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Presidential Documents

Title 3—

The President

Proclamation 10442 of September 9, 2022

World Suicide Prevention Day, 2022

By the President of the United States of America

A Proclamation

On World Suicide Prevention Day, our Nation joins the World Health Organization, the International Association for Suicide Prevention, and countries across the globe in mourning those who have died by suicide. Suicide is a devastating tragedy that leaves loved ones with unanswered questions and families missing a piece of their soul, wishing for more time together. We are still in the early stages of learning about the conditions that can lead to suicide, including job strain or loss; serious illnesses; and financial, criminal, legal, and relationship problems. Acknowledging suicide and the impact it has on our communities is a first step to understanding how it can be prevented more effectively.

Suicide accounts for 1 of every 100 deaths globally, and it is the second leading cause of death for Americans between the ages of 10 and 34. In the United States, American Indians, Alaska Native youth, LGBTQI+ youth, and rural men are disproportionately affected. Far too many service members, veterans, and law enforcement officials have taken or considered taking their own lives. And too frequently, these patriots and public servants do not receive the help they need due both to stigmas surrounding mental health challenges and lack of access to necessary resources.

During my State of the Union Address, I discussed tackling the mental health crisis as a key component of my Administration's Unity Agenda. My Administration released a comprehensive Government strategy designed to address mental health with the same substance and specificity as our approach to physical health. It connects more Americans to care and creates a full spectrum of prevention and recovery support. My Administration's budget proposes investing over $22.8 billion in Fiscal Year 2023 to bolster our mental health and care workforce, to establish new nontraditional health delivery sites, and to integrate quality mental health and substance use care into primary care settings. As we look ahead, we must advance equity in mental health and transform how mental health is understood, perceived, and treated. We also remain committed to expanding mental health research and services around the world.

Over the last 2 years, we have invested heavily in expanding the National Suicide Prevention Lifeline, which we transitioned from a 10-digit number to the 3-digit dialing code, 9–8–8, this summer. This new, easier-to-access tool connects people in crisis to trained professionals, 24-hours per day, 365 days per year.

This summer, I signed into law the first meaningful gun safety bill in nearly 30 years, which helps States implement red-flag laws that make it harder for people more likely to harm themselves and others to purchase guns. It funds more crisis intervention services and improves mental health access for children and families. With funding from my American Rescue Plan, my Administration strengthened our support for the Garrett Lee Smith State and Tribal Youth Suicide Prevention and Early Intervention Program, which awards money to States and Tribes implementing critical strategies to save lives.

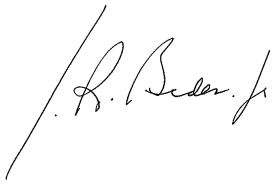
Last November, my Administration released a comprehensive public health strategy for reducing military and veteran suicide, which we are now working to implement. In March, the Department of Defense established the Suicide Prevention and Response Independent Review Committee to prevent suicide in the military and address suicide risk for service members who have experienced sexual assault. I also signed an Executive Order directing the Department of Health and Human Services to expand mental health care access to LGBTQI+ youth as a means of preventing suicide.

From committed crisis counselors who serve on hotlines and in schools to clinicians, behavioral health care practitioners, faith leaders, teachers, friends, and family members—we each have a role to play. Together, we can reduce the stigmatization of mental health issues, learn how to respond to suicide risk, and offer individuals and populations most impacted the essential care they need when a crisis arises. Together, we can save lives.

On this day of commemoration and action, we commit to studying the risk factors associated with suicide and to making mental health care accessible and affordable. Finally, to those experiencing emotional distress: please know that you are loved, and that you are not alone. There is hope, and there is help, and I encourage you to call or text 9–8–8 to reach the National Suicide & Crisis Lifeline.

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 10, 2022, as World Suicide Prevention Day. I call upon all Americans, communities, organizations, and all levels of government to join me in creating hope through action and committing to preventing suicide across America.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth 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.



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Presidential Documents

Proclamation 10443 of September 9, 2022

National Hispanic-Serving Institutions Week, 2022

By the President of the United States of America

A Proclamation

Today, Hispanic students make up nearly 20 percent of college undergraduates in the United States. They are our future leaders—the next generation of doctors and teachers, entrepreneurs and artists, first responders and scientists, elected officials and activists. Ensuring that these young people are prepared to take on the challenges of tomorrow is critical to the future of our Nation.

That is why this week we celebrate Hispanic-Serving Institutions (HSIs), which foster cultures of belonging and respect on their campuses and offer Hispanic students a nurturing, inclusive environment to learn and grow. Recently, I was pleased to award the Presidential Medal of Freedom to Dr. Julieta García, the first Mexican-American woman to lead the University of Texas at Brownsville, a center of excellence for countless students who have been inspired by her example. Committed to the value of education as a critical tool to uplift an entire community, Dr. García has demonstrated how HSIs can enable student success across the country.

My Administration knows that more needs to be done to support these places of higher learning that stand for the ideals of opportunity, dignity, and respect. Despite their many accomplishments, HSIs have been hit hard in recent years. Data show that Hispanic undergraduate enrollment has fallen by 7 percent since the pandemic began, and for the first time in 20 years, the number of these institutions has declined. That is why we are strengthening our commitment to help HSIs provide a pathway to opportunity and economic mobility for their students.

My Administration has invested approximately $11 billion from our American Rescue Plan to keep students and staff at HSIs safe from the COVID–19 pandemic and provide students emergency grants so they can stay enrolled. I also signed a bill to increase the maximum Pell Grant award by the greatest amount in over a decade, which will help approximately half of all Hispanic students, who depend on Pell Grants to pay for college.

Additionally, to address the financial harms of the pandemic, my Administration is providing up to $20,000 in debt relief as part of a comprehensive effort to address the burden of growing college costs. This action will have a significant impact on Hispanic borrowers, given that among Hispanic undergraduate borrowers, 65 percent receive Pell Grants. My Administration is also working to fix the broken Public Service Loan Forgiveness program by giving public servants—many of whom are educators at HSIs and alumni—appropriate credit toward forgiveness. These proposed changes build on the transformations already made with the Public Service Loan Forgiveness program that expire on October 31, 2022. For more information, please visit PSLF.gov.

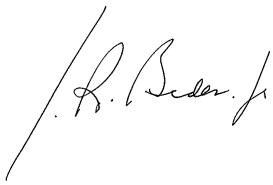
I have reestablished the White House Initiative on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics. And since my Administration began, the First Lady and the Secretary of Education have visited HSIs across our Nation to support efforts to keep students engaged, enrolled, and moving toward the completion of a degree or certificate.

There is still much more work to be done. We have a long way to go to fulfill the full potential of America, and my Administration sees HSIs as a critical gateway to making that promise a reality. I am proposing that we double the maximum Pell Grant amount by 2029 and continue to make higher education more affordable for all Americans. I am also requesting increased funding from the Congress to help Historically Black Colleges and Universities, Tribal Colleges and Universities, and minority-serving institutions, such as HSIs, expand their research and development infrastructure and strengthen their curricula in science, technology, and agriculture.

Every day, Hispanic Americans contribute immensely to our Nation's economy, security, and culture. It is our duty to ensure that the next generation of Hispanic students can make the most of their God-given talents. During National Hispanic-Serving Institutions Week, we recommit our support for the institutions helping to make this promise a reality.

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 11 through September 17, 2022, as National Hispanic-Serving Institutions Week. I call on public officials, educators, and all the people of the United States to observe this week with appropriate programs, ceremonies, and activities that acknowledge the many ways these institutions and their graduates contribute to our country.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth 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.



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Presidential Documents

Proclamation 10444 of September 9, 2022

National Grandparents Day, 2022

By the President of the United States of America

A Proclamation

On National Grandparents Day and every day, we give thanks to grandparents for their wisdom, strength, and love.

Grandparents are storytellers and gatekeepers of family tradition. They are wellsprings of knowledge and experience. They are the centerpieces of family gatherings and the glue that keeps so many families together. Grandparents also help raise children. They shuttle grandkids to-and-from school, babysit when parents are away from home, and offer advice and comfort when it is needed most. Sometimes they fill in as primary caregivers, putting aside their own needs and working full-time to provide the blessing of a loving family. I know from my own experience how grandparents can step up in critical moments. When my father lost his job in Scranton, Pennsylvania, my grandpop welcomed us into his home and offered us stability during a time of uncertainty.

While this is a day of celebration, it is also an opportunity to remember the grandparents who are no longer with us. The COVID–19 pandemic cut short the lives of too many loved ones—especially our seniors. My Administration sends strength to families who are no longer whole and to families whose grandparents are fighting for their health today. We also send encouragement to families who postponed gatherings and loving embraces during the pandemic. For Jill and me, our grandchildren are the love of our lives and the life of our love. We know how difficult it can be to remain physically apart, and we hope that the progress we have made—and continue to make—in ending the COVID–19 pandemic will allow more families to safely enjoy precious time together. Finally, we acknowledge that, for many Americans, grandparents live on only through the stories of relatives who were fortunate enough to have known them, but that these bonds can be powerful too.

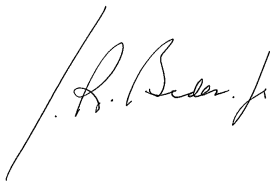
As we look ahead, my Administration will continue advocating for grandparents, especially as they care for children. The Department of Health and Human Services (HHS) is preparing a National Caregiving Strategy to present the Congress with new recommendations to better support family caregivers. And, my Administration is committed to making health care more affordable for more Americans, including seniors—many of whom are grandparents. As part of the Inflation Reduction Act, seniors and other Medicare beneficiaries will have the peace of mind of knowing that their prescription drug costs are capped at $2,000 annually. And millions of seniors will benefit from Medicare finally being able to negotiate prescription drug costs. My Administration will always protect Medicare and Social Security. Ensuring that seniors can age with dignity, security, and respect is not only the right thing to do—it is integral to our character as a Nation.

Many of our grandparents arrived in this country with nothing but a dream and an unwavering commitment to ensure that the lives of their children and grandchildren would be better than their own. Regardless of where they came from or how they got here, they have worked hard, planted roots, and built communities. They have had big hopes for us, and through our ups and downs, they have continued to love us just the same—because

that is what grandparents do. On National Grandparents Day, let us honor the grandparents who teach us lessons, imbue us with family pride, and shower us with affection. On behalf of a grateful Nation, we thank you for the gifts of life and love.

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 11, 2022, as National Grandparents Day. I call upon all Americans to celebrate the important role that grandparents play in the lives of their families and the children they love.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth 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.



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Presidential Documents

Proclamation 10445 of September 9, 2022

Patriot Day and National Day of Service and Remembrance, 2022

By the President of the United States of America

A Proclamation

On September 11, 2001, ordinary Americans performed extraordinary acts of heroism. Firefighters and police officers rushed into crumbling buildings and raging fires to save others. EMTs, construction workers, colleagues, and strangers tended to the wounded. Passengers and crewmembers gave their lives to thwart another attack. And a generation of women and men answered the call of duty by joining our Armed Forces to defend our freedom and our democracy.

These patriots—people of undaunted courage, uncommon resolve, and unwavering perseverance—are forever ingrained in our national character. They are reminders that we are a great country because we are a good people. On this Patriot Day and National Day of Service and Remembrance, we pay tribute to the heroes and victims who lost their lives on September 11, and we recommit ourselves to the spirit of unity, patriotism, and service that carried our Nation through in the days that followed.

Before they were national heroes, the women and men we honor were already heroes to so many others. They were the mothers who tucked their kids into bed at night. They were the fathers who drove the neighborhood carpools to school. They were the daughters who made their parents proud and the sons who lifted up their friends. To the families around America whose pain is especially personal on this day: Our entire Nation, including Jill and I, holds you close in our hearts and sends you our love. I know from personal experience that memorials can bring everything back as painfully as if it happened today—the moment you got the phone call—no matter how many years go by.

On this day, let us honor the memory of the innocent victims we lost and carry on the legacy of the selfless heroes who served our Nation on September 11 and in its aftermath. Let us also recognize the members of our intelligence and counterterrorism communities who worked with dedication and determination to deliver justice to Ayman al-Zawahiri, the emir of al-Qaeda and a key planner of this and other cruel attacks against our people.

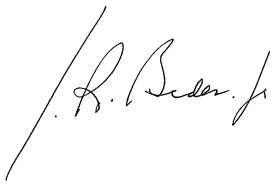
I invite all Americans to observe this day with service; you can find opportunities in your community by visiting americorps.gov/911-day. Unity is what makes us who we are as Americans—it is our greatest strength. When we come together on this day, and every day, we demonstrate that even in the darkness, America remains a bright beacon of light and hope for the world.

By a joint resolution approved December 18, 2001 (Public Law 107–89), the Congress has designated September 11 of each year as ''Patriot Day,'' and by Public Law 111–13, approved April 21, 2009, the Congress has requested the observance of September 11 as an annually recognized ''National Day of Service and Remembrance.''

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, do hereby proclaim September 11, 2022, as Patriot Day and

National Day of Service and Remembrance. I call upon all departments, agencies, and instrumentalities of the United States to display the flag of the United States at half-staff on Patriot Day and National Day of Service and Remembrance in honor of the individuals who lost their lives on September 11, 2001. I invite the Governors of the United States and its Territories and interested organizations and individuals to join in this observance. I call upon the people of the United States to participate in community service in honor of those our Nation lost, to observe this day with appropriate ceremonies and activities, including remembrance services, and to observe a moment of silence beginning at 8:46 a.m. eastern daylight time to honor the innocent victims who perished as a result of the terrorist attacks on September 11, 2001.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth 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.



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Rules and Regulations

Federal Register
Vol. 87, No. 177
Wednesday, September 14, 2022

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

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

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Parts 1001 and 1003

[EOIR Docket No. 22–0201; A.G. Order No. 5499–2022]

RIN 1125–AA83

Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances

AGENCY: Executive Office for Immigration Review, Department of Justice.

ACTION: Final rule.

SUMMARY: On March 27, 2019, the Department of Justice (the Department) published in the **Federal Register** an Advanced Notice of Proposed Rulemaking (ANPRM) to solicit public comments regarding whether the Department should allow practitioners who appear before the Executive Office for Immigration Review (EOIR) to engage in limited representation or representation of a noncitizen during only a portion of the case, beyond what the regulations permitted. On September 30, 2020, after reviewing the comments to the ANPRM, the Department published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM). The NPRM proposed to amend the regulations to allow practitioners the option of entering a limited appearance to assist pro se individuals with drafting, writing, or filing applications, petitions, briefs, and other documents in proceedings before EOIR, as opposed to requiring the practitioner to enter an appearance to become the ''practitioner of record'' and thereby to accept certain obligations and responsibilities. This final rule responds to comments received in response to the NPRM and adopts the proposed rule with changes as described below. Specifically, this final rule permits practitioners to provide document assistance to pro se individuals by entering a limited appearance through new Forms EOIR–60 or EOIR–61, without requiring the practitioner to become the practitioner of record or to submit a motion to withdraw or substitute after completing the document assistance.

DATES: This rule is effective November 14, 2022.

FOR FURTHER INFORMATION CONTACT: Lauren Alder Reid, Assistant Director, Office of Policy, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

I. Background

The Immigration and Nationality Act (INA) provides that noncitizens appearing before an immigration judge ''shall have the privilege of being represented, at no expense to the Government, by counsel of the [noncitizen]'s choosing who is authorized to practice in such proceedings.'' INA 240(b)(4)(A), 8 U.S.C. 1229a(b)(4)(A); *see also* INA 292, 8 U.S.C. 1362 (''In any removal proceedings before an immigration judge . . . the person concerned shall have the privilege of being represented (at no expense to the Government) by such counsel . . . as [the person concerned] shall choose.''); 8 CFR 1003.16(b) (''The [noncitizen] may be represented in proceedings before an Immigration Judge by an attorney or other representative of [the person concerned's] choice in accordance with 8 CFR part 1292, at no expense to the government.'').

The Department has promulgated regulations that establish rules of procedure before the immigration courts and the Board of Immigration Appeals (BIA), including rules specifying who is authorized to provide representation and standards of professional conduct governing those authorized to provide representation. *See* 8 CFR Subpart A (BIA rules of procedure); 8 CFR Subpart C (immigration court rules of procedure); 8 CFR Subpart G (rules of professional conduct for practitioners); 8 CFR 1292.1 (describing individuals authorized to provide representation before EOIR). Under those regulations, individuals authorized to provide representation—*i.e.,* attorneys, law students, law graduates, reputable individuals, accredited representatives, and accredited officials—are known as ''practitioners.'' 8 CFR 1003.101(b); *see also* 8 CFR 1292.1. In order to become the ''practitioner of record,'' which authorizes and requires the practitioner to appear before EOIR on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, practitioners must file a Notice of Entry of Appearance as Attorney or Representative Before the Board of Immigration Appeals (Form EOIR–27) or a Notice of Entry of Appearance as Attorney or Representative Before the Immigration Court (Form EOIR–28). 8 CFR 1003.3(a)(3), 1003.17(a), 1003.38(g), 1292.4(a). When a practitioner enters an appearance using these forms, that individual is the practitioner of record in the case for which the appearance form was filed, unless and until the immigration judge or the BIA grants a motion to withdraw or substitute. 8 CFR 1003.17(a)(3), 1003.38(g)(3), 1292.4(a).

Prior to a 2015 final rule, an entry of appearance in immigration court through the filing of a Form EOIR–28 required a practitioner to represent a noncitizen in all proceedings before the immigration court, including removal and bond proceedings if the noncitizen was detained.[1] *See* Separate Representation for Custody and Bond Proceedings, 80 FR 59500 (Oct. 1, 2015). The 2015 final rule allowed practitioners to enter an appearance to represent a noncitizen in ''custody or bond proceedings only, any other proceedings only, or for all proceedings.'' 8 CFR 1003.17(a). In sum, a practitioner can enter an appearance to be a practitioner of record in one of three capacities: (1) all proceedings, to include removal, deportation, exclusion, credible and reasonable fear, or any other proceeding type, and custody or bond; (2) custody or bond proceedings only; or (3) all proceedings other than custody and bond proceedings. A practitioner who enters an appearance in one of the three capacities becomes

[1] The 2015 amendment did not alter the rules for entering an appearance before the BIA. A separate entry of appearance was already required when an appeal was filed with the BIA from a decision of an immigration judge or a District Director decision. *See* 8 CFR 1003.38(g).

the practitioner of record for the designated proceeding(s). That practitioner then has certain obligations and responsibilities, including completing written filings, making appearances in court, and accepting service of documents, unless and until the immigration judge permits withdrawal or substitution of counsel. *See* 8 CFR 1003.17(b). Separate appearances in custody and non-custody proceedings are permitted under that final rule, and this rule does not alter that. As has been the case since 2015, a noncitizen remains ''pro se'' in any type of proceeding in which a practitioner has not entered an appearance to be the practitioner of record. For example, if a practitioner entered an appearance to be practitioner of record in custody or bond proceedings only, the noncitizen would remain ''pro se'' in all proceedings other than custody or bond proceedings. *See* 80 FR at 59500 (authorizing a practitioner to enter an appearance solely for custody or bond proceedings before the immigration court, such that noncitizen would appear pro se for all other proceedings if no practitioner has entered an appearance for those other proceedings).

For many years, members of the public have requested that the Department modify EOIR's regulations to allow practitioners to engage in limited appearances before EOIR on behalf of pro se noncitizens, without the practitioner being obligated to become the practitioner of record and represent the noncitizen for the entire proceeding, so that the practitioner could provide in-person representation for a discrete, limited part of a proceeding or draft forms or applications beyond what is already permitted by separate appearances as discussed above. *See, e.g.,* 84 FR at 11447 (referencing ''a comment seeking a broadening of the limited scope of representation permitted''). Commenters in support of allowing such limited appearances contended that doing so would enable practitioners to provide legal services to a greater number of noncitizens in immigration proceedings and thereby improve the efficiency of immigration proceedings. Specifically, the commenters indicated that the greatest benefit of a limited appearance mechanism would be to permit practitioners to provide pro se noncitizens with assistance in the preparation, drafting, and filing of documents, without obligating those practitioners to become the practitioners of record, as is required under the current regulations.

The Department agrees and acknowledges the importance of allowing practitioners to limit their appearance to document assistance to enhance the efficiency and fairness of immigration proceedings. After consideration, the Department has determined that permitting limited appearances to provide document assistance to pro se noncitizens would be beneficial because it would give practitioners greater flexibility to assist noncitizens appearing pro se before EOIR, provide increased access to competent legal services for noncitizens in immigration proceedings, and aid EOIR in adjudicating cases of pro se noncitizens who receive document assistance from practitioners. The new rule does not allow limited appearances for in-person representation, beyond what is already permitted under separate appearances as described above. *See* 80 FR at 59500–01; *see also Matter of Velasquez,* 19 I&N Dec. 377, 384 (BIA 1986).[2]

II. Summary of Changes

The final rule expands the circumstances in which practitioners may assist noncitizens in proceedings before an immigration court and the BIA by allowing practitioners to enter limited appearances—without further obligations or responsibilities to the immigration court, the BIA, or the noncitizen—when only providing assistance with documents filed in those proceedings. The rule clarifies when practitioners must file an appearance and the effect of the entry of a particular appearance. There is no change to the mechanism that causes a practitioner to become the ''practitioner of record,'' which authorizes and requires the practitioner to appear before EOIR on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings. A practitioner becomes a practitioner of record only by entering an appearance using a Form EOIR–27 or Form EOIR–28. Under this rule, practitioners may also choose to enter a limited appearance on a Form EOIR–60 or EOIR–61 when only providing document assistance to pro se noncitizens. Such a limited appearance does not restrict practitioners from later filing a Form EOIR–27 or EOIR–28 to enter an appearance as the practitioner of record.

''Document assistance'' is the drafting, completing, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with the immigration court or BIA. If they are not otherwise the practitioner of record, practitioners who engage in document assistance must disclose such assistance by entering a limited appearance. To facilitate this process, EOIR has created two new entry of appearance forms: Form EOIR–60 (Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals) and Form EOIR–61 (Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court). In addition, practitioners must identify themselves on the documents with which they assisted and complete the preparer section on forms with which they assisted.

Unlike an entry of appearance to become the practitioner of record through the filing of a Form EOIR–27 or EOIR–28, the entry of a limited appearance for document assistance pursuant to a Form EOIR–60 or EOIR–61 does not impose any continuing obligations to the noncitizen, the immigration court, or the BIA on the part of the practitioner. *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii). Practitioners who enter a limited appearance do not become the practitioner of record and, as such, do not have the authorization, obligation, or responsibility to appear on behalf of the noncitizen, to otherwise represent the noncitizen before the immigration court or the BIA, or to move to substitute or withdraw from the proceeding. *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii). A noncitizen who receives only document assistance from a practitioner remains pro se unless and until a practitioner files a Form EOIR–27 or EOIR–28 to become the practitioner of record. *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii). Indeed, only when a practitioner enters an appearance via an EOIR–27 or EOIR–28 and becomes the practitioner of record will the practitioner receive notice of a noncitizen's upcoming hearings, be sent filings in the case and be permitted access to the case file and appear in person on the noncitizen's behalf.

As explained *infra,* the final rule amends the definitions of ''practice'' and ''preparation'' in order to provide greater clarity and specificity to those terms. Further, the final rule clarifies the duty to enter an appearance and any disciplinary consequences associated with failing to enter the proper appearance, whether through a Form

[2] This final rule supersedes the statement in *Matter of Velasquez* that ''there is no 'limited' appearance of counsel in immigration proceedings,'' 19 I&N Dec. at 384, because this rule amends the regulation that *Matter of Velasquez* relied upon.

EOIR–27, EOIR–28, EOIR–60, or EOIR–61, are not determined by whether the practitioner is engaging in ''practice'' or is engaging in ''preparation.'' Practitioners enter an appearance through Form EOIR–27 or Form EOIR–28 when they seek to become the practitioner of record and to take on the responsibilities and obligations attendant to that status. Practitioners enter a limited appearance through Form EOIR–60 or Form EOIR–61 when they only assist with documents intended to be filed with EOIR, regardless of whether the practitioners' work related to those documents constitutes ''practice'' or ''preparation.''

As noted below and as was already the case, all practitioner conduct—not just conduct that requires a practitioner to enter an appearance as the attorney of record—may be subject to EOIR's disciplinary rules. *See* 8 CFR 1003.101(b); 8 CFR 1003.102. Accordingly, practitioners who provide assistance that requires an appearance on Form EOIR–27, EOIR–28, EOIR–60, or EOIR–61 are subject to EOIR's Rules of Professional Conduct. The final rule amends the disciplinary rules to amend practitioners' obligations to enter an appearance on the appropriate Form EOIR–27, EOIR–28, EOIR–60, or EOIR–61 and obligations regarding the drafting and signing of documents. Such amendments are discussed further below.

Given that only ''practitioners'' may enter an appearance before EOIR, the changes made in this final rule regarding the circumstances in which a practitioner must enter an appearance do not apply to non-practitioners. Non-practitioners continue to be permitted to assist noncitizens with the ''preparation'' of documents, which consists solely of filling in blank spaces on printed forms with information provided by the applicant or petitioner that are to be filed with or submitted to EOIR, only where such acts do not include the exercise of professional judgment to provide legal advice or legal services.[3]

In summary, the final rule establishes or reaffirms that practitioners: (1) must enter an appearance on Form EOIR–27 or Form EOIR–28 to become the practitioner of record and thereby be authorized and required to appear for hearings or arguments on behalf of a noncitizen before the immigration courts or the BIA, to file documents on behalf of a noncitizen, and to accept service of process on behalf of a noncitizen of all documents filed in a proceeding; (2) must enter a limited appearance on Form EOIR–60 or Form EOIR–61 when they provide document assistance to a pro se noncitizen, regardless of whether the assistance involves ''practice'' (*i.e.,* factual or legal analysis in drafting or completion of a document) or simply ''preparation'' (*i.e.,* filling in the blank spaces of a pre-printed form with information provided by the noncitizen); and (3) are not required to enter an appearance as described above when solely providing legal advice or engaging in a legal consultation pertaining to a noncitizen but not assisting with documents or appearing before EOIR on behalf of the noncitizen, even though such conduct constitutes ''practice.'' The final rule also reaffirms that non-practitioners cannot file an appearance or engage in ''practice'' under any circumstances and are limited to engaging in ''preparation.''

III. Comments and Responses

The comment period for the NPRM closed on October 30, 2020. The Department received 41 comments. Non-governmental organizations, legal advocacy groups, non-profit organizations, and religious organizations submitted the majority of these comments, and individual commenters submitted the remainder. The Department provided an additional 60-day notice and comment period for the proposed Notices of Entry of Limited Appearance for Document Assistance, Forms EOIR–60 and EOIR–61. *See* Agency Information Collection Activities; Proposed Collection; Comments Requested; Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals; and Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court, 86 FR 48443 (Aug. 30, 2021). No comments were received during that comment period. Both in response to the results of the public solicitations for comments and as the result of further consideration, the Department has revised the proposed rule as discussed below.

Below, the Department has summarized the comments and explained the changes the Department has made in response. The comments are addressed by topic rather than by reference to a specific commenter to prevent confusion due to overlapping comments and multiple subjects raised in some of the submissions.

Some commenters asserted that the rule did not adequately explain the goals and reasons for the proposed changes, why the Department was departing from existing practice of prohibiting limited appearances, that the revised definitions of ''practice'' and ''preparation'' were arbitrary and capricious, as well as vague, and that the Department did not consider the effect of the rule on various service-provider programs. They stated that these concerns rise to a violation of the Administrative Procedure Act (APA) and the U.S. Constitution. The Department believes that the reasoning for the proposed changes was sufficiently set forth in both the ANPRM and NPRM, and that the NPRM adequately addressed these issues as well as the rule's expected impact on the public. Nevertheless, the Department provides further explanation and clarification to address these concerns herein.

A. Entering an Appearance

The Department received many comments expressing confusion or demonstrating a lack of clarity in the proposed rule as to when the proposed rule would require filing an entry of appearance. The comments reflected confusion about the scope of the definitions of ''practice,'' ''preparation,'' and ''representation''; the effect of filling out a form's ''preparer section'' on the obligation to enter an appearance; and the obligations, if any, of practitioners after the practitioner finishes providing document assistance.

Additionally, the Department received many comments that the proposed definitions of ''practice,'' ''preparation,'' and ''representation'' as defined in the NPRM could be interpreted by practitioners to create additional barriers to representation and have the overall effect of providing fewer noncitizens with legal assistance in immigration proceedings.[4]

[3] Some commenters raised the concern that this rulemaking will not achieve the Department's goals of preventing fraud by individuals not authorized to practice immigration law if EOIR's appearance and disciplinary rules only apply to practitioners. While the disciplinary rules have always only applied to practitioners, complaints of non-practitioner fraud will continue to be investigated by EOIR's Fraud and Abuse Prevention Program. *See* EOIR, Fraud and Abuse Prevention Program, *available at https://www.justice.gov/eoir/fraud-and-abuse-prevention-program* (last updated Mar. 4, 2020). Additionally, permitting limited appearances for document assistance will likely increase the capacity of practitioners that will be able to assist noncitizens and as such, noncitizens will likely be less inclined to seek out the services of non-practitioners who may be acting unscrupulously and should be solely limited to ''preparation'' of documents.

[4] One commenter recommended that the Department pursue universal federally funded representation in immigration proceedings in lieu of this rule and to combat such potential chilling effect on representation. This recommendation is

Continued

Specifically, commenters stated that the NPRM drastically expands the ''practice'' definition to include nearly any interactions practitioners have with pro se noncitizens because typically all interactions between practitioners and pro se noncitizens include provision of legal advice or the exercise of legal judgment. The proposed rule defined ''representation'' as including any form of ''practice'' because it stated in its text that ''*representation* before EOIR includes practice.'' *See* Professional Conduct for Practitioners—Rules and Procedures, and Representation and Appearances, 85 FR 61640, 61651 (Sept. 30, 2020) (emphasis in original). Commenters expressed concern that this expanded definition could discourage representation because any form of ''practice''—including the provision of legal advice that does not include document assistance—would require the entry of an appearance and thereby diminish the opportunity for pro se noncitizens to receive legal assistance or advice. Commenters alleged that nonprofit providers in particular, who already have limited resources, would limit the scope of their services so as not to engage in ''representation.''

Considering these comments and the concerns raised, the Department has amended the regulatory provisions related to entry of appearances before the immigration courts and the BIA, *see* 8 CFR 1003.17, 1003.38(g), as well as the definitions of ''practice'' and ''preparation,'' *see* 8 CFR 1001.1(i), (k). The final rule eliminates the reference to ''represented'' at 8 CFR 1003.17(a) and 1003.38(g) and does not otherwise rely on the definitions of ''representation'' or ''practice'' to determine when an entry of appearance pursuant to a Form EOIR–27 or Form EOIR–28 is required, as the proposed rule did. Given the changes the final rule makes to the entry of appearance regulations, the Department has determined that revisions to the existing definition of ''representation'' at 1001.1(m) are not needed. *See* 8 CFR 1001.1(m) (''The term representation . . . includes practice and preparation as defined in paragraphs (i) and (k) of this section''). The definition will remain unchanged because ''representation'' is a term used elsewhere in the EOIR regulations, namely, the rules of professional conduct and the rules governing who can provide representation. *See* 8 CFR 1003.102(o) (disciplinary sanctions may be imposed if a practitioner ''[f]ails to provide competent representation,'' which ''requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation''); 8 CFR 1292.1 (defining who is authorized to provide representation). The changes in this final rule are intended to clarify that practitioners may provide legal advice (*i.e.,* engage in certain forms of ''practice''), including, for example, engaging in consultations with unrepresented noncitizens at a self-help clinic or legal orientation program, without creating an obligation to enter a full appearance as practitioner of record or otherwise represent the noncitizen in proceedings before EOIR.

The final rule requires an entry of appearance in two circumstances: (1) when a practitioner wants to become the practitioner of record, which authorizes and requires the practitioner to appear before EOIR on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings,[5] 8 CFR 1003.17(a), 1003.38(g)(1); and, (2) when a practitioner provides document assistance only and does not want to become the practitioner of record, 8 CFR 1003.17(b), 1003.38(g)(2). Practitioners who want to become a practitioner of record must enter an appearance on either Form EOIR–27 or Form EOIR–28. *See* 1003.17(a), 1003.38(g). Practitioners who only provide document assistance and do not want to become the practitioner of record must enter a limited appearance for document assistance on Form EOIR–60 or Form EOIR–61. *See* 1003.17(b). Practitioners can provide document assistance to pro se noncitizens by drafting, completing, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with EOIR. In order to avoid any confusion as to what kinds of document assistance require the filing of a limited appearance form, when practitioners engage in any document assistance for pro se noncitizens, they must complete a Form EOIR–60 or Form EOIR–61, regardless of whether the practitioners' conduct with respect to the documents constitutes ''practice'' or ''preparation.''

1. Entry of Appearance as Practitioner of Record

Under the current rules, it is unclear whether it is the practitioner or some other triggering event, such as engaging in ''practice'' or ''preparation,'' that determines when an entry of appearance is required. While the final rule makes no changes to the actions practitioners take to become the practitioner of record—namely, the requirement to enter an appearance on Form EOIR–27 or Form EOIR–28—it does remove any reference to ''represented'' in order to eliminate any perception that all acts constituting ''practice,'' ''preparation,'' or ''representation'' determine the entry of such appearance. The final rule revises 1003.17(a) and 1003.38(g) to make clear that practitioners become practitioners of record, regardless of whether they are engaging in ''practice'' or ''preparation'' or otherwise meeting the definition of ''representation,'' when they seek authorization to and wish to take on the responsibilities and obligations of that role, which includes appearing at hearings, filing documents on behalf of a noncitizen, and accepting service on behalf of a noncitizen. Practitioners are not authorized to engage in these activities or have these obligations unless they have entered an appearance on Form EOIR–27 or Form EOIR–28.

2. Entry of Limited Appearance for Document Assistance

When a practitioner's services to a pro se noncitizen are limited to document assistance, and they are not practitioner of record before the immigration court or the BIA, practitioners are required to enter a limited appearance on Form EOIR–60 or Form EOIR–61. *See generally* 8 CFR 1003.17(b), 1003.38(g)(2). ''Document assistance'' is described at 1003.17(b) (and in 1003.38(g)(2) with some minor variation) as ''assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed'' with the immigration court or BIA. Regardless of whether the practitioners' document assistance constitutes ''practice'' or ''preparation,'' practitioners must complete the applicable entry of appearance form for a limited appearance when they provide any document assistance. *See id.* While discussing available forms of relief based on a particular noncitizen's circumstances and providing legal advice about how to complete an application for relief to be filed at an immigration court constitute ''practice,'' such actions would not necessarily constitute document assistance unless the practitioner also assisted with drafting, completion, or filling in the applications for relief. In addition to submitting the Form EOIR–60 or Form EOIR–61, practitioners who have

beyond the Department's scope of rulemaking authority under current law.

[5] In immigration court proceedings, a practitioner can enter an appearance and become the practitioner of record for ''custody or bond proceedings only, any other proceedings only, or for all proceedings.'' 8 CFR 1003.17(a).

engaged in document assistance are required to complete the ''preparer section'' of any form for which assistance was provided and to disclose that they drafted a document, such as a motion or brief, by placing their name and signature on the document. 8 CFR 1003.17(c), 1003.38(g)(3). A limited appearance form is only required when providing document assistance to a pro se noncitizen, and it is not required of the practitioner of record who has already submitted a Form EOIR–27 or EOIR–28.

3. Scope of Conduct: ''Practice'' and ''Preparation''

As described above, the Department received many comments expressing concern that the proposed rule's definitions of ''practice'' and ''preparation'' could dissuade practitioners from entering appearances to assist pro se noncitizens. The Department acknowledges that the NPRM's definitions of ''practice'' and ''preparation,'' when read in conjunction with the NPRM's requirements for entry of an appearance, had the unintended consequence of causing confusion about the type of conduct that requires an entry of appearance, for both limited appearances for document assistance and to become the practitioner of record, whether for removal proceedings, custody proceedings, or both. Therefore, the final rule does not rely on these definitions for determining when an entry of appearance is required for either a limited appearance or to become the practitioner of record. *See, e.g.,* 8 CFR 1003.17(a), (b). Nonetheless, the final rule clarifies and simplifies the definitions of ''practice'' and ''preparation'' because these definitions explain the kind of conduct in which only practitioners can engage (*i.e.,* practice), and the kind of conduct in which both practitioners and non-practitioners can engage (*i.e.,* preparation). Despite the difference between the terms, the Department makes clear in the final rule that practitioners who engage in any document assistance, whether ''practice'' or ''preparation,'' must complete a Form EOIR–60 or EOIR–61. *See* 1003.17(b), 1003.38(g)(2).

a. ''Practice''

Commenters voiced concern with the NPRM's definition of ''practice'' and the interaction of that definition with the proposed rule's entry of appearance requirements. They expressed concern that the terms ''exercise of legal judgment'' and ''legal advice'' in the NPRM's definition of ''practice'' indicated that nearly any action a practitioner takes on behalf of a noncitizen would require an entry of appearance. Specifically, they indicated that this broad definition of ''practice'' could cause any form of education, orientation, or discussion with a pro se noncitizen to be considered ''practice'' and to trigger the obligation to file an entry of appearance. They also asserted that some conduct that was described as ''practice'' should not require entry of an appearance.[6]

As described above, although some actions constituting ''practice'' may require the entry of an appearance, the final rule does not rely on the definition of ''practice'' in determining when an appearance must be filed. The final rule revises 1003.17(a) and 1003.38(g) to make clear that practitioners become the practitioners of record, pursuant to the filing of a Form EOIR–27 or Form EOIR–28, when they seek authorization to take on the responsibilities and obligations of that role, which includes appearing at hearings, filing documents on behalf of a noncitizen, and accepting service on behalf of a noncitizen. The final rule further clarifies that the entry of a limited appearance pursuant to the filing of a Form EOIR–60 or EOIR–61 is required only when a practitioner is engaged in document assistance—described in 1003.17(b) as ''assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed''—with the immigration court or BIA. Thus, a limited appearance must accompany any document assistance provided by a practitioner that is at least ''preparation,'' regardless of whether it may also constitute ''practice.'' 8 CFR 1003.17(b), 1003.38(g)(2).

The final rule does not adopt the language from the NPRM for the definition of ''practice.'' *See* 85 FR at 61651. Instead, it defines ''practice'' as ''exercising professional judgment to provide legal advice or legal services related to any matter before EOIR,'' with a non-exhaustive description of conduct that constitutes practice in order to further clarify the meaning of this language. 8 CFR 1001.1(i). The description in the final rule includes a range of conduct: giving legal advice, drafting and filing documents on behalf of another person before EOIR, and appearing in person on behalf of another person before EOIR. *Id.* Based on that description of conduct, examples of ''practice'' include, but are not limited to, the following actions if taken by a practitioner: engaging in a consultation with an individual about forming an attorney-client relationship for assistance in immigration proceedings, or otherwise providing legal advice; discussing available forms of relief based on a particular noncitizen's circumstances; providing legal advice about how to complete an asylum application to be filed at an immigration court; drafting a motion to reopen on behalf of a noncitizen that is intended to be filed with the BIA; and appearing before an immigration judge in person on behalf of a noncitizen in removal proceedings.

The rule maintains a broad definition of ''practice'' for a specific reason: all practitioner conduct that constitutes ''practice''—not just conduct that requires entry of an appearance—may be subject to EOIR's Rules of Professional Conduct and state rules regulating attorney conduct. *See, e.g.,* 8 CFR 1003.101. For example, practitioners may be in violation of the EOIR Rules of Professional Conduct or state rules for providing a noncitizen with erroneous advice regarding the available forms of relief that the noncitizen relied on to their detriment. Therefore, practitioners should be mindful that even if entry of an appearance is not required, their actions might nonetheless be subject to other provisions of the regulations or other rules.

As discussed above, the terms ''practice'' and ''preparation'' do not determine when an appearance must be entered to become the practitioner of record; practitioners may engage in some conduct constituting ''practice'' or ''preparation'' without having to enter an appearance to become the practitioner of record. Moreover, even if engaging in ''practice'' or ''preparation,'' the practitioner may only be required to enter a limited appearance if such conduct constitutes document assistance as described in 1003.17(b) and 1003.38(g)(2). For example, if a practitioner is leading a legal orientation session to a group of pro se noncitizens, and in doing so, merely explains available forms of immigration relief to them, the practitioner is not required to enter an appearance of any kind. However, if a practitioner assists a pro

[6] For example, some commenters expressed apprehension that the proposed rule would end ''Friend of the Court'' programs, in which participants assist the immigration court in person without entering an appearance by providing information about particular noncitizens. Contrary to this claim, the final rule does not affect the ability of a person to appear as *amicus curiae* in immigration proceedings because *amicus curiae* appear as an aid to the court and not as a practitioner. *See* EOIR Director's Memorandum 22–06, Friend of the Court, May 5, 2022, *available at https://www.justice.gov/eoir/page/file/1503696/download.*

se noncitizen in drafting an asylum application after the presentation concludes, the practitioner must enter a limited appearance.

b. ''Preparation''

Commenters indicated that the proposed rule's definition of ''preparation'' could result in practitioners not providing assistance to pro se noncitizens. They suggested that the definition could discourage practitioners from taking any action that constitutes ''preparation'' that could also be considered ''practice'' (*i.e.,* the ''exercise of professional judgment'' or ''provision of legal advice'' in identifying and completing forms) and thus, require entry of an appearance under the NPRM's definitions. For example, commenters stated that they would be less willing to ask basic questions of noncitizens to assist them in completing forms or to solicit information in order to guide them in selecting applications for relief, if it would require an entry of appearance as practitioner of record and bind them to further obligations to the noncitizen or EOIR.

The final rule does not adopt the language of the proposed rule and retains part of the language of the existing regulatory definition of ''preparation,'' stating that ''preparation'' consists ''solely of filling in blank spaces on printed forms.'' [7] The rule makes clear that such action does not include the ''exercise of professional judgment to provide legal advice or legal services''; instead, the provision of legal advice or services is included under the definition of ''practice,'' to explicitly distinguish ''preparation'' from ''practice.'' *See* 8 CFR 1001.1(i), (k).

The Department believes that the commenters' concerns have been sufficiently addressed. As noted, *supra,* an entry of appearance to become the practitioner of record and to seek authorization to take on the associated responsibilities and obligations is not dictated by the terms ''practice'' or ''preparation.'' The entry of limited appearances for document assistance does not bind practitioners to provide further assistance, which should encourage rather than deter practitioners from providing assistance to noncitizens.[8] While a practitioner will always be required to enter a limited appearance when engaged in ''preparation'' (*i.e.,* the ministerial act of filling in the blanks of printed forms), doing so does not bind the practitioner to further obligations to the noncitizen or EOIR. Even if practitioners engage in ''practice'' when providing document assistance, they are only required to enter a limited appearance per a Form EOIR–60 or EOIR–61.

For example, practitioners, without further obligation, may permissibly assist a pro se noncitizen in completing a change of address form (Form EOIR–33) and engage in ''preparation,'' provided that the practitioner completes a limited appearance form.[9] Without further obligation to become the practitioner of record, practitioners may also assist pro se noncitizens in completing asylum applications and provide legal advice on how to present claims on the form, even though they are engaging in ''practice'' and ''preparation.'' Practitioners doing so are required to complete a Form EOIR–60 or EOIR–61 to be filed with the application and to complete the preparer section of the form. Conversely, if a practitioner is merely reading an administrative form to the applicant, in English or in the applicant's primary language, an entry of appearance would not be required.

4. Form EOIR–60 and Form EOIR–61

In contemplating changes to the manner of entry of appearance forms as suggested by the proposed rule, some commenters stated that completing an additional appearance form for actions that did not previously require an appearance form is too burdensome, especially when they must also complete the ''preparer section'' of a form. After careful deliberation, the Department determined that the informational needs of requiring such disclosure far outweigh the burden imposed on practitioners.

The goals of this rulemaking include providing greater flexibility to practitioners to be able to assist noncitizens appearing pro se before EOIR; providing increased access to legal assistance for such noncitizens, while adding protections to reduce the risk of individuals being victimized by ''ghostwriting'' and fraud; and ensuring practitioners are abiding by EOIR's Rules of Professional Conduct. The Department determined that identification of practitioners through the submission of an entry of limited appearance form, plus the additional requirements regarding the ''preparer section'' on forms and disclosure of assistance on other documents through name and signature, will reduce the risk to the public of unscrupulous individuals that currently prey on vulnerable noncitizens through ''ghostwriting.'' For example, the Department believes that, by increasing flexibility for practitioners who wish to provide varying types of assistance to noncitizens in proceedings before EOIR, the pool of individuals engaged in legitimate practices and available to assist noncitizens will expand, leaving less room for bad actors. Such requirements will also hold practitioners accountable for the document assistance they perform pursuant to the final rule.

Ghostwriting is a practice that occurs when an unidentified individual, whether a practitioner or non-practitioner, assists a noncitizen with or drafts pleadings, applications, petitions, motions, briefs, or other documents that are filed with EOIR. Ghostwritten documents can contain false or fraudulent information, sometimes unbeknownst to the noncitizen, and often present substandard, incomplete, inaccurate, or boilerplate work products. Ghostwriting is often a means for unscrupulous or unqualified individuals and other bad actors to deceive and mislead noncitizens and EOIR or, with the acquiescence of noncitizens, ghostwriting may be a means to perpetuate fraud and undermine proceedings.

As described in the NPRM, ghostwriting is harmful to parties and undermines the integrity of proceedings, candor to the tribunal, and

[7] Additionally, in response to commenters' request, the final rule removes references to the Department of Homeland Security (DHS) in the ''preparation'' definition, as DHS is a separate agency with its own definitions. *See* 8 CFR 1.2. The final rule retains existing pre-NPRM regulatory language regarding non-practitioner preparation and the requirement that any fees for such assistance be nominal and that the non-practitioner cannot hold themselves out as qualified in legal matters or immigration or naturalization procedures. *See* 8 CFR 1001.1(k).

[8] Some commenters indicated that it is unfair to require only practitioners engaging in ''preparation'' to complete an entry of limited appearance form if non-practitioners engaging in the exact same conduct are not obligated to do so. The Department disagrees. Practitioners have specific legal and ethical obligations due to their status as practitioners. Indeed, the final rule requires completion of a Form EOIR–60 or EOIR–61 in order to have the practitioner attest that they understand that EOIR's Rules of Professional Conduct govern their conduct. *See* Forms EOIR–60 and EOIR–61. Non-practitioners are limited to engaging in conduct that is exclusively ''preparation,'' which is a narrow segment of conduct because the preparation of most forms requires engaging in ''practice.'' Moreover, non-practitioners engaging in preparation of forms are still required to complete the preparer section of the forms, when applicable. EOIR's Fraud and Abuse Prevention Program will continue to be investigate reports of non-practitioners engaging in services beyond those authorized (*i.e.,* engaging in the unauthorized practice of law), including those kinds of conduct defined as ''practice'' in this rule. *See* EOIR, Fraud and Abuse Prevention Program, *available at https://www.justice.gov/eoir/fraud-and-abuse-prevention-program* (last updated Mar. 4, 2020).

[9] The Form EOIR–60 and Form EOIR–61 are estimated to take no more than 6 minutes to complete.

accountability. *See* 85 FR at 61647; *see also, e.g., Villagordoa Bernal* v. *Rodriguez,* No. 16–cv–152–CAS, 2016 WL 3360951, at *7 (C.D. Cal. June 10, 2016) (''[T]he parties are reminded that ghostwriting of pro se filings is, of course, inappropriate and potentially sanctionable conduct.'') (*citing Ricotta* v. *Calif.,* 4 F. Supp. 2d 961, 986 (S.D. Cal. 1998))); *Tift* v. *Ball,* No. 07–cv–276–RSM, 2008 WL 701979, at *1 (W.D. Wash. Mar. 12, 2008) (''It is therefore a violation for attorneys to assist pro se litigants by preparing their briefs, and thereby escape the obligations imposed on them under Rule 11.''); *Laremont-Lopez* v. *SE Tidewater Opportunity Ctr.,* 968 F. Supp. 1075, 1078–79 (E.D. Va. 1997) (explaining that ghostwriting causes confusion regarding representation, interferes with the administration of justice, constitutes a misrepresentation to the court under Rule 11, and while ''convenient for counsel,'' disrupts the proper conduct of proceedings).

Importantly, under the final rule, allowing practitioners to enter an appearance for document assistance without further obligation to act on behalf of a pro se noncitizen should expand noncitizens' access to practitioner assistance. Indeed, commenters indicated that they would be able to provide more services to noncitizens if limited appearances for document assistance were permitted. Unqualified or unethical individuals and other bad actors should have a reduced ability to operate in immigration proceedings through ''ghostwriting'' because practitioners who may have been dissuaded from providing assistance if they could not limit their role to document assistance will be more willing to engage in a limited appearance, thereby furthering the ability of noncitizens to find authorized and competent practitioners who are willing to identify themselves and provide assistance. Identification will also enable noncitizens, EOIR, and other authorities to hold practitioners accountable for the quality and substance of the limited documentary assistance work they perform.

These benefits far outweigh the burdens of having to complete the entry of a limited appearance form, which is estimated to take only 6 minutes to complete, and the other disclosure requirements of the final rule. *See infra* Section V.H. Paperwork Reduction Act of 1995 (further explaining the benefits of these regulatory changes). Indeed, as described below, the new limited appearance forms are less burdensome than the revisions to the appearance forms the Department proposed in the NPRM. In contrast to the originally proposed forms, the new Forms EOIR–60 and Form EOIR–61 do not include the proposed information collection that would have required signature by the noncitizen and disclosure of fees charged by a practitioner.

Given the benefits of identifying practitioners who provide only document assistance before EOIR, the Department agrees with the commenters that separate appearance forms for the entry of a limited appearance are more appropriate than attempting to modify the existing appearance forms to capture this unique type of appearance. Further, the Department recognizes that revising the Form EOIR–27 and Form EOIR–28 to encompass substantially different circumstances could cause confusion over the practitioner's representation status. Thus, the Department created the Form EOIR–60 and Form EOIR–61 for practitioners' entry of a limited appearance rather than revising Form EOIR–27 and Form EOIR–28. These new forms provide the most efficient means for EOIR to track the identity of practitioners who have entered a limited appearance for document assistance, as distinct from those who have entered an appearance as practitioner of record.

Some commenters indicated that the Department did not allow the public an opportunity to comment on the draft forms contemplated for limited appearances. Pursuant to the Paperwork Reduction Act of 1995, agency discussion of the information collection and the provision of instructions for providing public comments in the associated rulemaking is sufficient to provide the required public notice. *See* 44 U.S.C. 3506(c)(2)(A) (listing considerations for which an agency must solicit public comment on proposed information collections). The NPRM contained such information and described the intended changes to the Forms EOIR–27 and EOIR–28. *See* 85 FR at 61647. However, after consideration of the public comments that recommended separate forms for entering a limited appearance in balance with the agency's needs, the Department decided to proceed in line with that recommendation. In order to provide the public with the opportunity to comment on that decision, the Department published a 60-day notice in the **Federal Register** on August 30, 2021, that the Department was inviting public comments ahead of its submission to the Office of Management and Budget for review and approval. *See* 86 FR 48443. The public comment period closed on October 29, 2021. No public comments were received.

5. Requirements of Form EOIR–60 and Form EOIR–61

When a Form EOIR–60 or Form EOIR–61 is completed, the final rule provides that it must not be filed as a standalone document. 8 CFR 1003.17(b)(1), 1003.38(g)(2)(i). Rather, a single Form EOIR–60 or Form EOIR–61 must be filed with the immigration court or the BIA, respectively, with the document on which a practitioner has provided assistance. If a practitioner prepares, drafts, or completes a set of documents that are filed together, a single Form EOIR–60 or Form EOIR–61 may be completed to accompany that set of documents. *Id.* As provided in this rule, the practitioner must also complete the preparer section of any forms, if applicable, and must identify the practitioner by name and signature on any motions or briefs being submitted. 8 CFR 1003.17(c), 1003.38(g)(3). Noncitizens may file the entry of a limited appearance and assisted documents themselves or may arrange for an individual, such as the practitioner who assisted, to file the documents in accordance with EOIR filing policies. *See, e.g.,* EOIR, *Immigration Court Practice Manual* Ch. 3.1(a), *available at https://www.justice.gov/eoir/eoir-policy-manual/part-ii-ocij-practice-manual* (last updated Dec. 16, 2021) (explaining how documents may be filed with EOIR, either through the U.S. Postal Service or by courier, or electronically where permitted and/or required, and that ''[h]and-delivered filings should be brought to the Immigration Court's public window during that court's filing hours''). After any such initial filing of a document or set of documents with a Form EOIR–60 or EOIR–61, a subsequent filing of a document or set of documents in which a practitioner provided document assistance must be accompanied by a separate Form EOIR–60 or Form EOIR–61. 8 CFR 1003.17(b)(1), 1003.38(g)(2)(i).

The Form EOIR–60 and Form EOIR–61 requires the practitioner to provide the following data: practitioner's name; contact information; bar number (''BAR#'') or EOIR identification number (''EOIR ID#''),[10] as applicable; and a

[10] In response to a commenter's question regarding registration to practice before EOIR, the regulations at 8 CFR 1292.1(f) already authorize the registration of ''attorneys and accredited representatives . . . as a condition of practice before immigration judges or the Board of Immigration Appeals.'' Under the registration procedures established pursuant to these regulations, practitioners who are attorneys or accredited representatives are already required to complete the electronic registration process prior to entering an appearance before EOIR, regardless of

Continued

description of the underlying document(s) for which assistance was provided. The practitioner's signature attests that they explained the scope of their limited assistance to the pro se noncitizen,[11] that they are an authorized and qualified ''practitioner,'' and that they understand that they are bound by EOIR's Rules of Professional Conduct. The Department has taken steps to minimize any burden imposed on practitioners by deleting the ''certification by the pro se respondent'' and ''fees charged'' fields as proposed by the NPRM. *See* 85 FR at 61645. The Department agrees with commenters that the information regarding fees is unnecessary because such information is not captured on the Form EOIR–27 or Form EOIR–28 and because excessive or unethical legal fees are regulated through EOIR's Rules of Professional Conduct and similar state rules and standards. The Department estimates that the Forms EOIR–60 or EOIR–61 are expected to take no more than 6 minutes to complete.

6. Noncitizen Retains Pro Se Status

In cases where a practitioner enters a limited appearance for document assistance, the noncitizen remains pro se and unrepresented in the EOIR proceedings. *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii). Through the submission of the Form EOIR–60 or Form EOIR–61, the practitioner is not transformed into the practitioner of record, and thus, is not required to appear in immigration court or before the BIA on the noncitizen's behalf, will not receive service of process of any case filings, and will not be provided with access to the record of proceedings.[12] *See* 8 CFR 1003.17(b)(2), 1003.38(g)(2)(ii).

B. Rules of Professional Conduct

Many commenters indicated that the NPRM's proposed revisions to the disciplinary rule, 8 CFR 1003.102(t), to delete the ''pattern or practice'' requirement, and instead include language that indicates that failure to file an appearance form even one time could result in disciplinary action, is problematic because a single mistake should not be sufficient to institute disciplinary action. Moreover, they raised concerns regarding the proposed revisions to 8 CFR 1003.102(u), which would penalize the *drafting* of documents that are later filed with EOIR. Commenters stated that, due to the proposed provision's ambiguity about the scope of ''drafting,'' disciplinary action could be based on templates or example briefs that organizations provide to pro se noncitizens but are completed later in time without the assistance of a practitioner. Practitioners are concerned that they could be disciplined for substandard quality of such filings when they did not actually assist in completing them.

The Department agrees that 8 CFR 1003.102(t) should include language to clarify that a single instance of failing to file an appropriate entry of appearance form does not lead to disciplinary action. Therefore, the final rule amends 8 CFR 1003.102(t) to allow discipline of any practitioner who ''repeatedly'' fails to sign and file the appropriate entry of appearance form. ''Repeatedly,'' rather than ''pattern or practice,'' is an easily understood standard that is used for other grounds for discipline. *See* 8 CFR 1003.102(l) (''[r]epeatedly fails to appear . . .''); 1003.102(u) (''[r]epeatedly files notices, motions, briefs, or claims that reflect little or no attention to the specific factual or legal issues . . .''). ''Repeatedly'' serves to clarify that only a practitioner who fails to file the proper appearance form on more than one occasion is subject to discipline. Additionally, based on the changes in this final rule—to both the definitions of ''practice'' and ''preparation'' and the provisions of 8 CFR 1003.17 and 1003.38—references to ''practice'' and ''preparation'' in the current 8 CFR 1003.102(t) have been removed as unnecessary to effectively describe the conduct subject to disciplinary action.[13]

The final rule also amends 8 CFR 1003.102(u) to subject practitioners to discipline if they repeatedly ''draft'' notices, motions, briefs or claims that are filed with DHS or EOIR that rely on boilerplate language and reflect little or no attention to the specific facts or legal issues applicable to a client's case. This ground of discipline currently focuses on practitioners who repeatedly ''file'' such documents. *See* 65 FR 39526, June 27, 2000, as amended at 73 FR 76923, Dec. 18, 2008, 81 FR 92362, Dec. 19, 2016 (8 CFR 1003.102(u)). Given that practitioners can permissibly draft documents for pro se noncitizens under the changes to the final rule that permit a limited appearance for document assistance, the Department determined that it is necessary to amend this ground to hold practitioners accountable for the quality of their assistance on such documents. 8 CFR 1003.102(u). The applicability of this provision should not depend on whether documents drafted by a practitioner under this rule are ''filed'' by the practitioner or are ''filed'' by the noncitizen after receiving the practitioner's documentary assistance.

Commenters' concern about being subject to discipline for documents completed and filed by pro se noncitizens without practitioner assistance is unfounded. The use of template documents or form pleadings, drafted by a practitioner but later completed and filed by pro se noncitizens who add case-specific information without any assistance by the practitioner, need not be accompanied by a Form EOIR–60 or Form EOIR–61 or the practitioner's name and signature. Because the practitioner who created the template or form pleading did not provide

whether that appearance is limited to providing document assistance.

[11] Relatedly, the Department is cognizant of potential difficulties raised by the public in completing document assistance with noncitizens who are detained. However, those difficulties exist independently of the final rule. In fact, if a practitioner is able to provide underlying document assistance to a detained noncitizen, then they will be able to explain the scope of their limited appearance—as required by the attestation on the Form EOIR–60 and EOIR–61—at the same time. Similar to the current entry of appearance forms EOIR–27 and EOIR–28, the noncitizen's signature is not required on the EOIR–60 and EOIR–61, further minimizing the burden of entering a limited appearance.

[12] Commenters urged that access to the record of proceedings should be allowed for practitioners entering limited appearances. However, the Department decided that existing access procedures properly balance access with security and confidentiality and should remain unchanged given the discrete scope of a limited appearance for document assistance. This is particularly so, given that practitioners engaging in limited appearances do not have the same obligations as those intending to be practitioner of record. Thus, the final rule makes no changes to existing record of proceedings access procedures. *See, e.g.,* EOIR, *Immigration Court Practice Manual,* Ch. 1.6(c) (last updated Feb. 14, 2022) (explaining access procedures). Alternatively, practitioners who are not the practitioner of record in a case may obtain the record of proceeding from the noncitizen—who may make an electronic request by email directly to the immigration court or BIA for a copy—or practitioners may submit a Freedom of Information Act (FOIA) request to EOIR that includes signed written consent from the noncitizen who is the subject of the record of proceeding. *See e.g., id.,* at Ch. 12.2 (describing the process for making a request directly with the immigration court or BIA or through the FOIA process).

[13] The terms ''practice'' and ''preparation'' as included in current 8 CFR 1003.102(t) were, in part, the subject of a Federal lawsuit, *Northwest Immigration Rights Project (NWIRP)* v. *Garland,* No. 2:17–cv–00716 (W.D. Wash.). To the extent commenters have raised concerns that the proposed rule violates a Settlement Agreement entered in that litigation, such concerns are unfounded as the final rule satisfies the aims of the Settlement Agreement. *See generally* Notice of Settlement and Filing of Settlement Agreement, *NWIRP* v. *Barr,* No. 2:17–cv–00716 (W.D. Wash. Apr. 17, 2019) (permitting Department to aim to promulgate regulations allowing practitioners to provide pro se noncitizens with document assistance without requiring practitioner to enter appearance as practitioner of record and to require identification of such practitioners to EOIR with the option of disciplinary procedures for failing to do so).

assistance with the drafting of the case-specific content of the document filed by the noncitizen, the practitioner would not be responsible for such document.[14]

Further, the final rule creates a separate ground for discipline at 8 CFR 1003.102(w), which requires practitioners to sign documents in conformity with EOIR rules and any form instructions. This provision builds on and provides further clarity to the prohibition on practitioners failing to sign pleadings, applications, motions, or other filings that was previously included at 8 CFR 1003.102(t)(2).

C. Miscellaneous Changes

Finally, the final rule makes changes to 8 CFR 1003.2 and 1003.3 to include references to when the new entry of appearance form, Form EOIR–60, must be utilized in filings regarding reopening before the BIA and when the form must be filed with a Notice of Appeal before the BIA, respectively. This clarification is necessary to inform practitioners that any document assistance with respect to filings regarding reopening before the BIA or a Notice of Appeal before the BIA falls under the scope of 8 CFR 1003.38 and thus requires an entry of appearance.

Additionally, the final rule moves (without change) the definition of the term ''practitioner'' from EOIR's Rules of Professional Conduct, *see* 8 CFR 1003.101(b), to the list of generally applicable definitions section. The Department is moving this term for clarity since the provisions at 8 CFR 1003.17 and 1003.38 regarding entry of appearances apply to all types of practitioners.

IV. Notice-and-Comment Requirements

The NPRM provided for a 30-day notice and comment period as required pursuant to 5 U.S.C. 553. The proposed rule provided sufficient detail and rationale to permit interested parties to comment meaningfully. Indeed, the Department received a number of substantive comments recommending changes to the rule that have, in fact, been adopted in certain respects. For example, pursuant to the public input received, the final rule eliminates the proposed requirements to disclose fees and obtain a signed written attestation from the noncitizen and creates separate forms for entering a limited appearance. Despite the discussion of the relevant issues in the NPRM, some commenters contended that the 30-day comment period for this rule was insufficient because there were significant equities at stake, this rule was not time-sensitive, and the COVID–19 pandemic made it difficult to respond properly to the proposed rule on a short timeframe.

