaining conch populations. In addition, IUU fishing contributes to overutilization of the species because there is a lack of adequate regulatory mechanisms and enforcement of the regulatory measures that are in place, particularly in Colombia, Cuba, Dominican Republic, The Bahamas, Honduras, Jamaica, Nicaragua, and Turks and Caicos. Left unchecked, these additional removals will likely accelerate declines in abundance and associated densities over the next 30 years. As conch fisheries continue to close and populations become depleted, IUU will likely continue or increase, and without adequate enforcement to halt illegal harvest of conch, the species will continue to be on a downward trajectory and at risk of extinction over the next 30 years. The implementation and enforcement of appropriate management measures could reduce the threat of overutilization to the queen conch, but existing regulations and, more importantly, the enforcement of these regulations are currently either inadequate or lacking altogether across the species' range.

Finally, threats resulting from climate change include increased sea surface temperature, ocean acidification, and altered circulation patterns. Increased sea surface temperature and ocean acidification may result in decreased reproductive activity and increase veliger mortality rates, further exacerbating impacts to recruitment for this species. Changes in circulation patterns in the Caribbean Sea may represent a significant and widespread threat to queen conch larval dispersal, survival, and recruitment processes, but the extent to which this threat will impact the species survival is not well understood at this time. While there is some uncertainty as to the timing of any shifts that may occur, as well as the spatial scale over which it will occur, we conclude that the best available information indicates climate change will significantly contribute to the species' extinction risk in the foreseeable future.

Based on all of the foregoing information, which represents the best scientific and commercial data available regarding current demographic risks and threats to the species, we conclude that the queen conch is not currently in danger of extinction, but is likely to become so in the foreseeable future throughout all of its range. We conclude that the species does not currently have a high risk of extinction due to the following: the species has a broad distribution and still occurs throughout its geographic range and is not confined or limited to a small geographic area; the species does not appear to have been extirpated from any jurisdiction and can still be found, albeit at low densities in most cases, throughout its geographic range; and there are several jurisdictions that have queen conch populations that are contributing to the viability of the species, such that the species is not at imminent risk of extinction. As previously discussed, there are 9 jurisdictions that are estimated to have adult queen conch densities greater than 100 conch/ha and they comprise of about 61 percent of the estimated queen conch habitat. Note, if The Bahamas was removed from the set of 9 jurisdictions, the habitat estimate would be reduced to 32 percent. Of the 9 jurisdictions, queen conch populations in Cuba, Jamaica, and some of Colombia's banks, have high BC values (see Figure 13 in Horn *et al.* 2022), indicating that these areas facilitate the flow of queen conch larvae, allowing for some exchange of larvae and maintenance of some genetic diversity.

Significant Portion of Its Range

Under the ESA, a species warrants listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range (SPR). In 2014, the United States Fish and Wildlife Service and NMFS finalized a joint Significant Portion of its Range Policy (SPR Policy) that provided an analysis framework and definition for a ''significant'' portion of a species' range (79 FR 37577; July 1, 2014). However, several aspects of this joint policy have since been invalidated. Specifically, in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), the court vacated the aspect of the 2014 SPR Policy that provided that the Services do not undertake an analysis of significant portions of a species' range if the species warrants listing as threatened throughout all of its range. In addition, the SPR Policy's definition of ''significant'' was vacated nationwide in 2018 (See *Desert Survivors* v. *U.S. Dep't of Interior,* 321 F. Supp. 3d 1011 (N.D. Cal. 2018)). Therefore, we now conduct SPR analyses even in cases where we reach a conclusion that a species is threatened range wide, and we conduct species-specific evaluations to determine whether a portion of a species' range is ''significant.'' In determining whether a ''portion'' qualifies as ''significant,'' we evaluate the biological importance and contribution of the species within the portion to the viability of the overall species using key principles of conservation biology. In particular, we consider the ''portion's'' contribution to the viability of the species as a whole in terms of abundance, productivity, connectivity, and diversity from past, present, and future perspectives to the extent possible and depending upon the best available species-specific data and information.

As discussed in the SPR Policy, theoretically, there are an infinite number of ways to divide a species' range into portions; however, there is no purpose in evaluating portions that do not have a reasonable likelihood of being both ''significant'' and, in this case, at ''high risk'' of extinction. Therefore, a screening analysis was conducted to identify appropriate portions of the range for further evaluation. Because there are multiple levels of biological organization by which we could screen portions of the queen conch's range for purposes of this analysis, rather than using any one level or scale, we considered three different spatial scales: (1) the jurisdictional scale, which separately considers the 39 management jurisdictions or ''populations'' (as described in Vaz *et al.* 2022); (2) the ecoregional scale, which groups one or more 39 management jurisdictions into 10 marine ecoregions (Spaulding *et al.* 2007); and (3) one macroregion (*i.e.,* Lesser Antilles), which groups two of the 10 marine ecoregions into a single portion. As described in further detail in this section, at each of these scales, portions of the species' range were screened to determine whether it is potentially at ''high risk'' and whether it is potentially ''significant.'' If both screening tests were met, the particular portion was evaluated further to determine whether the queen conch in that portion are facing a high risk of extinction, and if so, whether the portion is ''significant.''