While the APA does not require a minimum specific length of time for the comment period, the Department believes the 30-day comment period was clearly sufficient given the limited set of issues addressed in the NPRM and the volume and detail of comments received. *See* 5 U.S.C. 553(b), (c). Moreover, the Department provided an additional 60-day notice and comment period to comment on the proposed entry of limited appearance Forms EOIR–60 and EOIR–61, which reflected that the disclosure of fees and attestation from the noncitizen were not being required. No comments were received regarding those forms during that comment period.

The revisions to ''practice'' and ''preparation,'' at 8 CFR 1001.1(i) and (k), maintain the general framework of the definitions in the proposed rule, and also provide additional clarity about their scope. The changes to the regulatory text are within the scope of the notice provided by the NPRM, and the adopted changes are consistent with the public comments received. Therefore, the final rule is a logical outgrowth of the proposed agency action described in the NPRM *See, e.g., Environmental Defense Center* v. *U.S. E.P.A.,* 344 F.3d 832, 851–52 (9th Cir. 2003); *American Water Works Ass'n* v. *E.P.A.,* 40 F.3d 1266, 1274 (D.C. Cir. 1994). Thus, the purpose of the NPRM was adequately stated and the interested parties could reasonably have anticipated the final rulemaking from the NPRM and the comments received.

V. Regulatory Requirements

A. Administrative Procedure Act

This final rule is being published with a 60-day delayed effective date, greater than the minimum 30-day period required by the Administrative Procedure Act. 5 U.S.C. 553(d).

B. Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Though many practitioners may qualify as small entities under the Regulatory Flexibility Act, the burdens of this rule will typically be limited to the submission of forms identifying their personal participation, a requirement estimated to require 6 minutes of time in each instance.

Practitioners who wish to represent noncitizens in person as practitioner of record in immigration proceedings are already required to submit a Form EOIR–27 or EOIR–28, and all individuals who prepare an application form or other form for a noncitizen are already required to disclose such preparation if the form requires it. This rule will require practitioners who provide document assistance to noncitizens to submit a Form EOIR–60 or EOIR–61, if they elect not to become the practitioner of record to represent them in EOIR proceedings. However, most, if not all, such practitioners are well-versed in submitting a similar Form EOIR–27 or EOIR–28 for entry of appearance in cases in which they do represent a noncitizen in proceedings before EOIR. The new Forms EOIR–60 or EOIR–61 are similar in nature to the existing appearance forms, and therefore, should be simple to complete. They are not expected to take more than 6 minutes to complete and will only involve providing information that the practitioner providing assistance already knows well—*i.e.,* their own contact information and identification of the documents they assisted with.

The Department has also determined that the needs of requiring such disclosure far outweigh the burden imposed on practitioners. The goals of this rulemaking include providing greater flexibility to practitioners to be able to assist noncitizens appearing pro se before EOIR and increasing access to legal assistance for such noncitizens because practitioners who may have been dissuaded from providing assistance if they could not limit their role to document assistance will be more willing to engage in a limited appearance. The Department expects that this rulemaking will increase the number of competent practitioners willing to identify themselves to EOIR. These changes, in turn, will likely diminish the risk of individuals being exploited by unaccountable ''ghostwriting'' because unqualified and unethical individuals should have a reduced ability to operate in immigration proceedings. Finally, the enhanced identification provisions of the rulemaking will ensure that practitioners are abiding by EOIR's Rules of Professional Conduct by allowing EOIR to hold practitioners accountable for the quality and substance of their work.

In order to achieve these goals, EOIR must have a means of accurately

[14] However, the template itself or the provision of such a template may implicate other disciplinary rules depending on the facts and circumstances. For example, if the template is legally deficient in some manner, disciplinary rules may be at issue.

identifying practitioners providing document assistance under the terms of this rule. The Department recognizes that requiring practitioners to complete an entry of limited appearance form does impose a burden on practitioners, and the Department has taken steps to minimize that as much as possible, without sacrificing the requirements necessary to safeguard noncitizens from unscrupulous actors. Therefore, even though there will be an impact on practitioners, the Department believes that the needs far outweigh the burden.

C. Unfunded Mandates Reform Act of 1995

This rule will not result in 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 (as adjusted for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

D. Congressional Review Act

This rule is not a major rule as defined by section 804 of the Congressional Review Act. However, the Department will be submitting the required reports under the Congressional Review Act to the Government Accountability Office and to the House and Senate.

E. Executive Orders 12866 and 13563

The Office of Information and Regulatory Affairs (OIRA) has determined that this rule is a ''significant regulatory action'' under section 3(f) of Executive Order 12866 (Regulatory Planning and Review). Accordingly, this rule has been submitted to the Office of Management and Budget (OMB) for review. This rule has been drafted and reviewed in accordance with Executive Order 12866's section 1(b), Principles of Regulation, and in accordance with section 1(b) of Executive Order 13563 (Improving Regulation and Regulatory Review), General Principles of Regulation.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health, and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of using the best available methods to quantify costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

As discussed above, practitioners who wish to act as practitioner of record for noncitizens in person in immigration proceedings are already required to submit Form EOIR–27 or EOIR–28 and all individuals who prepare an application form for a noncitizen are already required to disclose such preparation if the form requires it. Although this rule will require practitioners who provide document assistance to noncitizens but elect not to become the practitioner of record to represent them in court, to submit a Form EOIR–60 or EOIR–61, most, if not all, such practitioners are well-versed in submitting a similar Form EOIR–27 or EOIR–28 for cases in which they represent a noncitizen in proceedings before EOIR.

Moreover, the limited appearance form, which substantially mirrors existing forms, will not add any significant time burden. The new Forms EOIR–60 or EOIR–61 are similar in nature to the existing appearance forms and are not expected to take more than 6 minutes to complete. They only involve providing information that the practitioner providing assistance already knows well—*i.e.,* their own contact information and basic details about the limited appearance by identifying the documents for which they provided assistance. Any costs to practitioners will be solely in relation to completing the limited appearance form and explaining the scope of their assistance to the noncitizen. The practitioner may, but is not required to, separately serve the form on DHS or EOIR. Rather, the practitioner may provide the form to the pro se noncitizen for them to file and serve with the underlying document.

Thus, for the reasons explained above and in the NPRM, the expected costs of this rule are likely to be *de minimis.*

F. Executive Order 13132 (Federalism)

This rule will not have substantial direct effects on the States, on the relationship between the Federal government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, the Department has determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Paperwork Reduction Act of 1995

The Department of Justice, through EOIR, has submitted an information collection request to OMB for review and clearance in accordance with review procedures of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320. The Department, through EOIR, previously submitted this rulemaking, including a request for a new information collection (ICR Ref. No. 202111–1125–001), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. This proposed information collection was previously published in the **Federal Register** at 86 FR 48443 (Aug. 30, 2021), allowing for a 60-day comment period. OMB assigned OMB Control Number 1125–0021 to this collection. Further comments are encouraged and will be accepted for 30 days from the date of publication of this rulemaking. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

The Department received comments related to the proposed information collections associated with this rulemaking. In the proposed rule, the Department stated that it would revise Form EOIR–26, Notice of Appeal from a Decision of an Immigration Judge; Form EOIR–27; and Form EOIR–28, to allow for limited appearances as contemplated in this rule. *See* 85 FR at 61650. However, after further deliberation, the Department has decided to pursue a new information collection request (ICR) containing two new standalone forms for limited appearances related to document assistance for pro se noncitizens. The Department appreciates commenters' recommendation that the Department create separate forms for the entry of a limited appearance before the immigration courts and the BIA. The commenters' concerns that amending the existing entry of appearance forms would cause confusion that could lead to the misuse of the collection were valid. Thus, EOIR has created the Forms

EOIR–60, Notice of Entry of Limited Appearance for Document Assistance Before the Board of Immigration Appeals, and EOIR–61, Notice of Entry of Limited Appearance for Document Assistance Before the Immigration Court. The forms will be made available on EOIR's website, in a fillable .pdf format. This rule implements new requirements for practitioners to enter a limited appearance when assisting a pro se noncitizen with documents intended to be filed with EOIR. This information collection is necessary to allow a practitioner to notify the BIA or the Immigration Court that the practitioner is entering a limited appearance to assist a pro se noncitizen with a legal filing or other document intended to be filed with EOIR. In completing the form, practitioners must confirm that they have explained the scope of their limited assistance to the noncitizen and the form must be filed with the associated documents. The form creates no continuing obligation on the part of the practitioner, and because of this, a new form must be filed with each document submission. EOIR currently uses appropriate information technology to reduce burdens and improve data quality, agency efficiency, and responsiveness to the public. Under this rule, EOIR will continue to do so to the maximum extent practicable and will explore implementing technology to facilitate information collections.

Under the current regulation, it is estimated that it takes a total of 6 minutes to complete an entry of appearance form. At this time, it is difficult for EOIR to estimate the total receipts it will receive for this new collection. Pursuant to the NPRM, EOIR estimated the total receipts would be at least as many receipts as received for the other two forms for the entry of appearance before the Immigration Court (Form EOIR–28) and the Board of Immigration Appeals (Form EOIR–27). These forms are used for practitioners who wish to appear on behalf of a noncitizen in pending proceedings and remain the practitioner of record to which all obligations and responsibilities attach. Forms EOIR–28 and EOIR–27 are not used for limited appearance purposes, but EOIR expects that at least some of those practitioners will enter limited appearances to assist noncitizens with document filings. Therefore, in order to not underestimate the burden, EOIR will assume that it will receive as many entries for limited appearances as it does for full appearances. Therefore, the total number of submissions of the Forms EOIR–60 and EOIR–61 are expected to be 841,029 (the total receipts for the EOIR–27 (53,816) and EOIR–28 (787,213) for FY2019 as provided in the NPRM). The total public burden of these revised collections is estimated to be 84,102.9 burden hours annually (for Form EOIR–27, 53,816 noncitizens (FY 2019) × 1 response per noncitizen × 6 minutes per response = 5,381.6 burden hours) + (for Form EOIR–28, 787,213 noncitizens (FY 2019) × 1 response per noncitizen × 6 minutes per response = 78,721.3 burden hours) = 84,102.9 burden hours).

Following the new ICR's review and approval by the Office of Information and Regulatory Affairs (OIRA), the Department will publish notice of the new forms in the **Federal Register**. Following that publication, use of the new standalone form will be mandatory as outlined in 8 CFR 1003.17(a)(2) and 1003.38(g)(1)(ii).

List of Subjects

8 CFR Part 1001

Administrative practice and procedure, Immigration.

8 CFR Part 1003

Administrative practice and procedure, [Noncitizens], Immigration, Legal services, Organization and functions (Government agencies).

Accordingly, for the reasons stated in the preamble, parts 1001 and 1003 of title 8 of the Code of Federal Regulations are amended as follows:

PART 1001—DEFINITIONS

■ 1. The authority citation for part 1001 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101, 1103; Pub. L. 107–296, 116 Stat. 2135; Title VII of Pub. L. 110–229.

■ 2. In § 1001.1, revise paragraphs (i) and (k) and add paragraph (ff) to read as follows:

§ 1001.1 Definitions.

* * * * *

(i) The term *practice* means exercising professional judgment to provide legal advice or legal services related to any matter before EOIR. Practice includes, but is not limited to, determining available forms of relief from removal or protection; providing advice regarding legal strategies; drafting or filing any document on behalf of another person appearing before EOIR based on an analysis of applicable facts and law; or appearing on behalf of another person in any matter before EOIR.

* * * * *

(k) The term *preparation* means the act or acts consisting solely of filling in blank spaces on printed forms with information provided by the applicant or petitioner that are to be filed with or submitted to EOIR, where such acts do not include the exercise of professional judgment to provide legal advice or legal services. When this act is performed by someone other than a practitioner, the fee for filling in blank spaces on printed forms, if any, must be nominal, and the individual may not hold himself or herself out as qualified in legal matters or in immigration and naturalization procedure.

* * * * *

(ff) The term *practitioner* means an attorney as defined in paragraph (f) of this section who does not represent the Federal Government, or a representative as defined in paragraph (j) of this section.

PART 1003—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

■ 3. The authority citation for part 1003 continues to read as follows:

Authority: 5 U.S.C. 301; 6 U.S.C. 521; 8 U.S.C. 1101, 1103, 1154, 1155, 1158, 1182, 1226, 1229, 1229a, 1229b, 1229c, 1231, 1254a, 1255, 1324d, 1330, 1361, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

■ 4. In § 1003.2, revise paragraph (g)(1) to read as follows:

1003.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(g) * * *

(1) *English language, entry of appearance, and proof of service requirements.* A motion and any submission made in conjunction with a motion must be in English or accompanied by a certified English translation. If a party other than DHS is represented, any motion or related filing by that party must be accompanied by a Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, pursuant to 8 CFR 1003.38(g)(1). If a party other than DHS is pro se and receives document assistance from a practitioner with a motion or related filing pursuant to 8 CFR 1003.38(g)(2), a Form EOIR–60 must be filed with the motion or related filing. In all cases, the motion must include proof of service on the opposing party of the motion and all attachments. If the moving party is not DHS, service of the motion must be made upon the DHS office in which the

case was completed before the immigration judge.

* * * * *

■ 5. In 1003.3, revise paragraph (a)(3) to read as follows:

1003.3 Notice of appeal.

(a) * * *

(3) *General requirements for all appeals.* The appeal must be accompanied by a check, money order, or fee waiver request in satisfaction of the fee requirements of § 1003.8. If the respondent or applicant is represented, pursuant to 8 CFR 1003.38(g)(1), a Form EOIR–27, Notice of Entry of Appearance as Attorney or Representative Before the Board, must be filed with the Notice of Appeal. If the respondent or applicant receives document assistance from a practitioner with the appeal, pursuant to 8 CFR 1003.38(g)(2), a Form EOIR–60 must be filed with the Notice of Appeal. The appeal and all attachments must be in English or accompanied by a certified English translation.

* * * * *

■ 6. Revise § 1003.17 to read as follows:

1003.17 Entry of appearance.

(a) *Entering an appearance using Form EOIR–28.* A practitioner must enter an appearance in proceedings before an immigration court using Form EOIR–28 to perform the functions of and become the practitioner of record. The practitioner of record is authorized and required to appear in immigration court on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings. The practitioner may enter an appearance to be the practitioner of record for all proceedings before the immigration court, or for custody and bond proceedings only, or for all proceedings other than custody and bond proceedings. A practitioner's entry of appearance in only a custody or bond proceeding shall be separate and apart from an entry of appearance in any proceeding other than custody or bond before the immigration court. The Form EOIR–28 must indicate whether the practitioner's entry of appearance is for all proceedings, for custody and bond proceedings only, or for all proceedings other than custody and bond proceedings.

(1) *Filing Form EOIR–28.* The practitioner must file a copy of the Form EOIR–28 with the immigration court and serve a copy on DHS as required by 8 CFR 1003.32. The practitioner must file and serve a Form EOIR–28 even if the practitioner has previously filed a separate Notice of Entry of Appearance with DHS for appearances before DHS or previously entered a limited appearance using Form EOIR–61 in connection with document assistance under paragraph (b) of this section.

(2) *Effect of Filing Form EOIR–28.* A practitioner who enters an appearance using Form EOIR–28 is the practitioner of record and must appear in immigration court on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5. Filing a Form EOIR–28 provides the practitioner with access to the record of proceedings during the course of proceedings. A respondent shall be considered represented for the proceedings in which an EOIR–28 has been filed.

(3) *Withdrawal or substitution.* A practitioner who enters an appearance on behalf of a respondent before the immigration court by filing a Form EOIR–28 remains the practitioner of record unless an immigration judge permits withdrawal or substitution during proceedings upon oral or written motion submitted without fee.

(b) *Entering a limited appearance for document assistance using Form EOIR–61.* A practitioner who provides assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a specific motion, brief, form, or other document or set of documents intended to be filed with the immigration court, regardless of whether such assistance is considered ''practice'' or ''preparation'' as defined in 8 CFR 1001.1, must disclose such limited assistance to the immigration court using Form EOIR–61, unless pursuant to paragraph (a) the practitioner has filed a Form EOIR–28 to become the practitioner of record.

(1) *Filing Form EOIR–61.* A Form EOIR–61 must not be filed as a standalone document. The single Form EOIR–61 must be filed with the immigration court at the same time as the document or set of documents with which the practitioner assisted. Any subsequent filing of a document or set of documents with which a practitioner assisted must be accompanied by a new Form EOIR–61.

(2) *Effect of Filing Form EOIR–61.* A practitioner who enters a limited appearance using Form EOIR–61 is not the practitioner of record, is not required to appear on behalf of respondent before the immigration court, and is not required to submit a motion to withdraw or substitute. The submission of a Form EOIR–61 does not create additional ongoing obligations between the practitioner, the respondent, and EOIR. An appearance through Form EOIR–61 does not provide the practitioner with access to the record of proceedings. A respondent who received assistance pursuant to this paragraph is not represented, remains pro se, and is subject to service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5.

(c) *Completing an appearance form, proof of qualification, disclosure requirements, and identification.* The practitioner must properly complete and sign any Form EOIR–28 or Form EOIR–61, as required by the form instructions. A practitioner's personal appearance or signature on the Form EOIR–28 or Form EOIR–61 constitutes an attestation that the person is authorized and qualified to appear as a practitioner in accordance with § 1292.1. Further proof that the practitioner meets the qualifications of a practitioner as defined in § 1292.1 may be required. The completion of a Form EOIR–28 or Form EOIR–61 in connection with an application or form that requires disclosure of the preparer does not relieve a practitioner from complying with the particular disclosure requirements of the application or form. Notwithstanding the completion of a Form EOIR–28 or Form EOIR–61, the practitioner must identify themselves by name, accompanied by their signature, on any document filed or intended to be filed with the immigration court pursuant to an appearance under paragraph (a) or (b).

■ 7. In § 1003.38, revise paragraph (g) to read as follows:

§ 1003.38 Appeals

* * * * *

(g) In proceedings before the Board on behalf of a respondent, a practitioner must enter an appearance using Form EOIR–27 or Form EOIR–60.

(1) *Entering an appearance using Form EOIR–27.* In proceedings before the Board, in order to become the practitioner of record, which authorizes and requires the practitioner to appear before the Board on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, a practitioner must enter an appearance using Form EOIR–27.

(i) *Filing Form EOIR–27.* The practitioner must file a copy of the Form EOIR–27 with the Board and serve a copy on DHS as required by 8 CFR 1003.32. The practitioner must file and serve a Form EOIR–27 even if the practitioner has previously filed a separate Notice of Entry of Appearance with DHS for appearances before DHS

or a Form EOIR–28 with the immigration court, or has previously entered a limited appearance using a Form EOIR–60 in connection with document assistance under paragraph (g)(2) of this section.

(ii) *Effect of filing Form EOIR–27.* A practitioner who enters an appearance using Form EOIR–27 is the practitioner of record and must appear before the Board on behalf of the respondent, file all documents on behalf of the respondent, and accept service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5. Filing a Form EOIR–27 provides the practitioner with access to the record of proceedings during the course of proceedings. A respondent shall be considered represented for the proceedings in which a Form EOIR–27 has been filed.

(iii) *Withdrawal or substitution.* A practitioner who enters an appearance on behalf of a respondent before the Board by filing a Form EOIR–27 remains the practitioner of record unless the Board permits withdrawal or substitution during proceedings only upon written motion submitted without fee.

(2) *Entering a limited appearance for document assistance using Form EOIR–60.* A practitioner who provides assistance to a pro se respondent with the drafting, completion, or filling in of blank spaces of a motion, brief, form, or other specific document or set of documents intended to be filed with the Board, regardless of whether such assistance is considered ''practice'' or ''preparation'' as defined in § 1001.1, must disclose such limited assistance to the Board using Form EOIR–60, unless pursuant to paragraph (g)(1) the practitioner has filed a Form EOIR–27 to become the practitioner of record.

(i) *Filing Form EOIR–60.* A Form EOIR–60 must not be filed as a standalone document. The single Form EOIR–60 must be filed with the Board at the same time as the document or set of documents with which the practitioner assisted. Any subsequent filing of a document or set of documents with which a practitioner assisted must be accompanied by a new Form EOIR–60.

(ii) *Effect of Filing Form EOIR–60.* A practitioner who enters a limited appearance using Form EOIR–60 is not the practitioner of record, is not required to appear before the Board, and is not required to submit a motion to withdraw or substitute. The submission of a Form EOIR–60 does not create additional ongoing obligations between the practitioner, the respondent, and EOIR. An appearance through Form EOIR–60 does not provide the practitioner with access to the record of proceedings. A respondent who received assistance pursuant to this paragraph is not represented, remains pro se, and is subject to service of process of all documents filed in the proceedings, consistent with 8 CFR 1292.5.

(3) *Completing an appearance form, proof of qualification, disclosure requirements, and identification.* The practitioner must properly complete and sign any Form EOIR–27 or Form EOIR–60, as required by the form instructions. A practitioner's personal appearance or signature on the Form EOIR–27 or Form EOIR–60 constitutes a representation that the person is authorized and qualified to appear as a practitioner in accordance with 8 CFR 1292.1. Further proof that the practitioner meets the qualifications of a practitioner as defined in 8 CFR 1292.1 may be required. The completion of a Form EOIR–27 or Form EOIR–60 in connection with an application or form that requires disclosure of the preparer does not relieve a practitioner from complying with the particular disclosure requirements of the application or form.

Notwithstanding the filing of a Form EOIR–27 or Form EOIR–60, the practitioner must identify themselves by name, accompanied by their signature, on any document filed or intended to be filed with the Board pursuant to an appearance under paragraph (g)(1) or (2) of this section.

■ 8. In § 1003.101, revise paragraph (b) to read as follows:

§ 1003.101 General provisions.

* * * * *

(b) *Persons subject to sanctions.* Persons subject to sanctions include any practitioner. Attorneys employed by the Department of Justice shall be subject to discipline pursuant to § 1003.109. Nothing in this regulation shall be construed as authorizing persons who do not meet the definition of practitioner to represent individuals before the Board and the immigration courts or the DHS.

* * * * *

■ 9. Amend § 1003.102 by:

■ a. Removing the words ''Immigration Court'' in paragraphs (d) and (j) and adding in their place the words ''immigration court'';

■ b. Removing the words ''Immigration Courts'' in paragraph (f)(2)(i) and adding in their place the words ''immigration courts'';

■ c. Revising paragraphs (t) and (u); and

■ d. Adding paragraph (w).

The revisions and addition read as follows:

§ 1003.102 Grounds.

* * * * *

(t) Repeatedly fails to submit a signed and completed entry of appearance using the appropriate form in compliance with applicable rules and regulations, including 8 CFR 292.4(a), 1003.17, and 1003.38;

(u) Repeatedly drafts notices, motions, briefs, or claims that are filed with DHS or EOIR that reflect little or no attention to the specific factual or legal issues applicable to a client's case, but rather rely on boilerplate language indicative of a substantial failure to competently and diligently represent the client;

* * * * *

(w) Repeatedly fails to sign any pleading, application, motion, petition, brief, or other document prepared, drafted, or filed with DHS or EOIR. The practitioner's signature must be in the practitioner's individual name and must be handwritten or electronically in conformity with the rules and instructions of the applicable system.

Dated: September 9, 2022.

Merrick B. Garland,

Attorney General.

[FR Doc. 2022–19882 Filed 9–13–22; 8:45 am]

BILLING CODE 4410–30–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0398; Project Identifier MCAI–2020–00881–T; Amendment 39–22085; AD 2022–12–13]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

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

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A and 601–3R Variants) airplanes. This AD was prompted by reports that during certain operating modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. This AD requires revising the existing airplane flight manual (AFM) to provide the flightcrew with a new limitation and procedure for operation during certain

flight modes. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 19, 2022.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of October 19, 2022.

ADDRESSES: For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *bombardier.com*. You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available on the internet at *regulations.gov* by searching for and locating Docket No. FAA–2022–0398.

Examining the AD Docket

You may examine the AD docket on the internet at *regulations.gov* by searching for and locating Docket No. FAA–2022–0398; 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: Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Transport Canada Civil Aviation (TCCA), which is the aviation authority for Canada, has issued TCCA AD CF–2020–02, dated February 13, 2020 (TCCA AD CF–2020–02), to correct an unsafe condition for certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes.

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model CL–600–1A11 (600), CL–600–2A12 (601), and CL–600–2B16 (601–3A, 601–3R, and 604 Variants) airplanes. The NPRM published in the **Federal Register** on April 11, 2022 (87 FR 21037). The NPRM was prompted by reports that during certain operating modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. The NPRM proposed to require revising the existing AFM to provide the flightcrew with a new limitation and procedure for operation during certain flight modes. The FAA is issuing this AD to address a possible engine failure during or before a climb while in ALTSEL, ASEL or ALTS CAP mode, which could cause the airspeed to drop significantly below the safe operating speed. Prompt crew intervention may be required to maintain a safe operating speed.

Discussion of Final Airworthiness Directive

Comments

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

Change to the Applicability

Since the FAA issued the NPRM, TCCA revised AD CF–2020–02 and issued TCCA AD CF–2020–02R1, dated August 11, 2022 (TCCA AD CF–2020–02R1) (also referred to as the MCAI). TCCA stated the applicability was revised to remove Model CL–600–2B16 (604 Variants) as it was determined that these airplanes do not utilize ALTSEL, ASEL and ALTS CAP modes in their configurations. TCCA also stated that the AFM references for these airplanes were removed from the TCCA AD. You may examine the MCAI in the AD docket on the internet at *regulations.gov* by searching for and locating Docket No. FAA–2022–0398.

The FAA concurs with the change to the applicability because Model CL–600–2B16 (604 Variants) airplanes are not affected by the identified unsafe condition. The FAA has revised the applicability of this AD accordingly. The FAA has also removed the AFM references for these airplanes from this final rule and revised the Costs of Compliance paragraph in this final rule to specify there are 123 affected U.S. airplanes.

Conclusion

The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Except for minor editorial changes and the changes described previously, 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

Bombardier has issued the following service information. This service information contains a new AFM limitation and procedure for operation during certain flight modes. These documents are distinct since they apply to different airplane configurations. These configurations may include the presence or absence of winglets, incorporation of service bulletin 601–0300 which introduces an airspeed limitation placard, and the type of engine installed on the airplane.

- Automatic Flight Control System, Systems Limitations, Limitations, Bombardier Canadair Challenger Model CL–600–2A12, AFM, Product Support Publication (PSP) No. 601–1B–1, Revision 85, dated June 16, 2021.
- Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Bombardier Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1B–1, Revision 85, dated June 16, 2021.
- Automatic Flight Control System, Systems Limitations, Limitations, Bombardier Canadair Challenger Model CL–600–2B16, AFM, PSP No. 601A–1–1, Revision 96, dated June 16, 2021.
- Engine Failure in Climb During ASEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Bombardier Canadair Challenger Model CL–600–2B16, AFM, PSP No. 601A–1–1, Revision 96, dated June 16, 2021.
- Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–1A11, AFM, Product Publication No. 600, Revision A115, dated June 16, 2021.
- Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Normal Procedures, Canadair Challenger Model CL–600–1A11, AFM, Product Publication No. 600, Revision A115, dated June 16, 2021.
- Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–1A11, AFM, PSP No. 600–1, Revision 107, dated June 16, 2021.
- Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model

CL–600–1A11, AFM, PSP No. 600–1, Revision 107, dated June 16, 2021.

• Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A, Revision 129, dated June 16, 2021.

• Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A, Revision 129, dated June 16, 2021.

• Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A–1, Revision 83, dated June 16, 2021.

• Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A–1, Revision 83, dated June 16, 2021.

• Automatic Flight Control System Systems Limitations, Limitations, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1B, Revision 87, dated June 16, 2021.

• Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1B, Revision 87, dated June 16, 2021.

• Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–2B16, AFM, PSP No. 601A–1, Revision 107, dated June 16, 2021.

• Engine Failure in Climb During ASEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–2B16, AFM, PSP No. 601A–1, Revision 107, dated June 16, 2021.

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.

Costs of Compliance

The FAA estimates that this AD affects 123 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	$0	$85	$10,455

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:

2022–12–13 Bombardier, Inc.: Amendment 39–22085; Docket No. FAA–2022–0398; Project Identifier MCAI–2020–00881–T.

(a) Effective Date

This airworthiness directive (AD) is effective October 19, 2022.

(b) Affected Airworthiness Directives (ADs)

None.

(c) Applicability

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

(1) Model CL–600–1A11 (600), serial numbers 1001 through 1085 inclusive.

(2) Model CL–600–2A12 (601), serial numbers 3001 through 3066 inclusive.

(3) Model CL–600–2B16 (601–3A and 601–3R Variants), serial numbers 5001 through 5194 inclusive.

(d) Subject

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

(e) Reason

This AD was prompted by reports that during certain operating modes, the flight guidance/autopilot does not account for engine failure while capturing an altitude. The FAA is issuing this AD to address a possible engine failure during or before a climb while in ALTSEL, ASEL or ALTS CAP mode, which could cause the airspeed to drop significantly below the safe operating speed. Prompt crew intervention may be required to maintain a safe operating speed.

(f) Compliance

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

(g) Revision of the Existing Airplane Flight Manual (AFM)

Within 30 days after the effective date of this AD: Revise the existing AFM to incorporate the information specified in the limitation and procedure specified in the applicable AFM specified in figure 1 to paragraph (g) of this AD.

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Figure 1 to paragraph (g) – *AFM Revisions*

Airplane Serial Numbers	New Limitation and Procedure	AFM	Revision
Model CL-600-1A11 (600 variant), serial numbers 1001 through 1085 for non-winglets	Automatic Flight Control System, Systems Limitations, Limitations; and Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Normal Procedures	Canadair Challenger Model CL-600-1A11, AFM, Product Publication No. 600	Revision A115, dated June 16, 2021
Model CL-600-1A11 (600 variant), serial numbers 1001 through 1085 for winglets	Automatic Flight Control System, Systems Limitations, Limitations; and Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures	Canadair Challenger Model CL-600-1A11, AFM, Product Support Publication (PSP) No. 600-1	Revision 107, dated June 16, 2021
Model CL-600-2A12 (601 variant), serial numbers 3001 through 3066	Automatic Flight Control System, Systems Limitations, Limitations; and Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures	Canadair Challenger Model CL-600-2A12, AFM, PSP No. 601-1A	Revision 129, dated June 16, 2021
Model CL-600-2A12 (601 variant), serial numbers 3001 through 3066 with Service Bulletin (SB) 601-0360 incorporated	Automatic Flight Control System, Systems Limitations, Limitations; and Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures	Bombardier Canadair Challenger Model CL-600-2A12, AFM, PSP No. 601-1A-1	Revision 83, dated June 16, 2021
Model CL-600-2A12 (601 variant), serial	Automatic Flight Control System, Systems Limitations, Limitations;	Canadair Challenger Model CL-600-2A12,	Revision 87, dated June 16, 2021

Airplane Serial Numbers	New Limitation and Procedure	AFM	Revision
numbers 3001 through 3066 with -3A engine	and Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures	AFM, PSP No. 601-1B	
Model CL-600-2A12, serial numbers 3001 through 3066 with -3A engine and SB 601-0360 incorporated	Automatic Flight Control System, Systems Limitations, Limitations; and Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures	Bombardier Canadair Challenger Model CL-600-2A12, AFM, PSP No. 601-1B-1	Revision 85, dated June 16, 2021
Model CL-600-2B16 (601-3A/3R variant), serial numbers 5001 through 5194	Automatic Flight Control System, Systems Limitations, Limitations; and Engine Failure in Climb During ASEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures	Canadair Challenger Model CL-600-2B16, AFM, PSP No. 601A-1	Revision 107, dated June 16, 2021
Model CL-600-2B16 (601-3A/3R variant), serial numbers 5001 through 5194 with SB 601-0360 incorporated	Automatic Flight Control System, Systems Limitations, Limitations; and Engine Failure in Climb During ASEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures	Bombardier Canadair Challenger Model CL-600-2B16, AFM, PSP No. 601A-1-1	Revision 96, dated June 16, 2021

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(h) Other FAA AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, New York ACO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to ATTN: Program Manager, Continuing Operational Safety, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(2) *Contacting the Manufacturer:* For any requirement in this AD to obtain instructions from a manufacturer, the instructions must be accomplished using a method approved by the Manager, New York ACO Branch, FAA; or Transport Canada Civil Aviation (TCCA); or Bombardier, Inc.'s TCCA Design Approval Organization (DAO). If approved by the DAO, the approval must include the DAO-authorized signature.

(i) Related Information

(1) Refer to Mandatory Continuing Airworthiness Information (MCAI) TCCA AD CF–2020–02R1, dated August 11, 2022, for

related information. This MCAI may be found in the AD docket on the internet at *regulations.gov* by searching for and locating Docket No. FAA–2022–0398.

(2) For more information about this AD, contact Steven Dzierzynski, Aerospace Engineer, Avionics and Electrical Systems Section, FAA, New York ACO Branch, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7367; email *9-avs-nyaco-cos@faa.gov.*

(j) 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) Automatic Flight Control System, Systems Limitations, Limitations, Bombardier Canadair Challenger Model CL–600–2A12, Airplane Flight Manual (AFM), Product Support Publication (PSP) No. 601–1B–1, Revision 85, dated June 16, 2021.

(ii) Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Bombardier Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1B–1, Revision 85, dated June 16, 2021.

(iii) Automatic Flight Control System, Systems Limitations, Limitations, Bombardier Canadair Challenger Model CL–600–2B16, AFM, PSP No. 601A–1–1, Revision 96, dated June 16, 2021.

(iv) Engine Failure in Climb During ASEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Bombardier Canadair Challenger Model CL–600–2B16, AFM, PSP No. 601A–1–1, Revision 96, dated June16, 2021.

(v) Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–1A11, AFM, Product Publication No. 600, Revision A115, dated June 16, 2021.

(vi) Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Normal Procedures, Canadair Challenger Model CL–600–1A11, AFM, Product Publication No. 600, Revision A115, dated June 16, 2021.

(vii) Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–1A11, AFM, PSP No. 600–1, Revision 107, dated June 16, 2021.

(viii) Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–1A11, AFM, PSP No. 600–1, Revision 107, dated June 16, 2021.

(ix) Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A, Revision 129, dated June 16, 2021.

Note 1 to paragraph (ix): The page date for page i of the Limitations Contents specified in the List of Effective Pages of the Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A, Revision 129, dated June 16, 2021, is incorrect; the correct page date is April 16, 2020.

(x) Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A, Revision 129, dated June 16, 2021.

(xi) Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A–1, Revision 83, dated June 16, 2021.

Note 2 to paragraph (xi): The page date for page i of the Limitations Contents specified in the List of Effective Pages of the Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A–1, Revision 83, dated June 16, 2021, is incorrect; the correct page date is April 16, 2020.

(xii) Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1A–1, Revision 83, dated June 16, 2021.

(xiii) Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1B, Revision 87, dated June 16, 2021.

Note 3 to paragraph (xiii): Page iii of the Limitations Contents specified in the List of Effective Pages of the Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1B, Revision 87, dated June 16, 2021, does not exist.

(xiv) Engine Failure in Climb During ALTSEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–2A12, AFM, PSP No. 601–1B, Revision 87, dated June 16, 2021.

(xv) Automatic Flight Control System, Systems Limitations, Limitations, Canadair Challenger Model CL–600–2B16, AFM, PSP No. 601A–1, Revision 107, dated June 16, 2021.

(xvi) Engine Failure in Climb During ASEL, Airplane Handling Procedures Following Engine Failure, Abnormal Procedures, Canadair Challenger Model CL–600–2B16, AFM, PSP No. 601A–1, Revision 107, dated June 16, 2021.

(3) For service information identified in this AD, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* internet *bombardier.com.*

(4) 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.

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

Issued on August 16, 2022.

Christina Underwood,

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

[FR Doc. 2022–19778 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31445; Amdt. No. 4023]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule establishes, amends, suspends, or removes Standard Instrument Approach Procedures (SIAPS) and associated Takeoff Minimums and Obstacle Departure procedures (ODPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 14, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 2022.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops–M30. 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001.

2. The FAA Air Traffic Organization Service Area in which the affected airport is located;

3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,

4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by establishing, amending, suspending, or removes SIAPS, Takeoff Minimums and/or ODPS. The complete regulatory description of each SIAP and its associated Takeoff Minimums or ODP for an identified airport is listed on FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR part 97.20. The applicable FAA Forms 8260–3, 8260–4, 8260–5, 8260–15A, 8260–15B, when required by an entry on 8260–15A, and 8260–15C.

The large number of SIAPs, Takeoff Minimums and ODPs, their complex nature, and the need for a special format make publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, Takeoff Minimums or ODPs, but instead refer to their graphic depiction on charts printed by publishers or aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP, Takeoff Minimums and ODP listed on FAA form documents is unnecessary. This amendment provides the affected CFR sections and specifies the typed of SIAPS, Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure, and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPS, Takeoff Minimums and/or ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP, Takeoff Minimums and ODP as amended in the transmittal. Some SIAP and Takeoff Minimums and textual ODP amendments may have been issued previously by the FAA in a Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flights safety relating directly to published aeronautical charts.

The circumstances that created the need for some SIAP and Takeoff Minimums and ODP amendments may require making them effective in less than 30 days. For the remaining SIAPs and Takeoff Minimums and ODPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs and Takeoff Minimums and ODPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Lists of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on August 19, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, Code of Federal Regulations, Part 97 (14 CFR part 97) is amended by establishing, amending, suspending, or removing Standard Instrument Approach Procedures and/or Takeoff Minimums and Obstacle Departure Procedures effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

Effective 6 October 2022

Selma, AL, KSEM, ILS Y OR LOC Y RWY 33, Amdt 1
Selma, AL, KSEM, ILS Z OR LOC Z RWY 33, Amdt 3
Orlando, FL, KORL, RNAV (GPS) RWY 7, Amdt 2D
Hopkinsville, KY, KHVC, Takeoff Minimums and Obstacle DP, Amdt 2
Roanoke Rapids, NC, KIXA, RNAV (GPS) RWY 20, Amdt 2B
Saranac Lake, NY, KSLK, RNAV (GPS) RWY 5, Amdt 1D
Saranac Lake, NY, KSLK, RNAV (GPS) RWY 9, Amdt 1A

Effective 3 November 2022

Gulkana, AK, PAGK, VOR–A, Orig
Danville, AR, 32A, Takeoff Minimums and Obstacle DP, Orig-A
Willcox, AZ, P33, Takeoff Minimums and Obstacle DP, Amdt 1A
Burlington, CO, KITR, LOC RWY 33, Amdt 1A
Burlington, CO, KITR, NDB RWY 15, Amdt 2A
Burlington, CO, KITR, RNAV (GPS) RWY 15, Amdt 1A
Lakeland, FL, KLAL, VOR RWY 10, Amdt 4G
Lakeland, FL, KLAL, VOR RWY 28, Amdt 7J

Pine Mountain, GA, KPIM, RNAV (GPS) RWY 9, Amdt 1
Pine Mountain, GA, KPIM, VOR–A, Amdt 5D, CANCELLED
Iowa City, IA, KIOW, RNAV (GPS) RWY 25, Amdt 2
Alton/St Louis, IL, KALN, NDB RWY 17, Amdt 12B, CANCELLED
Lacon, IL, C75, VOR RWY 13, Amdt 2D
Mount Sterling, KY, KIOB, NDB RWY 3, Amdt 2B, CANCELLED
Mount Sterling, KY, KIOB, NDB RWY 21, Amdt 2B, CANCELLED
Murray, KY, KCEY, RNAV (GPS) RWY 5, Amdt 1A
Hammond, LA, KHDC, ILS OR LOC RWY 18, Amdt 5A
Hammond, LA, KHDC, RNAV (GPS) RWY 18, Amdt 1B
Hammond, LA, KHDC, RNAV (GPS) RWY 31, Amdt 1B
Hammond, LA, KHDC, RNAV (GPS) RWY 36, Orig-B
Auburn/Lewiston, ME, KLEW, ILS OR LOC RWY 4, Amdt 12
Escanaba, MI, KESC, ILS OR LOC RWY 10, Amdt 3B
Escanaba, MI, KESC, LOC BC RWY 28, Amdt 1C
Escanaba, MI, KESC, RNAV (GPS) RWY 19, Orig-A
Escanaba, MI, KESC, Takeoff Minimums and Obstacle DP, Amdt 2
Escanaba, MI, KESC, VOR RWY 1, Orig-E
Canby, MN, KCNB, RNAV (GPS) RWY 12, Amdt 2
Canby, MN, KCNB, RNAV (GPS) RWY 30, Amdt 1B
Madison, MN, KDXX, RNAV (GPS) RWY 14, Amdt 1
Montevideo, MN, KMVE, VOR RWY 14, Amdt 5D
Ortonville, MN, KVVV, RNAV (GPS) RWY 34, Amdt 1
Roseau, MN, KROX, RNAV (GPS) RWY 16, Amdt 1
Roseau, MN, KROX, RNAV (GPS) RWY 34, Amdt 1
Cuba, MO, KUBX, RNAV (GPS) RWY 1, Amdt 1A
Cuba, MO, KUBX, RNAV (GPS) RWY 19, Orig-D
Cuba, MO, KUBX, Takeoff Minimums and Obstacle DP, Amdt 2A
Libby, MT, Libby, EYESE TWO, Graphic DP
Libby, MT, Libby, Takeoff Minimums and Obstacle DP, Amdt 2
Beatrice, NE, KBIE, RNAV (GPS) RWY 18, Amdt 2D
Beatrice, NE, KBIE, RNAV (GPS) RWY 32, Amdt 1D
Beatrice, NE, KBIE, RNAV (GPS) RWY 36, Amdt 2C
Beatrice, NE, KBIE, VOR RWY 18, Amdt 4
Beatrice, NE, KBIE, VOR RWY 36, Amdt 11
Teterboro, NJ, KTEB, ILS OR LOC RWY 19, Amdt 1A
Teterboro, NJ, KTEB, RNAV (GPS) Y RWY 19, Amdt 1A
Lake Placid, NY, KLKP, RNAV (GPS) RWY 14, Amdt 1A
Philadelphia, PA, KPHL, VOR–A, Amdt 3B, CANCELLED
Andrews, SC, KPHH, NDB RWY 36, Orig-C, CANCELLED
Andrews, SC, KPHH, RNAV (GPS)-A, Orig
Brookings, SD, KBKX, ILS OR LOC RWY 12, Orig-E
Eagle Lake, TX, KELA, VOR RWY 17, Amdt 5B, CANCELLED
Mexia, TX, KLXY, NDB–A, Amdt 4B, CANCELLED
Wharton, TX, KARM, VOR/DME–A, Amdt 5, CANCELLED
Chase City, VA, KCXE, RNAV (GPS) RWY 18, Amdt 1D
Chase City, VA, KCXE, RNAV (GPS) RWY 36, Amdt 1C
Juneau, WI, KUNU, LOC RWY 26, Amdt 1A, CANCELLED
Juneau, WI, KUNU, NDB RWY 20, Orig, CANCELLED
Ladysmith, WI, KRCX, NDB RWY 32, Amdt 3B, CANCELLED
Elkins, WV, Elkins-Randolph CO-Jennings Randolph Fld, ELKINS ONE, Graphic DP
Elkins, WV, Elkins-Randolph CO-Jennings Randolph Fld, Takeoff Minimums and Obstacle DP, Amdt 4

[FR Doc. 2022–19749 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 31446; Amdt. No. 4024]

Standard Instrument Approach Procedures, and Takeoff Minimums and Obstacle Departure Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends, suspends, or removes Standard Instrument Approach Procedures (SIAPs) and associated Takeoff Minimums and Obstacle Departure Procedures for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, adding new obstacles, or changing air traffic requirements. These changes are designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: This rule is effective September 14, 2022. The compliance date for each SIAP, associated Takeoff Minimums, and ODP is specified in the amendatory provisions.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of September 14, 2022.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. U.S. Department of Transportation, Docket Ops-M30, 1200 New Jersey Avenue SE, West Bldg., Ground Floor, Washington, DC 20590–0001;
2. The FAA Air Traffic Organization Service Area in which the affected airport is located;
3. The office of Aeronautical Information Services, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 or,
4. 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.*

Availability

All SIAPs and Takeoff Minimums and ODPs are available online free of charge. Visit the National Flight Data Center online at *nfdc.faa.gov* to register. Additionally, individual SIAP and Takeoff Minimums and ODP copies may be obtained from the FAA Air Traffic Organization Service Area in which the affected airport is located.

FOR FURTHER INFORMATION CONTACT: Thomas J. Nichols, Flight Procedures and Airspace Group, Flight Technologies and Procedures Division, Flight Standards Service, Federal Aviation Administration. Mailing Address: FAA Mike Monroney Aeronautical Center, Flight Procedures and Airspace Group, 6500 South MacArthur Blvd., Registry Bldg. 29, Room 104, Oklahoma City, OK 73169. Telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This rule amends 14 CFR part 97 by amending the referenced SIAPs. The complete regulatory description of each SIAP is listed on the appropriate FAA Form 8260, as modified by the National Flight Data Center (NFDC)/Permanent Notice

to Airmen (P–NOTAM), and is incorporated by reference under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20. The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained on FAA form documents is unnecessary. This amendment provides the affected CFR sections, and specifies the SIAPs and Takeoff Minimums and ODPs with their applicable effective dates. This amendment also identifies the airport and its location, the procedure and the amendment number.

Availability and Summary of Material Incorporated by Reference

The material incorporated by reference is publicly available as listed in the **ADDRESSES** section.

The material incorporated by reference describes SIAPs, Takeoff Minimums and ODPs as identified in the amendatory language for Part 97 of this final rule.

The Rule

This amendment to 14 CFR part 97 is effective upon publication of each separate SIAP and Takeoff Minimums and ODP as amended in the transmittal. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained for each SIAP and Takeoff Minimums and ODP as modified by FDC permanent NOTAMs.

The SIAPs and Takeoff Minimums and ODPs, as modified by FDC permanent NOTAM, and contained in this amendment are based on criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these changes to SIAPs and Takeoff Minimums and ODPs, the TERPS criteria were applied only to specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a FDC NOTAM as an emergency action of immediate flight safety relating directly to published aeronautical charts.

The circumstances that created the need for these SIAP and Takeoff Minimums and ODP amendments require making them effective in less than 30 days.

Because of the close and immediate relationship between these SIAPs, Takeoff Minimums and ODPs, and safety in air commerce, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest and, where applicable, under 5 U.S.C. 553(d), good cause exists for making these SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Incorporation by reference, Navigation (Air).

Issued in Washington, DC, on August 19, 2022.

Thomas J Nichols,

Aviation Safety, Flight Standards Service, Manager, Standards Section, Flight Procedures & Airspace Group, Flight Technologies & Procedures Division.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Title 14, CFR part 97, (is amended by amending Standard Instrument Approach Procedures and Takeoff Minimums and ODPs, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

■ 1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

■ 2. Part 97 is amended to read as follows:

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, Identified as follows:

** * * Effective Upon Publication*

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
6-Oct-22	NC	New Bern	Coastal Carolina Rgnl	2/0445	8/2/22	RNAV (GPS) RWY 4, Amdt 2.
6-Oct-22	NJ	Cross Keys	Cross Keys	2/1065	8/2/22	VOR OR GPS RWY 9, Amdt 6A.
6-Oct-22	IA	Des Moines	Des Moines Intl	2/1658	8/1/22	ILS OR LOC RWY 31, ILS RWY 31 (SA CAT I), ILS RWY 31 (CAT II), ILS RWY 31 (CAT III), Amdt 24.
6-Oct-22	GA	Savannah	Savannah/Hilton Head Intl	2/1728	8/2/22	RNAV (GPS) RWY 19, Amdt 2A.
6-Oct-22	WA	Yakima	Yakima Air Trml/Mcallister Fld.	2/1754	8/3/22	ILS OR LOC RWY 27, Amdt 1A.
6-Oct-22	AR	Magnolia	Ralph C Weiser Fld	2/1765	8/2/22	RNAV (GPS) RWY 18, Orig-B.
6-Oct-22	AR	Magnolia	Ralph C Weiser Fld	2/1769	8/2/22	RNAV (GPS) RWY 36, Amdt 1B.
6-Oct-22	ID	Burley	Burley Muni	2/1938	8/5/22	RNAV (GPS) RWY 20, Orig-D.
6-Oct-22	NC	Roanoke Rapids	Halifax/Northampton Rgnl	2/1945	8/2/22	RNAV (GPS) RWY 2, Amdt 2A.
6-Oct-22	TN	Smithville	Smithville Muni	2/1955	8/5/22	RNAV (GPS) RWY 6, Amdt 3B.
6-Oct-22	TN	Smithville	Smithville Muni	2/1956	8/5/22	RNAV (GPS) RWY 24, Amdt 3B.
6-Oct-22	NE	North Platte	North Platte Rgnl/Lee Bird Fld.	2/2125	8/5/22	ILS OR LOC RWY 30, Amdt 7B.
6-Oct-22	NE	North Platte	North Platte Rgnl/Lee Bird Fld.	2/2127	8/5/22	RNAV (GPS) RWY 12, Amdt 1B.
6-Oct-22	NE	North Platte	North Platte Rgnl/Lee Bird Fld.	2/2129	8/5/22	RNAV (GPS) RWY 30, Amdt 2B.

AIRAC date	State	City	Airport	FDC No.	FDC Date	Subject
6-Oct-22	NE	North Platte	North Platte Rgnl/Lee Bird Fld.	2/2134	8/5/22	RNAV (GPS) RWY 35, Amdt 1B.
6-Oct-22	NE	North Platte	North Platte Rgnl/Lee Bird Fld.	2/2136	8/5/22	VOR RWY 35, Amdt 18D.
6-Oct-22	TX	El Paso	El Paso Intl	2/2211	8/2/22	RNAV (GPS) Y RWY 26L, Amdt 1C.
6-Oct-22	WY	Big Piney	Miley Meml Fld	2/2325	8/4/22	RNAV (GPS) RWY 31, Orig-D.
6-Oct-22	FL	Daytona Beach	Daytona Beach Intl	2/2367	8/5/22	RNAV (GPS) RWY 34, Amdt 2E.
6-Oct-22	KS	El Dorado	El Dorado/Capt Jack Thomas Meml.	2/2387	8/1/22	RNAV (GPS) RWY 15, Amdt 1A.
6-Oct-22	KS	El Dorado	El Dorado/Capt Jack Thomas Meml.	2/2390	8/1/22	RNAV (GPS) RWY 33, Amdt 1A.
6-Oct-22	AL	Eufaula	Weedon Fld	2/3013	8/5/22	RNAV (GPS) RWY 18, Amdt 1B.
6-Oct-22	AL	Eufaula	Weedon Fld	2/3014	8/5/22	VOR RWY 18, Amdt 8B.
6-Oct-22	AL	Eufaula	Weedon Fld	2/3017	8/5/22	VOR/DME RWY 36, Amdt 3B.
6-Oct-22	AL	Eufaula	Weedon Fld	2/3019	8/5/22	RNAV (GPS) RWY 36, Amdt 1B.
6-Oct-22	TN	Winchester	Winchester Muni	2/3176	8/5/22	RNAV (GPS) RWY 36, Orig-C.
6-Oct-22	VT	Lyndonville	Caledonia County	2/3180	8/5/22	RNAV (GPS) RWY 2, Orig-C.
6-Oct-22	KY	Elizabethtown	Addington Fld	2/3197	8/3/22	VOR–A, Amdt 3A.
6-Oct-22	WI	Sheboygan	Sheboygan County Meml	2/3319	8/2/22	RNAV (GPS) RWY 31, Orig-C.
6-Oct-22	GA	Savannah	Savannah/Hilton Head Intl	2/3428	8/5/22	RNAV (GPS) RWY 10, Amdt 2B.
6-Oct-22	TN	Athens	McMinn County	2/3856	8/5/22	RNAV (GPS) RWY 20, Amdt 1C.
6-Oct-22	TN	Athens	McMinn County	2/3859	8/5/22	RNAV (GPS) RWY 2, Orig-C.
6-Oct-22	GA	Canton	Cherokee County Rgnl	2/4025	8/8/22	RNAV (GPS) RWY 5, Amdt 1B.
6-Oct-22	KS	Washington	Washington County Veteran's Meml.	2/4059	8/2/22	RNAV (GPS) RWY 17, Amdt 1A.
6-Oct-22	KS	Washington	Washington County Veteran's Meml.	2/4060	8/2/22	RNAV (GPS) RWY 35, Amdt 1A.
6-Oct-22	NM	Santa Fe	Santa Fe Muni	2/5667	8/9/22	VOR/DME-A, Amdt 1B.
6-Oct-22	KS	Ulysses	Ulysses	2/5691	8/8/22	RNAV (GPS) RWY 12, Amdt 2.
6-Oct-22	NM	Santa Fe	Santa Fe Muni	2/5841	8/9/22	VOR RWY 33, Amdt 9B.
6-Oct-22	TX	Borger	Hutchinson County	2/6319	8/1/22	RNAV (GPS) RWY 35, Amdt 1.
6-Oct-22	MI	West Branch	West Branch Community	2/6458	8/10/22	RNAV (GPS) RWY 9, Orig-A.
6-Oct-22	OK	Holdenville	Holdenville Muni	2/6472	8/10/22	RNAV (GPS) RWY 17, Orig-A.
6-Oct-22	OK	Holdenville	Holdenville Muni	2/6474	8/10/22	RNAV (GPS) RWY 35, Orig-A.
6-Oct-22	OK	Frederick	Frederick Rgnl	2/6487	8/10/22	RNAV (GPS) RWY 35, Orig-A.
6-Oct-22	OH	Oxford	Miami University	2/6623	8/10/22	RNAV (GPS) RWY 23, Orig-A.
6-Oct-22	OH	Oxford	Miami University	2/6625	8/10/22	RNAV (GPS) RWY 5, Orig-A.
6-Oct-22	FL	Boca Raton	Boca Raton	2/6895	8/5/22	RNAV (GPS) RWY 5, Amdt 1.
6-Oct-22	OK	Norman	University Of Oklahoma Westheimer.	2/7210	7/27/22	LOC RWY 3, Amdt 4A.
6-Oct-22	IA	Ames	Ames Muni	2/8536	6/23/22	RNAV (GPS) RWY 19, Amdt 1B.
6-Oct-22	WA	Bellingham	Bellingham Intl	2/8592	8/3/22	RNAV (GPS) Y RWY 34, Amdt 2.
6-Oct-22	OK	Elk City	Elk City Rgnl Business	2/9269	8/3/22	RNAV (GPS) RWY 17, Amdt 2A.
6-Oct-22	KS	Ulysses	Ulysses	2/9934	8/8/22	RNAV (GPS) RWY 17, Amdt 1B.

[FR Doc. 2022–19750 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 922

[Docket No. 220908–0186]

RIN 0648–AV85

Amendments to National Marine Sanctuary Regulations; Delay of Effective Date

AGENCY: Office of National Marine Sanctuaries (ONMS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Interim final rule; delay of effective date.

SUMMARY: On May 13, 2022, the National Oceanic and Atmospheric Administration (NOAA) published an interim final rule that appeared in the **Federal Register** and that amended the Office of National Marine Sanctuaries (ONMS) regulations. That rule was published with a 30-day comment period, which ended on June 13, 2022, and a 45-day delayed effective date (June 27, 2022). A subsequent notice delaying the effective date until September 26, 2022, was published on June 24, 2022. This action further delays the effective date of the interim final rule by an additional 120 days, until January 24, 2023.

DATES: As of September 14, 2022, the effective date for the interim final rule published at 87 FR 29606, May 13, 2022, and delayed at 87 FR 37728, June 24, 2022, is further delayed until January 24, 2023.

FOR FURTHER INFORMATION CONTACT: Vicki Wedell, NOAA Office of National Marine Sanctuaries, (240) 533–0650, *Vicki.Wedell@noaa.gov.*

SUPPLEMENTARY INFORMATION: In response to the interim final rule published on May 13, 2022 (87 FR 29606), which updated and streamlined ONMS regulations, NOAA received eight comments before the end of the comment period on June 13, 2022. The submitted comments are posted at *regulations.gov* under docket NOAA–NOS–2011–0120. Based on issues raised by some of the public comments, NOAA is preparing technical corrections and responses to those comments for the final rule. A subsequent notice delaying

the effective date until September 26, 2022, was published on June 24, 2022 (87 FR 37228). In this action, NOAA is delaying the effective date of the interim final rule by an additional 120 days, to January 24, 2023. This action does not extend or reopen the comment period for NOAA's previous request for comments on the interim final rule.

National Marine Sanctuaries Act

The National Marine Sanctuaries Act (NMSA) authorizes the Secretary of Commerce to designate, manage, and protect, as a national marine sanctuary, any area of the marine environment that is of special national significance due to its conservation, recreational, ecological, historical, scientific, cultural, archeological, educational, or esthetic qualities (16 U.S.C. 1431 *et seq.*). NMSA provides the legal basis and serves as the authority under which NOAA issues this action.

Nicole R. LeBoeuf,

Assistant Administrator for Ocean Services and Coastal Zone Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–19877 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–NK–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 300

[Docket No. FDA–2019–N–5553]

RIN 0910–AI36

Annual Summary Reporting Requirements Under the Right to Try Act

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, the Agency, or we) is issuing a final rule to specify the deadline and content for submission of an annual summary of investigational drugs supplied under the Trickett Wendler, Frank Mongiello, Jordan McLinn, and Matthew Bellina Right to Try Act of 2017 (Right to Try Act) and the uses for which the investigational drugs were supplied. This final rule implements a provision in the Right to Try Act that requires sponsors and manufacturers who provide an ''eligible investigational drug'' under the provisions of the Right to Try Act to submit to FDA an annual summary of such use, and directs FDA to specify by regulation the deadline of submission.

DATES: This rule is effective November 14, 2022. For additional information on the effective and compliance dates, see section V of this document.

ADDRESSES: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and insert the docket number found in brackets in the heading of this final rule 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:

With regard to the final rule: Allison Hoffman, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 32, Rm. 3138, Silver Spring, MD 20993, 301–796–9203, *Allison.Hoffman@fda.hhs.gov.*

With regard to the information collection: Domini Bean, Office of Operations, Food and Drug Administration, Three White Flint North 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–5733, *PRAStaff@fda.hhs.gov.*

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I. Executive Summary

A. Purpose of the Final Rule

The purpose of this rule is to implement provisions of the Federal Food, Drug, and Cosmetic Act (FD&C Act), added by the Right to Try Act, which requires sponsors and manufacturers who provide an ''eligible investigational drug'' under the Right to Try Act to submit to FDA an annual summary of such use, and directs FDA to specify by regulation the deadline of submission. The rule provides information on the necessary contents of the annual summary and the deadline for its submission.

B. Summary of the Major Provisions of the Final Rule

The rule adds a new subpart to the regulations, to specify the deadline and content for submission of an annual summary of investigational drugs supplied under the Right to Try provisions of the FD&C Act and the uses for which they were supplied. The Right to Try Act provides that the manufacturer or sponsor of an eligible investigational drug shall submit to FDA an annual summary of any use of such drug supplied under the FD&C Act. Per the statute, the summary shall include the number of doses supplied, the number of patients treated, the use for which the drug was made available, and any known serious adverse events from use of the drug.

C. Legal Authority

The enacted provisions of the Right to Try Act, in conjunction with FDA's general rulemaking authority serve as FDA's legal authority for this rule.

D. Costs and Benefits

This final rule establishes the deadline for submission of annual summaries of use of investigational drugs supplied under the FD&C Act. The rule also establishes the required contents of these submissions.

The benefits of this rule consist of societal and public health outcomes that may accrue from the disclosure of the use of investigational drugs and any known serious adverse events provided in these annual summary reports. There is no data that would allow us to predict the magnitude of generated benefits, and thus we are unable to quantify the expected benefits of this rule.

Costs are estimated as the time spent by firms to prepare and submit these annual summary reports. The total estimated present value of this rule's

costs is $37,132 at a 7 percent discount rate and $45,818 at a 3 percent discount rate. The annualized cost of this rule over 10 years is $5,287 at a 7 percent discount rate and $5,371 at a 3 percent discount rate.

II. Background

A. Need for the Regulation/History of the Rulemaking

On May 30, 2018, the Right to Try Act (Pub. L. 115–176) was signed into law, creating section 561B of the FD&C Act (21 U.S.C. 360bbb–0a). The Right to Try Act amends the FD&C Act to establish an alternative option for patients who meet certain criteria to request access to certain unapproved drug products and for sponsors and manufacturers who agree to provide those certain unapproved drug products, other than through FDA's expanded access program.[1] This law provides a new pathway for patients to request and manufacturers or sponsors to choose to provide access to certain unapproved, investigational drugs, including biological products, for patients diagnosed with life-threatening diseases or conditions as defined in § 312.81 (21 CFR 312.81) who, as certified by a physician, have exhausted approved treatment options and who are unable to participate in a clinical trial involving the investigational drug.[2] This rule does not require that physician determinations be submitted to FDA. Manufacturers or sponsors who provide their investigational drug under the Right to Try Act are required to submit to FDA an annual summary of the use of their drug(s). Specifically, manufacturers or sponsors of an eligible investigational drug must submit to FDA an annual summary that includes the number of doses supplied of an eligible investigational drug, the number of patients treated, the uses for which the drug was made available, and any known serious adverse events. Per section 561B of the FD&C Act, FDA is required to specify, through regulation, the deadline for such submissions (section 561B(d)(1)). This rule specifies that deadline. This rule specifies that submissions must be made electronically. Currently, this means attaching a PDF document to an email. In the future, FDA may move to electronic submission through other direct means.

B. Summary of Comments to the Proposed Rule

FDA received fewer than 50 comments to the proposed rule from healthcare professionals, patient advocacy groups, regulated industry, scientific and academic experts, and private citizens. FDA received comments on the following: (1) the annual summary submission deadline; (2) the definition of ''manufacturer''; (3) reporting information in the annual report on dosing, any known serious adverse events, clinical outcomes, patient demographic information, and the amount, if any, charged for the product; and (4) general comments requesting clarifications. FDA also received general comments both in support of and against the proposed annual reporting rule as well as the entire Right to Try Act.

C. General Overview of the Final Rule

FDA has extended the submission date for the first annual summary report from 60 calendar days after the final rule becomes effective as proposed to a specific date of March 31, 2023.

III. Legal Authority

The Right to Try Act amended Chapter V of the FD&C Act by inserting section 561B. New section 561B(d)(1) of the FD&C Act requires FDA to specify by regulation the deadline of submission of an annual summary of the use of any eligible investigational drug under the Right to Try Act by manufacturers or sponsors and specifies the contents of such summaries. This section, in conjunction with our general rulemaking authority in section 701(a) of the FD&C Act (21 U.S.C. 371(a)), serves as our legal authority for this final rule.

IV. Comments on the Proposed Rule and FDA Response

A. Introduction

We describe and respond to the comments in sections IV.B through IV.J of this document. We have numbered each comment to help distinguish between different comments. We have grouped similar comments together under the same number, and, in some cases, we have separated different issues discussed in the same comment and designated them as distinct comments for purposes of our responses. The number assigned to each comment or comment topic is purely for organizational purposes and does not signify the comment's value or importance or the order in which comments were received.

B. Description of General Comments and FDA Response

(Comment 1) Some comments made general remarks supporting or opposing the proposed reporting rule or Right to Try in general without focusing on a particular proposed provision. These comments either supported or opposed the proposed rule, without any suggestions for specific changes.

(Response 1) FDA made no changes in response to these comments, as there were no suggestions for specific changes. In regards to comments opposing issuance of the proposed rule, we do not agree that FDA should not issue this rule. Section 561B(d) of the FD&C Act provides that ''the Secretary shall specify by regulation'' the deadline of submission of annual summaries. This rule implements the statutory directive in section 561B(d) of the FD&C Act, and FDA concludes that the rulemaking is necessary to establish deadline requirements for the submission of annual summaries.

C. Comments on the Submission Deadline

(Comment 2) Several comments focused on proposed § 300.200(b)(1) regarding the submission deadline. These comments requested a change of the submission deadline for the first annual summary from 60 calendar days after the rule becomes effective to 90 calendar days. Some comments also requested that the first annual summary cover a 12-month time period beginning from the finalization of the Proposed Rule onward. Some comments requested that for the initial annual summary, the reporting period should begin on the date the final rule is published and end on December 31 of that calendar year.

(Response 2) FDA agrees with the proposal to change the submission deadline for the first annual summary from 60 calendar days after the rule becomes effective to 90 calendar days. Regarding the proposals to change the reporting periods for the first required annual summaries, FDA disagrees that use of investigational drugs under the Right to Try Act prior to the finalization of this rule should not be reported. Rather than directing manufacturers or sponsors to only report Right to Try Act uses after FDA's rulemaking is completed, the Right to Try Act directs manufacturers or sponsors to submit to FDA an annual summary of ''any use'' of a drug under the law (section 561B(d)(1) of the FD&C Act). Therefore, requiring submissions of Right to Try

[1] Information on FDA's Expanded Access Program is available at *https://www.fda.gov/news-events/public-health-focus/expanded-access.*

[2] Physicians who have questions should consult with sponsors and manufacturers of eligible investigational drugs. Resources for determining whether there are available clinical trials include the sponsors of eligible investigational drugs and the website *https://www.clinicaltrials.gov.*

Act uses since enactment of the law is consistent with the statute. Furthermore, the information in the reports may provide relevant information regarding the use of eligible investigational drugs. The comment's suggestion could lead to a situation where a serious adverse event that occurs 1 day prior to the final rule publication is not shared with FDA but the same event that occurred 2 days later is. Therefore, we are finalizing the proposed requirement that uses of eligible investigational drugs under Right to Try be reported to FDA, even if they occurred before issuance of this rule. The rule is considered in effect 60 days after the date of publication, however the due date for the first annual report is March 31, 2023 (see section V), but the Right to Try Act was effective as of the date it was signed, May 30, 2018. The rulemaking establishes the process for reporting actions sponsors already have taken. The first annual summary should cover all uses under the Right to Try Act since the statute has been in effect in accordance with § 300.200(b).

D. Comments on Combining Right to Try Reporting

(Comment 3) Several comments addressed combining Right to Try reporting with other FDA regulatory reporting requirements, noting that it may be less burdensome and facilitate FDA having all of the data on an investigational product together. Some comments requested the inclusion of the annual report on Right to Try uses as an addendum or section within the investigational new drug (IND) annual report required under § 312.33 (21 CFR 312.33), in addition to a separate report. Some comments requested aligning the Right to Try Act reporting with the annual reporting required under the Expanded Access regulations and aligning the reporting of known serious adverse events under proposed § 300.200(c)(5) with current serious adverse event reporting regulations under § 312.32 (21 CFR 312.32).

(Response 3) FDA disagrees with the comments requesting combining Right to Try reporting with other FDA-required reports. The IND reporting regulations do not capture all the information required under Right to Try, so it is not accurate that compliance with § 312.32 will provide compliance with the reporting requirements in this rule. Consequently, the information detailed for the Right to Try submission would have to be added to the IND annual report. Moreover, existing IND annual reports under § 312.33 are due to FDA based upon the date an IND application was submitted to FDA. These IND annual reports are submitted throughout the year and not at a single point in time for all active applications, which is consistent with international harmonization efforts. It would be extremely difficult and resource-intensive for FDA to examine all IND annual reports for the sole purpose of identifying those potentially few reports that have Right to Try information so that we can compile the annual summary required by section 561B(d)(2) of the FD&C Act. In addition, it is efficient to have separate reporting requirements for Right to Try Act and other investigational drug uses because section 561B(c) of the FD&C Act limits FDA's use of clinical outcomes associated with the use of eligible investigational drugs under the Right to Try Act in ways that are not applicable to other uses of INDs. For these reasons, it is more efficient to implement the annual reporting and summary requirements of the Right to Try Act by requiring the annual reports to be submitted as separate reports to FDA.

FDA does not intend to object if sponsors refer to their Right to Try activities in their IND annual report required under § 312.33 as long as such information is labeled as Right to Try and is also included in the separate Right to Try annual report. The reporting requirements in § 312.33 include a provision that requires sponsors to identify the IND numbers that correspond to the products used under Right to Try. This will facilitate the integration into FDA systems and allow FDA to link all information received on a particular IND or new drug application or biologics license application.

E. Comments on Submitting Dosing Information

(Comment 4) Some comments made recommendations on proposed § 300.200(c)(2) regarding dosing. Section 300.200(c)(2) proposed to require that the annual summary include the total number of doses supplied by the manufacturer or sponsor to eligible patients for use under the Right to Try Act. We also proposed that each dose of an eligible investigational drug supplied for an eligible patient shall be counted as a dose supplied. Several comments recommended that FDA require sponsors or drug manufacturers to report the number of doses per patient, rather than the cumulative number of doses supplied of the drug overall.

(Response 4) As noted in the proposed rule, FDA only proposed to require reporting on the total number of doses supplied. This will make the reporting requirements less burdensome for sponsors and is consistent with the requirements in the Right to Try Act, which does not require that information be submitted on a per patient basis. It is also consistent with our public health oversight needs, because at this time FDA does not foresee a need for more detailed information and FDA can follow up with the submitter if more information would be useful to FDA as it reviews the annual summary. However, sponsors may voluntarily provide an itemized list of doses per patient in their tabular summary when reporting any known serious adverse events; FDA encourages sponsors to include information on the number of doses supplied per patient when reporting on known serious adverse events even though this rule does not require this information.

(Comment 5) One comment expressed that the example given in the proposed rule of a tabular summary goes beyond the level of information required by the Right to Try Act.

(Response 5) FDA disagrees with the comment, because the tabular summary example included in the proposed rule showed information that sponsors may choose to submit to provide context around the known serious adverse event information. Specifically, the sample tabular summary that FDA provided in the proposed rule included such non-mandatory information as a field for a Patient ID number and for grading the severity of known serious adverse events. However, we did not propose to require that manufacturers or sponsors submit this information (and indeed the final rule does not require submission of such information).

To the extent the comment seeks a tabular summary example that includes only mandatory information, the tabular summary below highlights (bolded text) the mandatory information (although the specific format is not required). The summary may include optional contextual data (*e.g.,* the time interval between the last dose received and the onset of the known serious adverse event) in addition to the statutorily required information, and the sponsor or manufacturer may choose to submit this data if they believe the non-mandatory data could provide relevant information.

Eligible investigational drug	IND No.	Patient ID	Number of doses supplied	Number of patients treated	Disease(s) or condition(s)	Serious adverse event(s)	
						Serious adverse event(s)	Outcome(s)
XDX501	99999	12345	5	1	Breast cancer	1. Hip fracture ... 2. Joint pain	1. Improved. 2. Improved.

F. Comments on Adverse Event Reporting

Some commenters made recommendations on proposed § 300.200(c)(5) regarding adverse event reporting. In that provision, we proposed to require that annual reports submitted to FDA include a tabular summary of any known serious adverse events, including resulting outcomes, experienced by patients treated with the eligible investigational drug under the Right to Try Act.

(Comment 6) One comment recommended that manufacturers and sponsors obtain data on the route of administration of the drug in the case of an adverse event.

(Response 6) While the Agency welcomes manufacturers or sponsors to include information they conclude is relevant to understanding a known serious adverse event, FDA believes we can adequately fulfill our public health role without including such a requirement; if FDA has questions about route of administration that are relevant to our review, we may pose such questions to manufacturers or sponsors.

FDA agrees that information on routes of administration may in some cases aid FDA in understanding the circumstances surrounding an adverse event. However, many drugs are not able to support multiple routes of administration, so for these drugs FDA may not gain any helpful information if we required reporting regarding route of administration.

(Comment 7) Some comments recommended that FDA encourage earlier reporting of known serious adverse events prior to the required due date for the annual summary.

(Response 7) FDA disagrees because section 561B(d)(1) of the FD&C Act directs that the reporting be ''annual.'' Nevertheless, we note that sponsors can always report safety data to FDA earlier than the timeframes required by this rule in accordance with § 312.32 (while also ensuring compliance with the reporting timeframes under this rule).

(Comment 8) One comment expressed concern with the definition of a ''known serious adverse event,'' arguing that only disclosing known serious adverse events is too limiting and will not provide enough information to evaluate a drug's associated risks. Instead, the comment recommends that FDA require reporting of suspected adverse reactions. One comment also requested that FDA require manufacturers and sponsors to affirmatively seek information about known serious adverse events.

(Response 8) FDA disagrees with changing the proposed definition of ''known serious adverse event'' to encompass suspected serious adverse reactions. We consider suspected adverse reactions to be adverse events for which there is a reasonable possibility that the drug caused the adverse event (see, *e.g.,* § 312.32(a) (defining ''suspected adverse reaction'')). An adverse event, however, is any untoward medical occurrence associated with the use of a drug in humans, whether or not considered drug related (see § 312.32(a)). Suspected adverse reactions are the subset of all adverse events for which there is a reasonable possibility that the drug caused the event. A ''serious adverse event'' is an adverse event that is ''serious,'' as defined in § 312.32(a). A ''known serious adverse event'' is a serious adverse event of which a manufacturer or sponsor is aware (§ 300.200(a)(4)). We believe it is appropriate to require that Right to Try annual summaries only include information about known serious adverse events for two reasons. First, Congress specifically required reporting of such events, but did not require that annual summaries include information about suspected adverse reactions. Second, at this time we do not see a need to require reporting under this rule for suspected adverse reactions because our IND safety reporting requirements in § 312.32 already require reporting of suspected adverse reactions and reflect the need for the sponsor to evaluate the available evidence. Accordingly, FDA receives needed information about suspected adverse events through the IND safety reporting process.

With respect to the comment requesting that FDA require manufacturers or sponsors to affirmatively seek information about serious adverse events, we disagree. FDA does not seek to make this rule more burdensome than is needed to efficiently implement the Right to Try Act, and at this time it is not clear that any such investigation requirement would result in relevant information for purposes of FDA's Right to Try oversight role. Under the final rule, known serious adverse events must be reported. Nevertheless, sponsors are not constrained from including additional information they find to be relevant regarding a known serious adverse event.

G. Comments on the Definition of Manufacturer or Sponsor

In proposed § 300.200(a)(5), we proposed to define a ''manufacturer or sponsor'' as the person who meets the definition of ''sponsor'' in § 312.3 (21 CFR 312.3) for the eligible investigational drug; has submitted an application for the eligible investigational drug under section 505(b) of the FD&C Act (21 U.S.C. 355(b)) or section 351(a) of the Public Health Service Act (42 U.S.C. 262(a)); or produces the eligible investigational drug provided to an eligible patient on behalf of such persons.

(Comment 9) Some commenters made recommendations on proposed § 300.200(a)(5) regarding the definition of ''manufacturer or sponsor.'' One comment recommended the exclusion of contract manufacturing organizations from the term ''manufacturer or sponsor'' because a contract manufacturer may not possess the necessary information to complete the annual report. One comment requested that FDA limit the definition of ''manufacturer or sponsor'' to the treating physician because for drugs supplied through Right to Try, treating physicians are responsible for monitoring their patients' use of the drug and their safety.

(Response 9) FDA agrees that a contract manufacturing organization that is not closely connected to the clinical investigation and approval process should not be considered a ''manufacturer or sponsor'' under this rule, and therefore we have updated the regulatory text to specify that a contract manufacturer is not a ''manufacturer or sponsor.'' We are making this change because we believe that only those entities that are closely connected to the clinical investigation or approval process should submit annual summaries, and contract manufacturers

would generally not be considered such entities. A manufacturer or sponsor is better positioned to have access to the relevant data required for the annual summary if their role is not merely to manufacture a drug to another entity's specifications on behalf of the other entity. Accordingly, we generally do not consider most contract manufacturers to be a ''manufacturer or sponsor'' for purposes of this rule. We consider a ''contract manufacturer'' to be an entity that merely manufactures a drug to another entity's specifications on behalf of the other entity. We expect that whenever a drug is distributed under Right to Try, there will be a manufacturer or sponsor with access to the relevant data who will submit the required annual summary.

Regarding limiting the definition of ''sponsor'' to the treating physician, FDA disagrees because we think there will be less confusion if we use the regulatory definition of ''sponsor'' in § 312.3. This is a definition that industry and researchers are familiar with, and one that Congress likely understood when it used the term in the Right to Try Act. We also note that the Right to Try Act refers to ''physician[s],'' but not in the context of reporting annual summaries; rather, section 561B(a)(1) of the FD&C Act refers to ''physician[s]'' in the context of the definition of an eligible patient—suggesting that Congress understood ''physician'' and ''sponsor'' to not be synonymous.

(Comment 10) One comment requested that FDA require sponsors to include the physicians' names and the total number of patients each physician has certified over each reporting period because of potential pressure for physicians to provide access to drugs under Right to Try.

(Response 10) FDA disagrees. Under section 561B(a) of the FD&C Act, the ''eligible patient'' definition provides for the certification by a physician; FDA information about the identity of the physician is not needed for FDA to review the annual summary data as provided in the Right to Try Act. Therefore, FDA does not seek to require any information related to the physician.

(Comment 11) One comment requested that manufacturers assign patient identification numbers to track patients.

(Response 11) FDA recommends this practice only with respect to patients who experienced a known serious adverse event that is included in the Right to Try annual summary, to help distinguish between patients and events included in the annual summary. However, FDA does not believe it is necessary to require the assignment of patient identification numbers. Manufacturers or sponsors can take steps to ensure that they adequately track relevant safety information without the use of patient identification numbers, and if FDA has questions about information included in an annual summary FDA may contact the manufacturer or sponsor to clarify.

H. Comments on Reporting Patient Demographic Information

(Comment 12) Some commenters made recommendations regarding inclusion of patient demographic information. Some comments requested that the rule include a non-mandatory request for such other information to provide a more comprehensive picture on Right to Try use, such as the demographics of patients for whom Right to Try access was requested; information about requests that were denied, including reason for denial; amount charged for the product (if any); and overall patient outcomes from the Right to Try use. Other commenters asked for reporting of patient demographic information to be mandatory.

(Response 12) Congress specified the information FDA was to collect for the annual summary in the Right to Try Act and did not include demographic information. We encourage sponsors and/or manufacturers to provide demographic data, individual patient information, and other types of data suggested in the comments as optional additional contextual information when submitting the annual summary.

I. Comments on Outcomes Reporting

In proposed § 300.200(c)(5), we proposed to require that the annual summary include a tabular summary of any known serious adverse events, including resulting outcomes, experienced by patients treated with the eligible investigational drug under the Right to Try Act.

(Comment 13) One comment requested that FDA require manufacturers and sponsors to report all relevant clinical outcome data after treatment.

(Response 13) FDA disagrees. Congress did not specify that manufacturers or sponsors provide information about all treatment outcomes, and at this time we do not see a need to require this information in annual summaries. If FDA has questions about treatment outcomes not associated with known serious adverse events, FDA can request that information as appropriate.

(Comment 14) One comment disagreed with the proposed requirement that annual summaries include information about outcome data. The comment stated that patients who receive drugs under Right to Try are being treated individually and not as a part of a clinical trial, so treatment plans may vary.

(Response 14) We disagree. The proposed requirement is to report any known serious adverse events, including resulting outcomes; the outcomes are tied specifically to the adverse event, and not the outcome of each individual use of an eligible drug, as the comment suggests. Requiring information about outcomes resulting from known serious adverse events is important so that FDA can meet the directive in section 561B(d)(2) of the FD&C Act, that FDA shall post an annual summary report including information specific to ''clinical outcomes.'' See section 701(a) of the FD&C Act (providing FDA with authority to promulgate regulations for the efficient enforcement of the FD&C Act). In addition, the outcome of the adverse event can provide important context to enable FDA to determine if the outcomes are critical to understanding safety issues associated with the eligible investigational drug without requesting additional information for each event. We also note that the Agency routinely evaluates safety outcomes outside of a clinical trial, so just because eligible patients may not be part of a clinical trial does not mean we are unable to review information about their outcomes.

(Comment 15) One comment requested more information on how the Secretary of Health and Human Services would inform sponsors that the Agency's use of a drug's clinical outcome is critical to making a safety determination on the use of the drug.

(Response 15) This comment relates to section 561B(c) of the FD&C Act, which includes certain restrictions on certain FDA uses of a clinical outcome associated with Right to Try unless FDA makes a determination that use of such clinical outcome is critical to determining the safety of the eligible investigational drug. If FDA makes such a determination, section 561B(c)(2) of the FD&C Act provides that FDA ''shall provide written notice of such determination to the sponsor, including a public health justification for such determination, and such notice shall be made part of the administrative record.'' FDA does not believe additional clarification is necessary because the statute specifies that FDA's notification to the sponsor shall be ''written.'' The

comment has not explained what additional clarification is needed.

J. Comments on the Clarity of the Proposed Rule

(Comment 16) One comment requested an explicit statement from FDA that there are no reporting requirements for sponsors or manufacturers who choose not to grant a request to provide products under Right to Try.

(Response 16) FDA is not sure what kind of explicit statement the comment seeks. Neither the Right to Try Act nor this final rule require parties to report to FDA when they have declined to distribute drugs under the Right to Try Act. FDA notes that there is no requirement that a manufacturer or sponsor participate in Right to Try.

(Comment 17) One comment requested clarity on whether an annual summary is only required if new access to a drug has been granted during the reporting period or if sponsors should also report on ongoing use from a prior reporting period.

(Response 17) Under § 300.200(c)(2), the manufacturer or sponsor must report the total number of doses supplied. The relevant period of time is the period of time covered by the annual summary. Therefore, the number of doses supplied during the annual summary period is what should be reported. For example, if Patient A started using the drug in the previous reporting period and continues to use that drug in the current reporting period, the manufacturer or sponsor should report how many doses were supplied during the current reporting period.

(Comment 18) One comment requested that FDA consider providing criteria on how a patient would submit a request for a drug under Right to Try.

(Response 18) The Right to Try Act does not outline a role for FDA with respect to the process by which patients may request access to eligible investigational drugs. Therefore the comment asks FDA to provide information about a matter that is beyond the scope of this rulemaking. We decline.

(Comment 19) One comment requested additional detail on FDA's intent to post online an annual summary report and expressed interest in how FDA's posting of the annual summary report ''may increase awareness about the availability of investigational drugs'' as noted in the ''Costs and Benefits'' section of the preamble to the Proposed Rule. One comment also stated that the information FDA includes in the annual summary report does not convey or imply any conclusions regarding the safety or efficacy of the products provided under the Right to Try Act, and it may also be helpful for FDA's annual summary report website to link to additional information regarding ''Expanded Access.''

(Response 19) FDA will follow the requirements in the Right to Try Act regarding posting an annual summary of uses of drugs under the statute. As stated in the preamble to the proposed rule, providing this information will increase awareness about the availability of investigational drugs because the report will make available data about the use of eligible investigational drugs. With respect to the comment stating that the information included in FDA's annual summary report will not convey or imply any conclusions about a drug's safety or efficacy, we agree. The information included in FDA's annual summary reports will be purely factual and will not reflect any FDA evaluations of the eligible investigational drugs. With respect to the comment requesting that our website link to information about ''Expanded Access,'' we will consider that comment when we design our website for Right to Try annual summary reports.

V. Effective/Compliance Date(s)

This final rule becomes effective 60 days after publication in the **Federal Register**. Any manufacturer or sponsor who provides an eligible investigational drug for use by an eligible patient in accordance with the Right to Try Act must include in their first annual summary submitted under this section any use from the time of enactment of the Right to Try Act, May 30, 2018, through December 31, 2022. The first annual summary submitted under the Right to Try Act will be required to be submitted March 31, 2023.

Thus, for a manufacturer or sponsor of an eligible investigational drug that has supplied an eligible patient with an eligible investigational drug under section 561B of the FD&C Act between the period from enactment of section 561B (May 30, 2018) and December 31, 2022, the manufacturer or sponsor shall submit to FDA a first annual summary covering that period no later than March 31, 2023. After this annual report, the manufacturer or sponsor must submit a report that covers every January 1 through December 31 annual period by no later than March of the following year, for every year in which the manufacturer or sponsor has supplied a drug under the Right to Try Act. Therefore, a report submitted in March 2024, would cover the period January 1, 2023, through December 31, 2023.

VI. Economic Analysis of Impacts

A. Introduction

We have examined the impacts of the final rule under Executive Order 12866, Executive Order 13563, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). Executive Orders 12866 and 13563 direct us to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). We find that this final rule is not a significant regulatory action as defined by Executive Order 12866.

The Regulatory Flexibility Act requires us to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the effects are low in cost and minimally dispersed, we certify that the final rule will not have a significant economic impact on a substantial number of small entities.

The Unfunded Mandates Reform Act of 1995 (section 202(a)) requires us to prepare a written statement, which includes an assessment of anticipated costs and benefits, before issuing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation) in any one year.'' The current threshold after adjustment for inflation is $165 million, using the most current (2021) Implicit Price Deflator for the Gross Domestic Product. This final rule would not result in an expenditure in any year that meets or exceeds this amount.

B. Summary of Costs and Benefits

This final rule implements a statutory requirement in the Right to Try Act that sponsors and manufacturers who provide an eligible investigational drug under the Right to Try Act to eligible patients submit to FDA an annual summary of such use. The Right to Try Act requires FDA to specify by regulation the deadline and requires that submissions include certain information.

The benefits of this final rule consist of societal and public health outcomes that may accrue from the disclosure of the use of investigational drugs and any known serious adverse events provided

in these annual summary reports. These reporting requirements instruct firms to collect all known serious adverse events and submit them once per year to FDA. Without these reports, FDA would not be made aware in a systematic manner of the use of eligible investigational drugs under the Right to Try Act and any known serious adverse events. With these reports, there may be increased awareness of investigational drugs, the diseases or conditions for which patients are seeking access, and any known serious adverse events associated with such use.

In addition, based on the information in these annual summaries, FDA intends to post an annual summary report in accordance with section 561B(d)(2) of the FD&C Act. FDA's posting of these reports may increase awareness about the availability of investigational drugs. In some cases, access to such drugs may help treat future patients. There is no data that would allow us to predict the magnitude of generated benefits, and thus we are unable to quantify the expected benefits of this rule.

Costs are calculated as the time spent by firms to prepare and submit annual summary reports based on participation in Right to Try Act requests from eligible patients for investigational new treatments. The total estimated present value of this rule's costs is $37,132 at a 7 percent discount rate and $45,818 at a 3 percent discount rate (in 2020 dollars). The annualized cost of this rule over 10 years is $5,287 at a 7 percent discount rate and $5,371 at a 3 percent discount rate. Consistent with Executive Order 12866, table 1 provides the costs and a description of benefits for this final rule over a 10-year period.

TABLE 1—SUMMARY OF BENEFITS, COSTS, AND DISTRIBUTIONAL EFFECTS OF THE FINAL RULE

Category	Primary estimate	Low estimate	High estimate	Units			Notes
				Year dollars	Discount rate (%)	Period covered	
Benefits:							
Annualized Monetized $/year	.....	.....	.....	2020	7	10	
	.....	.....	.....	2020	3	10	
Annualized Quantified	.....	.....	.....	.....	7	.....	
	.....	.....	.....	.....	3	.....	
Qualitative	Disclosure of known serious adverse events and outcomes related to investigational new drug treatments.						
Costs:							
Annualized Monetized $/year	5,287	.....	.....	2020	7	10	
	5,371	.....	.....	2020	3	10	
Annualized Quantified	.....	.....	.....	.....	7	.....	
	.....	.....	.....	.....	3	.....	
Qualitative							
Transfers:							
Federal Annualized Monetized $/year	.....	.....	.....	.....	7	.....	
	.....	.....	.....	.....	3	.....	
From/To	From:			To:			
Other Annualized Monetized $/year	.....	.....	.....	.....	7	.....	
	.....	.....	.....	.....	3	.....	
From/To	From:			To:			
Effects:							
State, Local or Tribal Government:							
Small Business:							
Wages:							
Growth:							

We have developed a comprehensive Economic Analysis of Impacts that assesses the impacts of the final rule. The full analysis of economic impacts is available in the docket for this final rule (Ref. 1) and at *https://www.fda.gov/about-fda/reports/economic-impact-analyses-fda-regulations.*

VII. Analysis of Environmental Impact

We have determined under 21 CFR 25.30(h) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act of 1995

This final rule contains information collection provisions that 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 title, description, and respondent description of the information collection provisions are shown in the following paragraphs with an estimate of the annual reporting burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Annual Summary Reporting Requirements Under the Right to Try Act—21 CFR part 300, subpart D—OMB Control Number 0910–NEW.

Description: The final rule provides for a submission schedule and sets forth content requirements for sponsors and manufacturers who: (1) provide an eligible investigational drug for use by an eligible patient and (2) submit to FDA an annual summary report by subject to the applicable regulations.

Regulations in § 300.200 require that sponsors and manufacturers submit to FDA an annual summary no later than March 31 of each year, including data for the preceding calendar year, which is the period from January 1 through December 31. The first report will cover the time period between enactment of the Right to Try Act (March 30, 2018) and December 31, 2022. We will provide instruction on the FDA Right to Try web page at *https://www.fda.gov/patients/learn-about-expanded-access-and-other-treatment-options/right-try* regarding a designated point of contact for submissions of Right To Try annual reporting summaries and are currently developing a form to facilitate submission of requisite information. Data elements included in the annual summary are:

- The name of the eligible investigational drug and applicable IND number.
- The number of doses supplied to the eligible patient.
- The number of eligible patients treated.
- The use for which the eligible investigational drug was made available to the eligible patient.
- Any known serious adverse events and outcomes that the eligible patient treated with an eligible investigational drug experienced.

Description of Respondents: Respondents to the information collection are sponsors and manufacturers who provide an eligible investigational drug to eligible patients in accordance with the Right to Try Act and will submit to FDA annual summaries.

As discussed in section II.F of the Final Regulatory Impact Analysis, we estimate the burden of the information collection as follows:

TABLE 2—ESTIMATED ANNUAL REPORTING BURDEN [1]

Activity; 21 CFR citation	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response (in hours)	Total hours
Sponsors and manufacturers submit annual summaries in accordance with the Right to Try Act (§ 300.200)	6	1	6	2.5	15

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Consistent with estimates in our Final Regulatory Impact Analysis, we estimate that six sponsors and manufacturers will prepare and submit six annual summaries and assume it takes 2.5 hours to prepare and submit each summary, which results in a total of 15 hours annually.

The information collection provisions in this final rule have been submitted to OMB for review as required by section 3507(d) of the Paperwork Reduction Act of 1995.

Before the effective date of this final rule, FDA will publish a notice in the **Federal Register** announcing OMB's decision to approve, modify, or disapprove the information collection provisions in this final rule. An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

IX. Federalism

We have analyzed this final rule in accordance with the principles set forth in Executive Order 13132. We have determined that the rule does not contain policies 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. Accordingly, we conclude that the rule does not contain policies that have federalism implications as defined in the Executive Order and, consequently, a federalism summary impact statement is not required.

X. Consultation and Coordination With Indian Tribal Governments

We have analyzed this rule in accordance with the principles set forth in Executive Order 13175. We have determined that the rule does not contain policies that have substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes. Accordingly, we conclude that the rule does not contain policies that have tribal implications as defined in the Executive Order and, consequently, a tribal summary impact statement is not required.

XI. Reference

The following reference is on display at the Dockets Management Staff (see **ADDRESSES**) and is available for viewing by interested persons between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500; it is also available electronically at *https://www.regulations.gov.* FDA has verified the website address, as of the date this document publishes in the **Federal Register**, but websites are subject to change over time.

1. Economic Analysis of Impacts (available at *https://www.fda.gov/AboutFDA/ReportsManualsForms/Reports/EconomicAnalyses/default.htm*).

List of Subjects in 21 CFR Part 300

Drugs, Prescription drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 300 is amended as follows:

PART 300—GENERAL

■ 1. The authority citation for part 300 is revised to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 355, 360b, 360bbb-0a, 371.

■ 2. Add subpart D, consisting of § 300.200, to read as follows:

Subpart D—Annual Summary Reporting Requirements.

§ 300.200 Annual summary requirements under the Right to Try Act.

(a) Definitions: The following definitions of terms apply only to this section:

(1) *Eligible investigational drug.* An eligible investigational drug is as defined in section 561B(a)(2) of the Federal Food, Drug, and Cosmetic Act.

(2) *Eligible patient.* An eligible patient is as defined in section 561B(a)(1) of the Federal Food, Drug, and Cosmetic Act.

(3) *Investigational New Drug (IND).* An IND is as defined in § 312.3 of this chapter.

(4) *Known serious adverse event.* A serious adverse event (as defined in § 312.32 of this chapter) is considered ''known'' if the manufacturer or sponsor is aware of it.

(5) *Manufacturer or sponsor.* A manufacturer or sponsor is the person who:

(i) Meets the definition of ''sponsor'' in § 312.3 of this chapter for the eligible investigational drug;

(ii) Has submitted an application for the eligible investigational drug under section 505(b) of the Federal Food, Drug, and Cosmetic Act or section 351(a) of the Public Health Service Act; or

(iii) Is other than a contract manufacturer acting on behalf of a manufacturer or sponsor, producing the eligible investigational drug provided to an eligible patient on behalf of the persons described in paragraph (a)(5)(i) or (ii) of this section.

(b)(1) Except as described in paragraph (b)(2) of this section, a manufacturer or sponsor of an eligible investigational drug shall submit to the Food and Drug Administration (FDA), no later than March 31 of each year, an annual summary of any use of eligible investigational drugs supplied to any eligible patient under section 561B of the Federal Food, Drug, and Cosmetic Act for the period of January 1 through December 31 of the preceding year.

(2) For a manufacturer or sponsor of an eligible investigational drug that has supplied an eligible patient with an eligible investigational drug under section 561B of the Federal Food, Drug, and Cosmetic Act between the period from enactment of section 561B (May 30, 2018) and December 31, 2022, the manufacturer or sponsor shall submit to FDA a first annual summary covering that period no later than March 31, 2023.

(c) For each eligible investigational drug, the annual summary must include:

(1) *The name of the eligible investigational drug and applicable IND number.* The name and IND number of the eligible investigational drug supplied by the manufacturer or sponsor for use under section 561B of the Federal Food, Drug, and Cosmetic Act.

(2) *Number of doses supplied.* The total number of doses supplied by the manufacturer or sponsor to eligible patients for use under section 561B of the Federal Food, Drug, and Cosmetic Act. Each dose of an eligible investigational drug supplied for an eligible patient shall be counted as a dose supplied.

(3) *Number of patients treated.* The total number of eligible patients for whom the manufacturer or sponsor provided the eligible investigational drug for use under section 561B of the Federal Food, Drug, and Cosmetic Act. An eligible patient treated more than one time or with multiple doses of an eligible investigational drug shall be counted as a single patient.

(4) *Use for which the eligible investigational drug was made available.* A tabular summary identifying the diseases or conditions for which the eligible investigational drug was made available for use under section 561B of the Federal Food, Drug, and Cosmetic Act.

(5) *Any known serious adverse events and outcomes.* A tabular summary of any known serious adverse events, including resulting outcomes, experienced by patients treated with the eligible investigational drug under section 561B of the Federal Food, Drug, and Cosmetic Act.

(d) Annual summaries submitted pursuant to this section shall be submitted in an electronic format that FDA can process, review, and archive, and shall be sent directly to a designated point of contact for submissions made under section 561B of the Federal Food, Drug, and Cosmetic Act. The annual summaries must be submitted to the designated point of contact and shall not be submitted to a particular investigational new drug application. FDA will specify the designated point of contact for submission of the annual summary on FDA's website, as described at *https://www.fda.gov*.

Dated: August 31, 2022.

Robert M. Califf,

Commissioner of Food and Drugs.

[FR Doc. 2022–19737 Filed 9–13–22; 8:45 am]

BILLING CODE 4164–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R02–OAR–2022–0400; FRL 9785–02–R2]

Outer Continental Shelf Air Regulations; Consistency Update for New York

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing an update to a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated here pertains to the requirements for OCS sources for which the State of New York is the COA. The intended effect of updating the OCS requirements for the State of New York is to regulate emissions from OCS sources in accordance with the requirements onshore. The requirements discussed in this rule are being incorporated by reference into the OCS air regulations.

DATES: This final rule is effective on October 14, 2022. The incorporation by reference of a certain publication listed in this rule is approved by the Director of the Federal Register as of October 14, 2022.

ADDRESSES: The EPA has established a docket for this action under Docket ID Number EPA–R02–OAR–2022–0400. All documents in the docket are available at *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Viorica Petriman, Air Programs Branch, Permitting Section, U.S. Environmental Protection Agency, Region 2, 290 Broadway, New York, New York 10007, (212) 637–4021, *petriman.viorica@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. What is the background for this action?

On May 20, 2022 (87 FR 30849), EPA proposed to incorporate by reference into the OCS Air regulations at 40 CFR part 55 [1] updated requirements pertaining to New York. *See* 87 FR 30849. The action that EPA is taking in this rule is to finalize those proposed updates. Section 328(a) of the CAA requires that for OCS sources located within 25 miles of a State's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the corresponding onshore area (COA). Because the OCS requirements are based on onshore requirements, and onshore requirements may change, CAA section 328(a)(1) requires that the EPA update

[1] EPA promulgated 40 CFR part 55 on September 4, 1992. The reader may refer to the proposed rulemaking to promulgate part 55 from 56 FR 63774 (December 5, 1991) and the preamble to the final rule promulgated 57 FR 40792 (September 4, 1992) for further background and information on the OCS regulations.

the OCS requirements as necessary to maintain consistency with onshore requirements.

To comply with this statutory mandate, the EPA must incorporate by reference into part 55 all relevant State rules in effect for onshore sources, so they can be applied to OCS sources located offshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Inclusion in the OCS rules does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

40 CFR 55.12 specifies certain times at which part 55's incorporation by reference of a State's rules must be updated. One time such a ''consistency update'' must occur is when any OCS source applicant submits a Notice of Intent (NOI) under 40 CFR 55.4 for a new or a modified OCS source. 40 CFR 55.4(a) requires that any OCS source applicant must submit to EPA a NOI before performing any physical change or change in method of operation that results in an increase in emissions. EPA must conduct any necessary consistency update when it receives a NOI, and prior to receiving any application for a preconstruction permit from the OCS source applicant. 40 CFR 55.6(b)(2) and 55.12(f).

On March 14, 2022, the EPA received a NOI from Empire Offshore Wind LLC to submit an OCS air permit application for the construction and operation of a new OCS source (a wind energy project) about 14 miles offshore New York.

The EPA reviewed the New York State Department of Environmental Conservation (''NYSDEC'') air rules currently in effect, to ensure that they are rationally related to the attainment or maintenance of Federal and State Ambient Air Quality Standards (AAQS) or part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are applicable to OCS sources. *See* 40 CFR 55.1. The EPA has also evaluated the rules to ensure they are not arbitrary and capricious. *See* 40 CFR 55.12(e). The EPA has excluded New York's administrative or procedural rules,[2] and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and State AAQS.

II. What comments were received in response to the EPA's proposed action?

The EPA did not receive any comments on the proposal to update a portion of the OCS Air Regulations to incorporate updated requirements into 40 CFR part 55 pertaining to the State of New York.

III. What action is the EPA taking?

The EPA is taking final action to incorporate by reference relevant New York air pollution control rules into § 55.14 and to update the ''New York'' section of appendix A to 40 CFR part 55, which lists those rules. The EPA is approving this action under section 328(a) of the CAA, 42 U.S.C. 7627(a). Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore.

IV. Incorporation by Reference

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference as described in sections I. and II. of this preamble. In accordance with the requirements of 1 CFR 51.5, the EPA is finalizing the incorporation by reference of ''State of New York Requirements Applicable to OCS Sources,'' dated March 10, 2022, which provides the text of the NYSDEC air rules in effect as of March 10, 2022 that would apply to OCS sources. The EPA has made, and will continue to make, this material available through *www.regulations.gov* and at the EPA Region 2 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into part 55 as they exist onshore. 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, the EPA's role is to maintain consistency between OCS regulations and the regulations of onshore areas, provided that they meet the criteria of the Clean Air Act. Accordingly, this action simply updates the existing OCS requirements to make them consistent with requirements onshore, without the exercise of any policy discretion by the EPA.

a. Executive Order 12866, Regulatory Planning and Review

This action is not a ''significant regulatory action'' under the terms of Executive Orders (E.O.) 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011) and is therefore not subject to review under the E.O.

b. Paperwork Reduction Act (PRA)

This action does not impose any new information collection burden under PRA because this action only updates the State rules that are incorporated by reference into 40 CFR part 55. OMB has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060–0249. This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55.

c. Regulatory Flexibility Act (RFA)

I certify that this action does not have a significant impact on a substantial number of small entities under the RFA. This final rule does not impose any requirements or create impacts on small entities. This consistency update under CAA section 328 does not create any new requirements but simply updates the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

d. Unfunded Mandates Reform Act (UMRA)

This action does not contain any unfunded mandate or significantly or uniquely affect small governments as described in UMRA, 2 U.S.C. 1531–1538. The action imposes no enforceable duty on any state, local or tribal governments.

[2] Each COA which has been delegated the authority to implement and enforce part 55, will use its administrative and procedural rules as onshore. However, in those instances where EPA has not delegated authority to implement and enforce part 55, as in New York, EPA will use its own administrative and procedural requirements to implement the substantive requirements. *See* 40 CFR 55.14(c)(4).

e. Executive Order 13132, Federalism

This action does not have federalism implications. It does not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

f. Executive Order 13175, Coordination With Indian Tribal Governments

This action does not have tribal implications, as specified in Executive Order 13175 (65 FR 67249, November 9, 2000), because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, nor does it impose substantial direct costs on tribal governments, nor preempt tribal law. It merely updates the State requirements incorporated by reference into 40 CFR part 55 to match current State requirements.

g. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 and simply updates the State requirements incorporated by reference into 40 CFR part 55 to match the current State requirements.

h. Executive Order 13211, Actions That Significantly Affect Energy Supply, Distribution, or Use

This final rule is not subject to Executive Order 13211 because it is not a significant regulatory action under Executive Order 12866.

i. National Technology Transfer and Advancement Act

This rulemaking 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 is inconsistent with the Clean Air Act.

j. Executive Order 12898: Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Population

The EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health, or environmental effects, using practicable and legally permissible methods.

k. Congressional Review Act (CRA)

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).

VI. Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 14, 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* CAA section 307(b)(2).

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Lisa Garcia,

Regional Administrator, Region 2.

For the reasons set out in the preamble, 40 CFR part 55, is amended as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

■ 1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Pub. L. 101–549.

■ 2. Section 55.14 is amended by revising the paragraph (e)(16)(i)(A) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States' seaward boundaries, by State.

* * * * *

(e) * * *

(16) * * *

(i) * * *

(A) State of New York Requirements Applicable to OCS Sources, March 10, 2022.

* * * * *

■ 3. Appendix A to 40 CFR part 55 is amended by revising the entry for ''New York'' to read as follows:

Appendix A to Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

New York

(a) State requirements.

(1) The following State of New York requirements are applicable to OCS Sources, as of March 10, 2022. New York Environmental Conservation Law—Department of Environmental Conservation. The following sections of Title 6, Chapter III:

Subchapter A. Prevention and Control of Air Contamination and Air Pollution

Part 200. General Provisions

6 NYCRR 200.1. Definitions (effective 4/2/2020)

6 NYCRR 200.3. False Statement (effective 6/16/1972)

6 NYCRR 200.4. Severability (effective 8/9/1984)

6 NYCRR 200.6. Acceptable Ambient Air Quality (effective 4/6/1983)

6 NYCRR 200.7. Maintenance of Equipment (effective 2/22/1979)

6 NYCRR 200.9. Referenced Material (effective 2/11/2021)

Part 201. Permits and Certificates

6 NYCRR 201–1.1. Purpose and applicability (effective 2/22/2013)

6 NYCRR 201–1.4. Malfunctions and start-up/shutdown activities (effective 2/25/2021)

6 NYCRR 201–1.5. Emergency defense (effective 2/25/2021)
6 NYCRR 201–1.7. Recycling and salvage (effective 2/22/2013)
6 NYCRR 201–1.8. Prohibition of reintroduction of collected contaminants to the air (effective 2/22/2013)
6 NYCRR 201–1.11. Temporary emission sources (effective 2/25/2021)
6 NYCRR 201–1.12. Suspension, reopening, reissuance, modification, or revocation of air permits (effective 2/25/2021)
6 NYCRR 201–2. Definitions (effective 2/25/2021)
6 NYCRR 201–4. Minor Facility Registration (effective 2/25/2021)
6 NYCRR 201–5. State Facility Permits (effective 2/25/2021)
6 NYCRR 201–6. Title V Facility Permits (effective 2/25/2021)
6 NYCRR 201–7. Federally Enforceable Emission Caps (effective 2/25/2021)
6 NYCRR 201–8. General Permits (effective 2/22/2013)
6 NYCRR 201–9. Tables (effective 2/25/2021)

Part 202. Emissions Verification

6 NYCRR 202–1. Emissions Testing, Sampling and Analytical Determinations (effective 9/30/2010)
6 NYCRR 202–2. Emission Statements (effective 12/3/2020)

Part 207. Control Measures for an Air Pollution Episode (effective 2/22/1979)

Part 211. General Prohibitions (effective 1/1/2011)

Part 212. Process Operations (effective 6/13/2015)

Part 215. Open Fires (effective 10/14/2009)

Part 219. Incinerators

6 NYCRR 219–1. Incineration—General Provisions (effective 3/15/2020)
6 NYCRR 219–2. Municipal and Private Solid Waste Incineration Facilities (effective 5/21/2005)
6 NYCRR 219–10. Reasonably Available Control Technology (RACT) For Oxides of Nitrogen (NO_X) at Municipal and Private Solid Waste Incineration Units (effective 3/15/2020)

Part 221. Asbestos-Containing Surface Coating Material (effective 9/29/1972)

Part 222. Distributed Generation Sources (effective 3/26/2020)

Part 225. Fuel Consumption and Use

6 NYCRR 225–1. Fuel Composition and Use—Sulfur Limitations (effective 2/4/2021)
6 NYCRR 225–2. Fuel Composition and Use—Waste Oil as a Fuel (effective 4/2/2020)
6 NYCRR 225–3. Fuel Composition and Use—Gasoline (effective 11/4/2001)
6 NYCRR 225–4. Motor Vehicle Diesel Fuel (effective 5/8/2005)

Part 226. Solvent Metal Cleaning Processes and Industrial Cleaning Solvents (effective 11/1/2019)

Part 227. Stationary Combustion Installations

6 NYCRR 227–1. Stationary Combustion Installations (effective 2/25/2000)
6 NYCRR 227–2. Reasonably Available Control Technology (RACT) for Major Facilities of Oxides of Nitrogen (NO_X) (effective 12/7/2019)
6 NYCRR 227–3. Ozone Season Oxides of Nitrogen (NOx) Emission Limits for Simple Cycle and Regenerative Combustion Turbines (effective 1/16/2020)

Part 228. Surface Coating Processes, Commercial and Industrial Adhesives, Sealants and Primers (effective 6/5/2013)

Part 229. Petroleum and Volatile Organic Liquid Storage and Transfer (effective 4/4/1993)

Part 230. Gasoline Dispensing Sites and Transport Vehicles (effective 2/11/2021)

Part 231. New Source Review for New and Modified Facilities

6 NYCRR 231–3. General Provisions (effective 2/25/2021)
6 NYCRR 231–4. Definitions (effective 2/25/2021)
6 NYCRR 231–5. New Major Facilities and Modifications to Existing Non-Major Facilities in Nonattainment Areas, and Attainment Areas of the State Within the Ozone Transport Region (effective 2/25/2021)
6 NYCRR 231–6. Modifications to Existing Major Facilities in Nonattainment Areas and Attainment Areas of the State Within the Ozone Transport Region (effective 2/25/2021)
6 NYCRR 231–7. New Major Facilities and Modifications to Existing Non-Major Facilities in Attainment Areas (Prevention of Significant Deterioration) (effective 2/25/2021)
6 NYCRR 231–8. Modifications to Existing Major Facilities in Attainment Areas (Prevention of Significant Deterioration) (effective 2/25/2021)
6 NYCRR 231–9. Plantwide Applicability Limitation (PAL) (effective 2/25/2021)
6 NYCRR 231–10. Emission Reduction Credits (ERCs) (effective 2/25/2021)
6 NYCRR 231–11. Permit and Reasonable Possibility Requirements (effective 2/25/2021)
6 NYCRR 231–12. Ambient Air Quality Impact Analysis (effective 2/25/2021)
6 NYCRR 231–13. Tables and Emission Thresholds (effective 2/25/2021)

Part 241. Asphalt Pavement and Asphalt Based Surface Coating (effective 1/1/2011)

Part 242. CO_2 Budget Trading Program

6 NYCRR 242–1. CO_2 Budget Trading Program General Provisions (effective 12/31/2020)
6 NYCRR 242–2. CO_2 Authorized Account Representative for CO_2 Budget Sources (effective 12/31/2020)
6 NYCRR 242–3. Permits (effective 1/1/2014)
6 NYCRR 242–4. Compliance Certification (effective 1/1/2014)
6 NYCRR 242–5. CO_2 Allowance Allocations (effective 12/31/2020)
6 NYCRR 242–6. CO_2 Allowance Tracking System (effective 12/31/2020)
6 NYCRR 242–7. CO_2 Allowance Transfers (effective 1/1/2014)
6 NYCRR 242–8. Monitoring and Reporting (effective 12/31/2020)
6 NYCRR 242–10. CO_2 Emissions Offset Projects (effective 12/31/2020)

Part 243. CSAPR NO_X Ozone Season Group 2 Trading Program (effective 1/2/2019)

Part 244. CSAPR NO_X Annual Trading Program (effective 1/2/2019)

Part 245. CSAPR SO_2 Group 1 Trading Program (effective 1/2/2019)

Subchapter B. Air Quality Classifications and Standards

Part 256. Air Quality Classifications System (effective 5/1/1972)

Part 257. Air Quality Standards

6 NYCRR 257–1. Air Quality Standards-General (effective 12/6/2019)
6 NYCRR 257–2. Air Quality Standards-Sulfur Dioxide (SO_2) (effective 3/18/1977)
6 NYCRR 257–3. Air Quality Standards-Particulates (effective 12/6/2019)
6 NYCRR 257–4. Ambient Air Quality Standards-Fluorides (effective 12/6/2019)
6 NYCRR 257–5. Ambient Air Quality Standards-Hydrogen Sulfide (H_2S) (effective 12/6/2019)

Subchapter C. Air Quality Area Classifications

Part 287. Nassau County (effective 5/1/1972)

Part 288. New York City (effective 5/1/1972)

Part 307. Suffolk County (effective 5/1/1972)

Part 315. Westchester County (effective 5/1/1972)

* * * * *

[FR Doc. 2022–19782 Filed 9–13–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0244; FRL–10167–01–OCSPP]

Hypochlorous Acid; Exemption From the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is exempting residues of the antimicrobial pesticide ingredient hypochlorous acid from the requirement of a tolerance when used on or applied to food-contact surfaces in public eating places. The EPA is finalizing this rule on its own initiative under the Federal Food, Drug, and Cosmetic Act (FFDCA) to address residues identified as part of the EPA's registration review program under the Federal Insecticide,

Fungicide, and Rodenticide Act (FIFRA).

DATES: This regulation is effective September 14, 2022. Objections and requests for hearings must be received on or before November 14, 2022 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

ADDRESSES: The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2020–0244, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and the OPP Docket is (202) 566–1744. For the latest status information on EPA/DC services, docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Anita Pease, Antimicrobials Division 7510M, Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: 202–566–0737; email address: *pease.anita@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are a pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. How can I get electronic access to other related information?

You may access a frequently updated electronic version of 40 CFR part 180 through the office of the Federal Register's e-CFR site at *https://www.ecfr.gov/current/title-40.*

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

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket ID numbers EPA–HQ–OPP–2020–0244 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before November 14, 2022. Addresses for mail and hand delivery of objections and hearing requests are provided in 40 CFR 178.25(b).

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2020–0244, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be CBI or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets.*

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

II. Summary of Rule-For Exemption

What action is the Agency taking?

In the **Federal Register** of May 17, 2022 (87 FR 29843) (FRL–9460–01), EPA proposed to exempt residues of the antimicrobial pesticide ingredient hypochlorous acid from the requirement of a tolerance when used on or applied to food-contact surfaces in public eating places. This exemption covers residues of hypochlorous acid that may be found in food as a result of the use of these antimicrobials on food-contact surfaces in public eating places. These exemptions were proposed on EPA's own initiative under section 408(e) of the FFDCA, 21 U.S.C. 346a(e). No comments were received on EPA's proposal. Therefore, EPA is finalizing the exemption from the requirement of a tolerance for residues of the antimicrobial pesticide ingredient hypochlorous acid when used on or applied to food-contact surfaces in public eating places.

III. Aggregate Risk Assessment and Determination of Safety

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

Consistent with FFDCA section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure to support the establishment of exemptions from the requirement of a tolerance for residues of hypochlorous acid.

As noted in the ''Hypochlorous Acid Interim Decision'', there are tolerance exemptions under 40 CFR 180.940(b) and (c), which state that solutions containing hypochlorous acid may be applied to dairy-processing equipment, and food-processing equipment and utensils, with the limitation that the end-use concentration of hypochlorous acid does not exceed 200 parts per

million (ppm) determined as total available chlorine. Because the current tolerance exemptions do not cover the antimicrobial products registered for use in public eating areas, the EPA is now establishing a tolerance exemption under section 40 CFR 180.940(a), which would cover all food-contact uses of hypochlorous acid pesticide products in public eating areas not to exceed 200 ppm determined as total available chlorine.

EPA's safety determination for establishing a hypochlorous acid tolerance exemption under section 40 CFR 180.940(a) is based on chemical similarity to sodium, calcium, and potassium hypochlorites. Hypochlorous acid risk conclusions, including those related to dietary and aggregate exposure, can be bridged to the risk conclusions from the reevaluation of the sodium, calcium, and potassium hypochlorites (see docket EPA–HQ–OPP–2012–0004 at *https://www.regulations.gov*). Because EPA did not identify any dietary or aggregate risks of concern for the sodium, calcium, and potassium hypochlorites, due to the lack of toxicity of these substances, there are no dietary or aggregate risks of concern for hypochlorous acid due to a lack of toxicity for hypochlorous acid. For further information, the ''Hypochlorous Acid Interim Decision'' can be found at *https://www.regulations.gov* in docket identification number EPA–HQ–OPP–2020–0244.

Based on the lack of any aggregate risks of concern, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or specifically to infants and children, from aggregate exposure to hypochlorous acid residues. Thus, EPA has determined that the exemption from the requirement of a tolerance for residues of hypochlorous acid is safe.

IV. Analytical Enforcement Methodology

An analytical method for residue is not required for enforcement purposes since the EPA is not establishing a numerical tolerance for residues of hypochlorous acid in or on any food commodities. EPA is establishing limitations on the amount of hypochlorous acid that may be used in antimicrobial pesticide formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils. These limitations will be enforced through the pesticide registration process under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 *et seq*. EPA will not register any antimicrobial pesticide formulation applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils that allows for the end-use concentration of hypochlorous acid in the ready to use product to exceed the 200 ppm limit determined as total available chlorine.

V. Conclusion

Therefore, EPA is establishing an exemption under 40 CFR 180.940(a) from the requirement of a tolerance for residues of hypochlorous acid when used in antimicrobial formulations applied to food-contact surfaces in public eating places, dairy-processing equipment, and food-processing equipment and utensils not to exceed 200 ppm determined as total available chlorine. Because the existing entries for hypochlorous acid in paragraphs (b) and (c) are duplicative of the new exemption in paragraph (a) of section 40 CFR 180.940, EPA is removing the tolerance exemptions for hypochlorous acid in paragraphs (b) and (c), as unnecessary.

VI. Statutory and Executive Order Reviews

This action establishes an exemption from the requirement of a tolerance under FFDCA section 408(e). The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866 due to its lack of significance, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001). This action does not contain any information collection subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.,*) or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq*.). Nor does it require any special considerations as required by Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994); or OMB review or any other Agency action under Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require EPA consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq*.), the EPA previously assessed whether establishment of tolerances, exemptions from tolerances, raising of tolerance levels, expansion of exemptions, or revocations might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. These analyses for tolerance establishments and modifications, and for tolerance revocations were published in the **Federal Register** of May 4, 1981 (46 FR 24950) and December 17, 1997 (62 FR 66020), respectively, and were provided to the Chief Counsel for Advocacy of the Small Business Administration. Taking into account this analysis, and available information concerning the pesticide listed in this rule, the EPA hereby certifies that this action will not have a significant negative economic impact on a substantial number of small entities. Furthermore, for the pesticide named in this rule, the EPA knows of no extraordinary circumstances that exist as to the present rule that would change EPA's previous analysis. No comments were submitted concerning EPA's similar determination in the rule.

In addition, the EPA has determined that this action will not have a substantial direct effect on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure ''meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.'' ''Policies that have federalism implications'' is 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.'' This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. This

action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the EPA has determined that this action does not have any ''tribal implications'' as described in Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000). Executive Order 13175 requires EPA to develop an accountable process to ensure ''meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications.'' ''Policies that have tribal implications'' is defined in the executive order to include regulations that have ''substantial direct effects on one or more Indian Tribes, on the relationship between the Federal Government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes.'' This action will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian Tribes, or on the distribution of power and responsibilities between the Federal Government and Indian Tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: September 7, 2022.

Anita Pease,

Director, Antimicrobials Division, Office of Pesticide Programs.

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

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

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

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

■ 2. Amend § 180.940, by:

■ a. Adding in alphabetical order the pesticide chemical ''Hypochlorous Acid'' in table 1 to paragraph (a).

■ b. Removing the entry ''Hypochlorous Acid'' from the table in paragraph (b).

■ c. Removing the entry ''Hypochlorous Acid'' from the table in paragraph (c).

The addition reads as follows:

§ 180.940 Tolerance exemptions for active and inert ingredients for use in antimicrobial formulations (Food-contact surface sanitizing solutions).

* * * * *

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Pesticide chemical	CAS Reg. No.	Limits
*	*	* * * * *
Hypochlorous Acid	7790–92–3	When ready for use, the end-use concentration of all hypochlorous acid chemicals in the solution is not to exceed 200 ppm determined as total available chlorine.
*	*	* * * * *

* * * * *

[FR Doc. 2022–19799 Filed 9–13–22; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register

Vol. 87, No. 177

Wednesday, September 14, 2022

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

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1158; Project Identifier MCAI–2022–00771–E]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce Deutschland Ltd & Co KG (Type Certificate Previously Held by Rolls-Royce plc) Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–710A1–10, BR700–710A2–20, and BR700–710C4–11 model turbofan engines. This proposed AD was prompted by reports of cracks on certain low-pressure compressor (LPC) rotor (fan) disks. This proposed AD would require initial and repetitive visual inspections of certain LPC rotor fan disks and, depending on the results of the inspections, replacement of any LPC rotor fan disk with cracks detected. This proposed AD would also allow modification of the engine in accordance with RRD service information as a terminating action to these inspections, as specified in a European Union Aviation Safety Agency (EASA) AD, which is proposed for incorporation by reference (IBR). 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 31, 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–2022–1158; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material that is proposed for IBR in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; phone +49 221 8999 000; email *ADs@easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *sungmo.d.cho@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–2022–1158; Project Identifier MCAI–2022–00771–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in 14 CFR 11.35, the FAA will post all comments received, without change, to *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 Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803. Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

EASA, which is the Technical Agent for the Member States of the European Union, has issued EASA AD 2022–0110, dated June 15, 2022 (EASA AD 2022–0110), to address an unsafe condition for certain RRD BR700–710A1–10, BR700–710A2–20, and BR700–710C4–11 model turbofan engines. The MCAI states that there have been reports of cracks on certain LPC rotor fan disks. The FAA is proposing this AD to prevent failure of the LPC rotor fan or blade. This condition, if not addressed, could result in high energy debris release, damage to the airplane, and reduced control of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2022–1158.

FAA's Determination

This product has been approved by the aviation authority of another

country, and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with the State of Design Authority, the FAA has been notified of the unsafe condition described in the EASA AD. The FAA is issuing this AD after determining that the unsafe condition described previously is likely to exist or develop in other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed EASA AD 2022–0110. EASA AD 2022–0110 specifies procedures for initial and repetitive visual inspections of certain LPC rotor fan disks, and replacement of any LPC rotor fan disk with cracks detected.

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

Other Related Service Information

The FAA reviewed RRD BR700 Series Propulsion System Service Bulletin (SB) SB–BR700–72–101474, Revision 1, dated November 18, 2014 (RRD BR700 Series Propulsion System SB SB–BR700–72–101474); RRD BR700 Series Propulsion System SB SB–BR700–72–101952, Initial Issue, dated December 1, 2016 (RRD BR700 Series Propulsion System SB SB–BR700–72–101952); and RRD BR700 Series Propulsion System SB SB–BR700–72–A900732, Initial Issue, dated June 7, 2022 (RRD BR700 Series Propulsion System SB SB–BR700–72–A900732).

RRD BR700 Series Propulsion System SB–BR700–72–101474 and RRD BR700 Series Propulsion System SB SB–BR700–72–101952 describe procedures for the modification of the engine as a terminating action to the initial and repetitive visual inspections of certain LPC rotor fan disks. RRD BR700 Series Propulsion System SB SB–BR700–72–A900732 specifies procedures for initial and repetitive visual inspections of certain LPC rotor fan disks.

Proposed AD Requirements in This NPRM

This proposed AD would require accomplishing the actions specified in EASA AD 2022–0110, described previously, as incorporated by reference, except for any differences identified as exceptions in the regulatory text of this proposed AD and except as discussed under ''Differences Between This Proposed AD and the EASA AD.''

Differences Between This Proposed AD and the EASA AD

Where EASA AD 2022–0110 requires compliance from its effective date, this proposed AD would require using the effective date of this AD.

This AD does not require compliance with the ''Remarks'' section of EASA AD 2022–0110.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 2,068 engines installed on airplanes of U.S. Registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspect LPC compressor rotor fan disk	4 work-hours × $85 per hour = $340	$0	$340	$703,120

The FAA estimates the following costs to do any necessary replacements 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 replacements:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per product
Replace LPC compressor rotor fan disk.	10 work-hours × $85 per hour = $850.	$470,000	$470,850

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:

Rolls-Royce Deutschland Ltd & Co KG (Type Certificate previously held by Rolls-Royce plc): Docket No. FAA–2022–1158; Project Identifier MCAI–2022–00771–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 31, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Rolls-Royce Deutschland Ltd & Co KG (RRD) BR700–710A1–10, BR700–710A2–20, and BR700–710C4–11 model turbofan engines as identified in European Union Aviation Safety Agency AD 2022–0110, dated June 15, 2022 (EASA AD 2022–0110).

(d) Subject

Joint Aircraft Service Component (JASC) Code 7230, Turbine Engine Compressor Section.

(e) Unsafe Condition

This AD was prompted by reports of cracks on certain low-pressure compressor (LPC) rotor (fan) disks. The FAA is issuing this AD to prevent failure of the LPC rotor fan or blade. The unsafe condition, if not addressed, could result in high energy debris release, damage to the airplane, and reduced control of the airplane.

(f) Compliance

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

(g) Required Actions

Except as specified in paragraphs (h) and (i) of this AD: Perform all required actions within the compliance times specified in, and in accordance with, EASA AD 2022–0110.

(h) Exceptions to EASA AD 2022–0110

(1) Where EASA AD 2022–0110 requires compliance from its effective date, this AD requires using the effective date of this AD.

(2) The ''Remarks'' section of EASA AD 2022–0110 is not incorporated by reference in this AD.

(i) No Reporting Requirement

Although the service information referenced in EASA AD 2022–0110 specifies to submit certain information to the manufacturer, this AD does not include that requirement.

(j) Alternative Methods of Compliance (AMOCs)

The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in § 39.19. In accordance with § 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (k)(2) of this AD or email to: *ANE-AD-AMOC@faa.gov.* Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(k) Additional Information

(1) For service information identified in EASA AD 2022–0110, contact Rolls-Royce plc, Corporate Communications, P.O. Box 31, Derby, DE24 8BJ, United Kingdom; phone: +44 (0)1332 242424; fax: +44 (0)1332 249936; website: *rolls-royce.com/contact-us.aspx.*

(2) For more information about this AD, contact Sungmo Cho, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7241; email: *sungmo.d.cho@faa.gov.*

(l) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency AD 2022–0110, dated June 15, 2022.

(ii) [Reserved]

(3) You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(4) 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 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–19596 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–1159; Project Identifier AD–2022–00692–E]

RIN 2120–AA64

Airworthiness Directives; Continental Aerospace Technologies, Inc. Reciprocating Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to supersede Airworthiness Directive (AD) 2022–04–04, which applies to certain Continental Aerospace Technologies, Inc. (Continental) C–125, C145, IO–360, IO–470, IO–550, O–300, O–470, TSIO–360, and TSIO–520 series model reciprocating engines and certain Continental Motors IO–520 series model reciprocating engines with a certain oil filter adapter installed. AD 2022–04–04 requires replacing the oil filter adapter fiber gasket (fiber gasket) with an oil filter adapter copper gasket (copper gasket). Since the FAA issued AD 2022–04–04, the FAA determined that the reciprocating engines identified in the applicability of AD 2022–04–04 are incorrect. This proposed AD would require replacing the fiber gasket with the copper gasket or the stainless steel embedded within polytetrafluoroethylene gasket (stainless steel PTFE gasket). This proposed AD would also revise the applicability to add and remove certain reciprocating engine models, update the required actions to add an additional part-numbered stainless steel PTFE gasket as a replacement part, and revise the special flight permit paragraph to expand the limitations. 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 31, 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 by searching for and locating Docket No. FAA–2022–1159; 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.