Management Jurisdictional (''Population'') Approach to SPR

The most granular level used in the SPR analysis is the management jurisdiction approach. The SRT felt this approach was appropriate because the resolution of management jurisdiction is consistent with the level of resolution available for the primary threats to the species (*i.e.,* overutilization and inadequacy of regulatory measures) and the available data to inform viability of the species, including landings data, survey data, and connectivity data (Horn *et al.* 2022; Vaz *et al.* 2022). The majority of relevant queen conch data (*i.e.,* connectivity, density, landings, and exploitation rates) were collected or summarized at the jurisdiction level, and the main threats to queen conch are managed at the jurisdiction level. Following Vaz *et al.* (2022), the SRT evaluated ''populations'' based on jurisdictional boundaries (*i.e.,* populations were defined by jurisdictional divisions). At this level of resolution, the SRT found that it could more accurately evaluate the risk and potential significance of a population.

Dozens of management jurisdictions needed to be evaluated by the SRT and data availability and quality were variable. To streamline the analysis, the SRT first screened for any portions of the range for which there is substantial information in the record indicating both (1) the species is reasonably likely to be at a ''high risk'' in that portion; and, (2) the portion is reasonably likely to be significant. Areas for which substantial information indicated the jurisdiction met both of these tests qualified for further consideration. To conduct this initial screening step, the SRT developed a standardized assessment tool with specific screening criteria, which provided a consistent frame of reference for determining potential risk level and significance across management jurisdictions (see S4 in Horn *et al.* 2022). The standardized assessment tool focused upon distinguishing characteristics for potential risk as denoted by spawning aggregation density and potential significance as denoted by potential contributions to population viability.

In the assessment tool, a portion of the species' range was potentially at a ''high risk'' of extinction if the jurisdiction had an exploitation rate of more than 8 percent, or median adult queen conch density less than 50 conch/ha. The assessment tool's decision framework flags jurisdictions exceeding the 8 percent target exploitation rate because this is a region-wide guideline for establishing sustainable queen conch fisheries (*i.e.,* fishing should remove no more than 8 percent of the biomass of a healthy stock; Prada *et al.* 2017). Given that the goal for the 8 percent exploitation rate is ''sustainability'' of queen conch fisheries that have densities capable of supporting successful reproductive activity (*i.e.,* at least 100 adult conch/ha), flagging jurisdictions exceeding this benchmark is a conservative approach for identifying portions where the species is potentially high risk. The SRT also considered populations with median adult queen conch density below 50 conch/ha as potentially high risk because populations with densities below this threshold are at significant risk of reproductive failure.

In the assessment tool, a jurisdiction was considered potentially significant if it met one of the two criteria (criterion 1 or criterion 2) regarding its contribution to the viability of the species, *and* a third criterion (criterion 3) regarding its connectivity to the other populations:

1. Abundance of queen conch in the jurisdiction is greater than 5 percent of the overall estimated species abundance; or

2. Habitat in the jurisdiction is greater than 5 percent of all available queen conch habitat; and

3. Jurisdiction was historically important to population connectivity, having functioned as an important source population or ecological corridor.

This approach to screening for potentially significant contributions to viability considers both the population's contemporary contributions to species abundance (criteria 1) and the population's historical capacity for carrying a substantial portion of species abundance based on available habitat (criteria 2). Available habitat was used as a proxy for historical population size following Vaz *et al.* (2022) because in many jurisdictions queen conch have been depleted by decades of overfishing and survey data are unavailable to inform unfished population sizes. Although the actual densities of conch spawning biomass that historically may have been supported within a given jurisdiction would be dependent on the particular habitat attributes of that area, comprehensive maps of habitat types across the Caribbean region, as well as information on the relationships between habitat types and their respective conch densities at carrying capacity are not available. In the absence of such detailed information, the SRT assumed that equal spawning biomass densities and consistent per-capita fecundity rate across the region were reasonable approximations for understanding relative historical population sizes and relative overall connectivity patterns in a pre-exploitation historical scenario.

The independent consideration of available habitat (criteria 2) ensured that populations failing to meet criteria 1 due to declines in abundance (*i.e.,* prior overexploitation) could still be considered as potentially significant based on their ability to support conch populations, as inferred from available habitat. Relatively low thresholds (5 percent) were set for criteria 1 and 2 to ensure an inclusive evaluation of any potential portion of the species' range evaluated at the management jurisdictional scale.

The final threshold in the SRT's assessment tool for potential significance (criteria 3) assessed a jurisdiction's ability to make meaningful contributions to the viability of the species as a whole. This criterion was screened using a BC value that was above the median across all jurisdictions (Vaz *et al.* 2022). The BC value measures the relative influence of

a jurisdiction's queen conch reproductive output on the flow of larvae among every other pair of jurisdictions in the species' range. The SRT considered the BC from unexploited scenarios across hydrodynamic models simulated in Vaz *et al.* (2022) to assess each jurisdiction's contribution to the viability of the species as a whole. The unexploited BC value represents the historical connections between populations created by larval dispersal and is an indicator of overall potential ''connectedness'' of individuals within each jurisdiction. The median was selected to delimit high versus low levels of connectivity, as measured by BC. Use of the median as the screening statistic is appropriate given the BC values are a relative scale of non-normally distributed values (Vaz *et al.* 2022). If reproductive output from jurisdictions with high BC (*i.e.,* above the median) were to decline significantly, reduced genetic mixing over the region as a whole would be expected, as was reported by Vaz *et al.* (2022) under contemporary exploitation levels. The SRT used BC values from the unexploited connectivity scenario (Vaz *et al.* 2022), which accounts for historical spawning potential and is not biased by contemporary reductions in reproductive output from overexploited locations. We agree with the SRT that using the pre-exploitation BC measure represents the ''potential'' of a jurisdiction to contribute to the spatial connectivity of the species as a whole. Jurisdictions with a high BC value historically functioned as ecological corridors and were biologically important to facilitate larval and genetic flows, preventing the fragmentation of the range (Vaz *et al.* 2022). Thus, the BC measure (criteria 3) evaluates each jurisdiction's historic contributions to viability, especially spatial connectivity, regardless of their current status. Additional discussion of the assessment tool and methodological details are provided in see Horn *et al.* (2022).