Material Incorporated by Reference:

• For Stratus Tool Technologies service information identified in this NPRM, contact Stratus Tool Technologies, LLC, 2208 Air Park Drive, Burlington, NC 27215; phone: (800) 822–3200; website: *tempestplus.com.*

• You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

FOR FURTHER INFORMATION CONTACT: George Hanlin, Aviation Safety Engineer, Atlanta ACO, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5584; 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–2022–1159; Project Identifier AD–2022–00692–E'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend 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 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 George Hanlin, Aviation Safety Engineer, Atlanta ACO, FAA, 1701 Columbia Avenue, College Park, GA 30337. Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA issued AD 2022–04–04, Amendment 39–21945 (87 FR 9435, February 22, 2022) (AD 2022–04–04), for certain Continental (Type Certificate previously held by Continental Motors, Inc., and Teledyne Continental Motors) C–125–1, C–125–2, C145–2, C145–2H, IO–360–C, IO–360–D, IO–360–DB, IO–360–H, IO–360–HB, IO–360–K, IO–360–KB, IO–470–E, IO–470–S, IO–550–B, IO–550–G, O–300–B, O–300–C, O–300–D, O–300–E, O–470–A, O–470–B, O–470–G, O–470–J, O–470–K, O–470–L, O–470–M, O–470–N, O–470–R, O–470–S, O–470–U, O–470–11, O–470–15, TSIO–360–E, TSIO–360–EB, TSIO–360–F, TSIO–360–FB, TSIO–360–GB, TSIO–360–LB, TSIO–360–MB, TSIO–360–SB, TSIO–520–C, TSIO–520–CE, TSIO–520–E, and TSIO–520–UB model reciprocating engines; and certain Continental Motors (Type Certificate previously held by Teledyne Continental Motors) IO–520–A, IO–520–B, IO–520–BA, IO–520–BB, IO–520–C, IO–520–D, IO–520–J, and IO–520–L model reciprocating engines. AD 2022–04–04 was prompted by reports of two accidents that were the result of power loss due to oil starvation. AD 2022–04–04 requires replacing the fiber gasket with a copper gasket. The agency issued AD 2022–04–04 to prevent loss of engine power.

Actions Since AD 2022–04–04 Was Issued

Since the FAA issued AD 2022–04–04, the FAA determined that the reciprocating engines identified in the applicability of AD 2022–04–04 are incorrect. Certain model reciprocating engines were inadvertently included in the applicability paragraph of AD 2022–04–04; and certain other model reciprocating engines were inadvertently omitted in the applicability paragraph of AD 2022–04–04. Further, after the FAA issued AD 2022–04–04, the FAA approved an additional part-numbered stainless steel PTFE gasket, in addition to the copper gasket, which was previously approved as a replacement part. The FAA, therefore, is proposing to supersede AD 2022–04–04 to revise the applicability by adding and removing certain model reciprocating engines, to update the required actions by adding stainless steel PTFE gasket, part number ST07, as a replacement part, and to revise the special flight permit paragraph by expanding the limitations.

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 Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev B, dated June 17, 2021. This service information specifies procedures for removing a fiber gasket and replacing it with a copper gasket. The Director of the Federal Register previously approved the incorporation by reference of this service information as of March 29, 2022 (87 FR 9435, February 22, 2022). 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 retain certain requirements of AD 2022–04–04. This proposed AD would require replacing the fiber gasket with the copper gasket or the stainless steel PTFE gasket. This proposed AD would also revise the applicability to add and remove certain reciprocating engine models, update the required actions to add an additional part-numbered stainless steel PTFE gasket as a replacement part, and revise the special flight permit paragraph to expand the limitations.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 6,300

engines installed on airplanes of U.S. registry.

The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Replace fiber gasket with copper gasket or stainless steel PTFE gasket.	2.5 work-hours × $85 per hour = $212.50	$34	$246.50	$1,552,950

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 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 2022–04–04, Amendment 39–21945 (87 FR 9435, February 22, 2022); and

■ b. Adding the following new airworthiness directive:

Continental Aerospace Technologies, Inc.: Docket No. FAA–2022–1159; Project Identifier AD–2022–00692–E.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by October 31, 2022.

(b) Affected ADs

This AD replaces AD 2022–04–04, Amendment 39–21945 (87 FR 9435, February 22, 2022).

(c) Applicability

This AD applies to Continental Aerospace Technologies, Inc. C–125–1, C–125–2, C145–2, C145–2H, GO–300–A, GO–300–B, GO–300–C, GO–300–D, GO–300–E, GO–300–F, IO–360–C, IO–360–D, IO–360–DB, IO–360–H, IO–360–HB, IO–360–K, IO–360–KB, IO–470–C, IO–470–D, IO–470–H, IO–470–J, IO–470–K, IO–470–L, IO–470–M, IO–470–N, IO–470–S, IO–470–U, IO–470–V, IO–520–A, IO–520–D, IO–520–F, IO–520–J, IO–520–K, IO–520–L, IO–550–D, IO–550–E, IO–550–F, O–300–A, O–300–B, O–300–C, O–300–D, O–300–E, O–470–A, O–470–B, O–470–G, O–470–J, O–470–K, O–470–L, O–470–M, O–470–N, O–470–R, O–470–S, O–470–U, O–470–11, O–470–15, TSIO–360–E, TSIO–360–EB, TSIO–360–F, TSIO–360–FB, TSIO–360–GB, TSIO–360–LB, TSIO–360–MB, TSIO–360–SB, TSIO–470–C, TSIO–520–C, TSIO–520–G, and TSIO–520–H model reciprocating engines equipped with an F&M Enterprises, Inc. (F&M), or Stratus Tool Technologies, LLC (Stratus) oil filter adapter installed per Supplemental Type Certificate SE8409SW, SE09356SC, or SE10348SC.

(d) Subject

Joint Aircraft System Component (JASC) Code 8550, Reciprocating Engine Oil System.

(e) Unsafe Condition

This AD was prompted by reports of two accidents that were the result of power loss due to oil starvation. The FAA is issuing this AD to prevent loss of engine power. The unsafe condition, if not addressed, could result in failure of the engine, in-flight shutdown, and loss of control of the airplane.

(f) Compliance

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

(g) Required Actions

Before accumulating 50 flight hours after the effective date of this AD or at the next scheduled oil change after the effective date of this AD, whichever occurs first, remove any F&M or Stratus oil filter adapter fiber gasket from service and replace it with an oil filter adapter copper gasket, part number (P/N) AN900–28, P/N AN900–29, or a stainless steel polytetrafluoroethylene gasket, P/N ST07, as applicable, in accordance with the Compliance Instructions, paragraph 6., pages 7 through 10 (including all detailed instructions for Figure 5 through Figure 16), of Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev B, dated June 17, 2021.

(h) Installation Prohibition

After the effective date of this AD, do not install an F&M or Stratus oil filter adapter fiber gasket onto any affected engine.

(i) Special Flight Permit

A special flight permit may be issued in accordance with 14 CFR 21.197 and 21.199 to permit a one-time non-revenue ferry flight to operate the airplane to the nearest location where the maintenance action can be performed provided that the engine oil pressure and engine oil temperatures are in their allowable ranges and there is no noticeable increase in engine noise. This flight must be performed with no passengers on board.

(j) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector,

or lacking a principal inspector, the manager of the local flight standards district office/certificate holding district office.

(3) AMOCs approved for AD 2022–04–04 (87 FR 9435, February 22, 2022) are approved as AMOCs for the corresponding provisions of this AD.

(k) Related Information

For more information about this AD, contact George Hanlin, Aviation Safety Engineer, Atlanta ACO, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: (404) 474–5584; email: *9-ASO-ATLACO-ADs@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 the AD specifies otherwise.

(3) The following service information was approved for IBR on March 29, 2022 (87 FR 9435, February 22, 2022).

(i) Stratus Tool Technologies Mandatory Service Bulletin SB–001 Rev B, dated June 17, 2021.

(ii) [Reserved]

(4) For Stratus Tool Technologies, LLC, 2208 Air Park Drive, Burlington, NC 27215; phone: (800) 822–3200; website: *tempestplus.com.*

(5) You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

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

Issued on September 7, 2022.

Christina Underwood,

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

[FR Doc. 2022–19704 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–13–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1610

[Docket No. CPSC–2019–0008]

Standard for the Flammability of Clothing Textiles; Notice of Proposed Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) is proposing to amend the Standard for the Flammability of Clothing Textiles. The proposed revisions would clarify existing provisions, expand permissible equipment and materials, and update equipment requirements that are outdated. The Commission is providing an opportunity for interested parties to present written and oral comments on this notice of proposed rulemaking (NPR). Both written and oral comments will be part of the rulemaking record.

DATES: *Deadline for Written Comments:* Submit comments by November 14, 2022.

Deadline for Request to Present Oral Comments: Any person interested in making an oral presentation must send an email indicating this intent to the Office of the Secretary at *cpsc-os@cpsc.gov* by October 31, 2022.

ADDRESSES: Submit comments, identified by Docket No. CPSC–2019–0008, by any of the following methods:

Electronic Submissions: Submit electronic comments to the Federal eRulemaking Portal at: *https://www.regulations.gov.* Follow the instructions for submitting comments. CPSC typically does not accept comments submitted by electronic mail (email), except as described below. CPSC encourages you to submit electronic comments by using the Federal eRulemaking Portal.

Mail/Hand Delivery/Courier Written Submissions: Submit comments by mail/hand delivery/courier to: Office of the Secretary, Consumer Product Safety Commission 4330 East West Highway, Bethesda, MD 20814; telephone: (301) 504–7479. If you wish to submit confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public, you may submit such comments by mail, hand delivery, or courier, or you may email them to: *cpsc-os@cpsc.gov.*

Instructions: All submissions must include the agency name and docket number for this notice. CPSC may post all comments without change, including any personal identifiers, contact information, or other personal information provided, to: *https://www.regulations.gov.* Do not submit electronically: confidential business information, trade secret information, or other sensitive or protected information that you do not want to be available to the public. If you wish to submit such information, please submit it according to the instructions for mail/hand delivery/courier written submissions.

Docket: To read background documents or comments regarding this proposed rulemaking, go to: *https://www.regulations.gov,* insert docket number CPSC–2019–0008 in the ''Search'' box, and follow the prompts.

FOR FURTHER INFORMATION CONTACT: Paige Witzen, Project Manager, U.S. Consumer Product Safety Commission, 5 Research Place, Rockville, MD 20852; telephone (301) 987–2029; email: *PWitzen@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. History of the Standard for the Flammability of Clothing Textiles

Congress enacted the Flammable Fabrics Act (FFA; 15 U.S.C. 1191–1204) in 1953, to prohibit the importation, manufacture for sale, or the sale in commerce of any fabric or article of wearing apparel that is ''so highly flammable as to be dangerous when worn by individuals.'' [1] The FFA of 1953 required that a test, first published by the Department of Commerce as a voluntary commercial standard, then called ''Flammability of Clothing Textiles, Commercial Standard 191–53'' (CS 191–53), be used to determine if fabric or clothing is ''so highly flammable as to be dangerous when worn by individuals.'' In 1975, the Commission codified CS 191–53 as the Standard for the Flammability of Clothing Textiles at 16 CFR part 1610 (Standard). 40 FR 59884 (Dec. 30, 1975).[2] The Commission has since amended 16 CFR part 1610 several times to clarify requirements and update outdated materials, equipment, and technologies.[3]

B. The Current Standard

The purpose of the Standard is to reduce the risk of injury and death by providing a national standard for testing and rating the flammability of textiles and textile products used for clothing. 16 CFR 1610.1(a). The Standard includes test equipment, materials, and procedures for testing the flammability of clothing textiles. As a general

[1] Public Law 83–88, 67 Stat. 111 (June 30, 1953).

[2] In 1967, Congress amended the FFA to allow for rulemaking to issue flammability standards. Public Law 90–189, 67 Stat. 112 (Dec. 14, 1967). Congress transferred the authority to administer the FFA, including issuing regulations, to CPSC in 1972. 15 U.S.C. 2079(b).

[3] *See, e.g.,* 59 FR 33193 (June 28, 1994) (removing the names of firms that supplied components of the test apparatus and equipment because additional firms had since entered the market); 73 FR 15636 (Mar. 25, 2008) (revising definitions and the test procedure to reduce confusion, updating test equipment and methods to reflect currently available materials, and revising burn codes to improve accuracy and consistency).

overview,[4] the Standard includes specifications for a flammability test apparatus, which consists of a chamber that contains an ignition mechanism, sample rack, and timing mechanism. The test procedure generally involves placing a specimen in the test apparatus, stringing stop thread across the top of the specimen, activating a trigger device that impinges a flame, and recording the time it takes to sever the stop thread and observations of the burn behavior of the specimen. This test is performed before and after refurbishing the specimen, which involves specified methods of dry cleaning and laundering, and must be performed on multiple specimens.

After testing, the burn time (*i.e.,* the time elapsed from ignition until the stop thread is severed) and burn behavior are used to identify appropriate test result codes (*i.e.,* burn codes) and determine the classification of the textile. Class 1 textiles exhibit normal flammability and are acceptable for use in clothing; Class 2 textiles exhibit intermediate flammability and may be used for clothing; and Class 3 textiles exhibit rapid and intense burning, are dangerously flammable, and are not permitted for clothing. The criteria for each classification differ for plain surface textile fabrics and raised surface textile fabrics.

Section 1610.40 of the Standard permits the use of alternative apparatus, procedures, or criteria for tests for guaranty purposes. The FFA states that no person will be subject to prosecution for failing to comply with flammability requirements if that person has a guaranty, meeting specific requirements, that indicates that reasonable and representative tests confirmed compliance with flammability requirements issued under the statute. 15 U.S.C. 1197. For purposes of supporting guaranties, § 1610.40(c) of the Standard states that ''reasonable and representative tests'' could be either the flammability tests required in the Standard or ''alternate tests which utilize apparatus or procedures other than those'' in the Standard. The Standard specifies that for persons or firms issuing guaranties to use an alternative apparatus or procedure, the alternative must be ''as stringent as, or more stringent than'' the test in the Standard, which the Commission will consider met ''if, when testing identical specimens, the alternative test yields failing results as often as, or more often than,'' the test in the Standard.

Section 1610.40 sets out conditions for using this allowance. A person or firm using the allowance ''must have data or information to demonstrate that the alternative test is as stringent as, or more stringent than,'' the test in the Standard, and retain that information while using the alternative and for one year after. 16 CFR 1610.40(d)(1), (2), (3), and (f). Section 1610.40 specifies that the Commission will test fabrics in accordance with the Standard and will consider any failing results evidence of non-compliance and a false guaranty. *Id.* 1610.40(e), (g).

C. History of This Rulemaking

In 2019, the Commission published a Request for Information (RFI), seeking information about the equipment and procedures in the Standard and possible ways to update those provisions to reduce testing burdens, improve clarity, and reflect current industry practices and technologies. 85 FR 16797 (Apr. 23, 2019). The RFI requested information about the clarity of the test result codes, availability and clarity of the stop thread specification, restrictions on the dry cleaning solvent, and availability of machines meeting the laundering specifications in the Standard.[5] Based on feedback received in response to the RFI, as well as CPSC staff's testing and other information, the Commission now proposes to amend the Standard to update and clarify these provisions.[6] For additional details, see CPSC staff's briefing package supporting this notice.[7]

D. The Product and Risk of Injury[8]

The Standard applies to all items of clothing and fabrics intended to be used for clothing (*i.e.,* articles of wearing apparel), whether for adults or children, for daywear or nightwear,[9] with certain listed exclusions.[10]

Between January 1, 2016, and December 31, 2020 (the most recent year for which data are available), there were an average of 81 deaths annually in the United States that involved ignition of clothing. An average of 2.2 of these fatalities involved ignition or melting of nightwear, and an average of 78.2 of these fatalities involved ignition or melting of other clothing. Between 2000 and 2020, the number of clothing fire deaths declined, overall. In addition, using CPSC's National Electronic Injury Surveillance System (NEISS),[11] staff estimates that between January 1, 2017, and December 31, 2021 (the most recent year for which data are complete), there were an average of 5,300 nonfatal injuries annually that were associated with clothing ignition treated in U.S. hospital emergency departments.

II. Statutory Requirements for Revising the Standard

The FFA specifies the requirements for the Commission to issue or amend a flammability standard. The Commission may initiate rulemaking by issuing an advance notice of proposed rulemaking (ANPR) or an NPR. 15 U.S.C. 1193(g). The Commission is initiating this rulemaking with an NPR. The FFA requires that an NPR include the text of the proposed rule, any alternatives the Commission proposes, and a preliminary regulatory analysis. *Id.* 1193(i). The preliminary regulatory analysis must include:

- a preliminary description of the potential benefits and costs of the proposed rule, including benefits and costs that cannot be quantified, and who is likely to receive the benefits and bear the costs;
- a discussion of the reasons the Commission did not publish any standard or portion of a standard submitted in response to an ANPR as the proposed rule or part of it;
- a discussion of the reasons for the Commission's preliminary

[4] See 16 CFR part 1610 for details regarding test equipment, materials, and procedures, as well as exceptions.

[5] The RFI also sought input on the possibility of adding spandex to the list of fabrics that are exempt from testing requirements in 16 CFR part 1610. However, comments on the RFI and additional staff research did not provide sufficient information to justify such an exemption at this time. See *Status Update: 16 CFR part 1610 Rule Update and Consideration for Adding Spandex Fibers to the List of Currently Exempted Fibers from Testing* (Sep. 30, 2020), available at: *https://www.cpsc.gov/s3fs-public/StatusUpdate-16CFRPart1610RuleUpdateandConsiderationforAddingSpandexFiberstotheListofCurrentlyExemptedFibers-from-Testing.pdf.*

[6] The Commission voted 5–0 to issue this document.

[7] Available at: *https://www.cpsc.gov/s3fs-public/Proposed-Rule-to-Amend-the-Standard-for-the-Flammability-of-Clothing-Textiles-16-CFR-part-1610.pdf?VersionId=4QrYt7W05qY5gEiFf_ohdwT4j8.FGDoR.*

[8] For detailed information about the risk of injury, see Tab A of staff's briefing package supporting this document.

[9] Other regulations governing the flammability of children's sleepwear, in 16 CFR parts 1615 and 1616, are more stringent than the general wearing apparel flammability standard in 16 CFR part 1610. The proposed changes discussed in this document would not affect the children's sleepwear standards.

[10] Excluded products include certain hats, gloves, footwear, interlining fabrics, plain surface fabrics meeting specified criteria, and fabrics made from certain fibers that, from years of experience, have been shown to consistently yield acceptable results when tested in accordance with the Standard. 16 CFR 1610.1(c) and (d).

[11] NEISS uses a probability sample of about 100 hospitals in the United States that represent all U.S. hospitals with emergency departments to identify and generate national estimates of nonfatal injuries treated in emergency departments.

determination that efforts submitted to the Commission in response to an ANPR to develop or modify a voluntary standard would not be likely, within a reasonable period, to result in a voluntary standard that would eliminate or adequately reduce the risk of injury at issue; and

• a description of reasonable alternatives to the proposed rule, a summary of their potential costs and benefits, and a brief explanation of the reasons the Commission did not choose the alternatives.

Id.

To issue a final rule, the Commission must publish a final regulatory analysis and make certain findings. *Id.* 1193(b), (j)(1), (j)(2). At the NPR stage, the Commission makes these findings on a preliminary basis to allow the public to comment on them. The Commission must find that each regulation or amendment:

• is needed to adequately protect the public from unreasonable risk of the occurrence of fire leading to death, injury, or significant property damage;

• is reasonable, technologically practicable, and appropriate;

• is limited to fabrics, related materials, or products that present such unreasonable risks; and

• is stated in objective terms.

Id. 1193(b). In addition, to promulgate a regulation, the Commission must make the following findings and include them in the rule:

• if a voluntary standard addressing the risk of injury has been adopted and implemented, that either compliance with the voluntary standard is not likely to result in the elimination or adequate reduction of the risk or injury, or it is unlikely that there will be substantial compliance with the voluntary standard;

• that the benefits expected from the rule bear a reasonable relationship to its costs; and

• that the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury.

Id. 1193(j)(2).

When issuing an NPR under the FFA, the Commission also must comply with section 553 of the Administrative Procedure Act (APA; 5 U.S.C. 551–559), which requires the Commission to provide notice of a rule and the opportunity for interested parties to submit written data, views, or arguments on it. 5 U.S.C. 553(c); 15 U.S.C. 1193(d). In addition, the FFA requires the Commission to provide interested parties with an opportunity to make oral presentations of data, views, or arguments. *Id.* 1193(d).

III. Description of and Basis for the Proposed Revisions

A. Test Result Codes [12]

1. Current Requirements

As described above, the burn time and burn behavior of tested specimens are used to determine the classification of a textile, and classifications determine whether the fabric may be used for clothing. Section 1610.8 of the Standard lists test result codes (*i.e.,* burn codes) that are used to record burn time and burn behavior results and help determine the appropriate classification.[13] The burn codes and classification criteria are different for plain and raised surface textile fabrics. Section 1610.2(l) and (k) define ''plain surface textile fabrics'' and ''raised surface textile fabrics.'' In general, plain surface textile fabrics do not have intentionally raised fiber or yarn surfaces, whereas, raised surface textile fabrics have intentionally raised fiber or yarn surfaces and consist of the base of the fabric, which is the fabric's structure, and the surface fibers that are raised from the base. Common examples of raised surface textile fabrics include velvet or terry cloth.

For plain surface textile fabrics, classification is based primarily on burn times. The Standard provides three possible burn codes for plain surface textile fabrics:

• DNI (did not ignite);

• IBE (ignited, but extinguished); and

• _._sec. (indicating the burn time).

Fabrics that yield DNI or IBE burn codes have no recordable burn time and are considered Class 1 fabrics. Plain surface textile fabrics with a burn time of 3.5 seconds or more are Class 1; those with a burn time of less than 3.5 seconds are Class 3; and there is no Class 2 option for plain surface fabrics.

For raised surface textile fabrics, classification is based on burn time and the intensity of the surface burning. Burn behaviors for raised surface textile fabrics fall into two general categories of intensity—surface flashes and base burns—and each category has specific burn codes associated with it. As described above, raised surface textile fabrics consist of a base and intentionally raised surface fibers. Burn behavior that involves only surface fibers is called surface flash, whereas, burn behavior that burns through the base is called a base burn, which involves the base fabric igniting or fusing. Both burn time and burn behavior are relevant to classification of these fabrics because a rapid surface flash that quickly breaks the stop thread but does not burn through the base of the fabric is not considered dangerously flammable; it is the combination of burning rapidly and through the base that results in a dangerously flammable fabric.

The Standard provides eight possible burn codes for raised surface textile fabrics:

• SF uc (surface flash under the stop thread);

• SF pw (surface flash part way, meaning it did not reach the stop thread);

• SF poi (surface flash at the point of impingement only);

• _._sec. (indicating the burn time);

• _._SF only (surface flash with a burn time);

• _._SFBB (surface flash with a base burn starting somewhere other than the point of impingement);

• _._SFBB poi (surface flash with base burn starting at the point of impingement); and

• _._SFBB poi* (surface flash with base burn where the base burn possibly started at the point of impingement, but testing was unable to make an absolute determination of the origin of the base burn).

Burn codes SF uc, SF pw, SF poi, and _._SF only apply when there is a surface flash and no base burn. Burn codes SFBB, SFBB poi, and SFBB poi* apply when the surface fiber and the base of the fabric are involved in the burning behavior (*i.e.,* both surface flash and base burn occur). Burn code _._sec. provides only the burn time, with no indication of burning behavior.

Raised surface textile fabrics are Class 1 if they either have a burn time greater than 7.0 seconds or they have a burn time of 0–7 seconds with no base burns (*i.e.,* the fabric exhibits only surface flash and no base burn). These fabrics are Class 2 if they have a burn time of 4 to 7 seconds (inclusive) and exhibit a base burn. These fabrics are Class 3 if they have a burn time of less than 4.0 seconds and exhibit a base burn.

[12] For additional information regarding burn codes and the proposed revisions to them, see Tab B of staff's briefing package supporting this notice.

[13] Criteria for classifications are provided in Table 1 to § 1610.4, and in § 1610.7. Because multiple specimens must be tested under the Standard, both before and after refurbishing, burn codes and classifications are based on the results of multiple tested specimens. The Standard specifies how to determine appropriate burn codes and classifications in light of these multiple results. See §§ 1610.7 and 1610.8 for details on these determinations.

2. Proposed Amendments and Rationale

The Commission proposes to update the burn code provisions in the Standard for raised surface textile fabrics to consolidate redundant codes, eliminate unnecessary and unclear codes, and to improve clarity. In response to the RFI, the Commission received several comments indicating that burn code information for raised surface textile fabrics is unclear. Because the burn codes help determine whether a fabric is permissible for use in clothing, a lack of clarity in these provisions could lead to misclassifications, which could impact consumer safety.

First, the Commission proposes several revisions to Table 1 to § 1610.4 to clarify the existing criteria for classifications of raised surface textile fabrics. In this table, the Commission proposes to replace the wording ''with no base burns (SFBB)'' in the Class 1 description with ''with no SFBB burn code.'' As the Class 1 description for raised surface fabrics in this table indicates, a fabric falls in this class only if it either has a longer burn time (more than 7 seconds) or if it exhibits rapid surface flash only, and no base burns. As explained above, there are three burn codes that indicate that a base burn occurred—SFBB, SFBB poi, and SFBB poi*. SFBB applies when the base burn occurs as a result of the surface flash, rather than from the point of impingement of the burner, whereas SFBB poi and SFBB poi* only have a base burn due to the flame that impinges on the fabric, not from the intensity of the surface of the fabric itself burning. As such, only fabrics with burn code SFBB, and not SFBB poi and SFBB poi*, are excluded from being Class 1. The proposed revision would retain this criterion, while clarifying the specific burn code—SFBB—being referenced.

Similarly, the Commission proposes to add a note to Table 1 to § 1610.4, stating that burn codes SFBB poi and SFBB poi* are not considered a base burn for purposes of determining Class 2 and 3 fabrics. Class 2 and 3 descriptions for raised surface textile fabrics in this table specify that fabrics in these classes exhibit base burns (SFBB). Like above, only fabrics with a burn code of SFBB, and not SFBB poi and SFBB poi*, have a base burn that occurs as a result of the surface flash rather than from the point of impingement of the burner. Although the table already references burn code SFBB for the Class 2 and 3 descriptions, the added note will make clear that SFBB refers only to that specific code, and not the other two base burn codes.

The Commission also proposes to add the classification names—Normal Flammability, Intermediate Flammability, and Rapid and Intense Burning—to the descriptions of raised surface textile classifications in the table. This addition is both for clarity and to highlight that, although both Class 1 and 2 fabrics are permissible for use in clothing, Class 2 fabrics are more flammable, which indicates that caution should be taken when using them.

Second, consistent with the clarification above in § 1610.4, the Commission proposes to revise the definition of ''base burn'' in § 1610.2(a) to clarify that base burns are used to establish Class 2 and 3 (not just Class 3) and to reference burn code SFBB for clarity.

Third, and also consistent with the changes above, the Commission proposes to revise the description of Class 2 for raised surface textile fabrics in § 1610.4(b)(2) to add the clarification that ''base fabric starts burning at places other than the point of impingement as a result of the surface flash (test results code SFBB).''

Fourth, the Commission proposes to amend the provisions on raised surface textile fabrics in § 1610.7(b)(3) and (4), which describes classification criteria in detail. The Commission proposes to add ''(SFBB)'' anywhere that the words ''base burn'' appear to make clear what burn code is being referenced, consistent with the revision in Table 1 to § 1610.4.

Fifth, the Commission proposes to revise § 1610.8, which lists the burn codes and requirements relevant to them, to streamline the codes by consolidating similar codes and removing unnecessary and confusing codes. The Commission proposes to combine burn codes SF uc, SF pw, and SF poi into a single new burn code, SF ntr (no time recorded, does not break stop thread). The three existing codes all describe burning behavior that does not have enough intensity to break the stop thread and, accordingly, have no burn time and all result in a fabric being Class 1. Because the purpose of burn codes is to determine the classification of fabrics, it is unnecessary to have all three of these codes; instead, a single code, indicating that there was no burn time recorded, is sufficient and clearer.

Similarly, the Commission proposes to remove from the list of raised surface textile fabric burn codes in § 1610.8, the code that lists only a burn time (_._sec.). Because burn time, alone, generally does not determine the classification of raised surface textile fabrics, this code does not help identify the appropriate classification, is confusing, and may result in misclassification.

Finally, the Commission proposes to amend the times provided in the Standard so they all include one decimal place. Currently, some references to time use one decimal place (*e.g.,* 7.0 seconds) and others use no decimal place (*e.g.,* 4 seconds). For consistency, the Commission proposes to include a single decimal place, without altering the times specified in the Standard.

None of these proposed changes would alter the testing requirements, classification criteria, or classification results under the Standard. Rather, they clarify existing requirements and consolidate codes to streamline the provisions. The Commission requests comments on each of these proposed revisions and, in particular, on whether they improve clarity, as intended.

B. Stop Thread [14]

1. Current Requirements

As discussed above, the test apparatus required for flammability testing includes, as part of the necessary components, stop thread, which is used to determine burn time. Section 1610.2(p) includes a definition of ''stop thread,'' and § 1610.5(a)(2)(ii) specifies the test apparatus and materials that must be used for flammability testing, both of which state that the stop thread must be ''No. 50, white, mercerized, 100% cotton sewing thread.''

2. Proposed Amendments and Rationale

CPSC has a supply of the required thread for testing. It is a 3-ply cotton thread. However, ''No. 50'' is not currently a common or clear method of describing thread. Lack of clarity or availability regarding the stop thread in the Standard potentially introduces variability in test results, depending on the thread testing laboratories use. This is problematic because the stop thread is used to determine burn time, which is used to determine the classification of a fabric and whether it is acceptable for use in clothing. The Standard needs to provide clear reference to a thread that is currently available on the market so that testing laboratories can acquire the necessary thread and use it to obtain consistent test results and classifications.

To identify a stop thread description that is available on the market and comparable to the current thread specified in the Standard, CPSC staff assessed the thread supply they currently use to test under the Standard, assessed an alternative thread that is marketed as complying with the Standard, considered threads required in other clothing flammability standards, and conducted testing of several threads. Currently, the industry (including internationally) commonly uses the Tex system to define thread size. ''Tex'' is defined as the weight, in grams, of 1,000 meters of yarn and is determined by measuring and weighing cotton threads and calculating linear density. Because of the wide recognition and use of the Tex system, staff considered the Tex size of the various stop threads assessed. For a detailed explanation of how CPSC staff determined the Tex sizes of these threads, see the briefing package staff prepared following the RFI.[15]

Staff determined that the current thread supply CPSC uses to test under the Standard has a Tex size of 36. CPSC staff also assessed a commercially available thread (Item Code 1502002, CFR1610, #50 mercerized cotton thread, lot 12308) that is marketed as complying with the Standard. Although CPSC does not use this thread, some commercial laboratories and manufacturers use this thread when testing to the Standard. Staff determined that this thread has a Tex size of 44. Staff also considered the stop thread required in the Canadian General Standards Board's standard, CAN/CGSB–4.2 No. 27.5, *Textile Test Method Flame Resistance—45° Angle Test—One Second Flame Impingement.* This stop thread specification is similar to the Standard and is described as R 35 Tex/3 (No.50, 3-ply), mercerized cotton, indicating a Tex size of 35.[16] Based on these assessments, the thread CPSC currently uses, and potentially comparable threads on the market, have Tex sizes ranging from 35 to 44.

Staff conducted a thread comparison study to determine whether differences in threads, such as fiber type and size (linear density), had a significant effect on burn times and flammability classifications under the Standard, and to identify the range of Tex sizes that yield flammability results comparable to the current Standard. Because the purpose of updating the stop thread specification is to improve clarity about the thread required and ensure there is such a thread available on the market, and not to alter the results under the Standard, staff aimed to identify Tex sizes that would yield flammability results comparable to those using the thread currently specified in the Standard. This section provides information about the comparison study and results.

Staff tested five threads with varying Tex sizes, as indicated in Table 1.

TABLE 1—THREAD DESCRIPTIONS

Thread	Description	Tex (g/1,000 meters)
A	Thread CPSC uses to test to the Standard	36
B	Commercially available thread, sold as meeting the Standard	44
C	Polyester core spun thread	87
D	Spun polyester thread	24
E	Cotton thread	37

[14] For additional information regarding stop thread and the proposed revisions, see Tab C of staff's briefing package supporting this notice.

[15] Tab B of staff's status update briefing package, ''Status Update: 16 CFR part 1610 Rule Update and Consideration for Adding Spandex Fibers to the List of Currently Exempted Fibers from Testing,'' Sep. 30, 2020, available at: *https://www.cpsc.gov/s3fs-public/StatusUpdate-16CFRPart1610RuleUpdateandConsiderationforAddingSpandexFibers totheListofCurrentlyExemptedFibers-from-Testing.pdf.*

[16] Staff also considered the stop thread required in ASTM International's standard, ASTM D1230–17, *Standard Test Method for Flammability of Apparel Textiles.* However, this standard describes the thread as ''Cotton Sewing Thread, No. 50, mercerized'' and, therefore, does not provide any further detail than the Standard.

Threads A, B, and E were cotton, and Threads C and D were polyester and had more divergent Tex sizes than the cotton threads. Staff used two plain surface cotton fabrics for testing—cotton organdy (Fabric 1) and cotton batiste (Fabric 2)—each with a fabric weight of 2.06 oz/yd^2. Staff selected these fabrics for testing because they have burn times exceeding the 3.5-second burn time limit for plain surface textile fabrics in the Standard, had sufficient burn times (between 4 and 7 seconds) to yield a range of measurements for comparison, and did not produce many test result codes of DNI or IBE. Staff tested 30 specimens for each combination of thread and fabric.

Figures 1 and 2 provide the results of staff's testing.[17]

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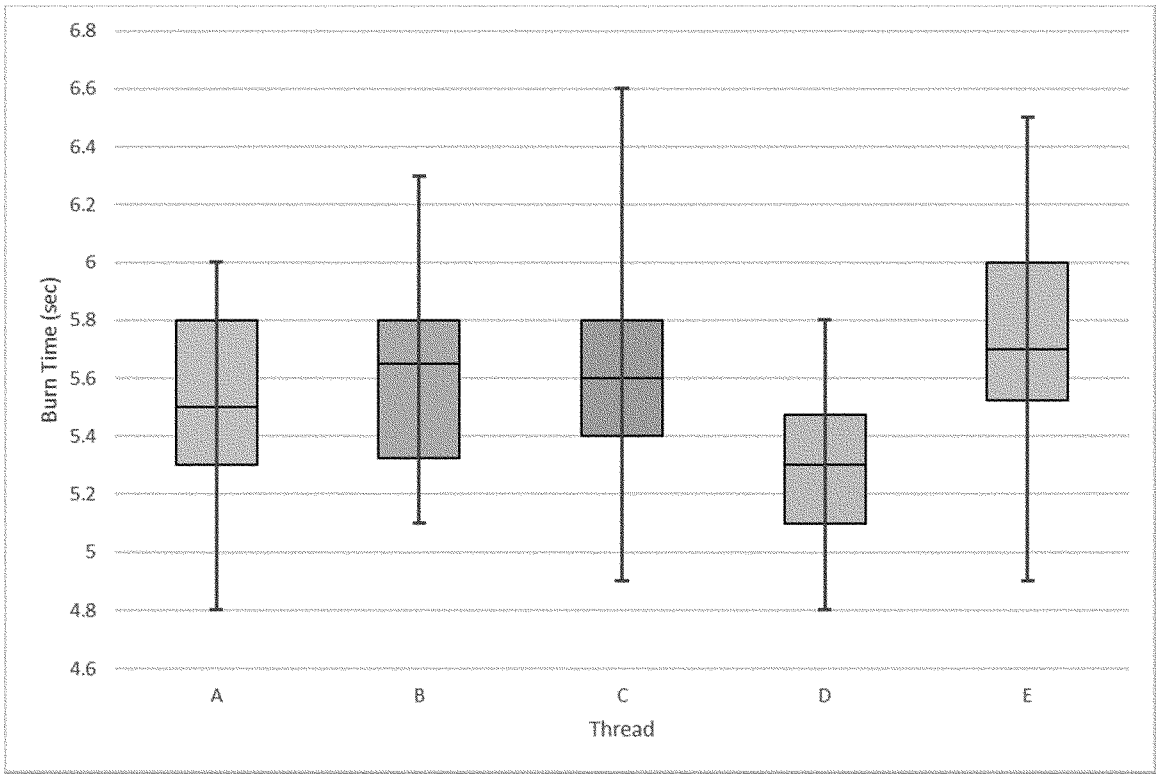

Figure 1: Burn times for Fabric 1 and Threads A through E.

[17] Specimen results of DNI or IBE were excluded since these did not provide a burn time. These were excluded because this testing was designed to evaluate how sensitive the burn time measurements are to the properties of a stop thread.

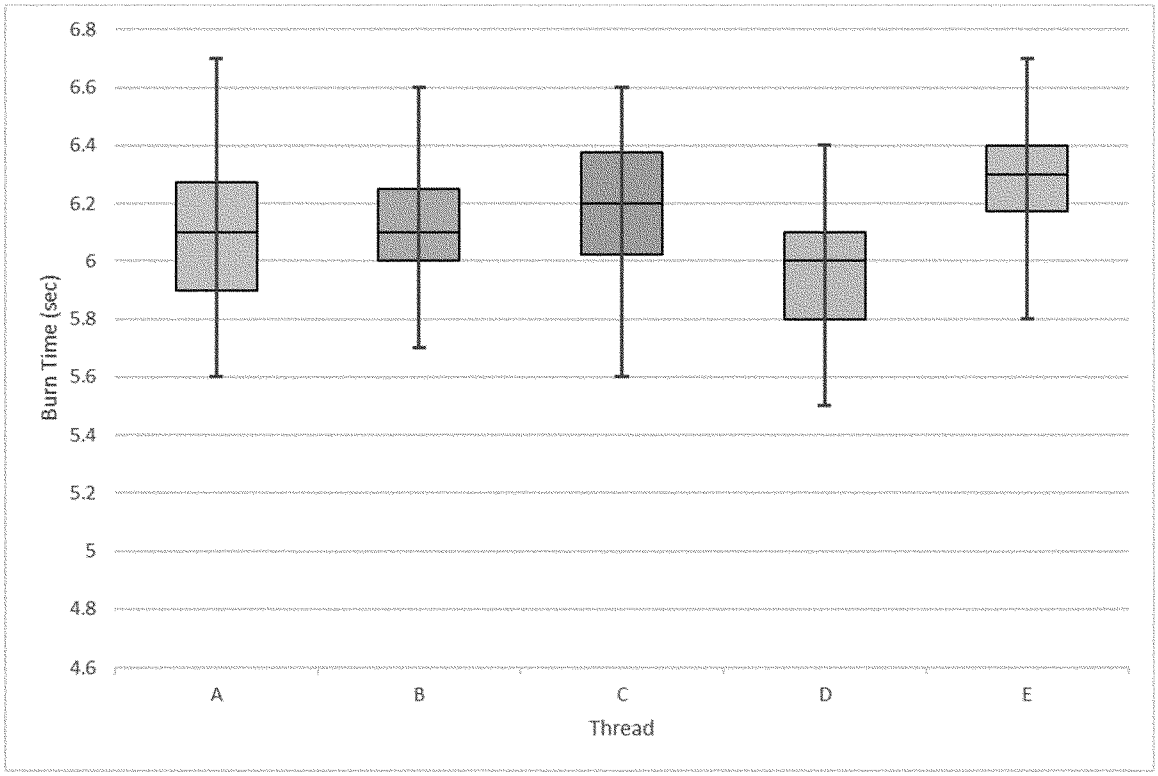

Figure 2: Burn times for Fabric 2 and Threads A through E.

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As these figures show, the burn times for all of the thread options for each fabric were very similar. As explained above, for plain surface textile fabrics, classification depends on whether the burn time is 3.5 seconds or more, or shorter than that. For both fabrics, and all threads, the burn times were well above this 3.5-second threshold, indicating that all of the results were Class 1 and that any of the alternative threads would yield classifications consistent with the current Standard. In addition, because the burn times were all well above the 3.5-second threshold, slight variations in burn times across thread options would not alter the classifications. Moreover, there was little variation in the burn times of the different threads, with the median burn time for all threads being within 0.4 seconds for Fabric 1 and 0.3 seconds for Fabric 2. For comparison, the variability in burn times from specimen to specimen within the same fabric and thread type was wider, at about 1.0 second of variation between the slowest and fastest burn times. These results show that any of these alternative threads and Tex sizes would not result in changes in a fabric's classification when compared to the current Standard.

Based on staff's assessments and testing, the Commission proposes to amend the stop thread description in the Standard from ''No. 50, white, mercerized, 100% cotton sewing thread,'' to state that it must consist of a spool of ''3-ply, white, mercerized, 100% cotton sewing thread, with a Tex size of 35 to 45 Tex.'' This amendment would remove the reference to ''No. 50'' since the meaning of this is no longer clear, and it would add to the description that the thread is ''3-ply'' because this is consistent with thread that complies with the current Standard. This would also maintain the requirement that the thread be ''white, mercerized, 100% cotton sewing thread,'' as this maintains consistency with the current Standard and does not require clarification or updates due to product availability. In addition, it is preferable to continue to require cotton for the stop thread because some polyester threads are designed to be flame resistant, making cotton thread more appropriate for flammability testing.

The Commission proposes to add to the description that the range of permissible Tex sizes is 35 to 45. Staff's test results indicate that a stop thread description that allows a range of acceptable Tex sizes would yield flammability results that are consistent across that range and in line with the results obtained using the stop thread in the current Standard. Because of the wide recognition and use of the Tex system, specifying a Tex size for the stop thread in the Standard would allow testing laboratories to purchase compliant thread and obtain repeatable and reliable test results. Allowing a range of Tex sizes, instead of specifying a specific Tex size, would give testing laboratories greater flexibility in identifying and obtaining stop threads that comply with the Standard, while retaining consistent burn times and flammability classifications.

The proposed range reflects the array of Tex sizes for the three cotton threads that yielded burn times that were consistent with the current Standard (Thread A with Tex size 36, Thread B with Tex size 44, and Thread E with Tex size 37). As such, the proposed revision would allow testing laboratories to use the thread CPSC currently uses (Thread A) and the thread currently marketed as complying with the Standard (Thread B), and it would also allow the use of thread that complies with the Canadian standard, which specifies a Tex size of 35. Although Threads C and D also yielded comparable burn times, these two threads were polyester, which is potentially problematic because some polyester threads are designed to be flame resistant, and they had much higher and lower Tex sizes (87 and 24, respectively). Therefore, the Commission is not proposing to include

these Tex size within the permissible range.

The Commission seeks comments on these proposed revisions and the justifications for them. In particular, the Commission seeks comments on the use of Tex sizes; whether a range of Tex sizes is appropriate, rather than a specific size; whether the range should be limited to those of cotton thread or include the Tex sizes of polyester or other thread; and the range of sizes that should be permissible and why.

C. Refurbishing [18]

1. Current Requirements and Need for Amendments

The Standard requires that flammability testing be performed on samples in their original state and again after refurbishing. 16 CFR 1610.3, 1610.6. The Standard defines ''refurbishing'' as ''dry cleaning and laundering in accordance with § 1610.6.'' *Id.* 1610.2(m). After testing samples in their original state, they must be dry cleaned following the procedures in § 1610.6(b)(1)(i), and then laundered (*i.e.,* washed and dried) following the procedures in § 1610.6(b)(1)(ii), before testing again. The purpose of the refurbishing requirements is to remove any non-durable or water-soluble treatments or finishes that are on the fabric that may affect the flammability of the fabric. These requirements are not meant to replicate how consumers would care for or use the garment. The specific requirements for dry cleaning and laundering, as well as the need for updating these provisions, are discussed below.

a. Dry Cleaning

The Standard defines ''dry cleaning'' as ''the cleaning of samples in a commercial dry cleaning machine under the conditions described in § 1610.6.'' *Id.* 1610.2(c). Section 1610.6 specifies that samples must be dry cleaned in a commercial dry cleaning machine using the solvent ''perchloroethylene, commercial grade,'' and it provides specific parameters regarding detergent class, cleaning time, extraction time, drying temperature, drying time, and cool down/deodorization time. *Id.* 1610.6(b)(1)(i). Likewise, the requirements regarding the test apparatus and materials specify that the dry cleaning solvent must be ''perchloroethylene, commercial grade,'' and the commercial dry cleaning machine must be capable of a complete automatic dry-to-dry cycle using perchloroethylene solvent. *Id.* 1610.5(b)(6), (b)(7).

In recent years, there have been increasing restrictions on the use of perchloroethylene in dry cleaning. In 2007, California adopted regulations that took incremental steps to phase out the use of perchloroethylene in the dry cleaning industry over time, and require that, by January 1, 2023, existing facilities remove all perchloroethylene dry cleaning machines from service.[19] In addition, the U.S. Environmental Protection Agency has announced that it is considering steps to address the risks associated with perchloroethylene, including potentially regulating, limiting, or prohibiting production or use of the chemical.[20] With increasing limitations on the use of perchloroethylene in dry cleaning, the Standard needs to be updated to include an alternative dry cleaning specification so that testing laboratories that cannot use perchloroethylene can conduct compliant testing and obtain consistent, reliable, and accurate test results and classifications.

b. Laundering

The Standard defines ''laundering'' as ''washing with an aqueous detergent solution and includes rinsing, extraction and tumble drying as described in § 1610.6.'' 16 CFR 1610.2(i). Section 1610.6 specifies that, for laundering, a sample be washed and dried one time in accordance with sections 8.2.2, 8.2.3, and 8.3.1(A) of AATCC Test Method 124–2006, *Appearance of Fabrics after Repeated Home Laundering* (TM 124–2006), which is incorporated by reference into the regulations in section 1610.6(b)(1)(iii). Sections 8.2.2 and 8.2.3 of TM 124–2006 address washing requirements, and section 8.3.1(A) addresses drying.

For washing, the Standard requires the use of specific washing procedures (by referencing sections 8.2.2 and 8.2.3 of TM 124–2006); the use of washing machines that meet criteria for wash temperature (by referencing Table II, provision (IV) in TM 124–2006) and water level, agitator speed, washing time, spin speed, and final spin cycle (by referencing Table III, provisions for ''Normal/Cotton Sturdy'' in TM 124–2006); and maximum wash loads and contents. For drying, the Standard requires the test method described in TM 124–2006 for Tumble Dry (section 8.3.1(A)), with the use of machines that meet specified exhaust temperatures and cool down temperatures (by referencing Table IV, provisions for ''Durable Press'' in TM 124–2006).

Washing machines have changed substantially over the past 15 years to reduce water use and improve energy efficiency. One key element of washing machines that has evolved is agitation speed. Currently, the Standard requires the use of a washing machine with an agitation speed of 179 ± 2 strokes per minute (spm) (by referencing Table III, provisions for ''Normal/Cotton Sturdy'' in TM 124–2006). However, washing machines available on the market are no longer able to meet this requirement because they have reduced agitation speeds. Although CPSC still has washing machines that meet the required agitation speed, when these machines reach the end of their useful lives, CPSC will not be able to replace them with machines that comply with the Standard. Likewise, CPSC expects that many washing machines that testing laboratories use to test for conformance with the Standard have reached, or soon will reach, the end of their useful lives, at which point, the labs will be unable to obtain the machines necessary to test to the Standard. As such, the Standard needs to be updated to include washing machine specifications that can be met by machines that are available on the market, and yield consistent, reliable, and accurate test results and classifications.

Unlike washing machines, there has been little change in the design of dryers in recent years, and dryers that meet the requirements in the Standard are still available on the market. Nevertheless, the Commission proposes to update the specifications for dryers in the Standard to align with the necessary updates for washing machines, for the reasons discussed below.

2. Comparison Study

Staff considered several options to update the dry cleaning and laundering specifications in the Standard and conducted comparison testing to determine whether these options would yield flammability results comparable to the current Standard. Staff sought to identify options that would not alter the flammability results of fabrics because the Standard has a long history and has been effective at addressing clothing flammability. As such, staff aimed to

[18] For additional information regarding refurbishing and the proposed revisions, see Tabs D and E of the briefing package supporting this NPR.

[19] See 17 CA ADC section 93109, available at: *https://govt.westlaw.com/calregs/Document/I3065E480D60811DE88AEDDE29ED1DC0A?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default).*

[20] See EPA Releases Final Chemical Risk Evaluation for Perchloroethylene (Dec. 14, 2020), available at: *https://www.epa.gov/chemicals-under-tsca/epa-releases-final-chemical-risk-evaluation-perchloroethylene.*

identify alternatives that would provide a comparable level of consumer safety, by providing comparable flammability classifications. In addition, alternatives that provide flammability results comparable to the Standard, reduce the costs associated with these updates because they would not change whether fabrics subject to the Standard are permissible for use in clothing. Finally, staff sought to identify comparable alternatives because the purpose of these amendments is to update outdated equipment and methods, not to alter the classifications of fabrics tested under the Standard.

This section provides information about the comparison study and results; for additional information, see Tabs D and E of staff's briefing package supporting this NPR.

a. Options

i. Dry Cleaning

Staff considered several dry cleaning solvents as alternatives to perchloroethylene. Staff considered hydrocarbon solvent because it is becoming the most commonly used alternative to perchloroethylene in the dry cleaning industry; it has a long history of use; it is low in cost; and it is more widely available than many other alternatives. Staff also considered silicone and butylal solvents because they are also widely available. Staff did not consider carbon dioxide dry cleaning because it is more expensive than other options and is not widely available. Staff also did not consider professional wet cleaning because it would not accomplish the purpose of the dry cleaning requirement in the Standard. The purpose of the refurbishing requirements in the Standard is to remove finishes that may affect the flammability of a fabric, and both dry cleaning and laundering are necessary for that purpose. Because fabrics are already exposed to water-based cleaning under the separate laundering requirements in the Standard, water-soluble finishes would be removed by that process, and professional wet cleaning would not provide additional finishing removal. As such, a non-water-based dry cleaning method, like the one currently in the Standard, is appropriate. Based on these assessments, staff tested three potential dry cleaning solvent options—hydrocarbon, silicone, and butylal—as part of the comparison study.

In selecting an alternative dry cleaning solvent for the Standard, it is not sufficient to change the solvent alone; the parameters surrounding the dry cleaning procedure need to be adjusted, as well, because of the nature of different solvent systems, dry cleaning processes, and equipment requirements. As such, in assessing alternative procedures, staff selected an appropriate detergent class, cleaning time, extraction time, cooling time, drying time, and drying temperature, for each alternative solvent, based on typical procedures used for that solvent system. For all of the options, samples were dry cleaned in a commercial dry cleaning machine at 80 percent of the machine's capacity.[21] The parameters staff used for the comparison study are in Table 2.

TABLE 2—DRY CLEANING PROCEDURES USED IN COMPARISON STUDY

Solvent	Perchloroethylene	Hydrocarbon	Silicone	Butylal
Detergent Class	Cationic	Cationic	Anionic	Cationic
Cleaning Time	10–15 minutes	20–25 minutes	14–17 minutes	2 mins (bath 1) 11 minutes (bath 2) (13 minutes total).
Extraction Time	3 minutes	4 minutes	6 minutes	5 minutes (bath 1) 5 minutes (bath 2) (10 minutes total).
Drying Temperature	60–66°C (140–150°F)	60–66°C (140–150°F)	70°C (158°F)	66–71°C (150–160°F).
Drying Time	18–20 minutes	20–25 minutes	18–20 minutes	40 minutes.
Cool Down/Deodorization Time.	5 minutes	5 minutes	5 minutes	4 minutes.

ii. Laundering

Staff also considered several options as alternatives to the laundering specifications in TM 124–2006. Because agitation speed is the primary element of the current specification that can no longer be met by machines on the market, one alternative staff considered was requiring the continued use of the laundering procedures in TM 124–2006, but allowing a lower agitation speed.[22] Staff considered this option because it is the alternative most similar to the current Standard—with all of the washing parameters remaining the same except for agitation speed—that washing machines on the market can meet. When comparison testing this option, the agitation speed was the only washing parameter changed from the current Standard, and the drying procedures remained the same as the current Standard.

To assess this lower agitation speed option, CPSC purchased a washing machine designed for testing laboratories that offers preprogrammed wash cycles or allows the user to program cycle parameters, subject to the machine's physical specification limits. All of the machine's programmable cycle parameters can meet the specifications in the Standard, except for the agitation speed. The maximum programmable agitation speed for the washing machine is 120 spm, lower than the 179 ± 2 spm required in the Standard. This option is referred to as ''reduced agitation speed'' in this notice because it has a reduced agitation speed, as compared to the Standard (although the agitation speed is higher than the second option, discussed below).

A second option staff considered to update the washing machine specifications was to follow the parameters in AATCC's Laboratory Procedure 1, *Home Laundering: Machine Washing* (LP1–2021), instead of the parameters in TM 124–2006. LP1–

[21] Consistent with § 1610.6(b)(1)(i)(B), staff used 80 percent wool and 20 percent cotton ballast, in addition to the sample, to achieve 80 percent of the machine's capacity.

[22] Agitation speed alone is not a measure of how rough a wash cycle is on textiles. Rather, agitation speed and stroke length need to be considered in combination when comparing washing parameters. Stroke length is a measurement of the degrees of rotation of the agitator. However, in considering this alternative, staff did not alter the stroke length because, although older washing machines have higher agitation speeds, they also typically have lower stroke lengths (typically up to 90 degrees). In contrast, washing machines currently on the market, which have lower agitation speeds, also have larger stroke lengths (typically up to 220 degrees), thereby achieving the same wash results with lower agitation speeds.

2021 is a voluntary standard that many testing laboratories already use for testing to other standards. A comment on the RFI recommended the use of this standard because it is similar to the current Standard; machines that meet it are readily available on the market; and the machines and standard are not expected to change significantly for some time.

LP1–2021 includes a lower agitation speed than the current Standard, but it also includes other differences in the washing and drying parameters. For this alternative, staff conducted comparison testing using washing machine parameters that conform to the provisions in:

- section 9.2 of LP1–2021, which includes a lower wash load size of 1.8 ± 0.1 kg (4.0 ± 0.2 pounds), compared to the current Standard;
- section 9.4 of LP1–2021, which requires the same detergent as the current Standard; and
- ''(1) Normal'' and ''(IV) Hot'' in Table 1, *Standard Washing Machine Parameters,* of LP1–2021, which specify the water level, agitation rate, stroke length, washing time, final spin speed and time, and wash temperature.

Staff used the drying parameters that conform to the provisions in:

- section 12.2(A) of LP1–2021, which are the same as those in the current Standard; and
- ''(Aiii) Permanent Press'' in Table VI, *Standard Tumble Dryer Parameters,* of LP1–2021, which specifies the maximum exhaust temperature and cool down time.

Based on these assessments, staff tested two potential laundering options as part of the comparison study. The first option was the reduced agitation speed for laundering (*i.e.,* the laundering specification in TM 124–2006, but with a reduced agitation speed) and the drying specifications in the Standard. The second was both the laundering and drying specifications stated above in LP1–2021. Note that when this notice references LP1–2021, it is referring only to the specific sections and tables stated above (*i.e.,* sections 9.2, 9.4, 12.2(A), Table 1 ((1) Normal and (IV) Hot), and Table VI ((Aiii) Permanent Press)), and not the entire LP1–2021 standard, which includes additional and alternative provisions. Table 3 provides a comparison of the washing and drying parameters in the current Standard, and the two alternatives staff assessed in comparison testing.

TABLE 3—LAUNDERING PROCEDURE PARAMETERS

	Standard	Reduced agitation speed	LP1–2021
Washing Machine Parameters			
Agitation Speed, spm	179 ± 2	120 ± 2	86 ± 2
Water Level, L (gal)	68 ± 4 (18 ± 1)	68 ± 4 (18 ± 1)	72 ± 4 (19 ± 1)
Washing Time, min	12	12	16 ± 1
Spin Speed, rpm [23]	645 ± 15	645 ± 15	660 ± 15
Final Spin Time, min	6	6	5 ± 1
Wash Temperature, °C (°F)	49 ± 3 (120 ± 5)	49 ± 3 (120 ± 5)	49 ± 3 (120 ± 5)
Load size, kg (lbs)	≤ 3.63 (≤ 8)	≤ 3.63 (≤ 8)	1.8 ± 0.1 (4 ± 0.2)
AATCC 1993 Standard Reference Detergent, g (oz)	66 ± 0.1 (2.3 ± 0.004)	66 ± 0.1 (2.3 ± 0.004)	66 ± 0.1 (2.3 ± 0.004)
Dryer Parameters			
Max. Dryer Exhaust Temperature, °C (°F)	66 ± 5 (150 ± 10)	66 ± 5 (150 ± 10)	68 ± 6 (155 ± 10)
Cool Down Time, min	10	10	≤10

b. Test Methods

To identify options that would yield flammability results comparable to the Standard, staff developed a comparison testing study that assessed the three alternative dry cleaning solvent options and the two alternative laundering options discussed above, in comparison to the dry cleaning and laundering provisions in the Standard.

Staff selected 11 fabrics for testing, including six plain surface textile fabrics and five raised surface textile fabrics. Staff included both plain and raised surface textile fabrics in the study because the Standard provides different criteria for classifying these fabric types. Staff chose samples that are representative of fabrics that typically require flammability testing [24] and yield both results that permit their use in clothing (Class 1 and 2) and do not (Class 3). Table 4 lists the fabrics used in the comparison study, as well as their characteristics.

TABLE 4—FABRICS USED IN COMPARISON STUDY

Fabric	Description	Fabric weight (oz/yd^2)	Surface type	Approximate fabric width (cm)
A	Silk, Chiffon, White	0.58	Plain	112
B	Silk, Habutae, White	1.06	Plain	114
C	Silk, Chiffon, Black	0.87	Plain	112
D	Rayon, Chiffon, white	2.0	Plain	137
E	Cotton, Batiste	2.06	Plain	114
F	Cotton, Organdy	2.06	Plain	152
G	Cotton, Brushed, White	7.24	Raised	100

[23] ''Rpm'' refers to revolutions per minute.

[24] Staff excluded fabrics that are exempt from flammability testing under the Standard. Staff also excluded blends from the study, for simplicity.

TABLE 4—FABRICS USED IN COMPARISON STUDY—Continued

Fabric	Description	Fabric weight (oz/yd^2)	Surface type	Approximate fabric width (cm)
H	Cotton Terry	9.02	Raised	152
I	Cotton, Chenille, White	10.0	Raised	142
J	Cotton, Chenille, Black	10.0	Raised	142
K	Rayon, Brushed, Black	3.08	Raised	152

Staff purchased at least 14 yards of each fabric, with widths between 40 and 60 inches, and they cut these into four 2-yard sections and one 6-yard section. One of the 2-yard sections of each fabric was tested in its original state, without refurbishing, in accordance with the Standard.

To examine the dry cleaning options, each of the three 2-yard sections for each fabric was dry cleaned using one of the three dry cleaning procedures under consideration (*i.e.,* hydrocarbon, silicone, and butylal), and then laundered using the procedures required in the Standard. Staff used the laundering method in the Standard so that only one variable in the refurbishing process was changed (*i.e.,* dry cleaning), to allow clear comparisons of the effects of different dry cleaning methods on flammability test results.

To examine the laundering options, the 6-yard section of each fabric was dry cleaned in perchloroethylene, in accordance with the Standard, and then cut into three 2-yard sections, each of which underwent one of the three laundering procedures under consideration (*i.e.,* the Standard, reduced agitation speed, and LP1–2021). Staff used the dry cleaning method in the Standard so that only one variable in the refurbishing process was changed (*i.e.,* laundering), to allow clear comparisons of the effects of different laundering methods on flammability test results.

After these refurbishing procedures, staff cut each 2-yard section (including the 6 refurbished sections and 1 section in its original state) into thirty 2-by-6-inch specimens and performed flammability testing on those specimens, in accordance with the Standard. In total, this resulted in staff testing 2,310 specimens (11 fabrics × 7 sections of each fabric × 30 specimens of each sample).[25] Staff recorded the burn times and applicable burn codes for each specimen.

c. Results

Overall, the results of the comparison study indicate that all of the alternative dry cleaning specifications and laundering specifications yield flammability results comparable to the Standard. Key results for the dry cleaning and laundering alternatives are provided in this section.

In understanding these results, it is important to note that, under the Standard, multiple specimens of a fabric must be tested, and burn codes and classifications are based on the results of these multiple specimens. The Standard specifies how to determine appropriate burn codes and classifications in light of these multiple specimens. Typically, fabric classification is determined by testing at least five specimens of a fabric. Thus, the results of a single specimen of fabric are not necessarily indicative of the final classification of the fabric. For example, if the results of a single specimen meet the criteria for Class 2 (*i.e.,* burn time of 4.0 to 7.0 seconds, with a burn code of SFBB), the final classification of the fabric may not be Class 2 because the final classification will depend on the results of the additional specimens of that fabric. Accordingly, the final classification of some fabrics discussed in this section cannot always be determined by the results presented here, but the range of possible classifications is determined. Particularly because the comparison testing assessed multiple specimens of the tested fabrics, these results provide a good indication of the final classification of the fabrics.

i. Dry Cleaning

The comparison study results for the three alternative dry cleaning specifications and the dry cleaning specifications in the Standard are presented below. Table 5 provides the aggregated results for all plain surface textile fabrics. Table 6 provides the results for the individual plain surface textile fabrics and includes the number of samples tested that resulted in burn times,[26] mean burn times, standard deviations, minimum burn times, and maximum burn times.

TABLE 5—BURN TIMES FOR PLAIN SURFACE TEXTILE FABRICS, AGGREGATED, BY DRY CLEANING PROCEDURE

Procedure	Number of samples with a burn time	Mean burn time (seconds)	Standard deviation	Minimum burn time (seconds)	Maximum burn time (seconds)
Standard	104	6.15	0.77	4.70	8.10
Hydrocarbon	94	6.05	0.88	4.90	9.40
Silicone	86	6.15	0.88	4.80	8.90
Butylal	115	6.09	0.77	4.80	7.90

[25] Staff tested 11 fabrics, which were each divided into seven sections (1 original state, 3 for dry cleaning options, and 3 for laundering options), which were each divided into 30 specimens.

[26] Although staff tested 30 specimens of each fabric/procedure combination, the number of samples with results in Tables 5 and 6 is not 30 because only samples with burn times, rather than DNI results, are provided in these tables. For DNI results, see Tab E of the briefing package supporting this NPR.

TABLE 6—BURN TIMES FOR PLAIN SURFACE TEXTILE FABRICS (A THROUGH F), BY DRY CLEANING PROCEDURE

Procedure	Number of samples with a burn time	Mean burn time (seconds)	Standard deviation	Minimum burn time (seconds)	Maximum burn time (seconds)
Fabric A					
Standard	26	6.75	0.50	5.90	7.90
Hydrocarbon	16	6.83	0.37	6.20	7.60
Silicone	4	6.85	0.50	6.30	7.50
Butylal	27	6.31	0.30	5.70	6.80
Fabric B					
Standard	16	6.49	0.26	6.00	7.00
Hydrocarbon	9	6.53	0.35	6.10	7.00
Silicone	6	7.52	0.26	7.10	7.90
Butylal	7	7.29	0.43	6.70	7.90
Fabric C					
Standard	28	5.24	0.38	4.70	6.10
Hydrocarbon	29	5.28	0.32	4.90	6.60
Silicone	29	5.25	0.27	4.80	5.90
Butylal	3	5.38	0.34	4.90	6.60
Fabric D					
Standard	24	6.03	0.41	5.20	7.50
Hydrocarbon	27	5.62	0.28	4.90	6.20
Silicone	23	6.13	0.44	5.40	6.80
Butylal	27	5.54	0.40	4.80	6.20
Fabric E					
Standard	4	7.03	0.72	6.60	8.10
Hydrocarbon	4	7.58	1.22	6.80	9.40
Silicone	3	7.23	0.32	7.00	7.60
Butylal	6	6.98	0.29	6.70	7.50
Fabric F					
Standard	6	6.92	0.69	6.30	8.10
Hydrocarbon	9	7.23	0.66	6.40	8.10
Silicone	21	6.73	0.72	5.50	8.90
Butylal	18	6.99	0.40	6.40	7.90

As Table 5 shows, for plain surface textile fabrics, all three of the alternative dry cleaning options yielded very similar burn times to the Standard, including the mean, minimum, and maximum burn times. Table 6 shows the same is true for each plain surface textile fabric tested, with very similar mean, minimum, and maximum burn times for each alternative and the dry cleaning specification in the Standard.

For plain surface textile fabrics, burn time alone determines a fabric's classification, and a burn time of 3.5 seconds or more is Class 1, while a burn time of less than 3.5 seconds is Class 3. As Tables 5 and 6 show, for both the aggregated results and the individual fabric results, the Standard and all three alternative dry cleaning procedures yielded mean, minimum, and maximum burn times above the 3.5 second threshold and, therefore, yielded the same classification—Class 1—for all of the fabrics. Moreover, the mean, minimum, and maximum burn times were all sufficiently above the 3.5-second threshold that, even with some variability in burn times, the alternatives would not alter the classifications of these fabrics, when compared to the classifications under the Standard.[27] This demonstrates that, for plain surface textile fabrics, all three alternative dry cleaning procedures yield flammability results comparable to the Standard.

Table 7 provides the aggregated results for all raised surface textile fabrics, and Table 8 provides the results for the individual raised surface textile fabrics.

[27] Staff also considered the extent to which each of the three alternative dry cleaning options yielded DNI results versus burn times, as compared to the Standard. For plain surface textile fabrics, DNI results generally result in a fabric being Class 1. Because all of the plain surface textile fabrics in the comparison study of dry cleaning options yielded either DNI results or burn times of more than 3.5 seconds, they were all Class 1. Consequently, the results of DNI versus burn times for these fabrics are not presented here, since they do not alter the classifications. Moreover, it is expected that there will be variation in whether multiple specimens yield DNI or burn time results even when they are specimens of the same fabric that underwent the same refurbishing procedure. For details on these results, see Tab E of the briefing package supporting this NPR.

TABLE 7—BURN TIMES FOR RAISED SURFACE TEXTILE FABRICS, AGGREGATED, BY DRY CLEANING PROCEDURE

Procedure	Number of samples with a burn time	Mean burn time (seconds)	Standard deviation	Minimum burn time (seconds)	Maximum burn time (seconds)
Standard	150	11.87	7.45	2.30	27.30
Hydrocarbon	150	11.01	7.65	1.60	27.80
Silicone	150	10.57	7.08	1.90	32.70
Butylal	150	10.34	6.56	1.80	27.70

TABLE 8—BURN TIMES FOR RAISED SURFACE TEXTILE FABRICS (G THROUGH K), BY DRY CLEANING PROCEDURE

Procedure	Number of samples with a burn time	Mean burn time (seconds)	Standard deviation	Minimum burn time (seconds)	Maximum burn time (seconds)
Fabric G					
Standard	30	19.66	2.25	16.60	27.30
Hydrocarbon	30	16.77	2.55	11.10	25.10
Silicone	30	15.91	1.32	13.60	19.20
Butylal	30	13.72	1.59	8.20	15.80
Fabric H					
Standard	30	21.16	2.62	16.00	26.00
Hydrocarbon	30	22.25	3.10	13.30	27.80
Silicone	30	20.60	5.00	13.90	32.70
Butylal	30	20.76	2.83	15.00	27.70
Fabric I					
Standard	30	7.18	1.45	5.00	12.70
Hydrocarbon	30	5.91	1.45	4.00	8.80
Silicone	30	6.00	1.13	4.30	10.10
Butylal	30	6.53	1.21	4.80	9.00
Fabric J					
Standard	30	2.84	0.28	2.30	3.40
Hydrocarbon	30	2.23	1.60	1.60	3.20
Silicone	30	2.60	1.90	1.90	4.20
Butylal	30	2.48	1.80	1.80	3.30
Fabric K					
Standard	30	8.51	0.77	7.10	10.50
Hydrocarbon	30	7.88	0.88	6.60	10.50
Silicone	30	7.74	0.69	6.50	9.40
Butylal	30	8.18	0.88	6.00	10.40

As Table 7 shows, for raised surface textile fabrics, all three of the alternative dry cleaning options yielded burn times very similar to the Standard, including the mean, minimum, and maximum burn times. Table 8 shows the same is true for each raised surface textile fabric tested, with similar mean, minimum, and maximum burn times for each alternative and the dry cleaning specification in the Standard. Tables 7 and 8 also illustrate the wide variability in burn times for raised surface textile fabrics, even when testing the same fabric with the same dry cleaning procedure. This variation is expected, particularly for raised surface textile fabrics, both within results for a single fabric and across different fabric types.

For raised surface textile fabrics, classifications are generally based on both burn time and burn behavior, as indicated by burn codes.[28] However, one classification for raised surface textile fabrics is based solely on burn time—specifically, a raised surface textile fabric is Class 1 if it has an average burn time greater than 7.0 seconds, regardless of burn behavior. For raised surface textile fabrics with an average burn time of 7.0 seconds or less, classifications depend on both burn behavior and burn time. If a fabric has an average burn time of 7.0 seconds or less and does not have a burn code of SFBB, then it is Class 1. If it has an average burn time of 4.0 to 7.0 seconds, and multiple specimens of the fabric have a burn code of SFBB, then it is Class 2. If it has an average burn time of less than 4.0 seconds, and multiple specimens have a burn code of SFBB, then it is Class 3. As discussed in the proposed revisions to burn codes, above, only a burn code of SFBB—not SFBB poi or SFBB poi*—determines the classification of the fabric.

As the results in Table 7 show, using the mean burn times, all of the alternative dry cleaning procedures yielded the same Class 1 results as the Standard. These mean results were also sufficiently above the 7.0-second threshold that, even with some

[28] See 16 CFR 1610.7 for details on requirements for testing multiple specimens of a fabric and determining classifications based on the results of those multiple specimens.

variability in burn times, the alternatives would not alter the classifications when compared to the classifications under the Standard. The wide range of minimum and maximum burn times in Table 7 is the result of variations in different raised surface textile fabrics. The results of individual fabrics are discussed below.

The results for Fabric G, in Table 8, show that the mean, minimum, and maximum burn times for this fabric were all above the 7.0-second threshold and, therefore, Class 1, using any of the three alternatives or the Standard. Even with some variability in burn times, the burn times were sufficiently above the 7.0-second threshold that this would not alter the classifications. In addition, staff found that all of the specimens tested under the three alternatives and the Standard yielded burn codes of SFBB poi. The same is true of the burn time and burn code results for Fabric H, in Table 8. This demonstrates that the classifications for Fabrics G and H would be the same under any of the three alternative dry cleaning procedures as they are under the Standard, making them all comparable alternatives.

The results for Fabric I illustrate that the mean and range of burn times for the three alternative dry cleaning procedures are similar to that of the Standard, but that all four methods have some variability clustered close to the burn time thresholds for different classifications. This makes burn codes relevant for purposes of determining classifications. Staff found that all 30 specimens of Fabric I tested using the Standard, silicone, and butylal had burn codes of SFBB poi, and that hydrocarbon yielded burn codes of SFBB (8 specimens), SFBB poi (17 specimens), and SFBB poi* (5 specimens). As such, Fabric I was Class 1 under the Standard, silicone, and butylal, but 8 of the specimens could potentially yield Class 2 or 3 results under the hydrocarbon option, depending on the burn time and the results of additional specimens. Although the hydrocarbon alternative could potentially result in different classifications than the Standard, these divergent results were limited to a small proportion of the hydrocarbon results, and most hydrocarbon results aligned with the classifications under the Standard.

The results for Fabric J also illustrate that the mean and range of burn times for the three alternative dry cleaning procedures are similar to that of the Standard. However, because the mean, minimum, and maximum are all well below the 7.0-second threshold for which classification can be determined solely by burn times, burn codes are relevant for determining the classifications of these specimens.

Staff found that, under the dry cleaning procedure in the Standard, 27 of the specimens of Fabric J had a burn code of SFBB poi (making them Class 1) and 3 had a burn code of SFBB (potentially making them Class 2 or 3, depending on burn time and results of other specimens). The hydrocarbon alternative yielded 22 specimens with a burn code of SFBB poi (making them Class 1) and 8 with burn code of SFBB (potentially making them Class 2 or 3, depending on burn time and results of other specimens). In total, 11 specimens tested under the hydrocarbon alternative yielded different burn codes than the Standard and 19 specimens yielded the same burn codes under both methods. The silicone alternative yielded 24 specimens with a burn code of SFBB poi and 1 with a burn code of SFBB poi* (making them Class 1), along with 5 with burn code of SFBB (potentially making them Class 2 or 3, depending on burn time and results of other specimens). In total, 9 specimens tested under the silicone alternative yielded different burn codes than the Standard and 21 specimens yielded the same burn codes under both methods. The butylal alternative yielded 16 specimens with a burn code of SFBB poi (making them Class 1), and 14 with a burn code of SFBB (potentially making them Class 2 or 3, depending on burn time and results of other specimens). In total, 17 specimens tested under butylal alternative yielded different burn codes than the Standard and 13 specimens yielded the same burn codes under both methods.

This indicates that, for Fabric J, all three alternative dry cleaning options could result in different classifications than the Standard. However, it also indicates that, overall, a small proportion of the classifications under hydrocarbon and silicone have the potential to yield different classifications than the Standard, and most hydrocarbon and silicone results aligned with the classifications in the Standard. In addition, the number of hydrocarbon and silicone results that diverged from the Standard were similar, whereas divergent classifications were far more common for butylal.

The results for Fabric K illustrate that the mean and range of burn times for the three alternative dry cleaning procedures are similar to that of the Standard, but that all four methods have some variability clustered close to the burn time thresholds for different classifications. Staff found that all 30 specimens of Fabric K tested using the Standard, hydrocarbon, silicone, and butylal had burn codes of SFBB poi, making them all Class 1 under every option. This demonstrates that the classifications for Fabric K would be the same under any of the three alternative dry cleaning procedures as they are under the Standard, making them all comparable alternatives.

ii. Laundering

The comparison study results for the two alternative laundering specifications and the laundering specifications in the Standard are presented below. Table 9 provides the aggregated results for all plain surface textile fabrics. Table 10 provides the results for the individual plain surface textile fabrics and includes the number of samples tested that resulted in burn times,[29] mean burn times, standard deviations, minimum burn times, and maximum burn times.

TABLE 9—BURN TIMES FOR PLAIN SURFACE TEXTILE FABRICS, AGGREGATED, BY LAUNDERING PROCEDURE

Procedure	Number of samples with a burn time	Mean burn time (seconds)	Standard deviation	Minimum burn time (seconds)	Maximum burn time (seconds)
Standard	104	6.15	0.77	4.70	8.10
Reduced Agitation Speed	126	6.25	0.71	4.80	8.20
LP1–2021	86	6.12	0.92	4.60	9.50

[29] Although staff tested 30 specimens of each fabric/procedure combination, the number of samples with results in Table 10 is not 30 because only samples with burn times, rather than DNI results, are provided in the table. For DNI results, see Tab E of the briefing package supporting this NPR.

TABLE 10—BURN TIMES FOR PLAIN SURFACE TEXTILE FABRICS (A THROUGH F), BY LAUNDERING PROCEDURE

Procedure	Number of samples with a burn time	Mean burn time (seconds)	Standard deviation	Minimum burn time (seconds)	Maximum burn time (seconds)
Fabric A					
Standard	26	6.75	0.50	5.90	7.90
Reduced Agitation Speed	24	6.79	0.27	6.20	7.30
LP1–2021	18	7.12	0.27	6.80	7.70
Fabric B					
Standard	16	6.49	0.26	6.00	7.00
Reduced Agitation Speed	28	6.43	0.32	5.60	7.10
LP1–2021	22	6.38	0.32	5.80	7.10
Fabric C					
Standard	28	5.24	0.38	4.70	6.10
Reduced Agitation Speed	30	5.30	0.34	4.80	6.20
LP1–2021	29	5.12	0.35	4.60	6.00
Fabric D					
Standard	24	6.03	0.41	5.20	7.50
Reduced Agitation Speed	26	6.16	0.41	5.60	7.10
LP1–2021	12	5.98	0.36	5.60	7.10
Fabric E					
Standard	4	7.03	0.72	6.60	8.10
Reduced Agitation Speed	6	7.53	0.42	7.20	8.20
LP1–2021	4	7.75	1.20	6.80	9.50
Fabric F					
Standard	6	6.92	0.69	6.30	8.10
Reduced Agitation Speed	12	6.94	0.52	6.20	7.90
LP1–2021	1	6.60	Not applicable	6.60	6.60

As Table 9 shows, for plain surface textile fabrics, both of the alternative laundering options yielded very similar burn times to the Standard, including the mean, minimum, and maximum burn times. Table 10 shows the same is true for each plain surface textile fabric tested, with very similar mean, minimum, and maximum burn times for each alternative and the laundering specification in the Standard. As Tables 9 and 10 show, for both the aggregated results and the individual fabric results, the Standard and both alternative laundering procedures yielded mean, minimum, and maximum burn times above the 3.5-second threshold for plain surface textile fabrics and, therefore, yielded the same classification—Class 1—for all of the fabrics. Moreover, the mean, minimum, and maximum burn times were all sufficiently above the 3.5-second threshold that, even with some variability in burn times, the alternatives would not alter the classifications of these fabrics, when compared to the classifications under the Standard.[30] This demonstrates that, for plain surface textile fabrics, both alternative laundering procedures are comparable to the Standard.

Table 11 provides the aggregated results for all raised surface textile fabrics, and Table 12 provides the results for the individual raised surface textile fabrics.

TABLE 11—BURN TIMES FOR RAISED SURFACE TEXTILE FABRICS, AGGREGATED, BY LAUNDERING PROCEDURE

Procedure	Number of samples with a burn time	Mean burn time (seconds)	Standard deviation	Minimum burn time (seconds)	Maximum burn time (seconds)
Standard	150	11.87	7.45	2.30	27.30
Reduced Agitation Speed	150	10.86	6.55	2.20	24.90
LP1–2021	150	10.76	6.72	2.00	31.50

[30] Like the dry cleaning results, staff also considered the extent to which both of the alternative laundering options yielded DNI results versus burn times, as compared to the Standard. Again, because all of the plain surface textile fabrics in the comparison study of laundering options yielded either DNI results or burn times of more than 3.5 seconds, they were all Class 1. Consequently, the results of DNI versus burn times for these fabrics are not presented here, since they do not alter the classifications. Moreover, it is expected that there will be variation in whether multiple specimens yield DNI or burn time results even when they are specimens of the same fabric that underwent the same refurbishing procedure. For details on these results, see Tab E of the briefing package supporting this NPR.

TABLE 12—BURN TIMES FOR RAISED SURFACE TEXTILE FABRICS (G THROUGH K), BY LAUNDERING PROCEDURE

Procedure	Number of samples with a burn time	Mean burn time (seconds)	Standard deviation	Minimum burn time (seconds)	Maximum burn time (seconds)
Fabric G					
Standard	30	19.66	2.25	16.60	27.30
Reduced Agitation Speed	30	17.93	2.30	10.10	22.50
LP1–2021	30	16.80	2.13	13.80	22.90
Fabric H					
Standard	30	21.16	2.62	16.00	26.00
Reduced Agitation Speed	30	18.54	2.90	10.90	24.90
LP1–2021	30	19.55	3.82	11.40	31.50
Fabric I					
Standard	30	7.18	1.45	5.0	12.70
Reduced Agitation Speed	30	6.38	1.00	4.80	8.70
LP1–2021	30	6.31	1.03	4.30	9.10
Fabric J					
Standard	30	2.84	0.28	2.30	3.40
Reduced Agitation Speed	30	2.89	0.34	2.20	3.50
LP1–2021	30	2.74	0.37	2.00	3.80
Fabric K					
Standard	30	8.51	0.77	7.10	10.50
Reduced Agitation Speed	30	8.58	0.81	7.40	11.20
LP1–2021	30	8.38	1.10	7.20	12.90

As Table 11 shows, for raised surface textile fabrics, the alternative laundering options yielded very similar burn times to the Standard, including the mean, minimum, and maximum burn times. Table 12 shows that, for each raised surface textile fabric tested, there were also similar mean, minimum, and maximum burn times for each alternative and the laundering specification in the Standard. Tables 11 and 12 also illustrate the wide variability in burn times for raised surface textile fabrics, even when testing the same fabric with the same laundering procedure. As explained above, this variation is expected, particularly for raised surface textile fabrics, both within results for a single fabric and across different fabric types.

As the results in Table 11 show, both of the alternative laundering procedures yielded the same Class 1 results as the Standard since they all had mean burn times above 7.0 seconds. These mean results were also sufficiently above the 7.0 second threshold that, even with some variability in burn times, the alternatives would not alter the classifications when compared to the classifications under the Standard. The wide range of minimum and maximum burn times in Table 11 is the result of variations in different raised surface textile fabrics, which behaved similarly for the laundering alternatives and the dry cleaning alternatives. The results of individual fabrics are discussed below.

The results for Fabric G, in Table 12, show that the mean, minimum, and maximum burn times for this fabric were all well above the 7.0-second threshold and, therefore, Class 1 using either of the alternatives or the Standard. Even with some variability in burn times, the burn times were sufficiently above the 7.0-second threshold that this would not alter the classifications. In addition, all of the specimens tested under both alternatives and the Standard yielded burn codes of SFBB poi. The same is true of the burn time and burn code results for Fabric H, in Table 12. This demonstrates that the classifications for Fabrics G and H would be the same under either of the alternative laundering procedures as they are under the Standard, making them both comparable alternatives.

The results for Fabric I illustrate that the mean and range of burn times for the two alternative laundering procedures are similar to that of the Standard, but that all three methods have some variability clustered close to the burn time thresholds for different classifications. This makes burn codes relevant for purposes of determining classifications. Staff found that all 30 specimens of Fabric I tested using the Standard and both laundering alternatives had burn codes of SFBB poi, making all of them Class 1, regardless of burn time. This demonstrates that the classification for Fabric I would be the same under either of the alternative laundering procedures as they are under the Standard, making them both comparable alternatives.

The results for Fabric J also illustrate that the mean and range of burn times for the two alternative laundering procedures are very similar to that of the Standard. Because the mean, minimum, and maximum are all well below the 7.0-second threshold for which classification can be determined solely by burn times, burn codes are relevant for determining the classifications of these specimens. Staff found that, under the laundering procedure in the Standard, 27 specimens of Fabric J had a burn code of SFBB poi (making them Class 1) and 3 had a burn code of SFBB (potentially making them Class 3 depending on the results of other specimens because all burn times were less than 4.0 seconds). The reduced agitation speed alternative yielded 24 specimens with a burn code of SFBB poi (making them Class 1) and 6 with a burn code of SFBB (potentially making them Class 3 depending on the results of other specimens because all burn times

were less than 4.0 seconds). In total, 5 specimens tested under the reduced agitation speed alternative yielded different burn codes than the Standard. The LP1–2021 alternative yielded 27 specimens with a burn code of SFBB poi (making them Class 1) and 3 with a burn code of SFBB (potentially making them Class 3 depending on the results of other specimens because all burn times were less than 4.0 seconds). In total, 6 specimens tested under LP1–2021 yielded different burn codes than the Standard.

This indicates that although both alternative laundering options could result in different classifications than the Standard, only a very small proportion of the results indicate this, and most results align with the classifications in the Standard. In addition, the number of reduced agitation speed and LP1–2021 burn code results that diverged from the Standard were nearly identical, indicating they provide similar equivalency to the Standard. Also, there were fewer classifications that differed when comparing LP1–2021 results and those under the Standard than when comparing the reduced agitation speed option to the Standard.

The results for Fabric K show that the mean, minimum, and maximum burn times for this fabric were all above the 7.0-second threshold and, therefore, Class 1 using either of the laundering alternatives or the Standard. However, because some of the burn times were close to this threshold, staff also considered their burn behavior. Staff found that all 30 specimens of Fabric K tested using the Standard, the reduced agitation speed alternative, and the LP1–2021 alternative had burn codes of SFBB poi. As such, even if burn times had been below the 7.0-second threshold, they would all still be Class 1 under every option. This demonstrates that the classifications for Fabric K would be the same under either of the alternative laundering procedures as they are under the Standard, making them all comparable alternatives.

3. Proposed Amendments and Rationale

a. Dry Cleaning

Based on staff's assessment and testing, the Commission proposes to amend the dry cleaning solvent requirements in the Standard to include, as an alternative to commercial grade perchloroethylene, commercial grade hydrocarbon solvent. Specifically, the Commission proposes to specify that the following conditions are permissible:

- hydrocarbon solvent,
- cationic detergent class,
- 20–25 minutes cleaning time,
- 4 minutes extraction time,
- 60–66 °C (140–150 °F) drying temperature,
- 20–25 minutes drying time, and
- 5 minutes cool down/deodorization time.

The Commission is not proposing to remove the perchloroethylene option from the Standard because this procedure is still available and widely used. However, because of the increasing restrictions on the use of perchloroethylene, the Commission proposes to also allow hydrocarbon as an alternative dry cleaning method. This would allow testing laboratories to continue to use perchloroethylene where it is available and permissible but accommodate testing laboratories that can no longer access or use this method.

As the comparison testing indicates, all three alternative dry cleaning procedures that staff tested would provide comparable and acceptable alternatives to the dry cleaning procedures in the Standard. Overall, fabrics yielded the same classifications under the hydrocarbon alternative as they did under the Standard. Although a small portion of the raised surface textile fabrics showed the potential to result in different classifications using hydrocarbon solvent, compared to the Standard, this was true for all three alternatives considered, and less so for hydrocarbon and silicone than for butylal; this only applied to a small portion of the fabrics and hydrocarbon results; variability in results was evident even in the results under the current Standard; and variability in flammability results is expected across specimens of the same fabric using the same procedure, particularly for raised surface fabrics. As such, in general, hydrocarbon solvent yields comparable flammability results to the Standard and is among the best options available to provide the needed alternative to perchloroethylene for testing laboratories that can no longer use that solvent. In addition, the Commission proposes to allow the use of hydrocarbon solvent, rather than silicone or butylal, because it is the most commonly used alternative to perchloroethylene, has a long history of use, and is less expensive than other alternatives. Also, several companies manufacture hydrocarbon solvents for dry cleaning, whereas silicone and butylal are newer technologies and patented, making their availability more limited.

However, CPSC also considered several variations on this proposal, including whether perchloroethylene should remain an option, and whether some other alternative or combination of alternatives including hydrocarbon, silicone, and butylal, should be permissible. The Commission requests comments on the proposed revision, including the solvent and associated parameters, the comparison testing, and the justifications for the proposed requirement. The Commission also requests comments on the alternatives considered and the justifications for them.

b. Laundering

Proposed amendments. Based on staff's assessment and testing, the Commission proposes to amend the laundering specifications in the Standard to remove the incorporation by reference of TM 124–2006 and, instead, incorporate by reference LP1–2021. Specifically, the Commission proposes to require that:

- washing conform to the provisions in section 9.2 and 9.4, and the provisions for ''(1) Normal'' and ''(IV) Hot'' in Table 1, *Standard Washing Machine Parameters,* of LP1–2021; and
- drying conform to the provisions in section 12.2(A), and the provisions for ''(Aiii) Permanent Press'' in Table VI, *Standard Tumble Dryer Parameters,* of LP1–2021.

These specifications are those staff used during comparison testing and are shown in Table 3, above.

In addition, for purposes of 16 CFR 1610.40, the Commission preliminarily concludes that the testing CPSC staff conducted that is provided in this notice and in full detail in Tabs D and E of the briefing package supporting this proposed rule [31] constitutes information demonstrating that the washing procedure specified in the current Standard—that is:

- in compliance with sections 8.2.2, 8.2.3 and 8.3.1(A) of TM 124–2006,
- using AATCC 1993 Standard Reference Detergent, powder,
- with wash water temperature (IV) (120° ± 5 °F; 49° ± 3 °C) specified in Table II of TM 124–2006,
- using water level, agitation speed, washing time, spin speed and final spin cycle for ''Normal/Cotton Sturdy'' in Table III of TM 124–2006, and
- with a maximum wash load of 8 pounds (3.63 kg) and consisting of any combination of test samples and dummy pieces—

is as stringent as the washing procedure in LP1–2021 that is proposed to be required in this NPR. If firms rely on

[31] Available at: *https://www.cpsc.gov/s3fs-public/Proposed-Rule-to-Amend-the-Standard-for-the-Flammability-of-Clothing-Textiles-16-CFR-part-1610.pdf?VersionId=4QrYt7W05qY5gEiFf_ohdwT4j8.FGDoR.*

this information and conform to the other requirements in section 1610.40, this will provide an option for them to continue to use washing machines that comply with the provisions in TM 124–2006 in the current Standard.

Likewise, for purposes of 16 CFR 1610.40, the Commission preliminarily concludes that the testing CPSC staff conducted that is provided in this notice and in full detail in Tabs D and E of the briefing package supporting this proposed rule [32] constitutes information demonstrating that the drying procedure specified in the current Standard—that is:

- in compliance with section 8.3.1(A), Tumble Dry, of TM 124–2006,
- using the exhaust temperature (150° ± 10 °F; 66° ± 5 °C) specified in Table IV, ''Durable Press,'' of TM 124–2006, and
- with a cool down time of 10 minutes specified in Table IV, ''Durable Press,'' of TM 124–2006—

is as stringent as the drying procedure in LP1–2021 that is proposed to be required in this NPR. If firms rely on this information and conform to the other requirements in section 1610.40, this will provide an option for them to continue to use dryers that comply with the provisions in TM 124–2006 in the current Standard.

Allowance in 16 CFR 1610.40. Although the Commission is proposing to require the use of laundering machines that comply with specified provisions in LP1–2021, testing laboratories could continue to use machines that comply with the provisions of TM 124–2006 referenced in the current Standard, in accordance with 16 CFR 1610.40.

As discussed above, section 1610.40 allows the use of alternative apparatus, procedures, or criteria for tests for guaranty purposes when reasonable and representative tests that use apparatus or procedures other than those in the Standard confirm compliance with the Standard, under specified conditions. This allowance specifies that an alternative must be as stringent as, or more stringent than the Standard, and that the Commission considers an alternative to meet this requirement ''if, when testing identical specimens, the alternative test yields failing results as often as, or more often than, the test'' in the Standard. Anyone using an alternative under this allowance must have data or information demonstrating this required stringency and retain it while the alternative is used to support a guaranty and for one year after. See 16 CFR part 1610 for full details regarding this allowance.

If the Commission finalizes this proposed rule and requires the use of laundering specifications in LP1–2021, then testing laboratories that want to continue to use laundering specifications that meet the specifications of TM 124–2006 that are referenced in the current Standard could use the results of staff's comparison testing to demonstrate that the laundering specification in TM 124–2006 that is referenced in the current Standard is as stringent as or more stringent than the specifications in LP1–2021 referenced in the proposed amendment. The following summarizes how staff's comparison testing demonstrates that the laundering specification in TM 124–2006 yields failing results as often as, or more often than the laundering specification in LP 1–2021, when testing identical specimens.

As discussed above, the aggregated results for both plain and raised surface textile fabrics (Tables 9 and 11) show that the mean burn times and classifications are comparable when specimens are laundered in accordance with the relevant specifications in TM 124–2006 or LP1–2021. More specifically, all of the individual plain surface textile fabrics yielded the same classifications—Class 1—whether tested in accordance with the relevant laundering procedures in TM 124–2006 or LP1–2021 and had sufficiently high burn times to consistently yield the same classifications, even if there was slight variability in burn times (Table 10). This demonstrates that, for plain surface textile fabrics, the relevant specifications in TM 124–2006 are as stringent as LP1–2021 since they yield failing results as often as LP1–2021.

Similarly, of the raised surface textile fabrics, Fabrics G, H, I, and K yielded the same classifications—Class 1—whether tested in accordance with the relevant laundering specifications in TM 124–2006 or LP1–2021 and had sufficiently high burn times and identical burn codes to consistently yield the same classifications, even if there was slight variability in burn times (Table 12). Only Fabric J had some deviations in burn codes, but even with these deviations, the classifications were the same. Specifically, although 6 of the 30 specimens of Fabric J tested under the laundering specification in LP1–2021 yielded different burn codes than those specimens tested under TM 124–2006, both laundering procedures still resulted in 27 of the 30 specimens tested under them having burn codes and burn times that would yield Class 1 results and three specimens with burn codes and burn times that could yield Class 3 results depending on the results of other specimens. Because flammability results are based on the final classification, and not just burn codes, this demonstrates that, for raised surface textile fabrics, the relevant laundering specifications in TM 124–2006 are as stringent as those in LP1–2021 since they yield failing results as often as LP1–2021.

Based on this information, the Commission preliminarily concludes that this NPR and the information provided in Tabs D and E of the briefing package supporting this proposed rule [33] satisfy the documentation requirements in section 1610.40 by demonstrating the necessary equivalency of the laundering specifications in TM 124–2006 that are referenced in the current Standard and those in LP1–2021 that the Commission proposes to adopt. If firms rely on this information and conform to the other requirements in section 1610.40, this will provide an option for them to continue to use laundering machines that comply with TM 124–2006 after the effective date of a final rule amending these provisions. This would minimize the impact of the proposed amendments on testing laboratories.

Comparison. As explained above, the laundering parameters in LP1–2021 differ somewhat from those in the Standard. Table 13 shows a comparison of the parameters. Although agitation speed is the only parameter of the Standard that machines can no longer meet, the Commission is proposing to require additional parameters from LP1–2021 as well, all of which were used during comparison testing. As explained above, certain parameters must be adjusted to accommodate other parameter changes, as certain parameters work in concert (*e.g.,* agitation speed and stroke length). In addition, certain parameters must be adjusted to reflect parameters for which LP1–2021 washing machines are designed (*e.g.,* load size). Finally, using all relevant parameters from a single standard provides for better clarity and ease of use.

[32] Available at: *https://www.cpsc.gov/s3fs-public/Proposed-Rule-to-Amend-the-Standard-for-the-Flammability-of-Clothing-Textiles-16-CFR-part-1610.pdf?VersionId=4QrYt7W05qY5gEiFf_ohdwT4j8.FGDoR.*

[33] Available at: *https://www.cpsc.gov/s3fs-public/Proposed-Rule-to-Amend-the-Standard-for-the-Flammability-of-Clothing-Textiles-16-CFR-part-1610.pdf?VersionId=4QrYt7W05qY5gEiFf_ohdwT4j8.FGDoR.*

TABLE 13—COMPARISON OF LAUNDERING PROCEDURE PARAMETERS

	Standard	LP1–2021
Washing Machine Parameters		
AATCC 1993 Standard Reference Detergent	66 ± 0.1 g (2.3 ± 0.004 oz)	66 ± 1 g (2.3 ± 0.004 oz).
Water Level	68 ± 4 L (18 ± 1 gal)	72 ± 4 L (19 ± 1 gal).
Agitation Speed	179 ± 2 spm	86 ± 2 spm.
Stroke Length	Not specified	Up to 220°.
Washing Time	12 min	16 ± 1 min.
Spin Speed	645 ± 15 rpm	660 ± 15 rpm.
Final Spin Time	6 min	5 ± 1 min.
Wash Temperature	49 ± 3 °C (120 ± 5 °F)	49 ± 3 °C (120 ± 5 °F).
Load size	Maximum 8 lbs (3.63 kg)	4 ± 0.2 lbs (1.8 ± 0.1 kg) Note that the proposed rule sets this as a maximum.
Dryer Parameters		
Maximum Dryer Exhaust Temperature	66 ± 5 °C (150 ± 10 °F)	68 ± 6 °C (155 ± 10 °F).
Cool Down Time	10 min	≤10 min.

Rationale. The Commission proposes to incorporate by reference the laundering specifications in LP1–2021, instead of requiring the reduced agitation speed alternative (*i.e.,* maintaining the requirement to meet specifications in TM 124–2006, but with a reduced agitation speed), for several reasons. For one, LP1–2021 is a standard that is commonly used by testing laboratories to launder samples for other tests. As such, testing laboratories are likely to already have this standard, be familiar with it, and have machines that comply with it. Also, there are more washing machines on the market that meet the specifications in LP1–2021 than the reduced agitation speed parameters staff examined. It is likely that only programmable washing machines where the agitation speed can be set by the user would be able to meet the reduced agitation speed parameters, whereas, both programmable machines and those with set parameters built to meet LP1–2021 specifications would be able to meet the proposed requirement.

Finally, as the comparison study results show, both the reduced agitation speed and LP1–2021 alternatives yield nearly identical classifications as the Standard, with only one raised surface textile fabric—Fabric J—having slightly different results when comparing the Standard and the alternatives. However, even for that fabric, the Standard and LP1–2021 yielded the same number of Class 1 results (27 specimens), while the reduced agitation speed alternative yielded 26 Class 1 results. As such, overall, fabrics yielded the same classifications under the LP1–2021 alternative as they did under the Standard and LP1–2021 is among the best options available to provide the needed alternative to TM 124–2006 since testing laboratories can no longer obtain washing machines that comply with that standard.

In addition to updating the washing machine specifications stated in section 1610.6(b)(1)(ii), the Commission proposes to update the drying specifications in that section to also incorporate by reference LP1–2021, for consistency and simplicity. Although clothes dryers have not changed significantly in recent years and machines that comply with TM 124–2006 are still available on the market, the Commission proposes to update this requirement for several reasons. For one, it is preferable for testing to follow the procedures and specifications in one standard for the entire laundering process, rather than using components of different standards for washing and drying, to ensure consistent and compatible testing. In addition, using two separate standards for washing and drying could lead to confusion or errors in testing, which could affect flammability results. Also, obtaining and maintaining two separate standards potentially would be cumbersome and slightly more costly for testing laboratories. Because many testing laboratories likely already have and are familiar with LP1–2021 to test for compliance with other standards, requiring the use of only this standard would be simpler, clearer, and less costly.

Finally, the dryer specifications in TM 124–2006 and LP1–2021 are nearly identical, which means the proposed update is unlikely to require testing laboratories to replace dryers that comply with the current Standard. As explained above, the Standard currently requires that drying be performed in accordance with section 8.3.1(A) of TM 124–2006 using the exhaust temperature and cool down time specified in ''Durable Press'' of Table IV of that standard. The Commission proposes to require that drying be performed in accordance with section 12.2(A) of LP1–2021 using the exhaust temperature and cool down time specified in ''(Aiii) Permanent Press'' of Table VI of that standard. These requirements are nearly identical—the comparison is discussed below.

Section 8.3.1(A) of TM 124–2006 and section 12.2(A) of LP1–2021 include essentially identical requirements that simply require tumble drying and immediate removal of samples. Similarly, reference to ''Permanent Press'' instead of ''Durable Press'' does not alter any requirements because the two terms have the same meaning—permanent press is simply the term more commonly used by industry currently.

As for exhaust temperature, in TM 124–2006, ''Durable Press'' of Table IV specifies that the dryer exhaust temperature is 66 ± 5 °C, whereas, in LP1–2021, (Aiii) ''Permanent Press'' of Table VI specifies that the maximum dryer exhaust temperature is 68 ± 6°C. As such, the range of exhaust temperatures is nearly identical in both standards, with TM 124–2006 allowing a range of 61–71 °C and LP1–2021 allowing a range of 62–74 °C. Thus, by updating the Standard to require the use of LP1–2021, only dryers with an exhaust temperature of precisely 61 °C would no longer be permissible, and dryers with exhaust temperatures of 72–74 °C would become permissible. Because most dryers are designed to target the mid-range of permissible temperatures, staff does not expect many dryers to fall outside the range that is permissible under both standards. To the extent that a dryer

complies with the current Standard, but not the exhaust temperature range in LP1–2021, Table VI, (Aiii) Permanent Press, testing laboratories would have section 1610.40 as an option to continue using their existing dryers.

Similarly, with respect to cool down time, TM 124–2006, ''Durable Press'' of Table IV specifies that the cool down time is 10 minutes, whereas in LP1–2021, (Aiii) ''Permanent Press'' of Table VI specifies that the cool down time is 10 minutes or less. As such, by updating the Standard to require the use of LP1–2021, there is a wider allowance for cool down time, including that specified in TM 124–2006.

Based on the very minor differences between the dryer specifications in TM 124–2006 and LP1–2021, staff expects that this proposed update would not require testing laboratories to replace any dryers because all machines that comply with TM 124–2006 are likely to also comply with LP1–2021, and the allowance in 16 CFR 1610.40 is available for the small number of machines that may become non-compliant.

Alternatives. The Commission considered several variations on this proposal. One alternative the Commission considered is to update the incorporation by reference in the Standard from TM 124–2006 to the most recent version of that standard, TM 124–2018. AATCC has updated TM 124 several times since 2006 (in 2009, 2010, 2011, 2014, and 2018) to reflect the evolving specifications of machines available on the market. In the 2010 and 2011 versions of the standard, AATCC removed the table specifying the washing machine parameters that is referenced in the Commission's regulations, instead referencing AATCC Monograph 6 ''Standardization of Home Laundry Test Conditions.'' AATCC later replaced the reference to Monograph 6 with reference to LP1, and then later revised TM 124 again to include a table specifying washing machine parameters.

The washing and drying specifications in TM 124–2018 are the same as those the Commission proposes to incorporate by reference from LP1–2021, but the Commission is not proposing to incorporate by reference TM 124–2018 for several reasons. For one, unlike LP1–2021 and the relevant provisions in the Standard, TM 124 is not just a laundering procedure—it is primarily intended to evaluate the smoothness appearance of fabrics after laundering and, accordingly, has procedures addressing that purpose. In contrast, the Standard is intended only for flammability assessments, and LP1–2021 is intended to be a stand-alone laundering protocol that can be used for flammability testing. In addition, because AATCC has referenced laundering specifications in several different ways over multiple revisions to TM 124, referencing TM 124 is a less reliable way of incorporating by reference these laundering requirements. In contrast, LP1–2021 is not expected to significantly change the laundering procedures the Commission proposes to incorporate by reference.

Another alternative the Commission considered is allowing both the continued use of the laundering specifications in the Standard (*i.e.,* TM 124–2006) and, as an alternative, the specifications in LP1–2021. The Commission is not proposing that option for several reasons. For one, when CPSC's washing machines that meet TM 124–2006 reach the end of their useful lives, CPSC will be unable to replace them with machines that meet that specification. At that point, CPSC will be unable to assess compliance with the Standard under TM 124–2006. Moreover, retaining a specification in the regulations that can no longer be met by machines available on the market leaves the regulations outdated. Instead, the Commission highlights 16 CFR 1610.40, which already provides an allowance for firms to use alternative apparatus for testing, under specific conditions. The Commission is facilitating the use of this allowance by providing in this notice and supporting materials the information supporting the use of 16 CFR 1610.40. Alternatively, the Commission could require firms to supply their own supporting information for section 1610.40.

Similarly, the Commission considered amending the Standard to include the specifications in LP1–2021, while allowing for the continued use of TM 124–2006 for a limited phase-out period. The Commission is not proposing this option because it would create the same problems as allowing continued use of TM 124–2006 indefinitely, and staff does not have information about an appropriate phase-out period for machines that comply with TM 124–2006. Although these machines have not been available on the market for many years, some testing laboratories have maintained existing machines, and it is difficult to determine when all such machines will be out of use.

In addition, the Commission considered only updating the washing machine specifications in the Standard, and not the dryer specifications, since only the washing machine specifications can no longer be met my machines available on the market. However, the Commission is proposing to also update the dryer specifications for the reasons discussed above.

Comments. The Commission requests comments on the proposed amendments, including the laundering specifications, comparison testing, use of the allowance in 16 CFR 1610.40, and the justifications for the proposed requirements. The Commission also requests comments on the alternatives considered and the justifications for them, including the reduced agitation speed, LP1–2021, TM 124–2018, allowing both TM 124–2006 and LP1–2021, providing a phase-out period for TM 124–2006, and the dryer specification. In addition, the Commission seeks information or data regarding the options the Commission has considered, such as how many testing laboratories use washing machines that comply with TM 124–2006, how many such machines testing laboratories use, the expected useful life remaining on these machines, and the extent to which testing laboratories' dryers comply with TM 124–2006 but would not comply with LP1–2021.

IV. Relevant Existing Standards

CPSC staff reviewed and assessed several voluntary and international standards that are relevant to clothing flammability:

- TM 124;
- LP1–2021;
- ASTM D1230–22, *Standard Test Method for Flammability of Apparel Textiles;* and
- Canadian General Standards Board Standard CAN/CGSB–4.2 No. 27.5, *Textile Test Method Flame Resistance—45° Angle Test—One-Second Flame Impingement.*

As explained above, TM 124–2006 is currently incorporated by reference into the Standard as part of the laundering requirements, but washing machines that meet this specification are no longer available on the market. The current version, TM 124–2018, includes washing and drying specifications that are the same as LP1–2021. However, TM 124 is not a flammability standard; rather, it is intended to evaluate the smoothness appearance of fabrics after repeated home laundering. As such, it contains provisions that are not relevant to flammability testing and lacks provisions that are necessary for flammability testing.

Similarly, the Commission is proposing to incorporate by reference portions of LP1–2021, but this standard also does not include full flammability testing and classification requirements because it is intended as a stand-alone

laundering protocol, for use with other test methods. ASTM D1230 is similar to the Standard but contains similar issues to those this proposed rule aims to address (*e.g.,* same stop thread description as the Standard), and it contains different laundering specifications, terminology, and burn codes. The Canadian standard also is similar to the Standard, but also has some differences (*e.g.,* allows a single Tex size for stop thread).

V. Preliminary Regulatory Analysis

The Commission is proposing to amend a rule under the FFA, which requires that an NPR include a preliminary regulatory analysis. 15 U.S.C. 1193(i). The following discussion is extracted from staff's preliminary regulatory analysis, available in Tab F of the NPR briefing package.

A. Preliminary Description of Potential Costs and Benefits of the Proposed Rule

The preliminary regulatory analysis must include a description of the potential benefits and costs of the proposed rule, including unquantifiable benefits and costs.

1. Potential Benefits

The primary benefit of the proposed amendments is a reduction of burdens for testing laboratories by clarifying existing requirements and updating the specifications for stop thread, dry cleaning, and laundering to include options that are identifiable, permissible for use, and currently available on the market. In addition, the proposed amendments should improve consumer safety. The proposed amendments provide comparable flammability results to the current Standard but would improve testing laboratories' abilities to conduct testing and obtain consistent and reliable results. This should improve consumer safety by ensuring that textiles intended for use in clothing are properly tested and classified so that dangerously flammable textiles are not used in clothing. Staff is unable to quantify these potential benefits because of the difficulty of measuring the extent of testing laboratories' burden reduction and possible improvements to consumer safety. However, staff estimates that these benefits are likely to be small.

Burn Codes. The proposed amendments to burn codes would clarify and streamline these provisions, which staff expects would improve the consistency and reliability of flammability testing results and classifications. This, in turn, may provide some safety benefit to consumers, and reduce testing burdens for testing laboratories. Because these proposed amendments are intended to clarify existing provisions and would not change current requirements for testing or classification, staff expects that they would provide a small amount of unquantifiable benefits.

Stop Thread. The proposed amendments to the stop thread specification would clarify the type of thread required by using the Tex system, which is commonly used and understood by the industry, to define the thread size. The proposed amendments would also expand the range of threads permissible for use under the Standard by providing a range of permissible Tex sizes, rather than specifying a single thread specification, as the current Standard does. As such, the proposed amendments would clarify the requirements, which may have consumer safety benefits by yielding more consistent and reliable test results. However, these benefits are expected to be small since the proposed amendments would provide comparable test results and classifications to the current Standard. The proposed amendments also may ease burdens on testing laboratories, by making it easier to identify compliant thread and by making more threads permissible for use. Therefore, staff expects that these proposed amendments would provide a small amount of unquantifiable benefits.

Dry Cleaning Specification. The proposed amendments to the dry cleaning specification would allow for the continued use of the existing specification using perchloroethylene solvent, and also add an additional specification, as an alternative, to accommodate testing laboratories that will soon be unable to use the solvent currently specified in the Standard. The alternative specification, using hydrocarbon solvent, provides comparable flammability results to the current solvent specified in the Standard and staff notes that the cost of hydrocarbon solvent is comparable (or lower) in cost than other alternatives. Therefore, staff expects the proposed amendments to reduce burdens on testing laboratories by providing an additional alternative dry cleaning specification and allowing testing laboratories that are subject to restrictions on the use of perchloroethylene to continue to test to the Standard.

Laundering Specification. The proposed amendments to the washing specifications would provide a specification that can be met by machines that are currently on the market. Staff expects that this will reduce burdens on testing laboratories because it would allow testing laboratories that can no longer maintain or obtain washing machines that comply with the Standard to continue to test to the Standard, and it would eliminate their need to maintain and repair older outdated machines. Staff expects the proposed amendments to the drying specifications would provide benefits as well. By requiring the use of the same standard for both washing and drying, these amendments would streamline the requirements for testing laboratories, making it less cumbersome and less costly than obtaining and following two standards. Moreover, LP1–2021 is already familiar to many testing laboratories since it is used for other standards as well; as such, using this standard should be clear and low cost. In addition, by requiring the use of a widely familiar standard for both washing and drying, the proposed amendments should provide for consistent and reliable test results and classifications, and requiring the use of a single standard should reduce the risk of confusion or testing errors from referencing two standards, both of which may have some safety benefits for consumers.

2. Potential Costs

Burn Codes. The proposed amendments regarding burn codes only clarify and streamline existing requirements, and would not change any testing, flammability results, or classification criteria. As such, staff does not expect these proposed amendments to have any notable costs.

Stop Thread. The proposed amendments regarding the stop thread specification clarify and expand the range of permissible threads. They would not change any testing, flammability results, or classification criteria. As staff's testing indicates, thread that meets the current specification in the Standard would comply with the proposed amendments, and the proposed amendments would allow for the use of a wider range of threads than the current Standard. This would allow testing laboratories to continue to use their existing thread or more easily obtain compliant thread by providing a wider range of options. Therefore, staff does not expect these proposed amendments to have any notable costs.

Dry Cleaning Specification. The proposed amendments regarding the dry cleaning specification allow for the continued use of the existing specification (using perchloroethylene solvent), but also provides an additional alternative specification (using hydrocarbon solvent). The proposed amendments would not change any

testing requirements or criteria and, as staff's testing demonstrates, the hydrocarbon alternative provides comparable flammability results and classifications to the perchloroethylene specification. As such, testing laboratories could continue to use the existing specification, but would also have an additional option for complying with the Standard. Therefore, staff does not expect these proposed amendments to have any notable costs.

Laundering Specification. The proposed amendments regarding the washing specification would require different washing machines than those that currently comply with the Standard, since those machines are no longer available on the market. However, firms have the option to continue using machines that comply with the current Standard under 16 CFR 1610.40, thereby avoiding the need to obtain new washing machines. In this notice, the Commission preliminary concludes that, for purposes of 16 CFR 1610.40, the testing CPSC staff conducted that is provided in this notice and in full detail in Tabs D and E of the briefing package supporting this proposed rule constitutes information demonstrating that the washing procedure specified in the current Standard is as stringent as the washing procedure in LP1–2021 that is proposed to be required in this NPR. Therefore, if firms rely on this information and conform to the other requirements in section 1610.40, this will provide an option for them to continue to use washing machines that comply with the provisions in TM 124–2006 in the current Standard. This alternative would impose no costs, as testing laboratories could continue to use their existing compliant machines.

Although staff does not expect the proposed amendments to the washing specifications to impose any costs, staff examined potential costs associated with obtaining machines that comply with the proposed amendments to assess the costs to firms that choose to do so, rather than continue to use existing machines in accordance with the allowance in 16 CFR 1610.40. One potential cost to firms that choose to obtain new machines would be the cost of buying a copy of LP1–2021, which is approximately $50 for AATCC members and $70 for non-members. Staff does not consider this a significant cost and firms will not incur this cost if they already have LP1–2021 to comply with other standards.

The primary cost to firms that choose to obtain new machines would be the cost of new washing machines that comply with LP1–2021. Staff estimates that these machines cost an average of $4,300 (excluding tax but including certified calibration, packaging, and shipping). However, this cost would be offset by the reduced costs of no longer needing to repair or maintain existing, outdated machines. Staff estimates that the cost of maintaining and repairing the outdated machines is $300 annually and assumes that if a laboratory chooses to upgrade machines, it expects to receive benefits from the upgrade that outweigh the acquisition costs.

Staff was unable to determine the number of testing laboratories that test to the Standard and that would, therefore, by subject to the proposed amendments. At a minimum, staff notes that there currently are more than 300 testing laboratories that are CPSC-accepted third party laboratories that test to the Standard for purposes of children's product certifications. However, that is an underestimate of the number of firms impacted by the proposed rule because testing laboratories need not be CPSC-accepted third party laboratories to test to the Standard for non-children's products. At a maximum, staff notes that there are a total of 7,389 testing laboratories in the United States, according to the Census Bureau. However, this is an overestimate of the number of firms in the United States impacted by the proposed rule because this number includes testing laboratories that do not test to the Standard. Staff estimates that each testing laboratory that tests to the Standard has three washing machines that do not meet LP1–2021.

The proposed amendments regarding the drying specification are unlikely to require different dryers than those that currently comply with the Standard, since most dryers can comply with both specifications. However, to the extent that dryers that meet the current Standard would not meet the proposed amendments, firms would again have the option to continue to use their existing compliant dryers in accordance with 16 CFR 1610.40. Therefore, this alternative would eliminate any potential costs associated with the proposed amendments. Moreover, because most dryers comply with both the current Standard and LP1–2021, staff does not expect that most firms would need to replace their dryers even if they chose to comply with LP1–2021, instead of using 16 CFR 1610.40 to continue to comply with TM 124–2006.

B. Reasons for Not Relying on a Voluntary Standard

When the Commission issues an ANPR under the FFA, it must invite interested parties to submit existing standards or provide a statement of intention to modify or develop a standard that would address the hazard at issue. 15 U.S.C. 1193(g). When CPSC receives such standards or statements in response to an ANPR, the preliminary regulatory analysis must provide reasons that the proposed rule does not include such standards. *Id.* 1193(i). In the present rulemaking, the Commission did not issue an ANPR. Accordingly, CPSC did not receive submissions of standards or statements of intention to develop standards regarding clothing flammability.

C. Alternatives to the Proposed Rule

A preliminary regulatory analysis must describe reasonable alternatives to the proposed rule, their potential costs and benefits, and a brief explanation of the reasons the alternatives were not chosen. 15 U.S.C. 1193(i). CPSC considered several alternatives to the proposed rule. These alternatives, their potential costs and benefits, and the reasons the Commission did not select them, are described in detail in section VI. Alternatives to the Proposed Rule, below, and Tab F of the NPR briefing package.

VI. Alternatives to the Proposed Rule

Burn Codes. CPSC could retain the current burn code provisions in the Standard, rather than updating them. This alternative would not create any costs, but also would not provide any benefits. In comparison, the proposed amendments also would not create any costs, but would have benefits. Based on staff's assessment of needed clarifications, and comments on the RFI indicating the need for these clarifications, CPSC did not select this option.

Stop Thread Specification. As one alternative, CPSC could update the stop thread specification to require the use of a stop thread with the specific Tex size of the thread currently required in the Standard. This would not create any costs since thread that meets the current Standard would meet this alternative. However, this alternative would be more restrictive than the proposed amendment by providing fewer options of stop threads. Because staff determined that the range of Tex sizes in the proposed amendment would provide comparable flammability results to the Standard, while providing a broader range of options, CPSC did not select this alternative.

Another alternative is to allow a wider range of Tex sizes, such as the full range staff assessed during flammability testing and found to yield comparable flammability results to the Standard.

This would further reduce burdens on testing laboratories by providing even more options. However, staff concluded that it is more appropriate to limit the range of Tex sizes to those of cotton threads that yielded comparable flammability results to the Standard because some polyester threads are designed to be flame resistant.

Dry Cleaning Specification. In addition to the hydrocarbon alternative proposed in this NPR, CPSC considered two additional dry cleaning specifications—silicone, and butylal. As staff's testing indicates, both of these alternatives also yield comparable flammability results to the current Standard and, therefore, are likely to offer similar benefits to the hydrocarbon specification proposed. Staff identified estimated costs of the four dry cleaning solvent specifications using comparisons provided by the Toxic Use Reduction Institute (TURI). These comparisons estimate that dry cleaning with perchloroethylene involves equipment costs between $40,000 and $65,000 and solvent costs of $17; dry cleaning with hydrocarbon involves equipment costs between $38,000 and $75,000 and solvent costs of $14 to $17; dry cleaning with silicone involves equipment costs between $30,500 and $55,000 and solvent costs of $22 to $28; and dry cleaning with butylal involves equipment costs between $50,000 and $100,000 and solvent costs of $28 to $34. CPSC did not select the silicone or butylal alternatives because butylal yielded slightly more different classifications than the current Standard during comparison testing; hydrocarbon is the most commonly used alternative to perchloroethylene; hydrocarbon has a long history of use; and several companies manufacture hydrocarbon solvents for dry cleaning, whereas silicone and butylal are newer technologies and patented, making their availability more limited.

CPSC also considered requiring the use of only the hydrocarbon specification, rather than continuing to allow the use of the perchloroethylene specification in the current Standard. However, this alternative may increase costs by requiring all testing laboratories to change their dry cleaning specifications. CPSC did not select this option because, although perchloroethylene is being restricted in some locations, it is still available and widely used in the dry cleaning industry.

Laundering Specification. In addition to the LP1–2021 alternative proposed in this NPR, CPSC considered an alternative of continuing to require compliance with the laundering specification in TM 124–2006, but with a reduced agitation speed. As staff's testing indicates, this alternative also yields comparable flammability results to the current Standard and, therefore, is likely to offer similar benefits to the LP1–2021 specification proposed. However, this alternative may have higher costs than the proposed amendment because laboratory-grade washing machines are not sold pre-programmed to the reduced agitation speed settings, but they are sold pre-programmed with the LP1–2021 settings. Consequently, additional time and skilled labor resources would be necessary to program machines to meet the reduced agitation speed alternative, and there would be the potential for testing errors. CPSC did not select this option because testing laboratories are likely to already have and be familiar with LP1–2021 and have machines that comply with it since it is required for other standards and there are more washing machines on the market that meet the specifications in LP1–2021 than the reduced agitation speed parameters.

CPSC also considered amending the Standard to allow the use of LP1–2021 specifications or TM 124–2006 specifications. Similarly, CPSC considered amending the Standard to include the specifications in LP1–2021, while allowing for the continued use of TM 124–2006 for a limited phase-out period. These alternatives would have minimal, if any, costs because they would allow testing laboratories to continue to use existing machines, while providing an option to obtain machines that are available on the market. CPSC did not select these options because this would leave CPSC unable to test for compliance in accordance with one of the procedures in the Standard when CPSC's TM 124–2006-compliance machines reach the end of their useful lives; this would retain in the Standard an outdated and obsolete specification that is no longer possible to meet with products available on the market; and staff does not have information about an appropriate phase-out period for machines that comply with TM 124–2006.

Although the CPSC did not select either of these alternatives, firms would still be able to continue to use TM 124–2006-compliant machines, instead of LP1–2021-compliant machines, under the provisions in 16 CFR 1610.40. The Commission is facilitating this option by providing, in this notice and the briefing package supporting it, the documentation necessary to support that alternative.

For dryers, CPSC considered retaining the current provisions in the Standard, which reference TM 124–2006, since dryers that meet this standard are still available on the market. This alternative would eliminate any costs associated with the proposed amendment to dryer specifications. CPSC did not select this option because requiring the use of a single standard ensures compatible washing and drying requirements and reduces confusion and costs associated with obtaining and following two separate standards. In addition, because the dryer specifications in TM 124–2006 and LP1–2021 are nearly identical, testing laboratories are unlikely to need to replace their dryers to meet the proposed amendments and, for those that do, the allowance in 16 CFR 1610.40 would mitigate or eliminate that need.

VII. Paperwork Reduction Act

This proposed rule does not involve any new information collection requirements, subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). The Standard does contain recordkeeping provisions, but this proposed rule would not alter the estimated burden hours to establish or maintain associated records from the information collection approved previously.[34]

VIII. Regulatory Flexibility Act Analysis[35]

When an agency is required to publish a proposed rule, section 603 of the Regulatory Flexibility Act (5 U.S.C. 601–612) requires that the agency prepare an initial regulatory flexibility analysis (IRFA), containing specific content, that describes the impact that the proposed rule would have on small businesses and other entities. 5 U.S.C. 603(a). However, an IRFA is not required if the head of the agency certifies that the proposed rule ''will not, if promulgated, have a significant economic impact on a substantial number of small entities.'' 5 U.S.C. 603, 605(b). The agency must publish the certification in the **Federal Register** along with the NPR or final rule, include the factual basis for the certification, and provide the certification and statement to the Chief Counsel for Advocacy of the Small Business Administration. *Id.*[36]

[34] See Office of Management and Budget (OMB) Control No. 3041–0024.

[35] For additional information regarding the Regulatory Flexibility Act analysis, see Tab F of the briefing package supporting this NPR.

[36] For additional details regarding certifications, see *A Guide for Government Agencies: How to*

Continued

The Commission certifies that the proposed amendments, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because there are little to no estimated costs associated with the rule since the proposed amendments reduce burdens on industry, maintain or expand existing requirements, or firms may rely on the allowance in 16 CFR 1610.40 to continue to use equipment that is being updated in the proposed amendments. The factual basis for the certification for this proposed rule is available in Tab F of the NPR briefing package; this section provides an overview.

A. Small Entities to Which the Rule Would Apply

The proposed rule would amend requirements for testing laboratories that test for compliance with the Standard. According to the small business size standards set by the Small Business Administration, testing laboratories are considered small if their average annual receipts are less than $16.5 million per year. Staff estimates that 70 percent of testing laboratories would be considered small.

Staff identified a possible minimum and maximum number of testing laboratories that would be subject to the proposed rule, but notes that the upper and lower bounds of these estimates are unlikely to represent the number of impacted firms. As explained above, at a minimum, there currently are more than 300 testing laboratories that are CPSC-accepted third party laboratories that test to the Standard for purposes of children's product certifications. However, this is an underestimate of the number of firms impacted by the proposed rule because this number only includes testing laboratories that test to the Standard for children's products. Using this minimum estimate and the assumption that 70 percent are small firms, there are a minimum of 210 CPSC-accepted third party laboratories that qualify as small businesses. To identify a possible maximum, staff determined that there are a total of 7,389 testing laboratories in the United States, according to the Census Bureau. However, this is an overestimate of the number of firms impacted by the proposed rule because this number includes testing laboratories that do not test to the Standard. Using this maximum estimate and the assumption that 70 percent are small firms, there are a maximum of 5,172 small testing laboratories could theoretically be impacted by the proposed rule.

B. Criteria Supporting Certification

In considering whether certification is justified, staff established criteria for what constitutes a ''significant economic impact'' and a ''substantial number.'' Staff determined that a reasonable threshold for a ''significant economic impact'' is costs in excess of 1 percent of the small firm's gross annual revenue, and a ''substantial number'' is 20 percent or more of small domestic firms.

C. Potential Economic Impacts on Small Entities

The estimated economic impacts of the proposed rule are the same for small entities as for all firms and are discussed in section V. Preliminary Regulatory Analysis of this notice.

Staff does not anticipate any significant costs associated with the proposed amendments regarding burn codes because these amendments would merely clarify existing requirements. Staff does not anticipate any significant costs associated with the proposed amendments regarding stop thread or dry cleaning specifications because these amendments would continue to allow the use thread and dry cleaning under the current Standard. Staff also does not anticipate any significant costs associated with the proposed amendments regarding drying specifications because most dryers comply with both the current drying specifications and the proposed amendments, and any machines that do not comply with the amendments could be addressed through the allowance in 16 CFR 1610.40.

As discussed in the preliminary regulatory analysis, staff also does not expect significant costs associated with the proposed amendments regarding washing specifications because firms could continue to use existing machines under the allowance in 16 CFR 1610.40. In addition, any economic impact of these amendments on small firms would be offset by reducing the repair and maintenance costs to these firms to continue to use outdated machines required in the current Standard. Therefore, because there is no expected cost associated with the proposed rule, the economic impact is expected to be lower than the thresholds for ''significant economic impact'' and ''substantial number.''