Results of the Management Jurisdictional (''Population'') Approach to SPR

By using this assessment tool, the SRT identified 30 potentially high-risk conch jurisdictions and 3 potentially significant jurisdictions (File S4 in Horn *et al.* 2022). Only the Nicaragua jurisdiction met both the potentially high risk and potentially significant criteria. No other portions of the species range at the jurisdiction level met both the potentially high-risk and potentially significant criteria (File S4 in Horn *et al.* 2022). The SRT concluded, by consensus, that no other portions of the species range at the jurisdiction level warranted further consideration.

The SRT further evaluated the Nicaragua portion of the species' range to determine whether this jurisdiction was both significant and at a ''high risk'' of extinction. Because both of these conditions must be met, regardless of which question is addressed first, if a negative answer is reached with respect to the first question addressed, the other question does not need to be evaluated for that portion of the species' range. In undertaking the SPR analysis for queen conch, the SRT elected to address the ''high risk'' of extinction question first. The members of the species within the portion may be at ''high risk'' of extinction if the members are at or near a level of abundance, productivity, spatial structure, or diversity that places the members' continued persistence in question. Similarly, the members of the species' within the portion may be at ''high risk'' of extinction if the members face clear and present threats (*e.g.,* confinement to a small geographic area; imminent destruction, modification, or curtailment of habitat; or disease epidemic) that are likely to create imminent and substantial demographic risks.

As with queen conch throughout its range, the most significant threat to Nicaragua's portion of the population is overutilization through commercial, artisanal, and IUU fishing. Nicaragua is one of the primary producers of queen conch meat in the Caribbean, and its landings and fishing quotas have increased substantially since the mid 1990s. For example, in 2003, Nicaragua set its quota at 45 mt (processed meat), but in 2009, the quota had increased to 341 mt (processed meat) and 41 mt quota for scientific purposes (bringing the total queen conch quota to approximately 382 mt). By 2019, the scientific quota was revoked and the processed meat quota almost doubled to an annual export quota of 628 mt (FAO Western Central Atlantic Fishery Commission 2020). The most recent density estimates, conducted in 2016, 2017, and 2018 indicate that densities are sufficient to support some recruitment; however, comparisons between survey years suggest a declining trend. For example, surveys conducted in 2009 recorded approximately 176–267 conch/ha, while surveys conducted in October 2016, March 2018, and October 2019 indicated 70–109 conch/ha suggesting a decline in densities (FAO Western Central Atlantic Fishery Commission 2020). No additional information was provided on the methodology for the more recent surveys (*i.e.,* no location, season, area, or age class were provided).

Depensatory issues are a major factor limiting the recovery of overharvested queen conch populations (Appeldoorn 1995; Stoner *et al.* 2012c). In addition, queen conch within the Nicaraguan portion of the species' range are likely heavily reliant on self-recruitment (Vaz *et al.* 2022), which means that local depletions would have negative implications on its ability to recover. Based on the available information, the SRT concluded that the decreasing trend in queen conch densities within this jurisdiction, coupled with increasing quotas suggests inadequate management of the conch fishery and a likelihood of unsustainable fishing of the stock.

The SRT noted that the current estimated exploitation rate in Nicaragua (*i.e.,* 8.8 percent) was only slightly above the 8 percent target for sustainable fishing for stocks with a density of at least 100 adult conch/ha. The best available information suggests that the current exploitation levels exceed sustainable levels for the level of reproductive activity in Nicaragua. Considering the current exploitation rate (and potential for increases in this rate, given the trend in the quota-setting over the years), and the declining trend in queen conch densities, the SRT concluded that the best available information indicates that this subpopulation is not currently at a ''high risk'' of extinction. We have reviewed the SRT's assessment, definitions, and rationale, and agree with its determination. Thus, we conclude that the Nicaraguan portion of the species' range is not currently in danger of extinction, but is likely to become so within the foreseeable future. This finding is consistent with the species' range wide determination, that queen conch is not currently in danger of extinction, but is likely to become so within the foreseeable future.

Ecoregional Approach to SPR

We, NMFS, broadened the SRT's SPR evaluation, and considered whether there were additional portions or combinations of portions that might be both significant and at ''high risk.'' We extended the SRT's approach of evaluating populations at the jurisdictional scale to evaluating metapopulations at the broader ecoregional scale. We evaluated ten recognized marine ecoregions within the Caribbean Basin, Gulf of Mexico and the southwest Sargasso Sea (8–35 °N, 56–98 °W) as queen conch population portions: (1) the Northern Gulf of

Mexico, (2) the Southern Gulf of Mexico, (3) the Floridian, (4) Bermuda, (5) the Bahamian, (6) the Greater Antilles, (7) the Southwestern Caribbean, (8) the Western Caribbean, (9) the Eastern Caribbean, and (10) the Southern Caribbean (see Figure 1in Spalding *et al.* 2007). These marine ecoregions represent broad-scale patterns of species and communities in the ocean, and were designed as a tool for planning conservation across a range of scales and assessing conservation efforts and gaps worldwide. These marine ecoregions also closely track the connectivity analysis of Vaz *et al.* (2022), as the broad-scale patterns of species and communities used to designate ecoregions reflect spatial proximity and hydrodynamic connectivity. Using defined marine ecoregions enabled us to use a globally recognized approach to group management jurisdictions into larger population portions for the SPR analysis that is consistent with our specific understanding of queen conch population connectivity and regional hydrodynamic processes. As such, the jurisdictions within the ten marine ecoregions are similar in regards to their contributions to the viability of the species.

Of the ten marine ecoregions considered, four (*i.e.,* Northern Gulf of Mexico, Southern Gulf of Mexico, Floridian, Bermuda) consist of single jurisdictions (*i.e.,* Mexico, parts of which make up the Northern and Southern Gulf of Mexico ecoregions, Florida and Bermuda) and were evaluated by the SRT under the *Management Jurisdictional (''Population'')* approach described above. None of those single jurisdictions met both the potentially high risk and potentially significant criteria used by the SRT to warrant further evaluation.

NMFS evaluated the other six marine ecoregions (*i.e.,* the Bahamian, the Greater Antilles, the Southwestern Caribbean, the Western Caribbean, the Eastern Caribbean, and the Southern Caribbean) to determine whether any could be identified as potentially significant portions of the range. There are limited differences in terms of adequacy of existing regulations or management measures across the species' range. In addition, the main threat to the species (overutilization) is widespread throughout the species' range. However, several portions of the species' range may be facing greater demographic risks. As such, following the SRT's screening approach described above, we focused our analysis on the percentage of jurisdictions within an ecoregion with likely reproductive failure (*i.e.,* <50 adults/ha) to determine if an ecoregion was potentially ''high risk.'' An ecoregion was determined to be potentially at ''high risk'' if the majority of jurisdictions within the portion were below the 50 adults/ha threshold.

To determine if an ecoregion was ''potentially significant,'' we evaluated contributions to population viability based on habitat availability and connectivity similar to criterion 2 and 3 above, but at a larger spatial scale. The percentage of available conch habitat across all jurisdictions within an ecoregion was easily aggregated. We used the available habitat within an ecoregion relative to the total habitat within the species' range as a metric for the ecoregion's potential historical contribution to population viability. The data for connectivity could not be aggregated across jurisdictions within an ecoregion; therefore, we focused on the percentage of jurisdictions within the ecoregion that were highly connected, as denoted by the historical BC values above the median. Highly connected jurisdictions within the ecoregion serve (or once served) as important larval sources, facilitating gene flow and maintaining population connectivity. We considered an ecoregion to be potentially ''significant'' if the percentage of queen conch habitat within the ecoregion exceeded 5 percent of the total available conch habitat across the range (criteria 2 from above) and the majority of jurisdictions within the ecoregion were highly connected as indicated by a high historical BC value (criteria 3 from above). This approach allows us to evaluate the ecoregions historical capacity for carrying a substantial portion of the species abundance and its ability to make meaningful contributions to the viability of the species as a whole in determining whether the ecoregion is significant.

Results of the Marine Ecoregional Approach to SPR

1. The Bahamian

The Bahamian ecoregion consists of The Bahamas and the Turks and Caicos. The waters of these two countries represent 30 percent of the available queen conch habitat and contain an estimated 118 million spawning adult queen conch with densities exceeding 100 conch/ha. Neither of these jurisdictions has median adult density estimate below 50 conch/ha; thus, this ecoregion does not meet the threshold to be considered potentially at ''high risk.'' As such, we did not evaluate whether this ecoregion might be significant.

2. The Greater Antilles

The Greater Antilles ecoregion consists of the British Virgin Islands, Cuba, the Cayman Islands, Dominican Republic, Haiti, Jamaica, Puerto Rico, and the U.S. Virgin Islands. Half of the jurisdictions in the Greater Antilles portion have median adult densities estimates below 50 conch/ha; however, an estimated 473 million spawning adults remain in jurisdictions with adult queen conch densities greater than 100 conch/ha. Thus, this portion does not meet the threshold to be considered potentially at ''high risk.'' As such, we did not evaluate whether this ecoregion might be ''significant.'' We did note that the eight jurisdictions in the Greater Antilles ecoregion represents 36 percent of the total estimated queen conch habitat and 63 percent of the jurisdictions within this ecoregion are highly connected.

3. The Southwestern Caribbean

The Southwestern Caribbean ecoregion consists of Colombia (mainland and offshore banks), Costa Rica, Nicaragua, and Panama. Together, these 4 jurisdictions represent 10 percent of the total available queen conch habitat, and 75 percent of these jurisdictions were highly connected. Only Panama had adult queen conch densities below 50 conch/ha. Within the Southwestern Caribbean ecoregional portion, an estimated 89 million spawning adults remain at adult densities greater than 100 conch/ha. Thus, this ecoregion does not meet the threshold to be considered potentially at ''high risk.'' As such, we did not evaluate whether this ecoregion might be ''significant.''

4. The Western Caribbean

The Western Caribbean ecoregion consists of Belize; Honduras; Guatemala; and Quintana Roo, Mexico. Of these jurisdictions, Guatemala was not evaluated due to lack of data. The jurisdictions in the Western Caribbean ecoregion are characterized by low median densities, inadequacy of existing regulatory mechanisms to prevent juvenile harvest (Horn *et al.* 2022; Arzu 2019, Tewfik *et al.* 2019), and continued illegal harvest (Horn *et al.* 2022; CITES 2012). Of the three jurisdictions with data, two (67 percent) have median adult densities below 50 conch/ha, and none of the three have median adult densities greater than 100 conch/ha. We note, that several surveys in Belize, Honduras, and Mexico have identified locations with queen conch densities greater than 100 conch/ha; however, many of these density

estimates included immature conch. There are three surveys in Belize and 18 in Mexico that reported adult queen conch densities greater than 100 conch/ha (Figure 20 in Horn *et al.* 2022); however, most of these surveys were conducted more than a decade ago. We note, that surveys near Xel-Ha in Quintana Roo, Mexico recorded adult queen conch densities between 405 and 665 conch/ha (Aldana Aranda *et al.* 2014); however, these surveys were conducted in 2012 and the study areas was small (1 ha). Thus, because the majority of jurisdictions in the Western Caribbean ecoregion have median adult queen conch densities less than 50 conch/ha, this ecoregion was identified as potentially at ''high risk.''