However, even if small firms choose to obtain new laundering machines, rather than continue to use existing machines under the allowance in 16 CFR 1610.40, staff expects these incremental costs to be well below 1 percent of the annual revenue of a small firm. Among domestic CPSC-accepted testing laboratories that are considered small and for which data was available, the average gross annual revenue was $2,930,192. As such, a cost would only be a ''significant economic impact'' if it totaled more than $29,301 (*i.e.,* 1 percent of the small firm's gross annual revenue). Staff estimates that acquiring a washing machine that complies with LP1–2021 is $4,300, minus $300 for the cost of maintaining a washing machine that complies with TM 124–2006, for a total incremental cost of $4,000. Staff assumes that testing laboratories each have three washing machines to test to the Standard. Thus, even replacing all three washing machines would result in a total cost of approximately $12,000 and would not constitute a ''significant economic impact'' for small entities. Staff does not expect all small entities to replace their washing machines, as some may use the allowance in 16 CFR 1610.40 to continue to use their existing machines. As such, a ''substantial number'' of small entities would not have significant economic impacts, even if they choose to upgrade their machines.

D. Assumptions and Uncertainties

Assumptions and uncertainties regarding the number of small entities affected by the proposed rule are discussed above. Assumptions and uncertainties regarding staff's assessment of the impact of the proposed rule on small entities are described in section V. Preliminary Regulatory Analysis of this notice.

E. Request for Comments

The Commission requests comments on the certification, the factual basis for it, the threshold economic analysis, and the underlying assumptions and uncertainties.

IX. Incorporation by Reference

The proposed rule incorporates by reference LP1–2021. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, in the preamble of the NPR, an agency must summarize the incorporated material, and discuss the ways in which the material is reasonably available to interested parties or how the agency worked to make the materials reasonably available. 1 CFR 51.5(a). In accordance with the OFR requirements, this preamble summarizes the provisions of LP1–2021 that the

Comply with the Regulatory Flexibility Act, SBA Office of Advocacy (Aug. 2017), available at: *https://advocacy.sba.gov/2017/08/31/a-guide-for-government-agencies-how-to-comply-with-the-regulatory-flexibility-act/.*

Commission proposes to incorporate by reference.

The standard is reasonably available to interested parties and interested parties can purchase a copy of LP1–2021 from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709; telephone (919) 549–8141; *www.aatcc.org.* Additionally, during the NPR comment period, a copy of LP1–2021 is available for viewing on AATCC's website at: *https://members.aatcc.org/store/lp001/2212/.* Once a final rule takes effect, a read-only copy of the standard will be available for viewing on the AATCC website. Interested parties can also schedule an appointment to inspect a copy of the standard at CPSC's Office of the Secretary, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814, telephone: 301–504–7479; email: *cpsc-os@cpsc.gov.*

X. Testing, Certification, and Notice of Requirements

Because the Standard applies to clothing and textiles intended to be used for clothing, it applies to both non-children's products and children's products. Section 14(a) of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089) includes requirements for testing and certifying that non-children's products and children's products comply with applicable mandatory standards issued under any statute the Commission administers, including the FFA. 15 U.S.C. 2063(a). The Commission's regulations on certificates of compliance are codified at 16 CFR part 1110.

Section 14(a)(1) addresses required testing and certifications for non-children's products and requires every manufacturer of a non-children's product, which includes the importer,[37] that is subject to a rule enforced by the Commission and imported for consumption or warehousing or distributed in commerce, to issue a certificate. The manufacturer must certify, based on a test of each product or upon a reasonable testing program, that the product complies with all rules, bans, standards, or regulations applicable to the product under statutes enforced by the Commission. The certificate must specify each such rule, ban, standard, or regulation that applies to the product. 15 U.S.C. 2063(a)(1).

Sections 14(a)(2) and (a)(3) address testing and certification requirements specific to children's products. A ''children's product'' is a consumer product that is ''designed or intended primarily for children 12 years of age or younger.'' 15 U.S.C. 2052(a)(2). The CPSA and CPSC's regulations provide factors to consider when determining whether a product is a children's product. 15 U.S.C. 2052(a)(2); 16 CFR 1200.2. An accredited third party conformity assessment body (third-party lab) must test any product that is subject to a children's product safety rule [38] for compliance with the applicable rule. 15 U.S.C. 2063(a)(2)(A). After this testing, the manufacturer or private labeler of the product must certify that, based on the third-party lab's testing, the product complies with the children's product safety rule. *Id.* 2063(a)(2)(B).

The Commission must publish a notice of requirements (NOR) for third-party labs to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A). The Commission must publish an NOR for new or revised children's products standards not later than 90 days before such rules or revisions take effect. *Id.* 2063(a)(3)(B)(vi). The Commission previously published an NOR for the Standard.[39] The NOR provided the criteria and process for CPSC to accept accreditation of third-party labs for testing products to 16 CFR part 1610. Part 1112 provides requirements for third-party labs to obtain accreditation to test for conformance with a children's product safety rule, including the Standard. 16 CFR 1112.15(b)(20).

The proposed rule does not require third-party labs to change the way they test products for compliance with the Standard. The proposed amendments to burn codes do not alter test protocols; they merely clarity existing requirements. The proposed amendments regarding stop thread and dry cleaning specifications continue to allow the use of the specifications that comply with the current Standard. Although the proposed amendments regarding laundering specifications differ from the current Standard, 16 CFR 1610.40 provides an allowance for the continued use of laundering specifications under the current Standard. Accordingly, if the Commission issues a final rule, the existing accreditations that the Commission has accepted for testing to the Standard would cover testing to the revised Standard, and CPSC-accepted third party conformity assessment bodies would be expected to update the scope of their accreditations to reflect the revised Standard in the normal course of renewing their accreditations. Accordingly, the Commission does not propose to revise the NOR for testing to the Standard.

The Commission seeks comments on this assessment and implications of the proposed rule on testing and certifications.

XI. Environmental Considerations

The Commission's regulations address whether CPSC is required to prepare an environmental assessment (EA) or an environmental impact statement (EIS). 16 CFR 1021.5. Those regulations list CPSC actions that ''normally have little or no potential for affecting the human environment,'' and, therefore, fall within a ''categorical exclusion'' under the National Environmental Policy Act (42 U.S.C. 4231–4370h) and the regulations implementing it (40 CFR parts 1500 through 1508) and do not require an EA or EIS. 16 CFR 1021.5(c). Among those actions are rules that provide design or performance requirements for products, or revisions to such rules. *Id.* 1021.5(c)(1). Because this proposed rule would make minimal revisions to the equipment and materials used for flammability testing in the Standard, and make minor revisions for clarity, the proposed rule falls within the categorical exclusion, and thus, no EA or EIS is required.

XII. Preemption

Executive Order (E.O.) 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of a regulation. 61 FR 4729 (Feb. 7, 1996), section 3(b)(2)(A). In accordance with E.O. 12988, CPSC states the preemptive effect of the proposed rule, as follows:

The proposed revision to the Standard for the Flammability of Clothing Textiles falls under the authority of the FFA. Section 16 of the FFA provides that ''whenever a flammability standard or other regulation for a fabric, related material, or product is in effect under this Act, no State or political subdivision of a State may establish or continue in effect a flammability standard or other regulation for such fabric, related material or product if the standard or other regulation is designed to protect against the same risk of occurrence of fire with respect to which

[37] The CPSA defines a ''manufacturer'' as ''any person who manufactures or imports a consumer product.'' 15 U.S.C. 2052(a)(11).

[38] The Commission has previously stated that because the definition of ''children's product safety rule'' in section 14(f)(1) of the CPSA includes any consumer product safety rule issued under any statute enforced by the Commission, third-party testing is required to support a certification under the Standard since the Standard applies to children's products as well as non-children's products. *See* 77 FR 31086, 31105 (May 24, 2012).

[39] *See* 75 FR 51016 (Aug. 18, 2010), amended at 76 FR 22608 (Apr. 22, 2011); 78 FR 15836 (Mar. 12, 2013).

the standard or other regulation under this Act is in effect unless the State or political subdivision standard or other regulation is identical to the Federal standard or other regulation.'' 15 U.S.C. 1203(a). The Federal Government, or a state or local government, may establish or continue in effect a non-identical requirement for its own use that is designed to protect against the same risk as the CPSC standard if the Federal, state, or local requirement provides a higher degree of protection than the CPSC requirement. *Id.* 1203(b). In addition, states or political subdivisions of a state may apply for an exemption from preemption regarding a flammability standard or other regulation applicable to a fabric, related material, or product subject to a standard or other regulation in effect under the FFA. Upon such application, the Commission may issue a rule granting the exemption if it finds that: (1) compliance with the state or local standard would not cause the fabric, related material, or product to violate the Federal standard; (2) the state or local standard provides a significantly higher degree of protection from the risk of occurrence of fire than the CPSC standard; and (3) the state or local standard does not unduly burden interstate commerce. *Id.* 1203(c).

XIII. Effective Date

Section 4(b) of the FFA specifies that an amendment to a flammability standard shall take effect 12 months after the date the amendment is promulgated unless the Commission finds, for good cause shown, that an earlier or later effective date is in the public interest and publishes the reasons for that finding. 15 U.S.C. 1193(b).

The Commission proposes that the amendments to the Standard take effect 6 months after publication of the final rule in the **Federal Register**. However, the Commission seeks comments on whether a different effective date is justified and, if so, the appropriate date and justification for it. The Commission preliminarily finds that this shorter effective date is in the public interest because the Standard provides an important safety benefit and the proposed amendments would provide some improvement to those benefits, with little to no costs. Moreover, a shorter effective date is justified given that the proposed amendments should have minimal impacts, improve clarity, and relieve burdens; that the prohibition on the use of perchloroethylene in dry cleaning in California will take effect in January 2023; and that washing machines that meet the Standard are no longer available.

Section 4(b) of the FFA also requires that an amendment of a flammability standard exempt fabrics, related materials, and products ''in inventory or with the trade'' on the date the amendment becomes effective, unless the Commission prescribes, limits, or withdraws that exemption because it finds that the product is ''so highly flammable as to be dangerous when used by consumers for the purpose for which it is intended.'' Because the proposed amendments are intended to have minimal impacts, the Commission proposes that products ''in inventory or with the trade'' on the date the amendment becomes effective be exempt from the amended Standard.

XIV. Proposed Findings

As discussed in section II. Statutory Provisions, above, the FFA requires the Commission to make certain findings when it issues or amends a flammability standard. 15 U.S.C. 1193(b), (j)(2). This section discusses preliminary support for those findings.

The amendments are needed to adequately protect the public against unreasonable risk of fire leading to death, injury, or significant property damage. Since the requirements in the Standard were promulgated in 1953, industry practices, equipment, materials, and procedures have evolved, making some parts of the Standard outdated, unavailable, or unclear. Because the Standard determines whether a fabric is safe for use in clothing, it is necessary to replace outdated and unavailable equipment, materials, and procedures and clarify unclear provisions, to ensure that flammability testing can be performed and that the results of the testing yield consistent, reliable, and accurate flammability classifications to ensure that dangerously flammable fabrics are not used in clothing.

The amendments are reasonable, technologically practicable, and appropriate, and are stated in objective terms. The amendments reflect clarifications that industry members requested, streamline existing requirements, and update outdated equipment, materials, and procedures. The proposed amendments reflect changes recommended by industry members, and allow for the use of equipment, materials, and procedures that are commonly used by industry members, recognized in standards developed by industry, and are readily available, and stated in objective terms.

The amendments are limited to fabrics, related materials, and products that present an unreasonable risk. The proposed amendments do not alter the textiles or products that are subject to the Standard, which addresses products that present an unreasonable risk.

Voluntary standards. CPSC identified four relevant voluntary standards. AATCC Test Method 124–2018, *Appearance of Fabrics after Repeated Home Laundering,* includes provisions that are relevant to flammability testing and is similar to portions of the Standard, but is not a flammability standard. Rather, it is intended to evaluate the smoothness appearance of fabrics after repeated home laundering. As such, it contains provisions that are not relevant to flammability testing and lacks provisions that are necessary for flammability testing. AATCC's Laboratory Procedure 1–2021, *Home Laundering: Machine Washing,* also includes provisions that are relevant to flammability testing and is similar to portions of the Standard but is not a flammability standard. Rather, it is intended as a stand-alone laundering protocol, for use with other test methods, such as a flammability standard. Therefore, it contains provisions that are not relevant to flammability testing and lacks provisions that are necessary for flammability testing. ASTM D1230–22, *Standard Test Method for Flammability of Apparel Textiles,* is similar to the Standard, but contains different laundering specifications, terminology, and burn codes, and it does not address issues identified in this proposed rule, such as clarification of the stop thread specification. Canadian General Standards Board Standard CAN/CGSB–4.2 No. 27.5, *Textile Test Method Flame Resistance—45° Angle Test—One-Second Flame Impingement,* also is similar to the Standard, but includes several differences from longstanding provisions in the Standard, such as stop thread specifications. Compliance with these voluntary standards is not likely to result in the elimination or adequate reduction of the risk of injury identified by the Commission. The proposed amendments will provide better clarity and updates than these voluntary standards and, therefore, better address the risk of injury.

Relationship of benefits to costs. Because the proposed amendments reflect current industry practices and provide needed clarifications, the anticipated benefits and costs are expected to be small and bear a reasonable relationship to each other.

Least burdensome requirement. The proposed amendments do not substantively change the Standard but provide changes that are necessary for

clarity and so that testing laboratories may obtain necessary materials and equipment to conduct testing. Several proposed amendments expand the permissible range of materials or equipment to reduce burdens. For revisions that include new equipment or materials, the proposed amendments either provide these new equipment and materials as additional alternatives, or the Commission provides information to support the continued use of equipment or materials in the current Standard under 16 CFR 1610.40.

XV. Request for Comments

The Commission requests comments on all aspects of the proposed rule. Comments should be submitted in accordance with the instructions in the **ADDRESSES** section at the beginning of this notice. The following are specific comment topics that the Commission would find particularly helpful:

- Burn Codes:
  - The proposed amendments to the test result code provisions, whether they improve clarity, and whether additional revisions are necessary;
- Stop Thread:
  - The proposed revisions to the stop thread specification and whether additional revisions are necessary and why;
  - The equivalency of the proposed revisions and information and data supporting such comments;
  - The use of Tex size as part of the stop thread specification, as well as the appropriate size and range and justifications for them;
  - Alternatives to the proposed revisions, along with information and data supporting them;
- Comparison Testing:
  - The comparison testing supporting this NPR, including the fabrics selected, test methods, results, and conclusions regarding comparability to the Standard;
- Dry Cleaning Specifications:
  - The proposed revisions to the dry cleaning specifications;
  - The equivalency of the proposed revisions and information and data supporting such comments;
  - Whether perchloroethylene should be retained as an option in the Standard;
  - Whether hydrocarbon solvent should be the alternative provided, or whether other options should be provided instead of or in addition to hydrocarbon and, if so, information, data, and justifications for doing so;
- Washing Specifications:
  - The proposed revisions to the washing specifications;
  - The equivalency of the proposed revisions and information and data supporting such comments;
  - Whether TM 124–2006 should be retained as an option in the Standard and, if so, for how long and the justifications for doing so;
  - Additional alternatives, including reduced agitation speed and TM 124–2018, and other appropriate alternatives, along with information, data, and justifications for such alternatives;
  - The allowance in 16 CFR 1610.40 and its utility for the continued use of washing specifications required in the current Standard;
- Drying Specifications:
  - The proposed revisions to the drying specifications;
  - The equivalency of the proposed revisions and information and data supporting such comments;
  - Whether TM 124–2006 should be retained as an option in the Standard and, if so, for how long and the justifications for doing so;
  - Additional alternatives, including TM 124–2018 or the use of different standards for washing and drying, and other appropriate alternatives, along with information, data, and justifications for such alternatives;
  - The allowance in 16 CFR 1610.40 and its utility for the continued use of drying specifications required in the current Standard;
- Effective Date:
  - The reasonableness of the proposed effective date, and recommendations and justifications for a different effective date;
  - The reasonableness of the proposed effective date for the amendments regarding burn codes and stop thread, and whether another effective date would be in the public interest, and why;
  - The reasonableness of the proposed effective date for the amendments regarding dry cleaning, and whether a shorter effective date would be in the public interest, particularly given the prohibition on the use of perchloroethylene in certain locations, beginning in 2023;
  - The reasonableness of the proposed effective date for the amendments regarding laundering, including whether labs will need to obtain new machines and the time needed to obtain and test with new machines;
- Economic Analyses:
  - The accuracy of the estimated benefits associated with the proposed rule, and whether additional benefits should be considered, particularly for testing laboratories that are affected by restrictions on dry cleaning and the market availability of laundering equipment;
  - The accuracy of the estimated costs associated with the proposed rule, and whether additional costs should be considered, particularly for testing laboratories that maintain, use, or need new laundering equipment to test to the Standard;
  - Information and data regarding the benefits and costs associated with the proposed rule;
  - The number of firms that would be impacted by the proposed rule and the extent to which they would be impacted;
  - The number of small entities that would be impacted by the proposed rule and the benefits and costs to them; and
  - The alternatives to the proposed rule and the benefits and costs associated with them.

Consistent with the FFA requirement to provide interested parties with an opportunity to make oral presentations of data, views, or arguments, the Commission requests that anyone who would like to make an oral presentation concerning this rulemaking contact CPSC's Office of the Secretary (contact information is provided in the **ADDRESSES** section of this notice) within 45 days of publication of this notice. If the Commission receives requests to make oral comments, a date will be set for a public meeting for that purpose and notice of the meeting will be provided in the **Federal Register**.

XVI. Conclusion

For the reasons stated in this preamble, the Commission proposes to amend the Standard for the Flammability of Clothing Textiles.

List of Subjects in 16 CFR Part 1610

Clothing, Consumer protection, Flammable materials, Incorporation by reference, Reporting and recordkeeping requirements, Textiles, Warranties.

For the reasons discussed in the preamble, the Commission proposes to amend title 16 of the Code of Federal Regulations by revising part 1610 to read as follows:

PART 1610—STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

■ 1. The authority citation for part 1610 continues to read as follows:

Authority: 15 U.S.C. 1191–1204.

■ 2. Amend § 1610.2 by revising paragraphs (a) and (p) to read as follows:

§ 1610.2 Definitions.

* * * * *

(a) *Base burn* (also known as base fabric ignition or fusing) means the point at which the flame burns the ground (base) fabric of a raised surface textile fabric and provides a self-

sustaining flame. Base burns, used to establish a Class 2 or 3 fabric, are those burns resulting from surface flash that occur on specimens in places other than the point of impingement (test result code SFBB) when the warp and fill yarns of a raised surface textile fabric undergo combustion. Base burns can be identified by an opacity change, scorching on the reverse side of the fabric, or when a physical hole is evident.

* * * * *

(p) *Stop thread supply* means 3-ply, white, mercerized, 100% cotton sewing thread, with a Tex size of 35 to 45.

* * * * *

■ 3. Amend § 1610.4 by revising paragraphs (a)(2), (b)(2), (c)(2), and Table 1 to read as follows:

§ 1610.4 Requirements for classifying textiles.

(a) * * *

(2) *Raised surface textile fabric.* Such textiles in their original state and/or after being refurbished as described in § 1610.6(a) and (b), when tested as described in § 1610.6, shall be classified as Class 1, Normal flammability, when the burn time is more than 7.0 seconds, or when they burn with a rapid surface flash (0.0 to 7.0 seconds), provided the intensity of the flame is so low as not to ignite or fuse the base fabric.

(b) * * *

(2) *Raised surface textile fabric.* Such textiles in their original state and/or after being refurbished as described in § 1610.6(a) and (b), when tested as described in § 1610.6, shall be classified as Class 2, Intermediate flammability, when the burn time is from 4.0 through 7.0 seconds, both inclusive, and the base fabric starts burning at places other than the point of impingement as a result of the surface flash (test result code SFBB).

(c) * * *

(2) *Raised surface textile fabric.* Such textiles in their original state and/or after refurbishing as described in § 1610.6(a) and § 1610.6(b), when tested as described in § 1610.6, shall be classified as Class 3 Rapid and Intense Burning when the time of flame spread is less than 4.0 seconds, and the base fabric starts burning at places other than the point of impingement as a result of the surface flash (test result code SFBB).

TABLE 1 TO § 1610.4—SUMMARY OF TEST CRITERIA FOR SPECIMEN CLASSIFICATION

[See § 1610.7]

Class	Plain surface textile fabric	Raised surface textile fabric
1	Burn time is 3.5 seconds or more. ACCEPTABLE (3.5 seconds is a pass).	(1) Burn time is greater than 7.0 seconds; or (2) Burn time is less than or equal to 7.0 seconds with no SFBB test result code. Exhibits rapid surface flash only. ACCEPTABLE—Normal Flammability.
2	Class 2 is not applicable to plain surface textile fabrics.	Burn time is 4.0 to 7.0 seconds (inclusive) with base burn (SFBB). ACCEPTABLE—Intermediate Flammability.
3	Burn time is less than 3.5 seconds. NOT ACCEPTABLE.	Burn time is less than 4.0 seconds with base burn (SFBB). NOT ACCEPTABLE—Rapid and Intense Burning.

Note: SFBB poi and SFBB poi* are not considered a base burn for determining Class 2 and 3 fabrics.

■ 4. Amend § 1610.5 by revising paragraphs (a)(2)(ii), (b)(6) and (7) to read as follows:

§ 1610.5 Test apparatus and materials.

(a) * * *

(2) * * *

(ii) *Stop thread supply.* This supply, consisting of a spool of 3-ply, white, mercerized, 100% cotton sewing thread, with a Tex size of 35 to 45 Tex, shall be fastened to the side of the chamber and can be withdrawn by releasing the thumbscrew holding it in position.

* * * * *

(b) * * *

(6) *Commercial dry cleaning machine.* The commercial dry cleaning machine shall be capable of providing a complete automatic dry-to-dry cycle using perchloroethylene solvent or hydrocarbon solvent and a cationic dry cleaning detergent as specified in § 1610.6(b)(1)(i).

(7) *Dry cleaning solvent.* The solvent shall be perchloroethylene, commercial grade, or hydrocarbon solvent, commercial grade.

* * * * *

■ 5. Amend § 1610.6 by revising paragraphs (b)(1)(i)(A), (B)*(1)(ii)* and *(iii)* to read as follows:

§ 1610.6 Test procedure.

* * * * *

(b) * * *

(1) * * *

(i) * * *

(A) All samples shall be dry cleaned before they undergo the laundering procedure. Samples shall be dry cleaned in a commercial dry cleaning machine, using one of the following prescribed conditions:

(*1*) For perchloroethylene:

(i) Solvent: Perchloroethylene, commercial grade.

(ii) Detergent class: Cationic.

(iii) Cleaning time: 10–15 minutes.

(iv) Extraction time: 3 minutes.

(v) Drying Temperature: 60–66 °C (140–150 °F).

(vi) Drying Time: 18–20 minutes.

(vii) Cool Down/Deodorization time: 5 minutes.

(*2*) For hydrocarbon:

(i) Solvent: Hydrocarbon.

(ii) Detergent Class: Cationic.

(iii) Cleaning Time: 20–25 minutes.

(iv) Extraction Time: 4 minutes.

(v) Drying Temperature: 60–66 °C (140–150 °F).

(vi) Drying Time: 20–25 minutes.

(vii) Cool Down/Deodorization Time: 5 minutes.

Samples shall be dry cleaned in a load that is 80% of the machine's capacity.

(B) * * *

(ii) *Laundering procedure.* The sample, after being subjected to the dry cleaning procedure, shall be washed and dried one time in accordance with section 9.2, section 9.4, section 12.2(A), Table I ''(1) Normal,'' ''(IV) Hot,'' and Table VI ''(Aiii) Permanent Press'' of AATCC LP1–2021, ''Laboratory Procedure for Home Laundering: Machine Washing'' (incorporated by reference, see § 1610.6(b)(1)(iii)). Washing shall be performed in accordance with the detergent (powder) specified in section 9.4 of AATCC LP1–2021; parameters for water level, agitator speed, stroke length, washing time, spin speed, spin time, and wash temperature specified in Table I, ''Standard Washing Machine Parameters,'' ''(1) Normal'' and ''(IV) Hot'' of AATCC LP1–2021; and a maximum wash load as specified in section 9.2 of AATCC LP1–2021, which may consist of any combination of test samples and dummy pieces. Drying shall be performed in accordance with section 12.2(A) of AATCC LP1–2021, Tumble Dry, using the exhaust temperature and cool down time

specified in Table VI, ''Standard Tumble Dryer Parameters,'' ''(Aiii) Permanent Press'' of AATCC LP1–2021.

(iii) AATCC LP1–2021, ''Laboratory Procedure for Home Laundering: Machine Washing,'' is incorporated by reference. The Director of the Federal Register approves this incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A read-only copy of the standard is available for viewing on the AATCC website. You may obtain a copy from the American Association of Textile Chemists and Colorists, P.O. Box 12215, Research Triangle Park, North Carolina 27709; telephone (919) 549–8141; *www.aatcc.org.* You may inspect a copy at the Division of the Secretariat, U.S. Consumer Product Safety Commission, Room 820, 4330 East West Highway, Bethesda, MD 20814, telephone (301) 504–7479, email *cpsc-os@cpsc.gov,* or 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.*

* * * * *

■ 6. Amend § 1610.7 by revising paragraph (b) to read as follows:

§ 1610.7 Test sequence and classification criteria.

* * * * *

(b) *Test sequence and classification criteria.* (1) Step 1, Plain Surface Textile Fabrics in the original state.

(i) Conduct preliminary tests in accordance with § 1610.6(a)(2)(i) to determine the fastest burning direction of the fabric.

(ii) Prepare and test five specimens from the fastest burning direction. The burn times determine whether to assign the preliminary classification and proceed to § 1610.6(b) or to test five additional specimens.

(iii) Assign the preliminary classification of Class 1, Normal Flammability and proceed to § 1610.6(b) when:

(A) There are no burn times; or

(B) There is only one burn time, and it is equal to or greater than 3.5 seconds; or

(C) The average burn time of two or more specimens is equal to or greater than 3.5 seconds.

(iv) Test five additional specimens when there is either only one burn time, and it is less than 3.5 seconds; or there is an average burn time of less than 3.5 seconds. Test these five additional specimens from the fastest burning direction as previously determined by the preliminary specimens. The burn times for the 10 specimens determine whether to:

(A) Stop testing and assign the final classification as Class 3, Rapid and Intense Burning only when there are two or more burn times with an average burn time of less than 3.5 seconds; or

(B) Assign the preliminary classification of Class 1, Normal Flammability and proceed to § 1610.6(b) when there are two or more burn times with an average burn time of 3.5 seconds or greater.

(v) If there is only one burn time out of the 10 test specimens, the test is inconclusive. The fabric cannot be classified.

(2) Step 2, Plain Surface Textile Fabrics after refurbishing in accordance with § 1610.6(b)(1).

(i) Conduct preliminary tests in accordance with § 1610.6(a)(2)(i) to determine the fastest burning direction of the fabric.

(ii) Prepare and test five specimens from the fastest burning direction. The burn times determine whether to stop testing and assign the preliminary classification or to test five additional specimens.

(iii) Stop testing and assign the preliminary classification of Class 1, Normal Flammability, when:

(A) There are no burn times; or

(B) There is only one burn time, and it is equal to or greater than 3.5 seconds; or

(C) The average burn time of two or more specimens is equal to or greater than 3.5 seconds.

(iv) Test five additional specimens when there is only one burn time, and it is less than 3.5 seconds; or there is an average burn time less than 3.5 seconds. Test five additional specimens from the fastest burning direction as previously determined by the preliminary specimens. The burn times for the 10 specimens determine the preliminary classification when:

(A) There are two or more burn times with an average burn time of 3.5 seconds or greater. The preliminary classification is Class 1, Normal Flammability; or

(B) There are two or more burn times with an average burn time of less than 3.5 seconds. The preliminary and final classification is Class 3, Rapid and Intense Burning; or

(v) If there is only one burn time out of the 10 specimens, the test results are inconclusive. The fabric cannot be classified.

(3) Step 1, Raised Surface Textile Fabric in the original state.

(i) Determine the area to be most flammable per § 1610.6(a)(3)(i).

(ii) Prepare and test five specimens from the most flammable area. The burn times and visual observations determine whether to assign a preliminary classification and proceed to § 1610.6(b) or to test five additional specimens.

(iii) Assign the preliminary classification and proceed to § 1610.6(b) when:

(A) There are no burn times. The preliminary classification is Class 1, Normal Flammability; or

(B) There is only one burn time and it is less than 4.0 seconds without an SFBB test result code, or it is 4.0 seconds or greater with or without am SFBB test result code. The preliminary classification is Class 1, Normal Flammability; or

(C) There are no base burns (SFBB) regardless of the burn time(s). The preliminary classification is Class 1, Normal Flammability; or

(D) There are two or more burn times with an average burn time of 0.0 to 7.0 seconds with a surface flash only. The preliminary classification is Class 1, Normal Flammability; or

(E) There are two or more burn times with an average burn time greater than 7.0 seconds with any number of base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(F) There are two or more burn times with an average burn time of 4.0 through 7.0 seconds (both inclusive) with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(G) There are two or more burn times with an average burn time less than 4.0 seconds with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(H) There are two or more burn times with an average burn time of 4.0 through 7.0 seconds (both inclusive) with two or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability.

(iv) Test five additional specimens when the tests of the initial five specimens result in either of the following: There is only one burn time and it is less than 4.0 seconds with a base burn (SFBB); or the average of two or more burn times is less than 4.0 seconds with two or more base burns (SFBB). Test these five additional specimens from the most flammable area. The burn times and visual observations for the 10 specimens will determine whether to:

(A) Stop testing and assign the final classification only if the average burn time for the 10 specimens is less than 4.0 seconds with three or more base burns (SFBB). The final classification is Class 3, Rapid and Intense Burning; or

(B) Assign the preliminary classification and continue on to § 1610.6(b) when:

(*1*) The average burn time is less than 4.0 seconds with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(*2*) The average burn time is 4.0 to 7.0 seconds (both inclusive) with no more than 2 base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(*3*) The average burn time is greater than 7.0 seconds. The preliminary classification is Class 1, Normal Flammability; or

(*4*) The average burn time is 4.0 to 7.0 seconds (both inclusive) with three or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability; or

(v) If there is only one burn time out of the 10 specimens, the test is inconclusive. The fabric cannot be classified.

(4) Step 2, Raised Surface Textile Fabric After Refurbishing in accordance with § 1610.6(b).

(i) Determine the area to be most flammable in accordance with § 1610.6(a)(3)(i).

(ii) Prepare and test five specimens from the most flammable area. Burn times and visual observations determine whether to stop testing and determine the preliminary classification or to test five additional specimens.

(iii) Stop testing and assign the preliminary classification when:

(A) There are no burn times. The preliminary classification is Class 1, Normal Flammability; or

(B) There is only one burn time, and it is less than 4.0 seconds without an SFBB test result code; or it is 4.0 seconds or greater with or without an SFBB test result code. The preliminary classification is Class 1, Normal Flammability; or

(C) There are no base burns (SFBB) regardless of the burn time(s). The preliminary classification is Class 1, Normal Flammability; or

(D) There are two or more burn times with an average burn time of 0.0 to 7.0 seconds with a surface flash only. The preliminary classification is Class 1, Normal Flammability; or

(E) There are two or more burn times with an average burn time greater than 7.0 seconds with any number of base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(F) There are two or more burn times with an average burn time of 4.0 to 7.0 seconds (both inclusive) with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(G) There are two or more burn times with an average burn time less than 4.0 seconds with no more than one base burn (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(H) There are two or more burn times with an average burn time of 4.0 to 7.0 seconds (both inclusive) with two or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability.

(iv) Test five additional specimens when the tests of the initial five specimens result in either of the following: There is only one burn time, and it is less than 4.0 seconds with a base burn (SFBB); or the average of two or more burn times is less than 4.0 seconds with two or more base burns (SFBB).

(v) If required, test five additional specimens from the most flammable area. The burn times and visual observations for the 10 specimens determine the preliminary classification when:

(A) The average burn time is less than 4.0 seconds with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(B) The average burn time is less than 4.0 seconds with three or more base burns (SFBB). The preliminary and final classification is Class 3, Rapid and Intense Burning; or

(C) The average burn time is greater than 7.0 seconds. The preliminary classification is Class 1, Normal Flammability; or

(D) The average burn time is 4.0 to 7.0 seconds (both inclusive), with no more than two base burns (SFBB). The preliminary classification is Class 1, Normal Flammability; or

(E) The average burn time is 4.0 to 7.0 seconds (both inclusive), with three or more base burns (SFBB). The preliminary classification is Class 2, Intermediate Flammability; or

(vi) If there is only one burn time out of the 10 specimens, the test is inconclusive. The fabric cannot be classified.

■ 7. Amend § 1610.8 by revising paragraph (b) to read as follows:

§ 1610.8 Reporting results.

* * * * *

(b) *Test result codes.* The following are definitions for the test result codes, which shall be used for recording flammability results for each specimen that is burned.

(1) For Plain Surface Textile Fabrics:

(i) DNI Did not ignite.

(ii) IBE Ignited, but extinguished.

(iii) _._sec. Actual burn time measured and recorded by the timing device.

(2) For Raised Surface Textile Fabrics:

(i) SF ntr Surface flash, does not break the stop thread. No time recorded.

(ii) _._SF only Time in seconds, surface flash only. No damage to the base fabric.

(iii) _._SFBB Time in seconds, surface flash base burn starting at places other than the point of impingement as a result of surface flash.

(iv) _._SFBB poi Time in seconds, surface flash base burn starting at the point of impingement.

(v) _._SFBB poi* Time in seconds, surface flash base burn possibly starting at the point of impingement. The asterisk is accompanied by the following statement: ''Unable to make absolute determination as to source of base burns.'' This statement is added to the result of any specimen if there is a question as to origin of the base burn.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 677

[Docket No. ETA–2022–0006]

RIN 1205–AC01

DEPARTMENT OF EDUCATION

34 CFR Parts 361 and 463

RIN 1830–AA32

Workforce Innovation and Opportunity Act Effectiveness in Serving Employers Performance Indicator

AGENCY: Office of Career, Technical, and Adult Education (OCTAE), Rehabilitation Services Administration (RSA), Education; Employment and Training Administration (ETA), Labor.

ACTION: Joint proposed rule.

SUMMARY: The Workforce Innovation and Opportunity Act (WIOA) establishes six primary indicators of performance. Currently, the regulations contain definitions for five of the six performance indicators. However, in the final rule implementing WIOA, the U.S. Departments of Labor and Education (the Departments) indicated that they

would initially implement the sixth indicator of performance—effectiveness in serving employers—in the form of a pilot program to test the feasibility and rigor of the three proposed approaches. With the pilot completed, the Departments are engaging in this rulemaking that proposes to define in a standardized way the performance indicator for effectiveness in serving employers for the regulations implementing the jointly administered requirements governing WIOA's six core programs.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before November 14, 2022.

ADDRESSES: You may submit comments, identified by Docket No. ETA–2022–0006 and Regulatory Identification Number (RIN) 1205–AC01, through the Federal eRulemaking Portal: *https://www.regulations.gov.* Search for the above-referenced RIN, open the proposed rule, and follow the on-screen instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking or ''RIN 1205–AC01.'' Because of the narrow scope of this proposed regulation, the Departments encourage commenters to submit, and the Departments will consider, comments regarding the definition of the effectiveness in serving employers performance indicator and the indicator's use in determining if sanctions are necessary for failure to achieve adjusted levels of performance as set forth herein. The proposed amendments are limited to the sections of the regulations detailed in this rulemaking.

Please be advised that the Departments will post all comments received that relate to this notice of proposed rulemaking (NPRM) without changes to *https://www.regulations.gov,* including any personal information provided. The *https://www.regulations.gov* website is the Federal eRulemaking Portal and all comments posted there are available and accessible to the public. Therefore, the Departments recommend that commenters remove personal information (either about themselves or others), such as Social Security numbers, personal addresses, telephone numbers, and email addresses included in their comments, as such information may become easily available to the public via the *https://www.regulations.gov* website. The responsibility to safeguard personal information remains with the commenter.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* (search using RIN 1205–AC01 or Docket No. ETA–2022–0006).

Comments under the Paperwork Reduction Act of 1995 (PRA): In addition to filing comments on any aspect of this proposed rule with the Departments, interested parties may submit comments that concern the information collection (IC) aspects of this NPRM to the Office of Information and Regulatory Affairs (OIRA) at *https://www.reginfo.gov/public/do/PRAMain.* Find the relevant information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT:

U.S. Department of Labor: Heidi Casta, Acting Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210, Telephone: (202) 693–3700 (voice) (this is not a toll-free number), 1–877–872–5627, or 1–800–326–2577 (telecommunications device for the deaf).

U.S. Department of Education: Braden Goetz, Director of Policy, Planning and Research, U.S. Department of Education, OCTAE, 400 Maryland Avenue SW, PCP, Washington, DC 20202–7240, Telephone: (202) 245–7405; or Jessica Hawes, WIOA Team Coordinator, Office of Special Education and Rehabilitative Services, U.S. Department of Education, RSA, 400 Maryland Avenue SW, PCP, Washington, DC 20202–2800, Telephone: (202) 245–8232.

SUPPLEMENTARY INFORMATION:

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Acronyms and Abbreviations

AEFLA Adult Education and Family Literacy Act
BLS Bureau of Labor Statistics
CFR Code of Federal Regulations
Departments U.S. Departments of Labor and Education
DOL U.S. Department of Labor
E.O. Executive Order
ES Employment Service
ETA Employment and Training Administration
FR Federal Register
ICR Information Collection Request
INA Indian and Native American
NAICS North American Industry Classification System
NPRM *or* proposed rule Notice of proposed rulemaking
OCTAE Office of Career, Technical, and Adult Education
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
PIRL Participant Individual Record Layout
PRA Paperwork Reduction Act of 1995
Pub. L. Public Law
PY Program Year
QCEW Quarterly Census of Employment and Wages
RFA Regulatory Flexibility Act
RIA Regulatory impact analysis
RIN Regulation Identifier Number
RSA Rehabilitation Services Administration
SBA U.S. Small Business Administration
Stat. United States Statutes at Large
TAC Technical Assistance Circular
TEGL Training and Employment Guidance Letter
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
VR Vocational Rehabilitation
WDB Workforce Development Board
WIOA Workforce Innovation and Opportunity Act

I. Rulemaking Authority and Background

President Barack Obama signed WIOA into law on July 22, 2014. WIOA, the first legislative reform of the public workforce system in more than 15 years, superseded titles I and II of the Workforce Investment Act of 1998 and amended the Wagner-Peyser Act and the Rehabilitation Act of 1973 (Rehabilitation Act). WIOA reaffirmed the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce system, and enhanced and increased coordination among several key employment, education, and training programs. In WIOA, Congress directed the Departments to issue regulations implementing statutory requirements to

ensure that the public workforce system operates as a comprehensive, integrated, and streamlined system to provide pathways to prosperity and continuously improve the quality and performance of its services to job seekers and to employers.

WIOA sec. 116 establishes the performance indicators and performance reporting requirements to assess the effectiveness of the WIOA six core programs (sec. 116(b)(3)(A)(ii)) in serving WIOA customers (*i.e.,* participants, other job seekers, and employers).[1] The core programs are the adult, dislocated worker, and youth programs under title I of WIOA; the Adult Education and Family Literacy Act (AEFLA) program under title II; the Employment Service (ES) program authorized under the Wagner-Peyser Act as amended by WIOA title III; and the Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act as amended by WIOA title IV.

In the 2016 Joint WIOA Final Rule,[2] the Departments initiated a phased approach to defining the effectiveness in serving employers performance indicator, which included a pilot study to explore different possible definitions of this performance measure. This proposed rulemaking is necessary to complete implementation of the performance accountability requirements as discussed in the Joint WIOA Final Rule and required by statute.

Currently, 20 CFR 677.155(a)(1)(vi) and 34 CFR 361.155(a)(1)(vi) and 463.155(a)(1)(vi) implement the effectiveness in serving employers performance indicator as described in sec. 116(b)(2)(A)(i)(VI) of WIOA, subject to sec. 116(b)(2)(A)(iv), which requires the Secretaries of Labor and Education to jointly develop and establish the performance indicator, after consultation with representatives of State and local governments, business and industry, and other interested parties.

In developing the Joint WIOA Final Rule, the Departments consulted with stakeholders and considered public comments through the Joint WIOA NPRM[3] and the WIOA Joint Performance Information Collection Request (ICR) (Office of Management and Budget (OMB) Control Number 1205–0526) on three proposed approaches to defining the performance indicator. In the Joint WIOA Final Rule, the Departments acknowledged the dissatisfaction expressed by commenters with using any Joint WIOA NPRM proposed approaches as a sole indicator of successful service to employers and agreed with comments discussing the utility of piloting multiple alternative measures to ensure that States are required to report on employer satisfaction in the most effective manner. As such, the Departments stated they would work to implement a pilot program, the details of which would be further delineated in joint Departmental guidance (81 FR at 55846).

After considering all input, the Departments implemented a pilot to test the rigor and feasibility of the proposed approaches to inform the development of a standard definition of the effectiveness in serving employers performance indicator. The pilot tested all three approaches described by the Departments in the Joint WIOA NPRM and Final Rule, with the intent of assessing each approach for its efficacy in measuring effectiveness in serving employers. The Departments included these approaches in the WIOA Joint Performance ICR and required each State to report on any two of the three approaches set out in the Joint WIOA Final Rule, as well as any additional measure a State established related to services to employers.[4] This approach provided States with flexibility in selecting the approaches to the effectiveness in serving employers performance indicator that best suited their needs, while providing the Departments the opportunity to evaluate States' experiences in using these measures from Program Year (PY) 2016 through PY 2020. This approach also allowed the Departments to obtain employer feedback regarding the extent to which these different approaches indicate effectiveness in serving employers. On behalf of the Departments, DOL commissioned an examination of State experiences with the various approaches through a third-party contractor and the Departments used the results of that study to help inform the Departments' analysis of which definition of the effectiveness in serving employers performance indicator to implement.

II. Effectiveness in Serving Employers Performance Indicator for Workforce Innovation and Opportunity Act Core Programs

Because of the narrow scope of this proposed regulation, the Departments encourage commenters to submit, and the Departments will consider, comments regarding the definition of the effectiveness in serving employers performance indicator and the indicator's use in determining if sanctions are necessary for failure to achieve adjusted levels of performance as set forth herein. The proposed amendments are limited to the sections of the regulations detailed in this rulemaking. Comments on other provisions and aspects of the WIOA regulations, whether promulgated jointly by the Departments or independently by each agency, will be considered outside the scope of this rulemaking and will not be considered by the Departments.

In the discussion of the proposed regulatory text changes below, the heading references the DOL CFR part and section number. However, the U.S. Department of Education has identical provisions at 34 CFR part 361, subpart E (under its State VR program regulations) and at 34 CFR part 463, subpart I (under its AEFLA regulations). For purposes of brevity, the discussion of proposed regulatory text changes below appears only once—in conjunction with the DOL section number—and constitutes the Departments' collective explanation of the change. These changes to the joint performance regulations will appear in each of the CFR parts identified in this paragraph when the regulations are finalized and published in the CFR. In this preamble, the Departments describe only the proposed substantive changes. However, for transparency, the Departments note we propose only one purely technical edit to the regulatory text, specifically the replacement of a semicolon with a period at the end of

[1] Section 116(b)(2)(A) of WIOA states the primary indicators of performance: (1) the percentage of participants who are employed during the second and (2) fourth quarters after exit from the program, (3) the median earnings of participants who are employed during the second quarter after exit, (4) the percentage of participants who obtain a recognized postsecondary credential during the program or within 1 year of exit, (5) the percentage of participants who achieve measurable skill gains during a program year, and (6) ''indicators of effectiveness in serving employers.'' This last indicator is the subject of this NPRM. Definitions of the others were included in the WIOA regulations promulgated in August 2016 (81 FR 55791; *see* 20 CFR 677.155, 34 CFR 361.155, 34 CFR 463.155).

[2] *Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule,* 81 FR 55792 (Aug. 19, 2016) (hereinafter ''Joint WIOA Final Rule'').

[3] *Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Notice of Proposed Rulemaking,* 80 FR 20689 (Apr. 15, 2015) (hereinafter ''Joint WIOA NPRM'').

[4] Governors had the option to establish and report on a third State-specific approach for measuring effectiveness in serving employers, in addition to two of the three Departmental pilot approaches selected by the State.

§ 166.190(c)(3) for grammatical correctness and consistency.

A. Pilot Programs for Workforce Innovation and Opportunity Act Core Programs

The Departments reviewed annual report data [5] for PY 2017 through PY 2020 [6] for each of the three approaches for measuring effectiveness in serving employers with a focus on minimizing employer burden and using information that would provide an accurate picture of how well the public workforce system serves employers. Specifically, States, under guidance from the Departments (hereinafter ''joint guidance''), piloted the following definitions for the effectiveness in serving employers performance indicator: [7]

- Retention with the Same Employer: Percentage of participants with wage records who exit from WIOA core programs and were employed by the same employer in the second and fourth quarters after exit.
- Repeat Business Customer: Percentage of employers who have used WIOA core program services more than once during the last three reporting periods.
- Employer Penetration: Percentage of employers using WIOA core program services out of all employers in the State.

During the pilot, the Departments determined that the effectiveness in serving employers performance indicator should be a shared outcome across all six core programs within each State (*i.e.,* meaning that one program would report on behalf of all six core programs in the State), rather than reported separately by each of the six core programs. In the joint guidance for the pilot, the Departments recommended that States centralize the coordination of data collection and reporting into a single agency and select one core program to report the data statewide, representing all six core programs, on an annual basis.[8] This recommendation promoted coordination at the State level and encouraged a holistic approach to serving employers.

The pilot began during PY 2016 and continued through PY 2021. For PY 2020—the most recent data available—the piloted approaches for the effectiveness in serving employers performance indicator provided the following performance results: [9]

- Retention with the Same Employer PY 2020 Rate: 54 percent (36 States reported effectiveness in serving employers performance using this definition);
- Repeat Business Customer PY 2020 Rate: 35 percent (47 States reported using this definition); and
- Employer Penetration PY 2020 Rate: 8 percent (44 States reported using this definition).

Exhibit 1 summarizes this information and provides further detail about the calculation methodology used to determine the outcome rate for the three approaches.

EXHIBIT 1—PILOT DEFINITION OUTCOMES FOR PROGRAM YEAR 2020

Pilot definition	Performance outcome national rate (%)	Pilot definition calculation methodology *	Number of states reporting outcomes for definition
Retention with the Same Employer	54	The number of participants with wage records who exit during the reporting period and were employed by the same employer during the second quarter after exit and the fourth quarter after exit *DIVIDED* by the number of participants with wage records who exit and were employed during the second quarter after exit.	36
Repeat Business Customer	35	The total number of establishments, as defined by Bureau of Labor Statistics (BLS) Quarterly Census of Employment and Wages (QCEW) program, served during the current reporting period (i.e., one program year) and that during the prior three reporting periods have used core program services more than once *DIVIDED* by the number of establishments, as defined by BLS QCEW, served during the current reporting period.	47

[5] The indicator is reported on an annual basis; therefore, the reporting period is the program year from July 1 through June 30.

[6] ETA, ''Workforce Performance Results,'' *https://www.dol.gov/agencies/eta/performance/results* (last visited Oct. 23, 2021); ETA, ''PY 2020 WIOA National Performance Summary,'' Feb. 28, 2022, *https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/PY%202020%20WIOA%20National%20Performance%20Summary.pdf* (last visited Feb. 28, 2022).

[7] The Departments issued joint guidance on December 19, 2016, ''Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs'' (Training and Employment Guidance Letter [TEGL] No. 10–16, OCTAE Program Memorandum 17–2, and RSA Technical Assistance Circular [TAC] 17–01), that described the pilot indicators for effectiveness in serving employers. The Departments updated this joint guidance in August 2017, with the issuance of a change to the guidance and required States to submit the first report of annual results using data collected during PY 2017 (July 1, 2017–June 30, 2018), meaning that States did not report any data for the pilot study for purposes of PY 2016. However, due to the lag in Quarterly Census of Employment and Wages data availability for the Retention with the Same Employer and Repeat Business Customers approaches, the initial results for the effectiveness in serving employers performance indicator pilot were not available for reporting in the WIOA annual report due October 16, 2017. As a result, States reported their initial data in PY 2017. ETA, TEGL No. 10–16, Change 1, ''Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,'' Aug. 23, 2017, page 26, *https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3255*; U.S. Department of Education, OCTAE Program Memorandum 17–2, ''Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,'' Aug. 23, 2017, page 23, *https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/octae-program-memo-17-2.pdf*; U.S. Department of Education, RSA–TAC–17–01, ''Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,'' Aug. 17, 2017, page 23, *https://rsa.ed.gov/sites/default/files/subregulatory/tac-17-01.pdf.*

[8] ETA, TEGL No. 10–16, Change 1, page 26; U.S. Department of Education, OCTAE Program Memorandum 17–2, page 23; U.S. Department of Education, RSA–TAC–17–01, page 23.

[9] The most current public workforce system performance accountability data can be found on ETA's website. ETA, ''Workforce Performance Results,'' *https://www.dol.gov/agencies/eta/performance/results* (last visited Feb. 28, 2022). See ETA, ''PY 2020 WIOA National Performance Summary,'' Feb. 28, 2022, page 9, *https://www.dol.gov/sites/dolgov/files/ETA/Performance/pdfs/PY%202020%20WIOA%20National%20Performance%20Summary.pdf.*

EXHIBIT 1—PILOT DEFINITION OUTCOMES FOR PROGRAM YEAR 2020—Continued

Pilot definition	Performance outcome national rate (%)	Pilot definition calculation methodology *	Number of states reporting outcomes for definition
Employer Penetration Rate	8	The total number of establishments, as defined by the BLS QCEW program, that received a service or, if it is an ongoing activity, are continuing to receive a service or other assistance during the reporting period *DIVIDED* by the total number of establishments, as defined by BLS QCEW. This measure is a unique count of employers using WIOA core programs. If an establishment receives, or continues to receive, more than one service during the reporting period (i.e., during the program year), that establishment should be counted only once in this calculation.	44

* As described in the joint guidance issued by the Departments.

Throughout the pilot period, only one State reported on a State-specific approach to the effectiveness in serving employers performance indicator.[10] However, this State-specific approach may not be replicable across other States and does not reflect the effectiveness of serving employers across all six core programs because the State only applied it to the title III Wagner-Peyser Act ES program.[11]

The Departments assessed the pilot through a Department of Labor contract that resulted in a final report titled *Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act.*[12] Specifically, the study assessed each approach to defining the effectiveness in serving employers performance indicator for validity, reliability, practicality, and unintended consequences.[13] Though the study did not definitively recommend one approach, in assessing the study's findings for each of the three approaches of the effectiveness in serving employers performance indicator, the Departments concluded that the Retention with the Same Employer approach placed the least amount of burden on States to implement, while also providing a valid and reliable approach to measuring the indicator.

The study authors identified strengths for the Repeat Business Customer approach, including that it serves as a proxy for employer satisfaction. The study authors identified weaknesses in the Repeat Business Customer approach, including that it: (1) may provide a disincentive to reach out to new employers; (2) is subject to variation in industry and sector economic conditions; and (3) may require a statistical adjustment model to mitigate the weaknesses and improve implementation and interpretation.[14] The study authors identified strengths for the Employer Penetration approach, including that the dataset used for this measure is comprehensive, covering more than 95 percent of U.S. jobs. The study authors also identified weaknesses in the Employer Penetration approach, including: (1) emphasis on quantity rather than quality or intensity of the employer service provided; (2) reliability issues associated with data entry and the process to count unique establishments; (3) measurement of program output rather than outcome; (4) potential for creation of perverse incentives to prioritize program breadth rather than depth in service and delivery; and (5) lack of sensitivity to industry sectors targeted by State and local workforce agencies.[15] The Departments considered the study's findings and concurred with its conclusions on the Repeat Business Customer approach and Employer Penetration approach. As noted above, the study did not identify any significantly advantageous alternatives to defining the effectiveness in serving employers performance indicator outside of the three proposals (Executive Summary, pp. xx–xxi). Nevertheless, the Departments identified the following advantages regarding the Retention with the Same Employer definition of the effectiveness in serving employers performance indicator:

• *Demonstration of Effectiveness:* Retention with the Same Employer demonstrates a continued relationship between the employer and participants who have exited WIOA programs. While many circumstances affect an employer's retention of employees, an indication that an employee maintains employment with the same employer in both the second and fourth quarters after exiting from a WIOA program demonstrates a level of success for

[10] *See* Shayne Spaulding, Burt Barnow, Amanda Briggs, John Trutko, Alex Trutko, and Ian Hecker, ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, Chapter 5 (Alternative Measures and Data Sources), *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

[11] One State reported a State-specific approach to measuring effectiveness in serving employers, which the State called ''Active Job Orders with Referrals.'' This measure is explained in the State's PY 2019 WIOA Annual Statewide Performance Report Narrative, which can be accessed at *https://www.dol.gov/sites/dolgov/files/eta/performance/pdfs/PY2019/PA_PY19%20WIOA%20Annual%20Report%20Narrative.pdf* (last visited Jan. 27, 2022).

[12] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

[13] *See id.* at 3–6 (stating that validity ''is used to assess whether you are measuring what you intend to measure''; that reliability ''refers to the ability to maintain consistency in data collection over time and across organizations collecting the data''; that practicality means that the measure ''must be relatively uncomplicated and simple to administer to avoid threats to reliability and validity'' and ''must be practical to use in administrating programs''; and that unintended consequences are ''negative consequences or behaviors that result, like the displacement of goals or conflict with other goals'').

[14] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, page 67, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

[15] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, page 68, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

WIOA customers (*i.e.,* successfully preparing participants to fill jobs that meet employers' needs). Retention of an employee reduces the costs to the employer associated with employee turnover and retraining. The other two approaches are based only on employer data and fail to capture any level of job match effectiveness.

• *Stable Collection Mechanism:* Retention with the Same Employer uses data already collected in the WIOA Joint Performance ICR (OMB Control Number 1205–0526). While not all States selected this approach in the pilot, all States collect this information under the existing WIOA Joint Performance ICR. In contrast, the Participant Individual Record Layout (PIRL) in the WIOA Joint Performance ICR does not currently collect data elements used for the Repeat Business Customer and Employer Penetration approaches to the performance indicator.

• *Alignment with Employment Performance Indicators:* Retention with the Same Employer aligns with the performance indicators for employment in the second and fourth quarters after exit, which are existing performance indicators that all WIOA core programs already report.

The Departments acknowledge that the limitations for Retention with the Same Employer could include the unintended consequence that this approach may be at odds with an employee seeking a higher paying job or employment benefits, and the possibility that the performance outcome for this indicator might not be the result of an employer receiving a service from the workforce development system. The Departments seek public comment on additional ways to mitigate potential unintended consequences and downsides. However, notwithstanding these considerations, the Departments have determined that the strengths of this approach outweigh its limitations, as well as the disadvantages of the other two approaches discussed above. Prioritizing these advantages (*i.e.,* stable data collection mechanism, alignment with other employment performance indicators, and demonstrating maintained relationships between employers and employees), the Departments have determined Retention with the Same Employer is the preferred approach of measuring effectiveness in serving employers. Performance on this indicator, like the other performance indicators, would be affected by fluctuating economic conditions. The Departments will use the statistical adjustment model, as WIOA requires, to assess performance affected by fluctuating economic conditions and participant characteristics.

Of the three piloted approaches, Retention with the Same Employer is the least burdensome for both States and employers, as noted in the Joint WIOA Final Rule regulatory impact analysis (RIA) (81 FR at 55968). Retention with the Same Employer uses wage records to calculate the measure. Wage records are the least burdensome records to use because States already have these records for other WIOA-required reporting, and they are the most standardized and statistically valid records available. Because the records are the most standardized records available, States would be able to coordinate data aggregation for the six core programs more easily for Retention with the Same Employer than they would for either Repeat Business Customer or Employer Penetration.

While not all States selected the Retention with the Same Employer indicator for the pilot, all States have the mechanism to collect this information. Data for the Repeat Business Customer and Employer Penetration Rate are collected and reported outside of the PIRL and present obstacles for core programs in terms of data aggregation. As noted above, the Retention with the Same Employer indicator is based on wage records and is the only indicator of these three that collects data through the OMB-approved ICR. As such, the data source for the Retention with the Same Employer indicator is stable and is available to all programs in all States. With respect to the Repeat Business Customer and Employer Penetration indicators, States had to develop data sources on an ad hoc basis; therefore, the data sources vary from State to State using either of these other two indicators, making comparisons less reliable for performance accountability purposes. Because effectiveness in serving employers is a statewide indicator in which one core program would report data on behalf of all six core programs in the State, the Departments are giving heavy consideration to the benefits of the data used to calculate this measure described above.

In addition, the Departments note that Retention with the Same Employer has the benefit of aligning with two of the three employment-related performance indicators, specifically the employment in the 2nd and 4th quarter after exit indicators that measure the employment outcomes of program participants. As such, it promotes the statutory purpose of WIOA, particularly that set forth in WIOA sec. 2(3): ''To improve the quality and labor market relevance of workforce investment, education, and economic development efforts . . . to provide America's employers with the skilled workers the employers need to succeed in a global economy.'' Using Retention with the Same Employer would measure two levels of program effort—from the standpoint of the employer in retaining an employee on a long-term basis and from the standpoint of a State's efforts to help a participant obtain and maintain stable employment.

After careful consideration of the information gained from the States' reports on using the three piloted approaches and the pilot study's findings, including the strengths and weaknesses described above, the Departments are proposing to define the effectiveness in serving employers performance indicator as Retention with the Same Employer on a statewide level, as tested in the pilot. To encourage programs to work together to serve employers using well-rounded approaches, the Departments have determined this indicator would be measured as a shared outcome across all core programs within each State, rather than measured as an individual performance indicator separately for each of the core programs. As such, the data would be reported by one core program on behalf of all six core programs in the State. This means that the indicator would include participant data from all six core programs in the State to generate one overall State indicator score. As such, this score assesses the State's workforce development system as a whole in terms of its effectiveness in serving employers. Finally, measuring a statewide effectiveness in serving employers performance indicator at the individual program level would be contrary to WIOA's efforts to streamline reporting across the core programs, and this approach reduces the burden of collecting and reporting data for effectiveness in serving employers on these grantees.

This determination requires that changes be made to 20 CFR 677.155(a)(1)(vi) and (c)(6), 34 CFR 361.155(a)(1)(vi) and (c)(6), and 34 CFR 463.155(a)(1)(vi) and (c)(6). These proposed changes are discussed in section II.B of this NPRM.

Section 116(b)(2)(A)(i)(VI) of WIOA applies the same effectiveness in serving employers performance indicator to four non-core programs DOL administers under WIOA title I.[16] For consistency

[16] WIOA secs. 159(c), 166(h), 167(c)(3), and 171(f) direct the Secretary of Labor to establish levels of performance for the relevant primary indicators of

Continued

and alignment across WIOA programs, in addition to all the reasons discussed above, DOL proposes to incorporate this same definition for the effectiveness in serving employers performance indicator into regulations in a related rulemaking, *DOL-Only Performance Accountability NPRM* (RIN 1205–AC08), published concurrently with this NPRM elsewhere in the **Federal Register**.

B. Proposed Changes to § 677.155

Section 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

Section 677.155 sets forth the primary indicators that the Departments use to evaluate the performance of WIOA's six core programs, as required by WIOA sec. 116(b)(2)(A)(i). These primary performance indicators apply to the adult, dislocated worker, and youth programs, the AEFLA program, the Wagner-Peyser Act ES program, and the VR program. These primary performance indicators create a common language shared across the programs' performance measures, support system alignment, enhance programmatic decision-making, and help participants make informed decisions related to training. Paragraphs 677.155(a)(1)(vi) and (c)(6) implement the sixth statutory performance indicator as described in sec. 116(b)(2)(A)(i)(VI) of WIOA, subject to sec. 116(b)(2)(A)(iv), which requires the Departments to develop the indicator after consultation with the stakeholders listed at sec. 116(b)(4)(B) and discussed above. This performance indicator measures program effectiveness in serving employers.

For the reasons discussed above, the Departments propose to revise § 677.155(a)(1)(vi) to establish Retention with the Same Employer as the standard definition for measuring effectiveness in serving employers, the sixth performance indicator for all WIOA core programs. The proposed regulation removes the title effectiveness in serving employers [17] and defines Retention with the Same Employer as the percentage of participants with wage records who exited the program and were employed by the same employer in the second and fourth quarters after exiting the program. The proposed definition also clarifies that, for the six WIOA core programs, the indicator is a statewide indicator that is reported by one core program on behalf of all six core programs in the State. Finally, the proposed definition references guidance to signal to States that the Departments will provide additional details and explanations for reporting on the effectiveness in serving employers performance indicator in joint guidance. This reference to guidance is consistent with other sections of the Departments' Joint WIOA Performance Accountability regulations.

The Departments also propose to make corresponding changes to § 677.155(c)(6) to define effectiveness in serving employers as Retention with the Same Employer for the WIOA title I youth program.

C. Adjusted Levels of Performance for Workforce Innovation and Opportunity Act Core Programs—Proposed Changes to § 677.190

§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?

Currently, 20 CFR 677.190 details the circumstances under which sanctions are applied when WIOA core programs fail to achieve adjusted levels of performance. Paragraph (c) sets forth criteria the Departments use to determine which States have met adjusted levels of performance: (1) the overall State program score (§ 677.190(c)(1)); (2) the overall State indicator score (§ 677.190(c)(3)); and (3) the individual indicator score (§ 677.190(c)(5)).

The Departments propose revising § 677.190 to include the effectiveness in serving employers performance indicator in the criteria for determining if a State has failed to meet adjusted levels of performance as part of the overall State indicator score. The proposed revision would establish conforming language regarding the assessment of effectiveness in serving employers as a statewide performance indicator, as expressed in the Joint WIOA Final Rule, and the definition for effectiveness in serving employers proposed in § 677.155(a)(vi) and (c)(6).

As clarified and detailed in the Joint WIOA Final Rule preamble (81 FR at 55847) and joint guidance, the Departments conclude that the collaborative nature of the indicator supports implementing the effectiveness in serving employers performance indicator as a shared measure across all core programs. WIOA sec. 116(b)(2)(A)(i)(VI) requires assessing effectiveness in serving employers. Unlike the statutory provisions describing the other primary indicators of performance in sec. 116(b)(2)(A)(i), the statute does not describe effectiveness in serving employers as based on individual participants' outcomes. Based on this distinction, the Departments are proposing to assess this indicator as a shared indicator across all core programs. The Departments intend to encourage cross-program collaboration, coordination, and a holistic approach to serving employers. To further this collaborative approach, the Departments are requiring that this performance indicator be reported by one core program on behalf of all six core programs within each State.

As proposed, States would continue using the approach recommended in the joint guidance and discussed above, in which one core program reports the data statewide, on behalf of and representing all six core programs, on an annual basis.