Having identified the Western Caribbean ecoregion as potentially at ''high risk,'' we evaluated whether this ecoregion is potentially ''significant.'' The Western Caribbean ecoregion contains 12 percent of the total available conch habitat. Honduras has limited local retention of conch larvae (Vas *et al.* 2022). Historically, Honduras would have supplied larvae to Belize and Mexico. Currently, Honduras acts as mostly a sink for larvae from Nicaragua and Colombia's Serrana Bank. Mexico's conch population has low local larvae retention. With regards to connectivity, Belize mostly acts as a sink and has substantial local retention. Belize receives a significant supply of larvae from Honduras, and to a lesser extent Nicaragua. Historically, Mexico's conch population provided larval to the United States (Florida) and received larvae from upstream sources. Presently, Mexico does not appear to be supporting reproductive activity, but receives larvae from Honduras and Colombia's Serrana Bank, and, to a lesser extent, from Cuba and the Cayman Islands. Because of the position of the Western Caribbean ecoregion, jurisdictions within this ecoregion supply larvae to upstream jurisdictions within the ecoregion and to the Florida ecoregion. More specifically, queen conch larvae from Quintana Roo, Mexico appear to have been an important historical source of larval supply to the Floridian ecoregion, which functions as a sink (Vaz *et al.* 2022). Presently, reproduction is thought to be nominal with no viable upstream sources of larvae suggesting a limited capacity for recovery. Nonetheless, because less than the majority of jurisdictions in the Western Caribbean ecoregion (33 percent) are highly connected; we determined that the Western Caribbean ecoregion is not ''significant.''

5. The Eastern Caribbean

The Eastern Caribbean ecoregion consists of Anguilla, Antigua and Barbuda, Barbados, Dominica, Grenada, Guadeloupe, Martinique, Montserrat, Saba, Sint-Eustatius, St. Barthelemy, St. Kitts and Nevis, St. Lucia, St. Maarten, and St. Vincent and Grenadines. The majority of jurisdictions within this ecoregion (73 percent) have adult queen conch densities below 50 conch/ha, suggesting this ecoregion is potentially at ''high risk.'' This ecoregion represents just 5 percent of the total estimated queen conch habitat, but 73 percent of the jurisdictions are highly connected, suggesting this ecoregion is potentially ''significant.''

We further evaluated the Eastern Caribbean ecoregion to determine whether this portion of the species' range is at a ''high risk'' of extinction. We determined that an estimated 5 million spawning adults remain in jurisdictions (*i.e.,* Saba and St. Lucia) with adult queen conch densities greater than 100 conch/ha. A single female conch lays between 7–14 egg masses containing between 500,000–750,000 eggs during a single spawning season (Appeldoorn 2020). Thus, the approximately 5 million conch (see S5 in Horn *et al.* 2022) in viable spawning aggregations could produce up to 26 trillion eggs in a single spawning season. The Eastern Caribbean ecoregion likely has reasonably high levels of self-recruitment (Figures 5, 6, and 8 in Vaz *et al.* 2022). Given the high reproductive capacity of queen conch presently at viable spawning aggregation densities in this ecoregion and the capacity for self-recruitment within the ecoregion, we determined Eastern Caribbean ecoregion is not currently at ''high risk.'' We did note that in Saba, there is documented illegal fishing of queen conch in marine parks, with no established quotas for queen conch fisheries (van Baren 2013). Additionally, in St. Lucia, there is a declining trend in CPUE and inadequate enforcement of regulations (Williams-Peter 2021). Thus, we conclude that the Eastern Caribbean portion of the species' range is not currently in danger of extinction, but is likely to become so within the foreseeable future, due to the ongoing threats, and the declining trends in abundance and productivity in the majority of the jurisdictions within the Eastern Caribbean portion of its range. This finding is consistent with the species' range wide determination, that queen conch is not currently in danger of extinction, but is likely to become so within the foreseeable future.

6. The Southern Caribbean

The Southern Caribbean ecoregion consists of Aruba, Bonaire, Curacao, Trinidad and Tobago, and Venezuela. These five jurisdictions all have estimated densities less than 50 adults/ha, suggesting this ecoregion is potentially at ''high risk.'' Of the five jurisdiction, three of them (60 percent) are highly connected. However, the Southern Caribbean ecoregion comprises just 2 percent of the total available queen conch habitat throughout the species' range. As such, this ecoregion's historical ability to contribute to the viability of the queen conch species is limited, and this ecoregion does not meet potentially ''significant'' threshold for the purposes of our SPR evaluation.

Macroregional Approach to SPR

The Eastern and Southern Caribbean ecoregions, both of which were identified as potentially at ''high risk,'' are located upstream of most major harvesters of queen conch, and have experienced declines or collapses in many regional queen conch fisheries. Given this outcome, to ensure a rigorous analysis, we also considered a broader geographic scale by combining the Eastern and Southern Caribbean ecoregions into the more broadly recognized ''Lesser Antilles'' macroregion. This macroregion comprises 21 jurisdictions (*i.e.,* Anguilla, Aruba, Antigua and Barbuda, Barbados, Bonaire, Curacao, Dominica, Grenada, Guadeloupe, Martinique, Montserrat, Saba, St. Eustatius, St. Barthelemy, St. Kitts and Nevis, St. Lucia, St. Maarten, St. Vincent and Grenadines, Trinidad and Tobago, and Venezuela). These jurisdictions form the eastern boundary of the Caribbean Sea where it meets the Atlantic Ocean and represent the furthermost upstream source for queen conch larvae in the range.

Based on the marine ecoregional approach described above, we analyzed whether the majority of jurisdictions within the Lesser Antilles macroregion, have adult queen conch densities below the 50 conch/ha threshold indicating that the Lesser Antilles macroregion is potentially at ''high risk.'' Similarly, we analyzed whether the percentage of queen conch habitat within the Lesser Antilles macroregion exceeded 5 percent of the total available habitat (criteria 2 from above), and whether the majority of jurisdictions within the macroregion were highly connected (criteria 3 from above) to determine if the Lesser Antilles macroregion was potentially ''significant.''

Results of the Macroregional Approach to SPR

Of the 21 jurisdictions within the Lesser Antilles macroregion, 17 (81 percent) have adult queen conch densities below the reproductive threshold of 50 conch/ha, suggesting this macroregion is potentially at ''high risk.'' We note that the density estimates for 8 of the 21 jurisdictions within the Lesser Antilles macroregion are approximated from nearest neighbors due to the lack of surveys in those jurisdictions; only 10 of 21 jurisdictions (48 percent) have more contemporary jurisdiction-specific adult density estimates that are below 50 conch/ha.

Contemporary abundance of queen conch within the Lesser Antilles macroregion is estimated at 19 million adults, with historical capacity based on habitat availability estimated to comprise up to 8 percent of the unexploited population. For comparison, contemporary estimates suggest at least 725 million reproductive adult conch exist outside the Lesser Antilles portion (Horn *et al.* 2022). Of the 21 jurisdictions within the Lesser Antilles macroregion, 13 (61 percent) are ''highly connected'' based on BC values above the median. Because we estimate that the Lesser Antilles macroregion contains 8 percent of the available habitat for the species and because the majority of jurisdictions within macroregion are highly connected, the Lesser Antilles macroregion meets the potentially ''significant'' threshold. We note that the majority (10 of 13) of the ''highly connected'' jurisdictions within the macroregion have adult queen conch densities below 50 conch/ha. However, we also note that the highly connected jurisdictions within the macroregion with adult densities below 50 conch/ha represent only 3 percent of the total available queen conch habitat throughout the species' range.

Because we identified the Lesser Antilles macroregion as potentially ''high risk'' and potentially ''significant,'' we further evaluated the risk level for this macroregion. The Lesser Antilles macroregion is characterized by a lack of an upstream source of larvae and a high likelihood of reproductive failure in many jurisdictions. Of 21 jurisdictions within the macroregion, only two jurisdictions (Saba and St. Lucia) have median adult queen conch densities greater than 100 conch/ha. However, a single female conch lays between 7–14 egg masses containing between 500,000–750,000 eggs during a single spawning season (Appeldoorn 2020). As noted above, the SRT determined that an estimated 5 million spawning adults remain in Saba and St. Lucia. Thus, the approximately 5 million queen conch at reproductively viable densities in this macroregion (see S5 in Horn *et al.* 2022) could produce up to 26 trillion eggs in a single spawning season. The jurisdictions within this macroregion also have reasonably high levels of self-recruitment (Figures 5, 6, and 8 in Vaz *et al.* 2022). Due to the high reproductive capacity of the estimated 5 million adult queen conch presently at viable densities within the Lesser Antilles macroregion and the high level of connectivity between jurisdictions that facilitate self-recruitment within the macroregion (Figure 6a, c in Vaz *et al.* 2020), we determined that the Lesser Antilles macroregion is not currently at ''high risk.'' Thus, we conclude that the Lesser Antilles portion of the species range is not currently in danger of extinction, but is likely to become so within the foreseeable future, due ongoing threats, and declining trends in abundance and productivity in the majority of the jurisdictions within the macroregion. This finding is consistent with the species' range wide determination, that queen conch is not currently in danger of extinction, but is likely to become so within the foreseeable future.

Based on our assessment of 39 management jurisdictions, 10 marine ecoregions, and one macroregion, we did not identify any portions of the species' range that were both ''high risk'' and ''significant.'' Therefore, we conclude that there are no significant portions of the species' range that are currently in danger of extinction. Our conclusion regarding the species' overall extinction risk does not change based on consideration of status of the species within these portions of the species range, and thus we find that queen conch is not currently in danger, but is likely to become an endangered species within the foreseeable future throughout all of its range.

Conservation Efforts

There are several conservation efforts that have the potential to address the threats to the queen conch, including aquaculture and fisheries management and conservation plans. We considered ongoing queen conch aquaculture efforts being conducted by Florida Atlantic University's Harbor Branch Oceanographic Institute, Conservación ConCiencia, and Naguabo Fishing Association. These partners are working through a NOAA Saltonstall-Kennedy Grant Program funded project. The goal of the two year project (S–K NOAA Award NA10NMF4270029) is to assist with the restoration of queen conch fisheries in Puerto Rico by producing queen conch in a fishermen-operated aquaculture facility. With the declining conch populations in Puerto Rico and disruption of conch habitats from recent hurricanes, queen conch is a prime candidate for aquaculture. The facility will be open to fishermen, the local community, students and visitors to learn about queen conch aquaculture, biology, conservation, and fisheries. This project is anticipated to serve as a model that can be replicated in other fishing communities in Puerto Rico and elsewhere (Davis and Espinoza 2021).