The proposed regulatory text for § 677.190 clarifies that effectiveness in serving employers is to be assessed as an overall State indicator score and is excluded from the overall State program score and the individual indicator score. Effectiveness in serving employers is a statewide indicator shared across all core programs and is assessed only as an overall State indicator score, and, therefore, it cannot be attributed to any one program by itself (consequently, one program is reporting on behalf of all six core programs in the State). This is consistent with the holistic nature of the indicator. Furthermore, establishing the effectiveness in serving employers performance assessment as just one statewide indicator ensures that the effectiveness in serving employers indicator does not have the potential to be an outsized influence on the determination of a State's performance success or failure, which could lead to the possible application of sanctions. Because the indicator is a shared score, there is only one score generated for this indicator. Therefore, if the effectiveness in serving employers indicator were assessed as part of each of the six overall State program scores, this same score would repeat for each program in assessing the overall State program score, despite not being attributable to each program as noted above, thereby giving the indicator the potential to be an outsized influence in assessing State performance.

To reflect the effectiveness in serving employers performance indicator's status as a shared statewide indicator as

performance in WIOA sec. 116(b)(2)(A) for the Job Corps program, Indian and Native American programs, the National Farmworker Jobs Program, and the YouthBuild program, respectively.

[17] The regulations for definitions for the other WIOA performance indicators do not include the names of the indicators; they simply provide the definitions of the indicators. For consistency with the regulations for the other indicators, proposed § 677.155(a)(1)(vi) removes the name of the effectiveness in serving employer indicator and adds the definition.

proposed in § 677.155(a)(vi) and (c)(6), the Departments propose to add language to § 677.190(c)(3)(ii) stating that the overall State indicator score for effectiveness in serving employers equals the statewide percentage achieved of the statewide adjusted level of performance. Although the Departments propose a definition for the effectiveness in serving employers performance indicator, consistent with how the Departments have implemented the provisions for the other five performance indicators, the indicator would not be included in sanctions determinations until the Departments collect a minimum of 2 years of performance data, develop a statistical adjustment model that yields reliable estimates for the indicator, and negotiate performance levels for the indicator. As explained in the Departments' jointly issued guidance on February 6, 2020, the Departments will continue to review how the negotiations process applies to the effectiveness in serving employers indicator until at least 2 years of sufficient baseline data are collected and then will provide additional guidance regarding the process for negotiating this joint indicator.[18] The Departments propose changing § 677.190(c)(1) to exclude the effectiveness in serving employers performance indicator from the calculation of an overall State program score, which compares a program's results regarding the other primary indicators of performance with the adjusted levels of performance for that program. As explained above, the statewide and collaborative nature of the indicator cannot be attributed to any one program by itself because it measures the effectiveness of serving employers by the State's workforce development system as a whole.

The Departments propose to add two paragraphs to § 677.190(c)(3) to ensure the effectiveness in serving employers performance indicator's sole use as a shared statewide indicator. The first proposed paragraph, § 677.190(c)(3)(i), begins with language currently found in § 677.190(c)(3), which specifies that the overall State indicator score is the average of the percentages achieved of the adjusted levels of performance by all the core programs on the performance indicator. The Departments propose to exclude the effectiveness in serving employers performance indicator from this calculation.

The second proposed paragraph, § 677.190(c)(3)(ii), ensures the statewide nature of the effectiveness in serving employers performance indicator shared across all core programs and that it would be assessed only as an overall State indicator score. Proposed § 677.190(c)(3)(ii) would adopt in regulations the recommendation in the joint guidance—that one core program report performance data for the effectiveness in serving employers performance indicator on behalf of all six core programs. In addition, proposed § 677.190(c)(3)(ii) specifies that the overall State indicator score for effectiveness in serving employers is calculated as the statewide percentage achieved of the statewide adjusted level of performance. Finally, proposed § 677.190(c)(3)(ii) also references guidance to signal to States that the Departments will provide additional details and explanations for reporting on the effectiveness in serving employers performance indicator in joint guidance. This reference to guidance is consistent with other sections of the Departments' Joint WIOA Performance Accountability regulations.

Therefore, all core programs would collect the necessary information for this indicator and submit the information to one core program. That core program would report the performance data to the relevant Federal agency. This approach is consistent with current practice under the joint guidance, whereby the State selects the core program to receive the information and then report to the relevant Federal agency. This reporting requirement differentiates this indicator from the other five primary indicators of performance. The performance outcomes for the other five primary indicators of performance are reported by each core program to its respective Federal agency.

For the other five primary indicators of performance, the overall State indicator score is based on averages divided by the adjusted level of performance, whereas for the effectiveness in serving employers performance indicator, the overall State indicator score is based on actual results divided by the adjusted level of performance. Because effectiveness in serving employers is a statewide indicator, there are no individual indicator scores to average for each core program.

The Departments propose to revise paragraph (c)(5) to specify that the Departments will not include the effectiveness in serving employers performance indicator when calculating individual indicator scores.

III. Regulatory Analysis and Review

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

Under Executive Order (E.O.) 12866, OIRA determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. See 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Id. This proposed rule is a significant regulatory action, although not an economically significant regulatory action under sec. 3(f) of E.O. 12866. Accordingly, OMB reviewed this proposed rule.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and, in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

[18] The Departments issued guidance on February 6, 2020, to delineate the process for negotiating levels of performance and the application of sanctions for the States outlined in sec. 116 of WIOA and its implementing joint regulations. ETA, TEGL No. 11–19, ''Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs,'' Feb. 6, 2020, *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3430;* U.S. Department of Education, OCTAE Program Memorandum 20–2, ''Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs,'' Feb. 6, 2020, *https://www2.ed.gov/about/offices/list/ovae/pi/AdultEd/octae-program-memo-20-2.pdf;* U.S. Department of Education, RSA–TAC–20–02, ''Negotiations and Sanctions Guidance for the Workforce Innovation and Opportunity Act (WIOA) Core Programs,'' Feb. 6, 2020, *https://www2.ed.gov/policy/speced/guid/rsa/subregulatory/tac-20-02.pdf.*

1. Outline of the Analysis

Section III.A.2 provides a summary of the results of the RIA. Section III.A.3 describes the need for the proposed rule, and section III.A.4 describes the process used to estimate the costs and cost savings of the proposed rule and the general inputs used, such as wages and number of affected entities. Section III.A.5 explains how the provisions of the proposed rule would result in quantifiable costs and cost savings and presents the calculations the Departments used to estimate them. In addition, section III.A.5 describes the qualitative benefits of the proposed rule. Section III.A.6 summarizes the estimated first-year and 10-year total and annualized costs, cost savings, net costs, and transfer payments of the proposed rule. Finally, section III.A.7 describes the regulatory alternatives considered when developing the proposed rule.

2. Analysis Summary

The Departments estimate that the proposed rule would result in costs and cost savings. As shown in Exhibit 2, the proposed rule is expected to have an annualized quantifiable cost of $44,573 and a total 10-year quantifiable cost of $313,071 at a discount rate of 7 percent.[19] The proposed rule is estimated to have annualized quantifiable cost savings of $1.96 million and total 10-year quantifiable cost savings of $14.28 million at a discount rate of 7 percent.[20] The Departments estimate that the proposed rule would result in an annualized net quantifiable cost savings of $1.99 million and a total 10-year net cost of $13.96 million, both at a discount rate of 7 percent and expressed in 2020 dollars.[21]

EXHIBIT 2—ESTIMATED MONETIZED COSTS, COST SAVINGS, AND NET COST SAVINGS OF THE PROPOSED RULE

[2020 $millions]

	Costs	Cost savings	Net cost savings
Undiscounted 10-Year Total	$0.35	$19.00	$18.64
10-Year Total with a Discount Rate of 3%	0.33	16.69	16.36
10-Year Total with a Discount Rate of 7%	0.31	14.28	13.96
10-Year Average	0.04	1.90	1.86
Annualized at a Discount Rate of 3%	0.04	1.96	1.92
Annualized at a Discount Rate of 7%	0.04	2.03	1.99

The cost of the proposed rule is associated with rule familiarization and the requirement to calculate and report Retention with the Same Employer for the effectiveness in serving employers performance indicator for 57 States and 78 VR agencies.[22] No longer requiring States to collect, calculate, and report for two alternative definitions of the effectiveness in serving employers performance indicator and instead requiring States to calculate and report only the Retention with the Same Employer definition of the indicator would contribute to the cost savings of the proposed rule. See the costs and cost savings subsections of section III.A.5 (Subject-by-Subject Analysis) below for a detailed explanation.

The Departments cannot quantify the benefits of the proposed rule; therefore, section III.A.5 (Subject-by-Subject Analysis) describes the benefits qualitatively.

3. Need for Regulation

In the Joint WIOA Final Rule, the Departments described a phased approach, which included a pilot study, to defining in regulation the sixth statutory performance indicator—effectiveness in serving employers—required by WIOA. This proposed rulemaking is necessary to complete implementation of the performance accountability requirements as discussed in the Joint WIOA Final Rule and required by statute. Specifically, States, under the Departments' joint guidance, piloted the following definitions for the effectiveness in serving employers performance indicator:

- Retention with the Same Employer: Percentage of participants with wage records who exit from WIOA core programs and were employed by the same employer in the second and fourth quarters after exit.
- Repeat Business Customer: Percentage of employers who have used WIOA core program services more than once during the last three reporting periods.
- Employer Penetration: Percentage of employers using WIOA core program services out of all employers in the State.

The Departments propose establishing Retention with the Same Employer as the standard definition of the effectiveness in serving employers performance indicator to complete implementation of the WIOA performance accountability requirements to assess the effectiveness of States and local areas in achieving positive outcomes.

4. Analysis Considerations

a. WIOA Core Programs

The Departments estimated the costs and cost savings of the proposed rule relative to the existing baseline (*i.e.,* the current practices for complying with the joint WIOA performance accountability regulations and the Departments' joint guidance). WIOA sec. 116 establishes the requirement for performance indicators and performance reporting requirements to assess the effectiveness of the WIOA core programs enumerated in sec. 116(b)(3)(A)(ii) in serving employers. The core programs include adult, dislocated worker, and youth programs under title I of WIOA; the AEFLA programs under title II; the ES services program authorized under the Wagner-Peyser Act as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act as amended by WIOA title IV. The analysis refers to the title I and title III programs jointly as the DOL programs.

[19] The proposed rule would have an annualized cost of $37,360 and a total 10-year cost of $318,690 at a discount rate of 3 percent in 2020 dollars.

[20] The proposed rule would have an annualized cost savings of $1.88 million and a total 10-year cost savings of $16.02 million at a discount rate of 3 percent in 2020 dollars.

[21] The proposed rule would have an annualized net cost savings of $1.84 million and a total 10-year cost of $15.70 million at a discount rate of 3 percent in 2020 dollars.

[22] Consistent with sec. 3(56) of WIOA and 20 CFR 677.150(d), the use of the term ''States'' in this RIA refers to the 50 States; the District of Columbia; the U.S. territories of American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the Virgin Islands; and the Republic of Palau, a country in free association with the United States.

The baseline consists of the combination of piloted approaches for effectiveness in serving employers that States collected in 2020 and would be expected to continue to report in the absence of this proposed rule. The baseline uses DOL historical data on the number of States that report each combination of the three piloted approaches for the effectiveness in serving employers performance indicator. Exhibit 3 displays DOL data from 2017 through 2020 on the existing effectiveness in serving employers approach combinations. The Departments used the most recent year of State data reported for PY 2020 to define the existing baseline of States reporting combinations of approaches to the effectiveness in serving employers performance indicator.

EXHIBIT 3—STATE REPORTING COMBINATIONS OF EFFECTIVENESS IN SERVING EMPLOYERS DEFINITIONS [a]

	Retention with the same employer + employer penetration	Retention with the same employer + repeat business customer	Repeat business customer + employer penetration	All three effectiveness in serving employers approaches
2017	12	5	17	10
2018	10	10	17	15
2019	9	11	18	14
2020 [b]	9	12	20	15

[a] DOL collects data on 52 of 57 States.
[b] For PY 2020, DOL received data from 56 of 57 States. DOL assumes the remaining State reports the least costly combination of pilot approaches (Retention with the Same Employer + Employer Penetration).

In accordance with the RIA guidance articulated in OMB's Circular A–4 and consistent with the Departments' practices in previous rulemakings, this RIA focuses on the likely consequences of the proposed rule (*i.e.,* costs and cost savings that accrue to entities affected). The analysis covers 10 years (from 2022 through 2031) to ensure it captures major costs and cost savings that accrue over time. The Departments express all quantifiable impacts in 2020 dollars and use discount rates of 3 and 7 percent, pursuant to Circular A–4.

Exhibit 4 presents the number of entities that are expected to be affected by the proposed rule. The Departments provide these estimates and use them throughout this analysis to estimate the costs and cost savings of the proposed rule.

EXHIBIT 4—WIOA CORE PROGRAMS—NUMBER OF AFFECTED ENTITIES BY TYPE

Entity type	Number
DOL Programs:	
States	57
Local Workforce Development Boards (WDBs)	580
AEFLA Program:	
States	57
Local AEFLA providers [23]	1,719

[23] Local AEFLA providers include local education agencies; community-based organizations; faith-based organizations; libraries; community, junior, and technical colleges; 4-year colleges and universities; correctional institutions; and other agencies and institutions.

EXHIBIT 4—WIOA CORE PROGRAMS—NUMBER OF AFFECTED ENTITIES BY TYPE—Continued

Entity type	Number
RSA Program:	
VR agencies	78

b. Compensation Rates

In section III.A.5 (Subject-by-Subject Analysis), the Departments present the costs, including labor, associated with the implementation of the provisions of the proposed rule. Exhibits 5a through 5c present the hourly compensation rates for the occupational categories expected to experience a change in level of effort (workload) due to the proposed rule. We used the Bureau of Labor Statistics' mean hourly wage rate for State and local employees.[24] [25] We also used the wage rate from the Office of Personnel Management's Salary Table for the 2021 General Schedule for Federal employees in the management analyst occupation (Grade 14, Step 5).[26] To reflect total compensation, wage rates include nonwage factors, such as overhead and fringe benefits (*e.g.,* health and retirement benefits). For all labor groups (*i.e.,* local, State, and Federal Government), we used an overhead rate of 17 percent.[27] For the State and local sectors, we used a fringe benefits rate of 62 percent, which represents the ratio of average total compensation to average wages for State and local government workers in March 2021.[28] For the Federal Government, we used a fringe benefits rate of 63 percent.[29] We then multiplied the sum of the loaded wage factor and overhead rate by the corresponding occupational category wage rate to calculate an hourly compensation rate.[30]

[24] BLS, ''May 2020 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999200–State Government, excluding schools and hospitals (OEWS Designation),'' *https://www.bls.gov/oes/current/naics4_999200.htm* (last updated Mar. 31, 2021).

[25] BLS, ''May 2020 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999300—Local Government, excluding schools and hospitals (OEWS Designation),'' *https://www.bls.gov/oes/current/naics4_999300.htm* (last updated Mar. 31, 2021).

[26] Office of Personnel Management, ''Salary Table 2021,'' *https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2021/GS_h.pdf* (last visited Oct. 21, 2021).

[27] Cody Rice, U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002, *https://www.regulations.gov/document?D=EPA-HQ-OPPT-2014-0650-0005.*

[28] BLS, ''Employer Costs for Employee Compensation—March 2021,'' Sept. 16, 2021, *https://www.bls.gov/news.release/pdf/ecec.pdf.* Calculated using Table 1. Employer Costs for Employee Compensation by ownership.

[29] Department of Labor, ''Workforce Innovation and Opportunity Act (WIOA) Common Performance Reporting'' OMB Control No. 1205–0526, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202012-1205-003* (last visited Oct. 21, 2021).

[30] The hourly compensation rates presented in Exhibit 5a, Exhibit 5b, and Exhibit 5c are rounded. Calculations used throughout the RIA use the unrounded value. Therefore, numbers may not sum due to rounding for the convenience of the reader.

EXHIBIT 5A—COMPENSATION RATES FOR LOCAL EMPLOYEES

[2020 dollars]

Position	Grade level	Base hourly wage rate (a)	Loaded wage factor (b)	Overhead costs (c)	Hourly compensation rate d = a + b + c
Management Analyst	N/A	$41.23	$25.43 ($41.23 × 0.62)	$7.01 ($41.23 × 0.17)	$73.67
Database Administrator	N/A	$26.14	$16.12 ($26.14 × 0.62)	$4.44 ($26.14 × 0.17)	$46.71

EXHIBIT 5B—COMPENSATION RATES FOR STATE EMPLOYEES

[2020 dollars]

Position	Grade level	Base hourly wage rate (a)	Loaded wage factor (b)	Overhead costs (c)	Hourly compensation rate d = a + b + c
Management Analyst	N/A	$33.41	$20.61 ($33.41 × 0.62)	$5.68 ($33.41 × 0.17)	$59.70
Staff Trainer	N/A	$37.23	$22.97 ($37.23 × 0.62)	$6.33 ($37.23 × 0.17)	$66.53
Rehabilitation Counselor	N/A	$26.83	$16.55 ($26.83 × 0.62)	$4.56 ($26.83 × 0.17)	$47.94

EXHIBIT 5C—COMPENSATION RATES FOR FEDERAL EMPLOYEES

Position	Grade level	Base hourly wage rate (a)	Loaded wage factor (b)	Overhead costs (c)	Hourly compensation rate d = a + b + c
Management Analyst	GS–14, Step 5	$51.00	$32.13 ($51.00 × 0.63)	$8.67 ($51.00 × 0.17)	$91.80

5. Subject-by-Subject Analysis

The Departments' analysis below covers the estimated costs and cost savings of the proposed rule.

c. Costs

The following sections describe the costs of the proposed rule.[31]

(1) WIOA Core Programs Rule Familiarization

If the proposed rule is finalized, State- and local-level DOL programs, State- and local-level AEFLA programs, and State VR agencies would need to familiarize themselves with the new regulations. Consequently, this would impose a one-time cost in the first year.

To estimate the first-year cost of rule familiarization at the State level, the Departments multiplied the estimated number of management analysts (one) by the time required to read and review the rule (1 hour), and by the applicable hourly compensation rate ($59.70/hour). We multiplied this result by the sum of the number of States (57) for the DOL programs, the number of States (57) for the AEFLA programs, and the number of VR agencies (78). This calculation yields $11,462 in one-time labor costs, which is equal to an average annual cost of $1,146 over the 10-year analysis period.

At the local level for the DOL programs, the Departments multiplied the estimated number of management analysts (one) by the time required to read and review the rule (1 hour), by the applicable hourly compensation rate ($73.67/hour), and by the number of local boards (580). This calculation yields $42,730 in one-time labor costs, which is equal to an average annual cost of $4,273 over the 10-year analysis period.[32]

At the local level for the AEFLA programs, the Departments multiplied the estimated number of management analysts (one) by the time required to read and review the rule (1 hour), by the applicable hourly compensation rate ($73.67/hour), and by the number of local AEFLA providers (1,719). This calculation yields $126,643 in one-time labor costs, which is equal to an average annual cost of $12,664 over the 10-year analysis period.

The sum of these costs yields a total one-time labor cost of $180,835 for State- and local-level DOL programs, State- and local-level AEFLA programs, and State VR agencies to read and review the new rule. Over the 10-year period of analysis, these estimated one-time costs result in an average annual cost of $18,084 undiscounted, or $21,199 and $25,747 at discount rates of 3 and 7 percent, respectively.

(2) Calculating and Reporting Retention With the Same Employer

WIOA sec. 116(b)(2)(A)(i)(VI) provides that the sixth primary indicator of performance will be an indicator that measures program effectiveness in serving employers, which WIOA sec. 116(b)(2)(A)(iv) directs the Departments to establish. Currently, under the Departments' joint guidance, States must report at least two of the following three approaches to measuring effectiveness in serving employers: Retention with the Same Employer, Employer Penetration, and Repeat Business Customer. If the proposed rule is finalized, all States would be required to adopt the same approach to measure effectiveness in serving employers: Retention with the Same Employer. Twenty States do not currently report the Retention with the Same Employer approach to the effectiveness in serving employers

[31] Numbers may not sum due to rounding for the convenience of the reader.

[32] Numbers may not sum due to rounding for the convenience of the reader.

performance indicator.[33] These 20 States would have new costs associated with setting up procedures to calculate and report Retention with the Same Employer and annual costs associated with continuing to calculate and report Retention with the Same Employer. To estimate the cost of establishing Retention with the Same Employer as the effectiveness in serving employers performance indicator, the Departments followed the assumptions used to estimate the pilot cost of the Retention with the Same Employer approach to effectiveness in serving employers in the 2016 Joint WIOA Final Rule. However, we updated those assumptions for this analysis by removing the cost of collecting data (4 hours) because all States are already collecting the required data in the baseline. We then increased the number of hours we assume State-level DOL programs require for one-time costs of programming (from 4 to 6 hours) based on the Departments' experience with initial costs for programming following the Joint WIOA Final Rule. The assumptions and costs are summarized as follows:

At the Federal level for the DOL core programs, the Departments estimate the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($91.80/hour). This calculation results in a one-time labor cost of $734.

The Departments estimated DOL's annual labor costs for calculating and reporting Retention with the Same Employer by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in an annual labor cost of $367.

At the State level for the DOL core programs, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for programming (6 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($358) by the number of States (57) to estimate this one-time cost at $20,417.

The Departments estimated the State-level DOL core programs' annual labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($239) by the number of States (57) to estimate this annual cost at $13,611.

At the Federal level for the AEFLA program, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in a one-time labor cost of $734.

The Departments estimated AEFLA's annual labor cost for calculating and reporting Retention with the Same Employer at the Federal level by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in an annual labor cost of $367.

At the State level for the AEFLA program, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for programming and data collection (6 hours) and by the hourly compensation rate ($59.70). We multiplied the labor cost ($358) by the number of States (57) to estimate this one-time cost at $20,417.[34]

The Departments estimated the State-level AEFLA program's annual labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($239) by the number of States (57) to estimate this annual cost at $13,611.

At the Federal level for the VR program, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance development (8 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in a one-time labor cost of $734.

The Departments estimated the annual labor costs associated with calculating and reporting Retention with the Same Employer at the Federal level for the VR program by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in an annual labor cost of $367.

At the State level for the VR program, the Departments estimated the one-time labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for programming (6 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($358) by the number of VR agencies (78) to estimate this one-time cost at $27,939.

The Departments estimated the State-level VR program's annual labor cost associated with calculating and reporting Retention with the Same Employer by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($239) by the number of VR agencies (78) to estimate this annual cost of $18,626.

The sum of these one-time costs of the retention measure yields $70,977 for individuals from the Federal- and State-level DOL core programs, AEFLA program, and VR program. In addition, the sum of the annual costs associated with calculating and reporting Retention with the Same Employer for these entities yields $46,951 per year. Exhibits 6a and 6b summarize the above calculations.

[33] Thirty-four States report Retention with the Same Employer according to DOL data. DOL collects data on 52 of 57 States defined in this analysis. DOL assumes the remaining 5 States report the cheapest combination of pilot approaches (Retention with the Same Employer + Employer Penetration), resulting in the RIA assuming 39 States report Retention with the Same Employer.

[34] Numbers may not sum due to rounding for the convenience of the reader.

EXHIBIT 6a—RETENTION WITH THE SAME EMPLOYER, INITIAL COST

Agency	Management analyst hours [1]	Number of management analysts	Loaded wage rate	Population [2]	Total [3]
Federal-level DOL	8	1	$91.80	NA	$734
State-level DOL	6	1	59.70	57	20,417
Federal-level AEFLA	8	1	91.80	NA	734
State-level AEFLA	6	1	59.70	57	20,417
Federal-level RSA	8	1	91.80	NA	734
State-level RSA	6	1	59.70	78	27,939
Total Initial Cost					70,977

[1] Management analysts on the Federal level are GS–14, Step 5.
[2] Population figures represent States (57) and VR agencies (78).
[3] Numbers may not sum due to rounding for the convenience of the reader.

EXHIBIT 6b—RETENTION WITH THE SAME EMPLOYER, ANNUAL COST

Agency	Management analyst hours [1]	Number of management analysts	Loaded wage rate	Population [2]	Total [3]
Federal-level DOL	4	1	$91.80	NA	$367
State-level DOL	4	1	59.70	57	13,611
Federal-level AEFLA	4	1	91.80	NA	367
State-level AEFLA	4	1	59.70	57	13,611
Federal-level RSA	4	1	91.80	NA	367
State-level RSA	4	1	59.70	78	18,626
Total Annual Cost					46,951

[1] Management analysts on the Federal level are GS–14, Step 5.
[2] Population figures represent States (57) and VR agencies (78).
[3] Numbers may not sum due to rounding for the convenience of the reader.

The costs in Exhibits 6a and 6b represent the costs for all 57 States to report the Retention with the Same Employer approach to the effectiveness in serving employers performance indicator. Currently, 37 States already report Retention with the Same Employer. The remaining 20 States would face costs with having to start reporting Retention with the Same Employer. We therefore multiply the total one-time costs ($70,977) and annual costs ($46,951) by the 35.1 percent of States not currently reporting the retention measure (20 out of 57) yielding $24,904 in one-time costs and an additional $16,474 in annual costs to increase the number of States reporting the retention measure from 37 to all 57.

The estimated total cost from requiring all States to report Retention with the Same Employer over the 10-year period is $173,169 undiscounted, or $153,172 and $132,235 at discount rates of 3 and 7 percent, respectively, with an annualized cost over the 10-year period of $17,956 and $18,827 at discount rates of 3 and 7 percent, respectively.

d. Cost Savings

The following sections describe the cost savings of the proposed rule.

(1) Summary of Approach

The pilot program announced in the 2016 Joint WIOA Final Rule required States to report two of the three approaches for measuring effectiveness in serving employers. Under this proposed rule States would no longer face costs associated with collecting the information required to calculate the Employer Penetration or Repeat Business Customer approaches to the effectiveness in serving employers performance indicator. To estimate the cost savings, we first update the costs associated with collecting each of these pilot approaches following the assumptions used to estimate the cost of the Retention with the Same Employer pilot approach in the 2016 Joint WIOA Final Rule. We then estimate the cost savings under the proposed rule associated with the proportion of States that would no longer report the various combinations of the pilot approaches that States report in the baseline.

Currently, 9 States report Retention with the Same Employer and Employer Penetration, 12 States report Retention with the Same Employer and Repeat Business Customer, 20 States report Employer Penetration and Repeat Business Customer, and 15 States report all 3 approaches to defining the effectiveness in serving employers performance indicator. To estimate cost savings, we first estimate the annual cost of all 57 States collecting data for, calculating, and reporting the percentage of employers using services out of all employers in the State (Employer Penetration) and the percentage of repeat employers using services within the previous 3 years (Repeat Business Customer). We then multiply the annual cost by the percentage of States currently using the pilot approach to estimate the cost savings. Below, we present the updated costs associated with all 57 States reporting each pilot approach, and then present the cost savings associated with the proportion of States no longer reporting them.

(2) Employer Penetration: Percentage of Employers Using Services Out of All Employers in the State

Under the pilot program, States must use two of three specified approaches to measure effectiveness in serving employers. The proposed rule would only require States to collect data for, calculate, and report the first approach (Retention with the Same Employer). This section calculates the cost for all 57 States to collect data, calculate, and report Employer Penetration and then uses these costs to estimate cost savings

for the proportion of States that would no longer report Employer Penetration under the proposed rule.

At the Federal level for the DOL core programs, the Departments estimated the annual labor cost associated with Employer Penetration by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in an annual labor cost of $367.

At the State level for the DOL core programs, the Departments estimated Employer Penetration's annual labor cost by multiplying the estimated number of management analysts (one) by the sum of time required for data collection (4 hours), providing training and technical assistance to Local WDBs (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($657) by the number of States (57) to estimate this annual cost at $37,431.

For local-level DOL core programs, the Departments estimated the annual labor cost for Employer Penetration by multiplying the estimated number of management analysts (one) by the time required for data collection (4 hours) and by the hourly compensation rate ($73.67/hour). We multiplied the labor cost ($295) by the number of Local WDBs (580) to estimate this annual cost at $170,920.

At the Federal level for the AEFLA program, the Departments estimated the annual labor cost associated with Employer Penetration by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in an annual labor cost of $367.

At the State level for the AEFLA program, the Departments estimated Employer Penetration's annual labor cost by multiplying the estimated number of management analysts (one) by the sum of time required for data collection (4 hours), providing training and technical assistance to local AEFLA providers (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($657) by the number of States (57) to estimate this annual cost at $37,431.

For the local-level AEFLA program, the Departments estimated the annual labor cost for Employer Penetration by multiplying the estimated number of management analysts (one) by the time required for data collection (4 hours) and by the hourly compensation rate ($73.67/hour). We multiplied the labor cost ($295) by the number of local AEFLA providers (1,719) to estimate this annual cost at $506,572.[35]

At the Federal level for the VR program, the Departments estimated the annual labor cost associated with Employer Penetration by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in an annual labor cost of $367.

At the State level for the VR program, the Departments estimated Employer Penetration's annual labor cost by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). In addition, we added the estimated number of rehabilitation counselors (62 assistants) by the time required for data collection (1 hour each) and by the hourly compensation rate ($47.94/hour). We summed the labor cost for both categories and multiplied it ($3,211) by the number of VR agencies (78) to estimate this annual cost at $250,472.

Summing these annual costs for all 57 States to calculate and report Employer Penetration yields $1,003,929 per year for the Federal-, State-, and local-level DOL core programs and AEFLA programs and the State-level VR programs. The Departments used the updated costs in Exhibit 7 to estimate the cost savings for States that would no longer report this pilot approach.

EXHIBIT 7—EMPLOYER PENETRATION, ANNUAL

Agency	Labor category [1]	Hours	Workers	Loaded wage rate	Population [2]	Total [3]
Federal-level DOL	Management Analyst	4	1	$91.80	NA	$367
State-level DOL	Management Analyst	11	1	59.70	57	37,431
Local-Level DOL	Management Analyst	4	1	73.67	580	170,920
Federal-level AEFLA	Management Analyst	4	1	91.80	NA	367
State-level AEFLA	Management Analyst	11	1	59.70	57	37,431
Local-Level AEFLA	Management Analyst	4	1	73.67	1,719	506,572
Federal-level RSA	Management Analyst	4	1	91.80	NA	367
State-level RSA	Management Analyst	4	1	59.70	78	18,626
State-level RSA	Rehab Counselor	1	62	47.94	78	231,846
Annual Total						1,003,929

[1] Management analysts on the Federal level are GS–14, Step 5.
[2] Population figures represent States (57), VR agencies (78), and AEFLA providers (1,719).
[3] Numbers may not sum due to rounding for the convenience of the reader.

(3) Repeat Business Customer: Percentage of Repeat Employers Using Services Within the Previous 3 Years

This section calculates the cost for all 57 States to collect data, calculate, and report the Repeat Business Customer approach to the effectiveness in serving employers performance indicator. The Departments use these costs to estimate cost savings for the proportion of States that would no longer report this pilot approach under the proposed rule.

At the Federal level for the DOL core programs, the Departments estimated the annual labor cost associated with Repeat Business Customer by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour).

[35] Numbers may not sum due to rounding for the convenience of the reader.

This calculation would result in an annual labor cost of $367.

At the State level for the DOL core programs, the Departments estimated Repeat Business Customer's annual labor cost by multiplying the estimated number of management analysts (one) by the sum of time required for data collection (4 hours), providing training and technical assistance to Local WDBs (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($657) by the number of States (57) to estimate this annual cost at $37,431.

For the local-level DOL core programs, the Departments estimated the annual labor cost for Repeat Business Customer by multiplying the estimated number of management analysts (one) by the time required for data collection (6 hours) and by the hourly compensation rate ($73.67/hour). We multiplied the labor cost ($442) by the number of Local WDBs (580) to estimate this annual cost at $256,380.

At the Federal level for the AEFLA program, the Departments estimated the annual labor cost associated with Repeat Business Customer by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in an annual labor cost of $367.

At the State level for the DOL core programs, the Departments estimated Repeat Business Customer's annual labor cost by multiplying the estimated number of management analysts (one) by the sum of time required for data collection (4 hours), providing training and technical assistance to local AEFLA providers (3 hours), and Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). We multiplied the labor cost ($657) by the number of States (57) to estimate this annual cost at $37,431.

For the local-level AEFLA program, the Departments estimated the annual labor cost for Repeat Business Customer by multiplying the estimated number of management analysts (one) by the time required for data collection (6 hours) and by the hourly compensation rate ($73.67/hour). We multiplied the labor cost ($442) by the number of local AEFLA providers (1,719) to estimate this annual cost at $759,859.

At the Federal level for the VR program, the Departments estimated the annual labor cost associated with Repeat Business Customer by multiplying the estimated number of GS–14, Step 5 management analysts (one) by the time required for technical assistance delivery (4 hours) and by the hourly compensation rate ($91.80/hour). This calculation would result in an annual labor cost of $367.

At the State level for the VR program, the Departments estimated Repeat Business Customer's annual labor cost by multiplying the estimated number of management analysts (one) by the time required for Federal reporting (4 hours) and by the hourly compensation rate ($59.70/hour). In addition, we added the estimated number of rehabilitation counselors (62 counselors) by the time required for data collection (1 hour each) and by the hourly compensation rate ($47.94/hour). We summed the labor cost for both categories ($3,211) and multiplied it by the number of VR agencies (78) to estimate this annual cost of $250,472.

Summing these annual costs for all States to calculate and report Repeat Business Customer yields $1,342,676 per year for the Federal-, State-, and local-level DOL core programs and AEFLA programs and the State-level VR programs. The Departments used the updated costs in Exhibit 8 to estimate the cost savings for States to no longer report this pilot approach.

EXHIBIT 8—REPEAT BUSINESS CUSTOMER, ANNUAL

Agency	Labor category [1]	Hours	Workers	Loaded wage rate	Population [2]	Total [3]
Federal-level DOL	Management Analyst	4	1	$91.80	NA	$367
State-level DOL	Management Analyst	11	1	59.70	57	37,431
Local-level DOL	Management Analyst	6	1	73.67	580	256,380
Federal-level AEFLA	Management Analyst	4	1	91.80	NA	367
State-level AEFLA	Management Analyst	11	1	59.70	57	37,431
Local-level AEFLA	Management Analyst	6	1	73.67	1,719	759,859
Federal-level RSA	Management Analyst	4	1	91.80	NA	367
State-level RSA	Management Analyst	4	1	59.70	78	18,626
State-level RSA	Rehab Counselor	1	62	47.94	78	231,846
Annual Total						1,342,676

[1] Management analysts on the Federal level are GS–14, Step 5.
[2] Population figures represent States (57), VR agencies (78), and AEFLA providers (1,719).
[3] Numbers may not sum due to rounding for the convenience of the reader.

(4) Summary of Cost Savings

Under the proposed rule, the 14 States that currently report only the Retention with the Same Employer and Employer Penetration pilot approaches would have cost savings from no longer having to collect data for, calculate, and report Employer Penetration. Multiplying the annual cost for all 57 States to collect data for, calculate, and report Employer Penetration ($1,003,929) by the 17.5 percent of States reporting these two pilot approaches only (10 out of 57) yields annual cost savings of $176,128.

The 12 States currently reporting only the Retention with the Same Employer and Repeat Business Customer pilot approaches would have cost savings from no longer collecting data for, calculating, and reporting Repeat Business Customer. Multiplying the annual cost for all 57 States to collect data for, calculate, and report Repeat Business Customer ($1,342,676) by the 21.1 percent of States reporting these two pilot approaches only (12 out of 57) yields annual cost savings of $282,669.

The 20 States currently reporting only Employer Penetration and Repeat Business Customer and the 15 States currently reporting all three pilot approaches to the effectiveness in serving employers performance indicator would have cost savings from no longer collecting data for, calculating, and reporting both Employer Penetration and Repeat Business Customer. Multiplying the sum of annual costs for all 57 States to collect data for, calculate, and report both Employer Penetration and Repeat

Business Customer ($2,346,605) by the 35.1 percent of States reporting Employer Penetration and Repeat Business Customer only and by the 26.3 percent of States reporting all three approaches yields annual cost savings of $823,370 and $617,528, respectively.

Summing these annual cost savings yields total annual cost savings for all 57 States of $1,899,694 from the proposed rule. The Departments estimate total cost savings over the 10-year period at $18,996,941 undiscounted, or $16,690,919 and $14,276,642 at discount rates of 3 and 7 percent, respectively. At discount rates of 3 and 7 percent, the 10-year period results in annualized cost savings of $1,956,685 and $2,032,673, respectively.

e. Qualitative Benefits Discussion

(1) General Benefits of Measuring Effectiveness in Serving Employers

The Departments cannot quantify the proposed rule's benefits associated with improving the WIOA core programs' effectiveness in serving employers. Measuring effectiveness in serving employers allows DOL, AEFLA, and RSA programs to set goals, monitor, and learn how to serve employers more effectively.[36] Reporting a measure of effectiveness in serving employers also helps Federal, State, and local policymakers evaluate program performance and inform future policy changes to better meet program goals, particularly providing employers with skilled workers and other services.

The Departments cannot quantify these estimated benefits because we do not have quantitative data on how the effectiveness in serving employers performance measure has influenced program implementation and how much it would influence future policies.

(2) Specific Benefits of Reporting Retention With the Same Employer

Requiring all States to calculate and report Retention with the Same Employer as the effectiveness in serving employers performance indicator would make it easier to compare WIOA core programs' effectiveness in serving employers performance across States and ensure all States have an indicator of job turnover and match quality between workers exiting WIOA core programs and employers. Retention with the Same Employer demonstrates a continued relationship between the employer and participants who have exited WIOA core programs. While many circumstances can have an impact on an employer's retention of employees, an indication that an employee is still working for the same employer in both the second and fourth quarters after exiting from a WIOA program demonstrates a level of success for both parties, as retention of an employee reduces the costs to the employer associated with employee turnover and retraining. Thus, reporting Retention with the Same Employer can help inform design and implementation of program services to reduce job turnover and improve employer-employee match quality. Improved matching and reduced turnover allow employees and employers to operate closer to their productive potential and can make it more worthwhile for employers to invest in training their employees and for employees to invest in learning employer-specific skills.

6. Summary of the Analysis

Exhibit 9 summarizes the estimated total costs and cost savings of the proposed rule over the 10-year analysis period. Discontinuing reporting of Employer Penetration and Repeat Business Customer has the largest effect as a cost savings. The Departments estimate the total net cost savings of the proposed rule at $13,963,572 at a discount rate of 7 percent.

EXHIBIT 9—ESTIMATED 10-YEAR MONETIZED COSTS AND COST SAVINGS OF THE PROPOSED RULE BY PROVISION

[2020 $millions]

Provision	Cost	Cost savings	Total net cost savings
Rule Familiarization	$0.13		
Reporting Retention with the Same Employer	0.17		
No Longer Reporting Other Measures		$19.00	
Undiscounted	0.35	19.00	$18.64
With a Discount Rate of 3%	0.33	16.69	16.36
With a Discount Rate of 7%	0.31	14.28	13.96

The Departments estimate the annualized costs of the proposed rule at $44,574 and the annualized cost savings at $2,032,673, at a discount rate of 7 percent. The Departments estimate the proposed rule would result in an annualized net quantifiable cost savings of $1,988,098 and a total 10-year net cost savings of $13,963,572, both at a discount rate of 7 percent and expressed in 2020 dollars. Exhibit 10 summarizes the estimated total costs and cost savings of the proposed rule over the 10-year analysis period.

EXHIBIT 10—ESTIMATED MONETIZED COSTS, COST SAVINGS, AND NET COST SAVINGS OF THE PROPOSED RULE

[2020 $]

	Costs	Costs savings	Net cost savings
2022	$205,740	$1,899,694	$1,693,955
2023	16,474	1,899,694	1,883,220
2024	16,474	1,899,694	1,883,220
2025	16,474	1,899,694	1,883,220
2026	16,474	1,899,694	1,883,220
2027	16,474	1,899,694	1,883,220
2028	16,474	1,899,694	1,883,220

[36] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

EXHIBIT 10—ESTIMATED MONETIZED COSTS, COST SAVINGS, AND NET COST SAVINGS OF THE PROPOSED RULE—Continued

[2020 $]

	Costs	Costs savings	Net cost savings
2029	16,474	1,899,694	1,883,220
2030	16,474	1,899,694	1,883,220
2031	16,474	1,899,694	1,883,220
Undiscounted 10-Year Total	354,005	18,996,941	18,642,936
10-Year Total with a Discount Rate of 3%	334,007	16,690,919	16,356,912
10-Year Total with a Discount Rate of 7%	313,071	14,276,642	13,963,572
10-Year Average	35,400	1,899,694	1,864,294
Annualized with a Discount Rate of 3%	39,156	1,956,685	1,917,529
Annualized with a Discount Rate of 7%	44,574	2,032,673	1,988,098

7. Regulatory Alternatives

The Departments considered two alternatives to the proposed definition of the effectiveness in serving employers performance indicator. First, the Departments considered requiring use of the Employer Penetration pilot approach, which reports the percentage of employers using services out of all employers in the State. This approach would have required counts of services provided to employers, requiring States and local areas to report unique counts of individual employers receiving services through WIOA's programs. Employer Penetration would require a more data-intensive analysis than the proposed approach of Retention with the Same Employer. Employer Penetration would have the benefit of capturing the extent to which employers within a State are engaged with WIOA-funded services and would provide State programs an incentive to work with additional employers. As discussed earlier in Section II.A (Pilot Programs for Workforce Innovation and Opportunity Act Core Programs), on behalf of the Departments, DOL commissioned an examination of State experiences with the various approaches through a third-party contractor, which found weaknesses in this pilot approach, including (1) an emphasis on quantity rather than quality or intensity of the employer service provided; (2) reliability issues associated with data entry and the process to count unique establishments; (3) measurement of program output rather than outcome; (4) potential for creation of perverse incentives to prioritize program breadth rather than depth in service and delivery; and (5) a lack of sensitivity to industry sectors targeted by State and local workforce agencies.[37] The Departments estimated the costs and cost savings of this alternative using the same method as the proposed approach. That is, the Departments used the estimated cost of collecting data, calculating, and reporting Employer Penetration, and then estimated the cost for the proportion of States that would need to start using this approach to reporting effectiveness in serving employers (12 States). Exhibit 11 summarizes these calculations below.

EXHIBIT 11—SUMMARY OF REGULATORY ALTERNATIVE 1 COSTS

Non-reported measure	Number of States	Updated 2016 cost estimates: initial cost	Updated 2016 cost estimates: annual cost	Adjusted cost estimates: updated cost estimates × (# States ÷ 57), initial cost	Adjusted cost estimates: updated cost estimates × (# States ÷ 57), annual cost
Employer Penetration	12	$258,208	$1,003,929	$54,360	$211,354

Costs include calculating and reporting Employer Penetration and rule familiarization for WIOA core programs. The Departments estimate the total cost of the first alternative over the 10-year period at $2.1 million undiscounted, or $1.9 million and $1.6 million at discount rates of 3 and 7 percent, respectively, and an annualized cost of the 10-year period at $220,489 and $229,543 with discount rates of 3 and 7 percent, respectively.

To calculate cost savings the Departments used the estimated cost of collecting data for, calculating, and reporting the two other effectiveness in serving employers approaches (Retention with the Same Employer and Repeat Business Customer), and then estimated the cost savings for the proportion of States that would transition from their existing reporting combination of two or three effectiveness in serving employers approaches to the single Employer Penetration approach to the performance indicator. Exhibit 12 summarizes these calculations below.

[37] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, page 68, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

EXHIBIT 12—SUMMARY OF REGULATORY ALTERNATIVE 1 COST SAVINGS

Reported measures	Number of States	Updated 2016 cost estimates: annual cost savings	Adjusted cost savings estimates: updated cost estimates × (# States ÷ 57): annual cost savings
Employer Penetration + Retention with the Same Employer	10	$46,951	$8,237
Employer Penetration + Repeat Business Customer	20	1,342,676	471,114
Retention with the Same Employer + Repeat Business Customer (No Employer Penetration)	12	1,389,626	292,553
All Three	15	1,389,626	365,691

The Departments estimated the total cost savings associated with the first alternative over the 10-year period at $11.4 million undiscounted, or $10.0 million and $8.5 million at discount rates of 3 and 7 percent, respectively, with an annualized cost savings associated with the first alternative over the 10-year period at $1,171,723 and $1,217,227 with discount rates of 3 and 7 percent, respectively.

We estimate the first regulatory alternative to result in total net cost savings over the 10-year period of $9.2 million undiscounted, or $8.1 million and $6.9 million at discount rates of 3 and 7 percent, respectively, with an annualized net cost savings of the 10-year period at $951,233 and $987,684 with discount rates of 3 and 7 percent, respectively.

The Departments considered a second regulatory alternative that would require the use of the Repeat Business Customer approach to the effectiveness in serving employers performance indicator, which reports the percentage of employers receiving services in a year who also received services within the previous 3 years. This approach to the effectiveness in serving employers measure requires counts of services provided to employers through WIOA's programs. Repeat Business Customer requires a more data-intensive analysis than the proposed approach of Retention with the Same Employer. Repeat Business Customer captures the extent to which employers within a State can find workers and the employer's level of satisfaction with the public workforce system services. The Departments, in an Urban Institute study, found weaknesses in this pilot approach including that it (1) may provide a disincentive to reach out to new employers; (2) is subject to variation in industry and sector economic conditions; and (3) may require a statistical adjustment model to mitigate the weaknesses and improve implementation and interpretation.[38] The Departments estimated the costs and cost savings of this alternative using the same method as the proposed approach. That is, the Departments used the estimated cost of collecting data, calculating, and reporting Repeat Business Customer, and then estimated the cost for the proportion of States that would need to start using this approach to reporting effectiveness in serving employers (10 States). Exhibit 13 summarizes these calculations below.

EXHIBIT 13—SUMMARY OF REGULATORY ALTERNATIVE 2 COSTS

Non-reported measure	Number of States	Updated 2016 cost estimates: initial cost	Updated 2016 cost estimates: annual cost	Adjusted cost estimates: updated cost estimates × (# States ÷ 57), initial cost	Adjusted cost estimates: updated cost estimates × (# States ÷ 57), annual cost
Repeat Business Customer	10	$254,805	$1,342,676	$44,703	$235,557

Costs include the cost of calculating and reporting Repeat Business Customer and the cost of rule familiarization for WIOA core programs. The Departments estimated the total cost of the second alternative over the 10-year period at $2.3 million undiscounted, or $2.1 million and $1.8 million at discount rates of 3 and 7 percent, respectively, with an annualized cost of the 10-year period at $241,449 and $250,620 with discount rates of 3 and 7 percent, respectively.

To calculate cost savings, the Departments used the estimated cost of collecting data for, calculating, and reporting the two other effectiveness in serving employers approaches (Retention with the Same Employer and Employer Penetration), and then estimated the cost savings for the proportion of States that would transition from their existing reporting combination of two or three effectiveness in serving employers approaches to the single Repeat Business Customer approach to the performance indicator. Exhibit 14 summarizes these calculations below.

[38] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, page 67, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

EXHIBIT 14—SUMMARY OF REGULATORY ALTERNATIVE 2 COST SAVINGS

Reported measures	Number of States	Updated 2016 cost estimates: annual cost savings	Adjusted cost savings estimates: updated cost estimates × (# States ÷ 57): annual cost savings
Repeat Business Customer + Retention with the Same Employer	12	$46,951	$9,884
Repeat Business Customer + Employer Penetration	20	1,003,929	352,256
Employer Penetration + Retention with the Same Employer (No Repeat Business Customer)	10	1,050,880	184,365
All Three	15	1,050,880	276,547

The Departments estimated total cost savings associated with the second alternative over the 10-year period is $8.2 million undiscounted, or $7.2 million and $6.2 million at discount rates of 3 and 7 percent, respectively with an annualized cost associated with the second alternative over the 10-year period is $847,744 and $880,666 with discount rates of 3 and 7 percent, respectively.

The Departments estimate the second regulatory alternative to result in total net cost savings over the 10-year period of $5.9 million undiscounted, or $5.2 million and $4.4 million at discount rates of 3 and 7 percent, respectively, with an annualized net cost savings of the 10-year period at $606,295 and $630,046 with discount rates of 3 and 7 percent, respectively.

Exhibit 15 summarizes the estimated net cost savings associated with the three considered approaches to the effectiveness in serving employers performance indicator (*i.e.,* the three piloted approaches). The Departments prefer the proposed approach of requiring the use of Retention with the Same Employer because it has data more readily available, and, therefore, is less burdensome. The Retention with the Same Employer approach better aligns with workforce system goals of supporting employer-employee job match quality and reducing turnover without the weaknesses associated with the other two approaches to defining the effectiveness in serving employers performance indicator.

EXHIBIT 15—ESTIMATED MONETIZED COSTS OF THE PROPOSED RULE AND REGULATORY ALTERNATIVES

[2020 $Millions]

	Proposed rule	Regulatory alternative 1	Regulatory alternative 2
Total 10-Year Net Cost Savings	$18.6	$9.2	$5.9
Total with 3% Discount	16.4	8.1	5.2
Total with 7% Discount	14.0	6.9	4.4
Annualized with 3% Discount	1.86	0.92	0.59
Annualized with 7% Discount	1.92	0.95	0.61

B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604. The RFA permits an agency, in lieu of preparing such an analysis, to certify that the rulemaking is not expected to have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605.

The Departments determined that the proposed rule would not have a significant economic impact on a substantial number of small entities because any impacted small entities are already receiving financial assistance under the WIOA program and likely would continue to do so. The Departments have certified this to the Chief Counsel for Advocacy, Small Business Administration, pursuant to the RFA. 5 U.S.C. 605.

Affected Small Entities

The WIOA title I adult, dislocated worker, and youth program grantees, the WIOA title II State-level AEFLA grantees, WIOA title III Wagner-Peyser ES grantees, and VR program grantees (under the Rehabilitation Act as amended by WIOA title IV), are State government agencies and, therefore, are not considered small entities. However, the proposed rule could have a minimal impact on a variety of AEFLA local providers, some of which are small entities by U.S. Small Business Administration (SBA) size standards:[39] (1) local educational agencies (NAICS 611710; $21 million); (2) community-based organizations (NAICS 813410; $8.5 million); (3) faith-based organizations (NAICS 813110; $11.5 million); (4) libraries (NAICS 519120; $18.5 million); (5) community, junior (NAICS 611210; $28.5 million), and technical colleges (NAICS 611519; $18.5 million); (6) 4-year colleges and universities (NAICS 611310; $30.5

[39] SBA, ''Table of size standards,'' Effective May 2, 2022, *https://www.sba.gov/document/support-table-size-standards* (last visited June 15, 2022). Dollar values provided in parentheses are the SBA average annual receipts small entity threshold (2017$) for the relevant North American Industry Classification System (NAICS) code.

million); (7) correctional institutions (NAICS 922410; NA [40]); (8) other institutions, such as medical and special institutions not designed for justice-involved individuals (NAICS 623210; $16.5 million); and (9) other public or private non-profit agencies or institutions (NAICS 813319; $16 million).

Impact on Small Entities

As proposed in this NPRM, the definition of the effectiveness in serving employers performance indicator would have a minimal impact on AEFLA local providers. Each local AEFLA provider is expected to incur a $73.67 cost to review the rule. The $73.67 cost to review the rule is a de minimis burden on the entities incurring the cost, including the smallest entities subject to the rule. For example, the average community-based organization (NAICS 813410—civic and social organizations)—the business type with the smallest average revenue at $702,445—would spend much less than 1 percent of their annual revenue on this cost. Among libraries (NAICS 519120) with fewer than 5 employees (the subset of the above listed entity types with the least average revenue, by size in employees, at $110,980), this cost is 0.066 percent of the average entity's annual revenue.

Local AEFLA providers are not estimated to incur any new costs to report Retention with the Same Employer and may incur cost savings if they currently report Employer Penetration or Repeat Business Customers. Local AEFLA providers that currently report Employer Penetration would incur cost savings of $295 and local AEFLA providers that currently report Repeat Business Customers would incur cost savings of $442. Federal transfer payments to States would fully finance the minor WIOA program cost burdens on grantees that would result from finalizing the proposed rule. Therefore, the Department hereby certifies that the proposed rule would not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act of 1995

The purposes of the PRA, 44 U.S.C. 3501 *et seq.,* include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing for public comment a summary of the collection of information and a brief description of the need for and proposed use of the information.

As part of their continuing efforts to reduce paperwork and respondent burden, the Departments conduct a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the PRA. See 44 U.S.C. 3506(c)(2)(A). This activity helps to ensure that (1) the public understands the Departments' collection instructions; (2) respondents can provide the requested data in the desired format; (3) reporting burden (time and financial resources) is minimized; (4) collection instruments are clearly understood; and (5) the Departments can properly assess the impact of collection requirements on respondents. Furthermore, the PRA requires all Federal agencies to analyze proposed regulations for potential time burdens on the regulated community created by provisions in the proposed regulations that require any party to obtain, maintain, retain, report, or disclose information. The information collection requirements also must be submitted to OMB for approval.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA and displays a currently valid OMB control number. The public also is not required to respond to a collection of information unless it displays a currently valid OMB control number. In addition, notwithstanding any other provisions of law, no person will be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. 3512.

The proposed rule would revise ETA 9169, WIOA Statewide and Local Performance Report Template approved under OMB Control Number 1205–0526. The revision would require ''Retention with the Same Employer'' as the only definition of the effectiveness in serving employers performance indicator in the WIOA Common Performance Reporting ICR by an entity that reports to the Departments on behalf of the State. Data elements for the collection and calculation for the two other piloted definitions of the effectiveness in serving employers performance indicator—Repeat Business Customer and Employer Penetration—would be removed from the ICR, along with the corresponding breakouts of the employer services that comprise them. No other changes are proposed for this ICR. In accordance with the PRA, the Departments have submitted the associated ICR to OMB in concert with the publishing of this proposed rule. This provides the public the opportunity to submit comments on the ICR, either directly to the Departments or to OMB. The Departments will only consider comments within the scope of this ICR. The 60-day period for the public to submit comments begins with the submission of the ICR to OMB. Comments regarding this ICR may be submitted electronically through *https://www.regulations.gov* and/or to OIRA at *https://www.reginfo.gov/public/do/PRAMain.* See the **ADDRESSES** section of this proposed rule for more information about submitting comments.

Agency: DOL–ETA.

Title of Collection: Workforce Innovation and Opportunity Act (WIOA) Common Performance Reporting.

Type of Review: Revision of an approved ICR.

OMB Control Number: 1205–0526.

Description: The proposed rule would require Retention with the Same Employer as the only definition of the effectiveness in serving employers performance indicator in ETA 9169, WIOA Statewide and Local Performance Report Template by an entity that reports to the Departments on behalf of the State. Data elements for the collection and calculation for the two other piloted definitions of the effectiveness in serving employers performance indicator—Repeat Business Customer and Employer Penetration—would be removed from the ICR, along with the corresponding breakouts of the employer services that comprise them. This package is unchanged except to remove the data elements discussed above. No other changes are proposed for this ICR.

Affected Public: State Governments.

Obligation to Respond: Required to Obtain or Retain Benefits.

Frequency: Annually.

Estimated Total Annual Respondents: 19,114,129.

Estimated Total Annual Responses: 38,216,054.

Estimated Total Annual Burden Hours: 9,863,057.

Estimated Total Annual Other Burden Costs: $34,594,532.

Authority for the Information Collection: 20 CFR 677.155(a)(1)(vi), and 34 CFR 361.155(a)(1)(vi) and 463.155(a)(1)(vi).

D. Executive Order 13132 (Federalism)

E.O. 13132 aims to guarantee the division of governmental

[40] There is no SBA size standard for this NAICS code.

responsibilities between the National Government and the States and to further the policies of the Unfunded Mandates Reform Act of 1995 (UMRA). Accordingly, E.O. 13132 requires executive departments and agencies to ensure that the principles of federalism guide them in the formulation and implementation of policies. Further, agencies must adhere to constitutional principles, examine the constitutional and statutory authority supporting a regulation that would limit the policymaking discretion of the States, and assess the need for such a regulation. To the extent practicable, agencies must consult State and local officials before implementing any such regulation.

E.O. 13132 further provides that agencies must implement a regulation that limits the policymaking discretion of the States only where there is constitutional and statutory authority for the regulation, and it addresses a problem of national significance. For a regulation administered by the States, the National Government must grant the States the maximum administrative discretion possible to avoid intrusive Federal oversight of State administration, and agencies must adhere to special requirements for a regulation that pre-empts State law. E.O. 13132 also sets forth the procedures agencies must follow for certain regulations with federalism implications, such as preparation of a summary impact statement.

Accordingly, the Departments reviewed this WIOA-required NPRM for federalism implications and have concluded that none exist in this rulemaking. This joint NPRM does not contain any substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Departments concluded that this NPRM does not have a sufficient federalism implication to warrant the preparation of a summary impact statement.

E. Unfunded Mandates Reform Act of 1995

UMRA directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, and the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or Tribal governments, or imposes a duty upon the private sector.

Following the consideration of the above factors, the Departments concluded this joint NPRM contains no unfunded Federal mandates, as defined in 2 U.S.C. 658(6) to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' Reporting Retention with the Same Employer as the effectiveness in serving employers performance indicator as proposed does not place any additional burdens on State, local, and Tribal governments because the WIOA core programs already collect and report the necessary information. Furthermore, Federal program funding triggers the reporting requirement; therefore, the Departments provide funding for any associated reporting mandate. Private training entities participate as a provider under a WIOA core program on a purely voluntary basis, and voluntarily assume the information collection.

F. Executive Order 13175 (Indian Tribal Governments)

The Departments reviewed this proposed rule under the terms of E.O. 13175 and DOL's Tribal Consultation Policy and have determined that it would have Tribal implications, because the proposed regulations would have substantial direct effects on: one or more Indian Tribes; the relationship between the Federal government and Indian Tribes; or the distribution of power and responsibilities between the Federal government and Indian Tribes. Therefore, DOL has prepared a Tribal summary impact statement. Because the Tribal implications of this proposed rule relate only to DOL Indian and Native American (INA) program grantees, DOL has printed the requisite Tribal summary impact statement in the DOL-specific effectiveness in serving employers NPRM published elsewhere in this issue of the **Federal Register**, which proposes related changes for effectiveness in serving employers to DOL's INA program regulations.

List of Subjects

20 CFR Part 677

Employment, Grant programs—labor.

34 CFR Part 361

Administrative practice and procedure, Grant programs—education, Grant programs—social programs, Reporting and recordkeeping requirements, Vocational rehabilitation.

34 CFR Part 463

Adult education, Grant programs—education.

For the reasons discussed in the preamble, the Employment and Training Administration proposes to amend 20 CFR part 677 as follows:

PART 677—PERFORMANCE ACCOUNTABILITY UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 1. The authority citation for part 677 continues to read as follows:

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart A—State Indicators of Performance for Core Programs

■ 2. Amend § 677.155 by revising paragraphs (a)(1)(vi) and (c)(6) to read as follows:

§ 677.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) * * *

(1) * * *

(vi) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

* * * * *

(c) * * *

(6) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

Subpart B—Sanctions for State Performance and the Provision of Technical Assistance

■ 3. Amend § 677.190 by revising paragraph (c) to read as follows:

§ 677.190 When are sanctions applied for failure to achieve adjusted levels of performance?

* * * * *

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance, except for the effectiveness in serving employers indicator described in § 677.155(a)(1)(vi), to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators, except for the effectiveness in serving

employers indicator described in § 677.155(a)(1)(vi), by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program.

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator.

(i) The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score, except for the effectiveness in serving employers indicator described in § 677.155(a)(1)(vi).

(ii) The overall State indicator score for effectiveness in serving employers, as reported by one core program on behalf of all six core programs in the State, as described in guidance, is a statewide indicator that reflects the performance for all core programs. It is calculated as the statewide percentage achieved of the statewide adjusted level of performance.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance, except for the effectiveness in serving employers indicator described in § 677.155(a)(1)(vi).

* * * * *

For the reasons stated in the preamble, the Department of Education proposes to amend 34 CFR parts 361 and 463 as follows:

PART 361—STATE VOCATIONAL REHABILITATION SERVICES PROGRAM

Subpart E—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

■ 4. The authority citation for part 361, subpart E continues to read as follows:

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 5. Amend § 361.155 by revising paragraphs (a)(1)(vi) and (c)(6) to read as follows:

§ 361.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) * * *

(1) * * *

(vi) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

* * * * *

(c) * * *

(6) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

■ 6. Amend § 361.190 by revising paragraph (c) to read as follows:

§ 361.190 When are sanctions applied for failure to achieve adjusted levels of performance?

* * * * *

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance, except for the effectiveness in serving employers indicator described in § 361.155(a)(1)(vi), to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators, except for the effectiveness in serving employers indicator described in § 361.155(a)(1)(vi), by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program.

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator.

(i) The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score, except for the effectiveness in serving employers indicator described in § 361.155(a)(1)(vi).

(ii) The overall State indicator score for effectiveness in serving employers, as reported by one core program on behalf of all six core programs in the State, as described in guidance, is a statewide indicator that reflects the performance for all core programs. It is calculated as the statewide percentage achieved of the statewide adjusted level of performance.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance, except for the effectiveness in serving employers indicator described in § 361.155(a)(1)(vi).

* * * * *

PART 463—ADULT EDUCATION AND FAMILY LITERACY ACT

Subpart I—Performance Accountability Under Title I of the Workforce Innovation and Opportunity Act

■ 7. The authority citation for part 463, subpart I continues to read as follows:

Authority: Secs. 116, 189, and 503 of Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

■ 8. Amend § 463.155 by revising paragraphs (a)(1)(vi) and (c)(6) to read as follows:

§ 463.155 What are the primary indicators of performance under the Workforce Innovation and Opportunity Act?

(a) * * *

(1) * * *

(vi) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

* * * * *

(c) * * *

(6) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. For the six core programs, this indicator is a statewide indicator reported by one core program on behalf of all six core programs in the State, as described in guidance.

■ 9. Amend § 463.190 by revising paragraph (c) to read as follows:

§ 463.190 When are sanctions applied for failure to achieve adjusted levels of performance?

* * * * *

(c) Whether a State has failed to meet adjusted levels of performance will be determined using the following criteria:

(1) The overall State program score, which is expressed as the percent achieved, compares the actual results achieved by a core program on the primary indicators of performance, except for the effectiveness in serving employers indicator described in § 463.155(a)(1)(vi), to the adjusted levels of performance for that core program. The average of the percentages achieved of the adjusted level of performance for each of the primary indicators, except for the effectiveness in serving employers indicator described in § 463.155(a)(1)(vi), by a core program will constitute the overall State program score.

(2) However, until all indicators for the core program have at least 2 years of complete data, the overall State program score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data for that program.