In our discretion, we also considered foreign conservation efforts to protect and recover queen conch that are either underway, but not yet fully implemented, or are only planned, using these overarching criteria to determine whether these efforts are effective in ameliorating the threats we have identified to the species and thus potentially avert the need for listing. The 10-year Regional Queen Conch Fishery Management and Conservation Plan (Prada *et al.* 2017) was created following the recommendations of the first meeting of the WECAFC/CFMC/OPESCA/CRFM Working Group, held in Panama in 2012. The Regional Queen Conch Fishery Management and Conservation Plan was formulated with the following specific objectives: (1) improve the collection and integration of scientific data needed to determine the overall queen conch population status as the basis for the application of ecosystem-based management; (2) harmonize measures aimed at increasing the stability of the queen conch population and to implement best management practices for a sustainable fishery; (3) increase coordination and collaboration toward achieving better education and outreach, monitoring and research, co-management and strengthening, optimizing and harmonizing regional governance arrangements; and (4) adopt regional management measures, which incorporate the precautionary approach. While these conservation efforts are encouraging, it is difficult to assess the expected benefit to the species due to uncertainties surrounding their implementation. The management and conservation recommendation resulting from the Panama 2012 meeting are approximately 10 years old. Where recommendations were incorporated into fishery management strategies, we would have anticipated those benefits to be at least partially recognized, with improved data collection, updated

population monitoring and assessments, or the implementation regulations that promote sustainable harvest. However, in most cases, we cannot ascertain whether new management measures have occurred, or if they have occurred, we cannot determine whether those benefits have been realized, given the information available at this time. In addition, the Organization of Eastern Caribbean States, in partnership with the United Nations Conference on Trade and Development (UNCTAD) and CITES, designed a pilot project in 2020 to test the application of the revised UNCTAD BioTrade Principles and Criteria in the marine environment, focusing on the queen conch value chain in Grenada, St. Lucia, and St. Vincent and the Grenadines (UNCTAD, 2021). This pilot project aims to empower small-scale fisheries to produce and trade queen conch products sustainably through the application of Blue BioTrade Principles and Criteria. The BioTrade Principles and Criteria, developed by UNCTAD, are a set of guidelines for businesses, governments, and civil society wishing to support the conservation and sustainable use of biodiversity, as well as the fair and equitable sharing of benefits through trade (UNCTAD, 2021). If successful, these efforts will likely improve some fisheries management and have the potential to decrease specific threats in the future. Nonetheless, we do not find that these conservation efforts have significantly altered the extinction risk for the queen conch to where it would not be at risk of extinction in the foreseeable future. However, we seek additional information on these and other conservation efforts (see Public Comments Solicited below).

Proposed Determination

Section 4(b)(1) of the ESA requires that NMFS make listing determinations based on the best scientific and commercial data available after conducting a review of the status of the species and taking into account those efforts, if any, being made by any state or foreign nation, or political subdivisions thereof, to protect and conserve the species. We have independently reviewed the best available scientific and commercial information, public comments submitted in response to the notice of a status review (84 FR 66685; December 6, 2019), the status review report (Horn *et al.* 2022), and other published and unpublished information, and we have consulted with species experts and individuals familiar with queen conch. We considered each of the statutory factors to determine whether it presented an extinction risk to the queen conch on its own, now or in the foreseeable future, and also considered the combination of those factors to determine whether they collectively contribute to the extinction risk of the species, currently or in the foreseeable future. Based on our consideration of the best available scientific and commercial information, as summarized here, including the SPR analysis, we conclude that while queen conch is not currently in danger of extinction throughout all or a significant portion of its range, it is likely to become so within the foreseeable future as a result of ESA section 4(a)(1) factors: B (overutilization for commercial, recreational, scientific, or educational purposes); D (inadequacy of existing regulatory mechanisms to address identified threats); and E (other natural or human factors affecting its continued existence). Accordingly, the queen conch meets the definition of a threatened species, and thus, we propose to list it as such throughout its range under the ESA.

Effects of Listing

Conservation measures provided for species listed as endangered or threatened under the ESA include recovery actions (16 U.S.C. 1533(f)), critical habitat designations (16 U.S.C. 1533(a)(3)(A)), Federal agency consultation requirements (16 U.S.C. 1536), and protective regulations (16 U.S.C. 1533(d)). Recognition of the species' status through listing also promotes conservation actions by Federal and state agencies, foreign entities, private groups, and individuals.

Identifying ESA Section 7 Consultation Requirements

Section 7(a)(4) of the ESA and NMFS/USFWS regulations require Federal agencies to confer with us on actions likely to jeopardize the continued existence of species proposed for listing, or likely to result in the destruction or adverse modification of proposed critical habitat. If a proposed species is ultimately listed, Federal agencies must consult under section 7 on any action they authorize, fund, or carry out if those actions may affect the listed species or designated critical habitat. Based on currently available information, we conclude that examples of Federal actions that may affect queen conch within the U.S. jurisdiction include, but are not limited to: fisheries management practices, discharge of pollution from point and non-point sources, contaminated waste and plastic disposal, development of water quality standards, and dredging.

Protective Regulations Under Section 4(d) of the ESA

We are proposing to list the queen conch as a threatened species. For threatened species, ESA section 4(d) leaves it to the Secretary's discretion whether, and to what extent, to extend the section 9(a) ''take'' prohibitions to the species, and also requires us to issue regulations the Secretary deems necessary and advisable for the conservation of the species. The 4(d) protective regulations may prohibit, with respect to threatened species, some or all of the acts which section 9(a) of the ESA prohibits with respect to endangered species. We are not proposing such regulations at this time, but may consider promulgating protective regulations pursuant to section 4(d) for the queen conch in a future rulemaking. In order to inform our consideration of appropriate protective regulations for the species, we seek information from the public on possible measures for their conservation.

Critical Habitat

Critical habitat cannot be designated within foreign nations. ESA implementing regulations at 50 CFR 424.12(g) specify that critical habitat shall not be designated within foreign countries or in other areas outside of U.S. jurisdiction.

Critical habitat is defined in section 3 of the ESA (16 U.S.C. 1532(5)) as: (1) the specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the ESA, on which are found (a) those physical or biological features essential to the conservation of the species and (b) that may require special management considerations or protection; and (2) specific areas outside the geographical area occupied by the species at the time it is listed upon a determination that such areas are essential for the conservation of the species. ''Conservation'' means the use of all methods and procedures needed to bring the species to the point at which listing under the ESA is no longer necessary. Section 4(a)(3)(a) of the ESA (16 U.S.C. 1533(a)(3)(A)) requires that, to the extent prudent and determinable, critical habitat be designated concurrently with the listing of a species. Designations of critical habitat must be based on the best scientific data available and must take into consideration the economic, national security, and other relevant impacts of specifying any particular area as critical habitat. To the maximum extent prudent and determinable, we will publish a

proposed designation of critical habitat for the queen conch in a separate rule. We invite submissions of data and information on areas in U.S. jurisdiction that may meet the definition of critical habitat for the queen conch as well as potential impacts of designating any particular areas as critical habitat (see Public Comments Solicited below).

Policies on Peer Review

In December 2004, the Office of Management and Budget (OMB) issued a Final Information Quality Bulletin for Peer Review establishing minimum peer review standards, a transparent process for public disclosure of peer review planning, and opportunities for public participation. The OMB Bulletin, implemented under the Information Quality Act (Pub. L. 106–554) is intended to enhance the quality and credibility of the Federal government's scientific information, and applies to influential or highly influential scientific information disseminated on or after June 16, 2005. To satisfy our requirements under the OMB Bulletin, we received peer reviews from three independent peer reviewers on the status review report (Horn *et al.* 2022), which are available online (*https://www.noaa.gov/organization/information-technology/peer-review-plans*). All peer reviewer comments were addressed prior to dissemination of the final status review report and publication of this proposed rule. We conclude that these experts' reviews satisfy the requirements for ''adequate [prior] peer review'' contained in the Bulletin (sec. II.2.).

Public Comments Solicited

We intend that any final action resulting from this proposal will be as accurate as possible and informed by the best available scientific and commercial information. Therefore, we request comments or information from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party regarding this proposed rule. In particular we seek comments containing: (1) new or updated information regarding queen conch landings and IUU fishing; (2) new or updated queen conch fisheries-dependent or -independent data including stock assessments; (3) new or updated information on the status of the species, including surveys, density, and abundance information; (4) new or updated information regarding queen conch population structure, age structure, and connectivity; (5) new or updated information on queen conch range, habitat use, and distribution; (6) new or updated on data concerning any threats to the queen conch; (7) efforts being made to protect the species throughout its range; (8) new or updated queen conch fisheries management measures; or (9) other pertinent information regarding the species.

We are also soliciting information on physical and biological features that may support designation of critical habitat for queen conch within U.S. jurisdiction. Areas outside the occupied geographical area should also be identified if such areas themselves are essential to the conservation of the species. Physical and biological features essential to the conservation of the species may include, but are not limited to, features specific to individual species' ranges, habitats and life history characteristics within the following general categories of habitat features: (1) space for individual growth and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for reproduction and development of offspring; and (5) habitats that are protected from disturbance or are representative of the historical, geographical, and ecological distributions of the species.

References

A complete list of the references used in this proposed rule is available upon request, and also available at: *https://www.fisheries.noaa.gov/species/queen-conch*.

Classification

National Environmental Policy Act

The 1982 amendments to the ESA in section 4(b)(1)(A), restrict the information that may be considered when assessing species for listing. Based on this limitation of criteria for a listing decision and the opinion in *Pacific Legal Foundation* v. *Andrus,* 675 F. 2d 825 (6th Cir. 1981), NMFS has concluded that ESA listing actions are not subject to the environmental assessment requirements of the NEPA (See NOAA Administrative Order 216–6A).

Executive Order 12866 and Regulatory Flexibility Act

As noted in the Conference Report on the 1982 amendments to the ESA, economic impacts cannot be considered when assessing the status of a species. Therefore, the economic analysis requirements of the Regulatory Flexibility Act are not applicable to the listing process. In addition, this proposed rule is exempt from review under Executive Order 12866.

Paperwork Reduction Act

This proposed rule does not contain a collection-of-information requirement for the purposes of the Paperwork Reduction Act.

Executive Order 13132, Federalism

In keeping with the intent of the Administration and Congress to provide continuing and meaningful dialogue on issues of mutual state and Federal interest, the proposed rule will be provided to the relevant agencies in each state or territory in which the subject species occurs, and these agencies are invited to comment.

List of Subjects in 50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

Dated: August 30, 2022.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, we propose to amend 50 CFR part 223 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, in the table in paragraph (e), under the subheading ''Molluscs,'' add an entry for ''Conch, queen'' in alphabetical order by common name to read as follows:

§ 223.102 Enumeration of endangered marine and anadromous species.

* * * * *

(e) * * *

Species [1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
		MOLLUSCS			
Conch, queen	*Aliger gigas*	Entire species	*[**FEDERAL REGISTER** citation and date when published as a final rule].*	NA	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

[FR Doc. 2022–19109 Filed 9–7–22; 8:45 am]

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