(3) The overall State indicator score, which is expressed as the percent achieved, compares the actual results achieved on a primary indicator of performance by all core programs in a State to the adjusted levels of performance for that primary indicator.

(i) The average of the percentages achieved of the adjusted level of performance by all of the core programs on that indicator will constitute the overall State indicator score, except for the effectiveness in serving employers indicator described in § 463.155(a)(1)(vi).

(ii) The overall State indicator score for effectiveness in serving employers, as reported by one core program on behalf of all six core programs in the State, as described in guidance, is a statewide indicator that reflects the performance for all core programs. It is calculated as the statewide percentage achieved of the statewide adjusted level of performance.

(4) However, until all indicators for the State have at least 2 years of complete data, the overall State indicator score will be based on a comparison of the actual results achieved to the adjusted level of performance for each of the primary indicators that have at least 2 years of complete data in a State.

(5) The individual indicator score, which is expressed as the percent achieved, compares the actual results achieved by each core program on each of the individual primary indicators to the adjusted levels of performance for each of the program's primary indicators of performance, except for the effectiveness in serving employers indicator described in § 463.155(a)(1)(vi).

* * * * *

Martin J. Walsh,

Secretary of Labor.

Miguel A. Cardona,

Secretary of Education.

[FR Doc. 2022–19002 Filed 9–13–22; 8:45 am]

BILLING CODE 4000–01–P 4510–FN–P

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 684, 686, and 688

[Docket No. ETA–2022–0005]

RIN 1205–AC08

Workforce Innovation and Opportunity Act Title I Non-Core Programs Effectiveness in Serving Employers Performance Indicator

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Proposed rule.

SUMMARY: The Workforce Innovation and Opportunity Act (WIOA) established six primary indicators of performance for certain WIOA-authorized programs. Currently, the regulations contain definitions for five of the six performance indicators. In the final rule implementing WIOA, the U.S. Departments of Labor and Education (the Departments) indicated that they would initially implement the sixth indicator of performance—effectiveness in serving employers—in the form of a pilot program to test the feasibility and rigor of three proposed approaches. With the pilot completed, the Departments are engaging in a rulemaking under RIN 1205–AC01 to incorporate a standard definition of the performance indicator for effectiveness in serving employers into the implementing regulations for the six WIOA core programs. In this related rulemaking, the Department of Labor (DOL or the Department) is proposing to incorporate the same definition of the effectiveness in serving employers performance indicator into regulations for title I non-core programs: the Indian and Native American (INA) programs, the Job Corps program, the YouthBuild programs, and the National Farmworker Jobs Program (NFJP).

DATES: Interested persons are invited to submit written comments on the proposed rule on or before November 14, 2022.

ADDRESSES: You may submit comments, identified by Docket No. ETA–2022–0005 and Regulatory Identification Number (RIN) 1205–AC08, through the Federal eRulemaking Portal: *https://www.regulations.gov.* Search for the above-referenced RIN, open the proposed rule, and follow the on-screen instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this rulemaking or ''1205–AC08.'' Because of the narrow scope of this proposed regulation, the Department encourages commenters to submit, and the Department will consider only comments, regarding the definition of the effectiveness in serving employers performance indicator for WIOA title I non-core programs as set forth herein. The proposed amendments are limited to the sections of the regulations detailed in this rulemaking.

Please be advised that the Department will post all comments received that relate to this notice of proposed rulemaking (NPRM) without changes to *https://www.regulations.gov,* including any personal information provided. The *https://www.regulations.gov* website is the Federal e-Rulemaking Portal and all

comments posted there are available and accessible to the public. Therefore, the Department recommends that commenters remove personal information (either about themselves or others) such as Social Security numbers, personal addresses, telephone numbers, and email addresses included in their comments, as such information may become easily available to the public via the *https://www.regulations.gov* website. It is the responsibility of the commenter to safeguard personal information.

Because of the direct relationship between this proposed rule and the *Workforce Innovation and Opportunity Act Effectiveness in Serving Employers Performance Indicator; Joint proposed rule* (RIN 1205–AC01) and to ensure that comments are reviewed and considered, the Department encourages commenters to submit only comments regarding the proposed amendments to the title I non-core program regulations, which are limited to the sections of the regulations detailed in this proposed rule, to the docket that corresponds to this rulemaking action. Comments on other provisions and aspects of the WIOA regulations will be considered outside the scope of this rulemaking and will not be considered by the Department.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* (search using RIN 1205–AC08 or Docket No. ETA–2022–0005).

Comments Under the Paperwork Reduction Act of 1995 (PRA): In addition to filing comments on any aspect of this proposed rule with the Department, interested parties may submit comments that concern the information collection (IC) aspects of this NPRM to the Office of Information and Regulatory Affairs (OIRA) at *https://www.reginfo.gov/public/do/PRAMain.* Find the relevant information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT:

Heidi Casta, Acting Administrator, Office of Policy Development and Research, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW, Room N–5641, Washington, DC 20210, Telephone: 202–693–3700 (voice) (this is not a toll-free number), 1–877–872–5627, or 1–800–326–2577 (telecommunications device for the deaf).

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Acronyms and Abbreviations

AEFLA Adult Education and Family Literacy Act
CFR Code of Federal Regulations
Departments U.S. Departments of Labor and Education
DOL *or* Department U.S. Department of Labor
E.O. Executive Order
ES Employment Service
ETA Employment and Training Administration
FR Federal Register
GPMS Grantee Performance Management System
ICR Information Collection Request
INA Indian and Native American
MSFW migrant and seasonal farmworker
NAETC Native American Employment and Training Council
NFJP National Farmworker Jobs Program
NPRM *or* proposed rule notice of proposed rulemaking
OIRA Office of Information and Regulatory Affairs
OMB Office of Management and Budget
PIRL Participant Individual Record Layout
PRA Paperwork Reduction Act of 1995
Pub. L. Public Law
PY Program Year
RFA Regulatory Flexibility Act
RIA Regulatory impact analysis
RIN Regulation Identifier Number
Stat. United States Statutes at Large
UI unemployment insurance
UMRA Unfunded Mandates Reform Act
U.S.C. United States Code
TEGL Training and Employment Guidance Letter
VR Vocational Rehabilitation
WIOA Workforce Innovation and Opportunity Act
WIPS Workforce Integrated Performance System

I. Background and Rulemaking Authority

President Barack Obama signed WIOA into law on July 22, 2014. WIOA, the first legislative reform of the public workforce system in more than 15 years, superseded the Workforce Investment Act of 1998 and amended the Wagner-Peyser Act and the Rehabilitation Act of 1973. WIOA reaffirmed the role of the customer-focused one-stop delivery system, a cornerstone of the public workforce system, and enhanced and increased coordination among several key employment, education, and training programs. The law also includes a common performance accountability system, consisting of six statutory primary indicators of performance, applicable to all WIOA core programs: adult, dislocated worker, and youth programs under title I of WIOA; the Adult Education and Family Literacy Act (AEFLA) program under title II; the Employment Service (ES) program authorized under the Wagner-Peyser Act as amended by WIOA title III; and the Vocational Rehabilitation (VR) program authorized under title I of the Rehabilitation Act as amended by WIOA title IV. WIOA also required that the six statutory primary indicators of performance apply to four WIOA title I, DOL-administered non-core programs: INA programs (WIOA sec. 166(e)(5)), the NFJP (WIOA sec. 167(c)(2)(C)), Job Corps (WIOA sec. 159(c)(1)), and YouthBuild (WIOA sec. 171(f)) (hereinafter ''title I non-core programs'').

Other DOL-administered WIOA title I non-core programs and projects (*e.g.,* National Dislocated Worker Grants under WIOA sec. 170, the Reentry Employment Opportunities grants under WIOA sec. 169 and annual appropriations acts) also report on the WIOA sec. 116 primary indicators of performance, as directed by Training and Employment Guidance Letter (TEGL) No. 14–18, ''Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),'' and the DOL-only performance Information Collection Request (ICR), Office of Management and Budget (OMB) Control Number 1205–0521, ''DOL-Only Performance Accountability, Information, and Reporting System.'' However, unlike the other title I non-core programs that are the subject of this rulemaking, WIOA did not mandate the use of the sec. 116 performance indicators for these other title I programs. Those programs are not the subject of, or addressed in, this

rulemaking, but for some of these programs, the Department has chosen to apply the sec. 116 primary indicators to assess performance.[1] For those programs, the proposed definition of effectiveness in serving employers performance indicator also would be applied.

In WIOA, Congress directed the Department to issue regulations implementing statutory requirements to ensure that the public workforce system operates as a comprehensive, integrated, and streamlined system in order to provide pathways to prosperity and continuously improve the quality and performance of its services to job seekers and employers. On August 19, 2016, the Department issued the *Workforce Innovation and Opportunity Act; Final Rule* (DOL WIOA Final Rule) to implement WIOA for the title I non-core programs (81 FR 56071). That same day the Departments jointly issued the *Workforce Innovation and Opportunity Act; Joint Rule for Unified and Combined State Plans, Performance Accountability, and the One-Stop System Joint Provisions; Final Rule* (Joint WIOA Final Rule) to implement WIOA for the six core programs (81 FR 55791).

Under WIOA, there are six primary indicators of performance that apply to the core programs and the title I non-core programs authorized under WIOA. The statute defines five of the six performance indicators. However, the statute did not specify how effectiveness in serving employers should be measured. Instead, WIOA directed the Departments to develop a definition for the effectiveness in serving employers performance indicator (WIOA sec. 116(b)(2)(A)(iv)).[2] At that time, the Departments concluded that there was not enough evidence to adopt a standard definition. Therefore, in the Joint WIOA Final Rule, the Departments determined that it was prudent to pilot three definitions for the sixth performance indicator to test the feasibility and rigor of three approaches to measure a State's effectiveness in serving employers through its WIOA-authorized programs. As discussed more fully below, during the pilot period the Department, through guidance[3] and the ''DOL-Only Performance Accountability, Information, and Reporting System'' ICR, approved under OMB Control Number 1205–0521, required the title I non-core programs to report on one of the three definitions being piloted.

As detailed later in this NPRM, that pilot, as well as a study of the results from the pilot, are now complete. The Departments are engaging in two rulemakings to incorporate into the WIOA regulations a proposed standard definition of the performance indicator for effectiveness in serving employers. This proposed definition is meant to apply to both WIOA core programs—which are addressed in the concurrently published *Workforce Innovation and Opportunity Act Effectiveness in Serving Employers Performance Indicator; Joint proposed rule* (RIN 1205–AC01) (herein after referred to as Joint Effectiveness in Serving Employers NPRM)—as well as the four title I non-core programs, which are addressed in this NPRM.

WIOA secs. 159(c)(1) (Job Corps), 166(e)(5) (INA), 167(c)(2)(C) (NFJP), and 171(f) (YouthBuild) specify that performance for these title I non-core programs must be assessed using the primary indicators of performance for WIOA core programs. In this proposed rule, the Department is proposing to codify the approach for evaluating a program's effectiveness in serving employers. When finalized, this rulemaking would result in the codification of all the primary performance indicators for these programs—including the effectiveness in serving employers indicator—just as with the WIOA core programs.

II. Effectiveness in Serving Employers Performance Indicator Approaches for WIOA Core Programs, as Relevant to WIOA Non-Core Programs

Section 677.155 sets forth the primary indicators by which the performance of core programs is evaluated, as required by WIOA sec. 116(b)(2)(A)(i). These primary indicators of performance apply to the core programs described in WIOA sec. 116(b)(3)(A)(ii), as well as to the title I non-core programs. These primary indicators of performance create a common language shared across the programs' performance metrics, support system alignment, enhance programmatic decision making, and help participants make informed decisions related to training. Sections 116(b)(2)(A)(i)(VI) and (iv) of WIOA require the Secretaries of Labor and Education to jointly develop and establish the sixth performance indicator—effectiveness in serving employers—after consultation with representatives of State and local governments, business and industry, and other interested parties.

In the Joint Effectiveness in Serving Employers NPRM, the Departments are proposing to define the effectiveness in serving employers performance indicator in § 677.155(a)(1)(vi) as the percentage of participants with wage records who exited a program and were employed by the same employer in the second and fourth quarters after exit and specifies that this is a statewide indicator reported by one core program on behalf of all six core programs in the State. The Department is proposing this is same language for the WIOA title I non-core programs in this NPRM; however, the statewide aspect of the definition in the proposed Joint Effectiveness in Serving Employers NPRM would not apply to WIOA title I non-core programs. The Department seeks comment in this NPRM on how the proposed definition of effectiveness in serving employers performance indicator would impact the title I non-core programs.

Prior to selecting this single approach to propose, the Departments selected three approaches for measuring effectiveness in serving employers to be piloted by WIOA core programs. The Departments assessed the use of each of the three approaches with a focus on minimizing employer burden and using information that would provide an accurate picture of how well the public workforce system serves employers.

Under the guidance of the Departments,[4] each State piloted its

[1] *Pages 2 through 5 of* TEGL No. 14–18, ''Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),'' provide the current list of DOL-administered non-core programs for which DOL has chosen to apply these performance reporting requirements, which include programs authorized by WIOA, as well as programs authorized by other Federal legislation. TEGL No. 14–18, Mar. 25, 2019, *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.* The list of programs may change to reflect policy changes and updates to Federal legislation authorizing DOL's non-core programs.

[2] Section 116(b)(2)(A) of WIOA states the primary indicators of performance: (1) the percentage of participants who are employed during the second and (2) fourth quarters after exit from the program, (3) the median earnings of participants who are employed during the second quarter after exit, (4) the percentage of participants who obtain a recognized postsecondary credential during the program or within 1 year of exit, (5) the percentage of participants who achieve measurable skill gains during a program year, and (6) ''indicators of effectiveness in serving employers.'' This last indicator is the subject of this NPRM. Definitions of the others were included in the WIOA regulations promulgated in August 2016 (81 FR 55791; *see* 20 CFR 677.155, 34 CFR 361.155, 34 CFR 463.155).

[3] ETA, TEGL No. 14–18, ''Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),'' Mar. 25, 2019, *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.*

[4] This joint guidance, ''Performance Accountability Guidance for Workforce Innovation

choice of any two of three definitions for the effectiveness in serving employers performance indicator for WIOA core programs: (1) *Retention with the Same Employer:* Percentage of participants with wage records who exited from WIOA core programs and were employed by the same employer in the second and fourth quarters after exit; (2) *Repeat Business Customer:* Percentage of employers who have used WIOA core program services more than once during the last three reporting periods; and (3) *Employer Penetration:* Percentage of employers using WIOA core program services out of all employers in the State.

The Departments assessed the pilot through a Department of Labor contract that resulted in a final report titled *Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act.*[5] Specifically, the study assessed each approach to defining the effectiveness in serving employers performance indicator for validity, reliability, practicality, and unintended consequences.[6] Though the study did not definitively recommend one approach, in assessing the study's findings for each of the three approaches of the effectiveness in serving employers performance indicator, the Departments concluded that the Retention with the Same Employer approach provides a valid and reliable approach to measuring the indicator, while also placing the least amount of burden on States to implement.

The study authors identified strengths for the Repeat Business Customer approach, including that it serves as a proxy for employer satisfaction. In the study, the authors also identified weaknesses in the Repeat Business Customer approach, including that it: (1) may provide a disincentive to reach out to new employers; (2) is subject to variation in industry and sector economic conditions; and (3) may require a statistical adjustment model to mitigate the weaknesses and improve implementation and interpretation.[7] The study authors identified strengths for the Employer Penetration approach, including that the dataset used for this measure is comprehensive, covering more than 95 percent of U.S. jobs. The study authors also identified weaknesses in the Employer Penetration approach through the study, including: (1) emphasis on quantity rather than quality or intensity of the employer service provided; (2) reliability issues associated with data entry and the process to count unique establishments; (3) measurement of program output rather than outcome; (4) potential for creation of perverse incentives to prioritize program breadth rather than depth in service and delivery; and (5) lack of sensitivity to industry sectors targeted by State and local workforce agencies.[8] The Departments considered the study's findings and concurred with its conclusions on the Repeat Business Customer and Employer Penetration approaches.

The study did not identify any significantly advantageous alternatives to defining the effectiveness in serving employers performance indicator outside of the three proposals (Executive Summary, pp. xx–xxi).

Nevertheless, the Departments identified the following advantages regarding the Retention with the Same Employer definition of the effectiveness in serving employers performance indicator:

- *Demonstration of Effectiveness:* Retention with the Same Employer demonstrates a continued relationship between the employer and participants who have exited WIOA programs. While many circumstances affect an employer's retention of employees, an indication that an employee maintains employment with the same employer in both the second and fourth quarters after exiting from a WIOA program demonstrates a level of success for WIOA customers (*i.e.,* successfully preparing participants to fill jobs that meet employers' needs). Retention of an employee reduces the costs to the employer associated with employee turnover and retraining. The other two approaches are based only on employer data and fail to capture any level of job match effectiveness.
- *Stable Collection Mechanism:* Retention with the Same Employer uses data already collected in the WIOA Joint Performance ICR (OMB Control Number 1205–0526). While not all States selected this approach in the pilot, all States collect this information under the existing WIOA Joint Performance ICR. In contrast, the Participant Individual Record Layout (PIRL) in the WIOA Joint Performance ICR does not currently collect data elements used for the Repeat Business Customer and Employer Penetration approaches to the performance indicator.
- *Alignment with Employment Performance Indicators:* Retention with the Same Employer aligns with the performance indicators for employment in the second and fourth quarters after exit, which are existing performance indicators that all WIOA core programs already report.

Of the three approaches piloted with the States, Retention with the Same Employer is the least burdensome for both States and employers, as noted in the Joint WIOA Final Rule regulatory impact analysis (RIA) (81 FR 55792, 55968). DOL gives particular weight to reporting burden, especially for the competitive grantees with generally less reporting capacity than States, in order to allow grantees to focus on services and improve the accuracy and completeness of the data. However, the Department acknowledges that the limitations for Retention with the Same Employer could include the unintended consequences that this approach may be at odds with an employee seeking a higher paying job or employment benefits, and the possibility that the performance outcome for this indicator might not be the result of an employer receiving a service from the workforce development system. Prioritizing the advantages discussed above (*i.e.,* stable data collection mechanism, alignment with other employment performance indicators, and demonstrating maintained relationships between employers and employees), the Department has determined Retention

and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,'' was concurrently issued on December 19, 2016, as TEGL No. 10–16 by the Department of Labor, and as Office of Career, Technical, and Adult Education Program Memorandum 17–2 and Rehabilitation Services Administration Technical Assistance Circular (TAC) TAC–17–01 by the Department of Education.

[5] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

[6] *See id.* at 3–6 (stating that validity ''is used to assess whether you are measuring what you intend to measure''; that reliability ''refers to the ability to maintain consistency in data collection over time and across organizations collecting the data''; that practicality means that the measure ''must be relatively uncomplicated and simple to administer to avoid threats to reliability and validity'' and ''must be practical to use in administrating programs''; and that unintended consequences are ''negative consequences or behaviors that result, like the displacement of goals or conflict with other goals.''

[7] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, p. 67, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

[8] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, p. 68, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

with the Same Employer is the preferred approach of measuring effectiveness in serving employers and are proposing that approach in the Joint Effectiveness in Serving Employers NPRM. For further information on the pilot, including the Departments' findings regarding the utility of each pilot definition and reasoning for selecting the Retention with the Same Employer performance indicator definition, please refer to the Joint Effectiveness in Serving Employers NPRM, which is published concurrently with this NPRM elsewhere in this issue of the **Federal Register**.

III. Effectiveness in Serving Employers Performance Indicator for WIOA Title I Non-Core Programs

Although the four WIOA title I non-core programs in this rulemaking—Job Corps, INA, NFJP, and YouthBuild—did not participate in the core program pilot, these title I non-core program fund recipients (*i.e.,* Job Corps contractors and INA, NFJP, and YouthBuild grantees) were apprised of the three proposed definitions for the effectiveness in serving employers performance indicator that the pilot studied.[9] Moreover, the title I non-core program recipients have been required to report on Retention with the Same Employer since at least 2019. In TEGL No. 14–18 the Department implemented WIOA's performance reporting requirements by requiring the non-core programs to use the Retention with the Same Employer definition of the effectiveness in serving employers performance indicator.

Under this proposed rule, the WIOA title I non-core programs would be subject to the same data collection and reporting requirements as they have been under TEGL No. 14–18. The TEGL specified that, starting in Program Year (PY) 2018 (or the point at which wage matching data becomes available to the program), the Job Corps, INA, NFJP, and YouthBuild programs were to begin tracking the effectiveness in serving employers performance indicator using the Retention with the Same Employer definition. Consistent with related guidance issued in PYs 2016, 2017, and 2018,[10] these programs were required to use the Workforce Integrated Performance System (WIPS), the online performance reporting system for the Department's employment and training grants,[11] to submit information that would be used for calculating the effectiveness in serving employers performance indicator.[12] These requirements are all included in an existing information collection, the WIOA PIRL (ETA 9172), in the ''DOL-Only Performance Accountability, Information, and Reporting System'' ICR, approved under OMB Control Number 1205–0521. By proposing to use the Retention with the Same Employer definition for this indicator, the NPRM would require programs to use already-collected data and the existing performance reporting system, WIPS. Thus, programs would not have additional burden to collect and report on any other type of additional data to calculate and report results for other possible approaches to defining this performance indicator. Finally, TEGL No. 14–18 also put forth program-specific timelines for implementation of the WIOA reporting requirements factoring in data lags associated with the performance indicator as well as known implementation actions such as case management system development, which are further detailed below in each program-specific section. In summary, for these four title I non-core programs (Job Corps, INA, NFJP, and YouthBuild), this NPRM proposes to codify in regulation the existing practice of reporting Retention with the Same Employer in order to measure a program's effectiveness in serving employers.

As discussed above, the Department has concluded that the benefits of this proposed performance indicator definition with regard to the core programs—that, among other things, it places a low burden on the programs and employers, has a stable method of collection through wage records, and demonstrates a level of success for WIOA customers—are also applicable to the title I non-core programs. Using the proposed Retention with the Same Employer definition of the effectiveness in serving employers indicator, which would be the same definition used to assess the core programs, has the advantage of assessing performance consistently across the WIOA programs. This is consistent with one of the central purposes of WIOA: ''[t]o support the alignment of workforce investment, education, and economic development systems in support of a comprehensive, accessible, and high-quality workforce development system in the United States.'' WIOA sec. 2(2). Additionally, because WIOA applies the effectiveness in serving employers performance indicator to the WIOA core and title I non-core programs, applying the same definition of effectiveness in serving employers for all of these WIOA programs could allow the Department to build a common body of data that can be used to study effectiveness in serving employers across the entire workforce system.

While reporting this performance indicator contributes to the holistic data analysis of the workforce system, the Department recognizes that drawbacks to this proposed definition exist for the title I non-core programs, especially due to the unique nature of programs focused on youth and migrant or seasonal workers. Nevertheless, the Department believes that the benefits of this approach outweigh those drawbacks. Moreover, the Department intends to mitigate these drawbacks, if necessary, by exercising its discretion to place appropriate weight on the effectiveness in serving employers performance indicator. Title I non-core programs that serve youth, for example, focus on employment, career readiness, retention in education, and life skills to support youth participants in obtaining academic and career skills necessary to be successful in the job market, and success for youth is more likely to include progression in jobs. Recognizing the unique circumstances title I non-core programs may face, the Department expects variability in the reported outcomes from program to program,

[9] See Joint WIOA Final Rule, 81 FR 55791, 55845–55846 (discussing the pilot and the three proposed definitions for the effectiveness in serving employers performance indicator); ETA, TEGL No. 10–16, ''Performance Accountability Guidance for Workforce Innovation and Opportunity Act (WIOA) Title I, Title II, Title III, and Title IV Core Programs,'' Dec. 19, 2016, *https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8226;* ETA, TEGL No. 14–18, ''Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),'' Mar. 25, 2019, *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611* (referring the title I non-core programs to TEGL No. 10–16 for a description of the pilot).

[10] ETA, Training and Employment Notice (TEN) No. 08–06, ''Implementation of an Integrated Performance Reporting System for Multiple Employment and Training Administration (ETA) and Veterans' Employment and Training Service (VETS) Administered Programs,'' Aug. 24, 2016, *https://wdr.doleta.gov/directives/attach/TEN/TEN_08-16.pdf; ETA, TEN 40–16,* ''Workforce Integrated Performance System (WIPS) User Resource Library Information Page,'' Apr. 11, 2017, *https://wdr.doleta.gov/directives/attach/TEN/TEN_40-16_Acc.pdf.;* ETA, TEGL No. 14–18, ''Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),'' Mar. 25, 2019, *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.*

[11] ETA, ''Workforce Integrated Performance System (WIPS),'' *https://www.dol.gov/agencies/eta/performance/wips* (last visited Jan. 9, 2022).

[12] Specifically, the programs are required to report the wage records or supplemental wage information, as directed in program-specific guidance, which are used to identify whether a program participant's employer wage record indicates a match of the same establishment identifier (*e.g.,* Federal Employer Identification Number or State tax identifier) in the second and fourth quarters after exit from the program.

especially for programs serving youth, and intends to take this variability into account when negotiating levels of performance. These considerations are consistent with TEGL No. 14–18 guidance for applicability of primary performance indicators, which specifies that, as a general matter, participants' outcomes on the applicable primary indicators of performance may be relevant for negotiating levels of performance, decisions related to contract awards and renewal, and the award of competitive grants.[13]

It should be kept in mind that the effectiveness in serving employers performance indicator is unique among all other indicators in that it is employer-focused. Employers are critical partners with title I non-core programs in providing quality services and employment opportunities to program participants.

While WIOA does require an effectiveness in serving employers indicator to be applied to the title I non-core programs that are the subject of this rulemaking, the Department is soliciting comments to better inform implementation of the effectiveness in serving employers performance indicator for these programs, particularly those currently undergoing transition to the Grantee Performance Management System (GPMS). The Department is particularly interested in hearing from the regulated community regarding challenges that they might face in implementing this proposed definition of the effectiveness in serving employers performance indicator; challenges they have faced under TEGL No. 14–18, which serves as the basis for how the performance indicator is proposed to be defined in this NPRM; experiences they have had in considering alternate ways to measure effectiveness in serving employers; and other definitions that might be more suitable.

A. Part 684—Indian and Native American Programs

Part 684 governs the INA programs authorized under WIOA sec. 166, including programs for Native American youth (INA Supplemental Youth Services). The INA programs are intended to support employment and training activities for INA program participants in order to develop more fully academic, occupational, and literacy skills and to serve unemployed and low-income INA populations seeking to achieve economic self-sufficiency consistent with the goals and values of the particular communities. Where active, INA programs are required one-stop center partners. The Department administers these programs to maximize Federal commitment to support the growth and development of INAs and their communities as determined by representatives of such communities while meeting the applicable statutory and regulatory requirements.

WIOA sec. 166(h)(2) requires the Department to reach an agreement with Tribal Governments—and the respective entities administering the programs—as to the levels of performance required for each core indicator, including an effectiveness in serving employers performance indicator. The Department is also required to work with the Native American Employment and Training Council (NAETC) to develop a set of performance indicators and standards for the INA adult and youth programs in addition to the primary indicators used to measure performance (WIOA sec. 166(h)(1)(A)).

Beginning with PY 2018, ETA has applied the effectiveness in serving employers performance indicator to INA adult grants as it is described in TEGL No. 14–18, using the Retention with the Same Employer definition of the performance indicator. Specifically, on March 25, 2019, TEGL No. 14–18, Attachment 2 provided that the definition for effectiveness in serving employers performance indicator for INA program reporting purposes would be consistent with the Retention with the Same Employer approach applicable to DOL-administered WIOA title I non-core programs and described in Appendix I of the TEGL. On November 20, 2019, the ICR approved under OMB Control Number 1205–0521 formally established for INA programs the calculation of effectiveness in serving employers and the collection of required elements for the effectiveness in serving employers performance indicator. The cohort of INA adult program participants who exited after July 1, 2020, is the first that may have effectiveness in serving employers data collected, which will be compiled and analyzed in summer 2022.

For the INA Supplemental Youth Services program, the DOL WIOA Final Rule and TEGL No. 14–18 both acknowledged the significant challenges in implementing the performance indicators in WIOA sec. 116(b)(2)(A)(ii). In implementing these performance indicators in TEGL No. 14–18, the Department gave consideration as to how youth performance indicators can be implemented in a way that is realistic and feasible for INA program grantees while also implementing the requirements in WIOA. INA Supplemental Youth Services program participants will be reported once the INA youth case management system modernization has been completed, at which time it will be at least six additional quarters until the first data on effectiveness in serving employers will be available. INA grantees will eventually report on this performance indicator, but given the complexity of aligning data elements and building new systems to report such data, the Department is using the transition authority found in WIOA sec. 503(b) to work co-operatively with grant program organizations to transition to reporting of the information over time.[14]

In 2021, as part of the development of this proposed rule, the Department held two events[15] to consult with INA program grantees and representatives of Tribal institutions about their experiences with the implementation and operation of the effectiveness in serving employers performance indicator under TEGL No. 14–18. Participants at these two events expressed several concerns and questions, including: (1) how the Retention with the Same Employer performance indicator definition takes into account participants' employer, wage, or position changes; (2) how temporary jobs, such as seasonal or contract-based employment, would be considered; (3) the impact on performance of limited-duration summer employment opportunities for high school students within INA youth programs, (4) data collection and reporting process for INA youth programs, (5) use of and access to wage records that may not account for self-employed participants, and (6) the need for consideration of all Tribal communities and their unique needs. Other commenters suggested other ways to define the calculation of the

[13] *ETA, TEGL No. 14–18,* ''Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),'' p. 8, Mar. 25, 2019, *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.*

[14] ETA, TEN No. 8–16, ''Implementation of an Integrated Performance Reporting System for Multiple Employment and Training Administration (ETA) and Veterans' Employment and Training Service (VETS) Administered Programs,'' Aug. 24, 2016.

[15] The first event was a town hall discussion on September 21, 2021. See NAETC, ''41st National Indian and Native American Employment and Training Program,'' Sept. 20–23, 2021, *http://www.ninaetc.net/41%20NINAETC%20PROGRAM_FINAL.pdf.* The second event, a consultation webinar, occurred on October 19, 2021. See ''Tribal Consultation; Workforce Innovation and Opportunity Act, Implementation of the Effectiveness in Serving Employers Performance Indicator; Notice of Tribal Consultation; Virtual Meeting,'' 86 FR 54244 (Sept. 30, 2021).

performance indicator. One commenter asserted that the Department is not required to assess INA grantees on their effectiveness in serving employers. Section IV.F of this document, which pertains to Executive Order (E.O.) 13175 (Indian Tribal Governments), summarizes details from these events and requests further comments to provide the Department with recommendations and suggestions to address the issues identified through this consultation. The concerns raised during the consultation process can be classified into several categories: (1) issues focusing on services to participants (wages and position changes, temporary or contract jobs, and summer employment); (2) administrative and data tracking (data collection and use of wage records); (3) the needs of the Tribal communities.

If this rulemaking is finalized as proposed, the Department intends to work with INA program grantees to mitigate these concerns. First, INA program grantees' services to participants also are measured and assessed through the other five WIOA primary indicators of performance, and the Department recognizes the importance of these indicators in assessing the performance of INA program grantees. The effectiveness in serving employers performance indicator, unlike the other indicators, which are focused on program participants, focuses on how the WIOA programs are serving employers. As explained above, the proposed performance indicator definition of Retention with the Same Employer is one metric by which to ascertain how employers are being served by these programs. Second, the Department acknowledges and understands the challenges related to reporting for INA program grantees and is working to ensure that all INA program grantees have the systems and resources needed to report the information required for this performance indicator. Third, the Department acknowledges the concerns of Tribal communities and their unique needs. WIOA makes provision for the Department to negotiate additional performance indicators and standards taking into account the needs of participants and the economic circumstances of the communities INA program grantees serve. See WIOA sec. 166(h)(1). The Department will negotiate these additional performance indicators keeping these considerations in the forefront of the negotiations process. INA program grantee performance also is assessed based on these outcomes. Effectiveness in serving employers is not the only metric for assessing INA program grantee performance.

While the Department acknowledges the concerns that have been expressed by INA grantees during the Tribal consultation for this proposed rule regarding application of the effectiveness in serving employers to INA adult and youth programs and will work to mitigate the issues such concerns raise, we note that WIOA requires the performance of these programs to be measured using the WIOA sec. 116 six statutory indicators of performance, including effectiveness in serving employers. Specifically, WIOA sec. 166(h)(2) requires the Secretary to reach agreement on the levels of performance for each of the primary indicators of performance described in WIOA sec. 116(b)(2)(A), which includes the effectiveness in serving employers indicator.

Further, as explained above, the benefits of defining this measure using Retention with the Same Employer, including that it minimizes reporting burdens for INA program grantees, outweigh the drawbacks, as well as providing more benefits than the use of either of the other performance indicator definitions piloted by the core programs. To fulfill the intent of WIOA's common performance accountability system, the Department is proposing to define effectiveness in serving employers for the INA programs using the Retention with the Same Employer approach so that the Department can measure effectiveness in serving employers consistently across core programs and the title I non-core programs.

Additionally, the Department notes that WIOA sec. 166(i)(3) and the WIOA regulations at 20 CFR part 684 subpart I allow the Department to waive requirements, including performance requirements, that are inconsistent with the specific needs of INA grantees. Based on consultation with the NAETC, the Department issued guidance TEGL No. 04–19, ''Waiver Authority for the INA Program and Implementation of Additional Indicators of Performance,'' [16] which provides how INA grantees can request waivers of performance indicators, and how grantees with waivers can report on alternative performance indicators for INA adult and youth programs. As consultation commenters discussed, performance reporting can be particularly challenging for smaller grantees. Therefore, if this rulemaking is finalized as proposed, consistent with this waiver guidance, the Department would accept and promptly make determinations on requests submitted by grantees for waivers of performance indicators, including effectiveness in serving employers, so that grantees can structure their performance indicators to best fit the economic circumstances of the communities served and improve positive outcomes.

Section 684.460—What performance indicators are applicable to the supplemental youth services program?

Section 684.460(a) sets out the performance indicators that apply to INA youth programs, including an indicator of the effectiveness of serving employers—specifically in paragraph (a)(6)—as established under WIOA sec. 116(b)(2)(A)(iv). This NPRM proposes to change the language currently found in paragraph (a)(6) to align with the effectiveness in serving employers performance indicator language proposed at § 677.155(a)(1)(vi) in the Joint Effectiveness in Serving Employers NPRM. Specifically, proposed § 684.460(a)(6) would define the required effectiveness in serving employers performance indicator as the percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit.

Section 684.620—What performance indicators are in place for the Indian and Native American program?

Section 684.620(a) lists the performance indicators used to evaluate the INA programs, including an effectiveness in serving employers performance indicator. Like the proposed changes to § 684.460(a)(6), the Department proposes changing the existing language at § 684.620(a)(6) to define the required effectiveness in serving employers performance indicator as the percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit. This definition of effectiveness in serving employers aligns with the effectiveness in serving employers performance indicator language proposed at § 677.155(a)(1)(vi) in the Joint Effectiveness in Serving Employers NPRM.

[16] ETA, TEGL No. 04–19, ''Waiver Authority for the INA Program and Implementation of Additional Indicators of Performance,'' Aug. 29, 2019, *https://wdr.doleta.gov/directives/attach/TEGL/TEGL_4-19_acc.pdf.*

B. Part 685—National Farmworker Jobs Program

Part 685 establishes regulations for NFJP, authorized in title I, subtitle D of WIOA. The NFJP is a nationally directed, locally administered program of services for migrant and seasonal farmworkers (MSFWs) and their dependents. Grant recipients help program participants acquire new skills to either stabilize or advance their agricultural careers or obtain employment in a new industry, as well as working to meet the critical need of safe and sanitary permanent and temporary housing for farmworkers and their families.

The NFJP would be impacted by the proposed addition of the definition of the effectiveness in serving employers performance indicator in 20 CFR part 677. Section 167(c)(3) of WIOA (29 U.S.C. 3222) requires the Department to use the six WIOA primary indicators of performance, including the effectiveness in serving employers performance indicator, to assess the performance of the NFJP. In the DOL WIOA Final Rule, the Department implemented this requirement in 20 CFR 685.400(a) and (b), which states that NFJP grantees providing career services and training use the indicators of performance described in WIOA sec. 116(b)(2)(A). NFJP housing grantees, which provide housing assistance rather than training and employment placement services, are required to report a different set of performance indicators as defined in 20 CFR 685.400(c), specifically the total number served of eligible MSFWs, other individuals, eligible MSFW families, and other families. Therefore, if finalized, the proposed definition of the effectiveness in serving employers performance indicator in 20 CFR part 677 in the Joint Effectiveness in Serving Employers NPRM would apply to NFJP career services grantees but not housing grantees, although it would have no noticeable change to procedures for career services grantees as they already report this information in accordance with TEGL No. 14–18. Beginning with PY 2018, NFJP career services grants have applied the effectiveness in serving employers performance indicator as it is described in TEGL No. 14–18, using the Retention with the Same Employer definition of the performance indicator. However, the third quarter of PY 2020 was the first quarter where NFJP generated quarterly performance reports in WIPS with the effectiveness in serving employers performance indicator. No changes to the regulatory text at 20 CFR part 685 are necessary to implement this change, as the regulations currently state that the Department uses the indicators of performance described in WIOA sec.116(b)(2)(A) and do not state a definition directly.

C. Part 686—Job Corps Program

Part 686 establishes regulations for the Job Corps program, authorized in title I, subtitle C of WIOA. Job Corps is a no-cost education and career technical training program administered by the Department, which includes 121 Job Corps centers across the United States. The program aims to help young people—ages 16 to 24—gain academic credentials and career technical training skills and secure quality employment.

Job Corps historically has used post-separation surveys to capture post-program employment results. Job Corps' current surveys (OMB Control Number 1205–0426) are administered to participants immediately following the second and fourth quarters after exit and capture information related to whether they are employed or in an educational or training program during those quarters and if they have attained any additional certifications or credentials after exit from the program. In PY 2018, Job Corps revised the reporting periods in the post-separation surveys to replace program-specific definitions of the second and fourth quarters after exit with the same definitions used by other DOL employment and training programs. This definitional shift created alignment with quarterly wage records and facilitated calculation of common exit and outcomes across WIOA programs. With this change in definition, Job Corps has been able to apply the effectiveness in serving employers performance indicator as it is described in TEGL No. 14–18, using the Retention with the Same Employer definition of the performance indicator. While the post-separation surveys are a supplemental data source for reporting on the primary indicators of performance, Job Corps did not gain access to wage record matches, the primary data source, until the fourth quarter of PY 2020. All reported outcomes for Job Corps prior to this period were based solely on the supplemental data source. Job Corps began certifying its program results in WIPS for all the primary measures of performance, including the Retention with the Same Employer indicator, in the first quarter of PY 2020. Starting with the fourth quarter of PY 2020, Job Corps obtained quarterly wage record matches and, combined with the supplemental data from the surveys, has been able to report fully on the primary measures of performance, including the Retention with the Same Employer indicator.

Section 686.1010—What are the primary indicators of performance for Job Corps centers and the Job Corps program?

Section 686.1010 lists the primary indicators used to measure the performance of Job Corps centers, which includes the effectiveness in serving employers performance indicator. The effectiveness in serving employers performance indicator specifically applies to Job Corps center operators and career transition service providers. The Department proposes to change the existing language found at § 686.1010(f) to align with the effectiveness in serving employers performance indicator language proposed at § 677.155(a)(1)(vi) in the Joint Effectiveness in Serving Employers NPRM. Specifically, proposed § 686.1010(f) would define the required effectiveness in serving employers performance indicator as the percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit.

D. Part 688—YouthBuild Programs

Part 688 establishes regulations for the YouthBuild programs, authorized in title I, subtitle D of WIOA. YouthBuild is a pre-apprenticeship program that provides educational and job training opportunities for at-risk youth (ages 16–24) who have previously dropped out of high school. Program participants learn vocational skills focused on the construction industry, as well as other in-demand industries including healthcare, information technology, and hospitality. Participants earn their high school diploma while splitting time between the vocational training work site and the classroom, as well as preparing for postsecondary training opportunities, such as Registered Apprenticeships, college, and eventual employment. Community service is required of participants, including through construction and rehabilitation of affordable housing for low-income and homeless families, often in their own neighborhoods. YouthBuild programs include mentoring, follow-up education, employment, and personal counseling services as support systems for program participants as well. YouthBuild grants include a 4-month planning period and run on a cohort model, which spans from 6 to 12 months.

On March 25, 2019, TEGL No. 14–18, Attachment 11, provided that the definition for the effectiveness in serving employers performance

indicator for YouthBuild reporting purposes would be consistent with the Retention with the Same Employer approach generally applicable to DOL-administered WIOA programs and described in Appendix I to the TEGL. On November 20, 2019, the ICR approved under OMB Control Number 1205–0521 formally established for YouthBuild programs the calculation of effectiveness in serving employers and the collection of required elements for effectiveness in serving employers. YouthBuild program participants will be reported once the case management system modernization is completed, at which time it will be at least an additional six quarters until the first data on effectiveness in serving employers will be available. The YouthBuild participants from the grant class that began on July 1, 2021, is the first that may have effectiveness in serving employers data available, which would be available in the quarter ending on September 30, 2023.

Section 688.400—What are the performance indicators for YouthBuild grants?

Section 688.400 lists the primary indicators used to measure the performance of YouthBuild programs, which also includes a performance indicator for effectiveness in serving employers. This NPRM proposes to codify current practices by replacing existing language in § 688.400(f) with language that aligns with the effectiveness in serving employers performance indicator language proposed at § 677.155(a)(1)(vi) in the Joint Effectiveness in Serving Employers NPRM. Specifically, proposed § 688.400(f) would define the required effectiveness in serving employers performance indicator as the percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit.

IV. Regulatory Analysis and Review

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

Under E.O. 12866, OIRA determines whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. See 58 FR 51735 (Oct. 4, 1993). Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) has an annual effect on the economy of $100 million or more, or adversely affects in a material way a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities (also referred to as economically significant); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the E.O. Id. This proposed rule is a significant regulatory action, although not an economically significant regulatory action under sec. 3(f) of E.O. 12866. Accordingly, OMB reviewed this proposed rule.

E.O. 13563 directs agencies to propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs; the regulation is tailored to impose the least burden on society, consistent with achieving the regulatory objectives; and in choosing among alternative regulatory approaches, the agency has selected those approaches that maximize net benefits. E.O. 13563 recognizes that some benefits are difficult to quantify and provides that, where appropriate and permitted by law, agencies may consider and discuss qualitatively values that are difficult or impossible to quantify, including equity, human dignity, fairness, and distributive impacts.

1. Outline of the Analysis

Section IV.A.2 provides a summary of the results of the RIA. Section IV.A.3 describes the need for the proposed rule, and Section IV.A.4 describes the process used to estimate the costs and cost savings of the proposed rule and the general inputs used, such as wages and number of affected entities. Section IV.A.5 explains how the provisions of the proposed rule would result in quantifiable costs and cost savings and presents the calculations the Department used to estimate them. In addition, Section IV.A.5 describes the qualitative benefits of the proposed rule. Section IV.A.6 summarizes the estimated first-year and 10-year total and annualized costs, cost savings, net costs, and transfer payments of the proposed rule. Finally, Section IV.A.7 describes the regulatory alternatives considered when developing the proposed rule.

2. Analysis Overview

The Department estimates that the proposed rule would result in costs and qualitative benefits. As shown in Exhibit 1, the proposed rule is expected to have a one-time cost of $41,551. The Departments estimate that the proposed rule would result in an annualized net quantifiable cost of $5,916 at a discount rate of 7 percent and expressed in 2020 dollars.

EXHIBIT 1—ESTIMATED MONETIZED COSTS OF THE PROPOSED RULE

[2020 dollars]

	Cost
10-Year Total with a Discount Rate of 3%	$41,551
10-Year Total with a Discount Rate of 7%	41,551
10-Year Average	4,155
Annualized at a Discount Rate of 3%	4,871
Annualized at a Discount Rate of 7%	5,916

The cost of the proposed rule is associated with rule familiarization for all 121 Job Corps centers and 1 career transition service provider for a total of 122 Job Corps entities, 53 NFJP career service and training grantees, 69 INA youth grantees, 104 INA adult grantees, and 216 YouthBuild grantees.[17] See the costs subsections of Section IV.A.5 (Subject-by-Subject Analysis) below for a detailed explanation.

The Department cannot quantify the benefits of the proposed rule; therefore, Section IV.A.5 (Subject-by-Subject Analysis) describes the benefits qualitatively.

3. Need for Regulation

This proposed rulemaking is necessary to complete implementation of the performance accountability requirements as discussed in the Joint WIOA Final Rule and required by statute. WIOA included a common performance accountability system, consisting of six statutory primary indicators of performance, applicable to all WIOA core programs: adult, dislocated worker, and youth programs under title I of WIOA; the AEFLA program under title II; the ES program authorized under the Wagner-Peyser Act as amended by WIOA title III; and the VR program authorized under title I of the Rehabilitation Act, as amended by WIOA title IV. WIOA also required that the six statutory primary indicators of performance apply to four WIOA title I, DOL-administered non-core programs: INA, NFJP, Job Corps, and YouthBuild (''title I non-core programs''). The

[17] The 216 YouthBuild entities consist of grantees within each of the three currently active grant classes (67 grantees in the 2020 class, 68 grantees in the 2019 class, and 81 grantees in the 2018 class).

statute defines five of the six performance indicators. However, WIOA did not specify how effectiveness in serving employers should be measured. Instead, WIOA directed the Departments to develop a definition for the effectiveness in serving employers performance indicator (WIOA sec. 116(b)(2)(A)(iv)). In the Joint WIOA Final Rule, the Departments determined that it was prudent to pilot three definitions for the sixth performance indicator, which measures a State's effectiveness in serving employers through its WIOA-authorized programs. As explained earlier in this proposal, that pilot, as well as a study of the results from the pilot, is now complete. The Departments are engaging in two rulemakings to incorporate into the WIOA regulations a proposed standard definition of the performance indicator for effectiveness in serving employers. This proposed performance indicator definition is meant to apply to both WIOA core programs—which are addressed in the concurrently published Joint Effectiveness in Serving Employers NPRM—as well as the four title I non-core programs, which are addressed in this NPRM. When finalized, this rulemaking would codify the use of all the primary performance indicators for the evaluation of title I non-core program performance—including the effectiveness in serving employers indicator—just as with the WIOA core programs.

4. Analysis Considerations

a. Baseline for Title I Non-Core Programs: Indian and Native American, Job Corps, and YouthBuild

The Department estimated the costs of the proposed rule relative to the existing baseline. The Department determined that the proposed rule would result in no change from the baseline for the title I non-core programs. As a result, the Department estimates only the costs of rule familiarization for the title I non-core programs.

WIOA secs. 159(c)(1) (Job Corps), 166(e)(5) (INA), 167(c)(2)(C) (NFJP), and 171(f) (YouthBuild) specify that performance for these title I non-core programs must be assessed using the WIOA sec. 116 primary indicators of performance for WIOA core programs. In this proposed rule, the Department is codifying the approach for evaluating a program's effectiveness in serving employers, as put into practice through previously issued guidance [18] and the ''DOL-Only Performance Accountability, Information, and Reporting System'' ICR, approved under OMB Control Number 1205–0521 for the title I non-core programs.

All title I non-core programs, except the INA Supplemental Youth Services program, are able to report the Retention with the Same Employer definition of effectiveness in serving employers performance indicator, as required in TEGL No. 14–18, through WIPS or GPMS. Unlike the other title I non-core programs, the INA Supplemental Youth Services program is not currently reporting, and will not immediately be able to report, the effectiveness in serving employers performance indicator. The INA Supplemental Youth Services case management system modernization has not been completed at the time of this rulemaking; therefore, INA youth grantees will, for a period of time, use WIOA transition authority with regard to collecting and reporting on WIOA performance indicators, including the proposed effectiveness in serving employers performance indicator. The Department is planning, independent of this rulemaking, to build a new case management system for INA youth grantees that will provide for the collection and reporting of the effectiveness in serving employers performance indicator. Therefore, this proposed rule does not impose any new cost associated with the case management system. When the case management system is built, the INA youth grantees will use it to collect and report the outcomes for the effectiveness in serving employers performance indicator. The use of the new system to report the effectiveness in serving employers performance indicator would impose a de minimis cost for the INA youth grantees. When the INA Supplemental Youth Services case management system is complete, the INA youth program grantees would face a de minimis cost associated with reporting the effectiveness in serving employers performance indicator in the new system.

Exhibit 2 presents the number of entities the Department expects the proposed rule to affect. The Department provides these estimates and uses them to calculate the cost of rule familiarization for the title I non-core programs.

EXHIBIT 2—TITLE I NON-CORE PROGRAMS NUMBER OF AFFECTED ENTITIES BY TYPE

Entity type	Number
Job Corps:	
Current centers	121
Career transition service providers	1
NFJP:	
Career services and training grantees	53
Indian and Native American:	
Number of INA youth grants awarded under WIOA sec. 166	69
Grantees for the Comprehensive Services Program/INA adult program	104
YouthBuild:	
Grantees in active grant classes	216

b. Compensation Rates

In Section IV.A.5 (Subject-by-Subject Analysis), the Department presents the costs, including labor, associated with the proposed rule. Exhibit 3 presents the hourly compensation rates for the occupational categories expected to experience a change in level of effort (workload) due to the proposed rule. We use the Bureau of Labor Statistics (BLS) mean hourly wage rate for local government employees.[19] To reflect total compensation, wage rates include nonwage factors such as overhead and fringe benefits (*e.g.,* health and retirement benefits). We use an overhead rate of 17 percent [20] and a fringe benefits rate of 62 percent,[21] which represents the ratio of average total compensation to average wages for State and local government workers in March 2021. We then multiply the sum of the loaded wage factor and overhead rate by the corresponding occupational category wage rate to calculate an hourly compensation rate.

[18] ETA, TEGL No. 14–18, ''Aligning Performance Accountability Reporting, Definitions, and Policies Across Workforce Employment and Training Programs Administered by the U.S. Department of Labor (DOL),'' Mar. 25, 2019, *https://wdr.doleta.gov/directives/corr_doc.cfm?docn=7611.*

[19] BLS, ''May 2020 National Industry-Specific Occupational Employment and Wage Estimates: NAICS 999300—Local Government, excluding schools and hospitals (OEWS Designation),'' *https://www.bls.gov/oes/current/naics4_999300.htm* (last visited Jan. 9, 2022).

[20] U.S. Environmental Protection Agency, ''Wage Rates for Economic Analyses of the Toxics Release Inventory Program,'' June 10, 2002, *https://www.regulations.gov/document/EPA-HQ-OPPT-2018-0321-0046.*

[21] BLS, ''Employer Costs for Employee Compensation—March 2021,'' June 17, 2021, Calculated using Table 1. Employer Costs for Employee Compensation by ownership, *https://www.bls.gov/news.release/archives/ecec_06172021.htm.*

EXHIBIT 3—COMPENSATION RATES [2020 DOLLARS]

Position	Grade level	Base hourly wage rate (a)	Loaded wage factor (b)	Overhead costs (c)	Hourly compensation rate d = a + b + c
Management Analyst	N/A	$41.23	$25.43 ($41.23 × 0.62)	$7.01 ($41.23 × 0.17)	$73.67

5. Subject-by-Subject Analysis

The Department's analysis below covers the estimated cost of the proposed rule.

c. Costs

The following sections describe the costs of the proposed rule.

(1) DOL-Only Non-Core Programs Rule Familiarization

If the proposed rule is finalized, INA, YouthBuild, NFJP, and Job Corps programs would need to familiarize themselves with the new regulation. Consequently, this would impose a one-time cost in the first year.

To estimate the first-year cost of rule familiarization for INA, YouthBuild, NFJP, and Job Corps programs, the Department multiplied the estimated number of management analysts (1) by the time required to read and review the rule (1 hour), and by the applicable hourly compensation rate ($73.67/hour). We multiplied this result by the number Job Corps active centers (122), NFJP grantees (53), INA Youth program grantees (69), INA Adult program grantees (104), and the number of YouthBuild grantees (216). This calculation yields $41,551 in one-time labor costs for Job Corps, NFJP, INA Youth, and INA Adult programs to read and review the rule. Over the 10-year period of analysis, these estimated one-time costs result in an average annual cost of $4,155 undiscounted, or $4,871 and $5,916 at discount rates of 3 and 7 percent, respectively.

d. Qualitative Benefits Discussion

(1) General Benefits of Measuring Effectiveness in Serving Employers

The Department cannot quantify the proposed rule's benefits associated with improving the title I non-core programs' effectiveness in serving employers. Measuring effectiveness in serving employers allows title I non-core programs to set goals, monitor, and learn how to serve employers more effectively.[22] Reporting a measure of effectiveness in serving employers also helps Federal, State, and local policymakers evaluate program performance and inform future policy changes to better meet program goals, particularly providing employers with skilled workers and other services.

The Department cannot quantify these estimated benefits because we do not have quantitative data on how the effectiveness in serving employers performance indicator has influenced program implementation and how much it would influence future policies.

(2) Specific Benefits of Reporting Retention With the Same Employer

Requiring the calculation and reporting of Retention with the Same Employer as the effectiveness in serving employers performance indicator would make it easier to compare WIOA title I non-core programs' effectiveness in serving employers performance across grant programs. Retention with the Same Employer demonstrates a continued relationship between the employer and participants who have exited WIOA programs. While many circumstances can have an impact on an employer's retention of employees, an indication that an employee is still working for the same employer in both the second and fourth quarters after exiting from a WIOA program demonstrates a level of success for both parties, as retention of an employee reduces the costs to the employer associated with employee turnover and retraining. Thus, reporting Retention with the Same Employer can help inform design and implementation of program services to reduce job turnover and improve employer-employee match quality. Improved matching and reduced turnover allow employees and employers to operate closer to their productive potential and can make it more worthwhile for employers to invest in training its employees and for employees to invest in learning employer-specific skills.

6. Summary of the Analysis

The Department estimates the total net cost of the proposed rule at $41,183 at a discount rate of 7 percent. The Department estimates the annualized net cost of the proposed rule at $5,864 at a discount rate of 7 percent. Exhibit 4 summarizes the estimated cost of the proposed rule over the 10-year analysis period.

EXHIBIT 4—ESTIMATED MONETIZED COSTS OF THE PROPOSED RULE

[2020 dollars]

	Costs
2022	$41,551
2023	0
2024	0
2025	0
2026	0
2027	0
2028	0
2029	0
2030	0
2031	0
10-Year Total with a Discount Rate of 3%	41,551
10-Year Total with a Discount Rate of 7%	41,551
10-Year Average	4,155
Annualized with a Discount Rate of 3%	4,871
Annualized with a Discount Rate of 7%	5,916

7. Regulatory Alternatives

The Department considered two alternatives to the proposed definition of the effectiveness in serving employers performance indicator. First, the Department considered requiring use of the Employer Penetration pilot approach, which reports the percentage of employers using services out of all employers in the State. This approach would have required counts of services provided to employers requiring States and local areas to report unique counts of employer establishments receiving services through WIOA's programs. Employer Penetration would require a more data-intensive analysis than the proposed approach of Retention with the Same Employer. Employer Penetration would have the benefit of capturing the extent to which employers

[22] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act (Research Report),'' Jan. 2021, *https://www.urban.org/sites/default/files/publication/104160/measuring-the-effectiveness-of-services-to-employers_1_0.pdf.*

within a State are engaged with WIOA-funded services and would provide State programs an incentive to work with additional employers. The Department, in an Urban Institute study, found weaknesses in this pilot approach including: (1) emphasis on quantity rather than quality or intensity of the employer service provided; (2) reliability issues associated with data entry and the process to count unique establishments; (3) measurement of program output rather than outcome; (4) potential for creation of perverse incentives to prioritize program breadth rather than depth in service and delivery; and (5) lack of sensitivity to industry sectors targeted by State and local workforce agencies.[23]

The Department considered a second regulatory alternative that would require the use of the Repeat Business Customer approach to the effectiveness in serving employers performance indicator, which reports the percentage of employers receiving services in a year who also received services within the previous 3 years. This approach to the effectiveness in serving employers measure requires counts of services provided to employers through WIOA's programs. Repeat Business Customer requires a more data-intensive analysis than the proposed approach of Retention with the Same Employer. Repeat Business Customer captures the extent to which employers within a State can find workers and the employer's level of satisfaction with the public workforce system services. The Department, in an Urban Institute study, found weaknesses in this pilot approach including that it: (1) may provide a disincentive to reach out to new employers; (2) is subject to variation in industry and sector economic conditions; and (3) may require a statistical adjustment model to mitigate the weaknesses and improve implementation and interpretation.[24]

The Department prefers the proposed approach of requiring the use of Retention with the Same Employer because it has data more readily available and, therefore, it is less burdensome. The Retention with the Same Employer approach better aligns with workforce system goals of matching employers with job seekers and reducing turnover without the weaknesses associated with the other two approaches to defining the effectiveness in serving employers performance indicator. In addition, because title I non-core programs are already required to report the Retention with the Same Employer measure, the two alternative measures would impose new costs to affected entities associated with collecting data, calculation of, and reporting the alternative measure.

B. Regulatory Flexibility Act, Small Business Regulatory Enforcement Fairness Act, and Executive Order 13272 (Proper Consideration of Small Entities in Agency Rulemaking)

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, Public Law 104–121 (Mar. 29, 1996), requires Federal agencies engaged in rulemaking to consider the impact of their proposals on small entities, consider alternatives to minimize that impact, and solicit public comment on their analyses. The RFA requires the assessment of the impact of a regulation on a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions. Agencies must perform a review to determine whether a proposed or final rule would have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603 and 604.

The Department finds that this proposed rule would not have a significant economic impact on a substantial number of small entities. Based on this determination, the Department certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. This finding is supported, in large measure, by the fact that small entities are already receiving financial assistance under WIOA. In addition, the calculated cost of this rulemaking is a one-time per-entity cost of $73.67 associated with rule familiarization and would therefore have a de minimis impact on any on particular entity.

This proposed rule can be expected to impact small entities within the Job Corps, NFJP, and INA programs. These small entities can be, for example, Tribal or non-profit grantees, including regionally focused entities. The Department has estimated costs that are new to this proposed rule. As discussed in Section IV.A, the calculated cost of this rulemaking is a one-time per-entity cost of $73.67 associated with rule familiarization and would, therefore, have a de minimis impact on any one particular entity. Therefore, the Department certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Department previously submitted and received OMB approval for the information collection discussed above (OMB Control Number 1205–0521) in Section I, Background and Rulemaking Authority, and Section III, Effectiveness in Serving Employers Performance Indicator for WIOA Title I Non-Core Programs. See ICR Reference Number 202104–1205–003 (OMB Control Number 1205–0521). This NPRM does not modify any of the content in the exiting OMB Control Number 1205–0521.

D. Executive Order 13132 (Federalism)

E.O. 13132 aims to guarantee the division of governmental responsibilities between the National Government and the States and to further the policies of the Unfunded Mandates Reform Act of 1995 (UMRA). Accordingly, E.O. 13132 requires executive departments and agencies to ensure that the principles of federalism guide them in the formulation and implementation of policies. Further, agencies must adhere to constitutional principles, examine the constitutional and statutory authority supporting a regulation that would limit the policymaking discretion of the States, and assess the need for such a regulation. To the extent practicable, agencies must consult State and local officials before implementing any such regulation.

E.O. 13132 further provides that agencies must implement a regulation that limits the policymaking discretion of the States only where there is constitutional and statutory authority for the regulation and it addresses a problem of national significance. For a regulation administered by the States, the National Government must grant the States the maximum administrative discretion possible to avoid intrusive Federal oversight of State administration, and agencies must adhere to special requirements for a regulation that preempts State law. E.O. 13132 also sets forth the procedures that agencies must follow for certain regulations with federalism implications, such as preparation of a summary impact statement.

[23] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act (Research Report),'' Jan. 2021, *https://www.urban.org/sites/default/files/publication/104160/measuring-the-effectiveness-of-services-to-employers_1_0.pdf.*

[24] S. Spaulding, et al., ''Measuring the Effectiveness of Services to Employers: Options for Performance Measures under the Workforce Innovation and Opportunity Act,'' Jan. 2021, *https://wdr.doleta.gov/research/FullText_Documents/ETAOP2021-17%20Measures%20of%20Effectiveness%20in%20Serving%20Employers_Final%20Report.pdf.*

Accordingly, the Department has reviewed this WIOA-required NPRM and has concluded that the rulemaking has no Federalism implications. This NPRM has no substantial direct effects on States, on the relationships between the States, or on the distribution of power and responsibilities among the various levels of government as described by E.O. 13132. Therefore, the Department has concluded that this NPRM does not have a sufficient Federalism implication to warrant the preparation of a summary impact statement.

E. Unfunded Mandates Reform Act

UMRA directs agencies to assess the effects of Federal regulatory actions on State, local, and Tribal governments, as well as the private sector. A Federal mandate is any provision in a regulation that imposes an enforceable duty upon State, local, or Tribal governments, or imposes a duty upon the private sector that is not voluntary.

Following consideration of the above factors, the Department has concluded that this NPRM contains no unfunded Federal mandates, which are defined in 2 U.S.C. 658(6) to include either a ''Federal intergovernmental mandate'' or a ''Federal private sector mandate.'' No additional burden related to reporting the effectiveness in serving employers performance indicator is being proposed to be placed on State, local, and Tribal governments, as this information already is being collected and reported on. Furthermore, the reporting is a contingent to receiving Federal program funding. Any associated reporting mandate cannot, therefore, be considered ''unfunded.'' Because the decision by a private training entity to participate as a provider under a WIOA core program is purely voluntary, the information collection burden does not impose a duty on the private sector that is not voluntarily assumed.

F. Executive Order 13175 (Indian Tribal Governments)

The Departments of Labor and Education reviewed this proposed rule, as well as the Joint Effectiveness in Serving Employers NPRM published concurrently with this NPRM elsewhere in this issue of the **Federal Register**, under the terms of E.O. 13175 and DOL's Tribal Consultation Policy (77 FR 71833 (Dec. 4, 2012)) and have determined that it would have Tribal implications, because the proposed regulations would have substantial direct effects on: one or more Indian Tribes; the relationship between the Federal Government and Indian Tribes; or the distribution of power and responsibilities between the Federal Government and Indian Tribes. Therefore, DOL has prepared a Tribal summary impact statement.

Prior to developing this proposed rule, the Department held two events to consult with INA program grantees and representatives of Tribal institutions about their experiences with the implementation and operation of the effectiveness in serving employers performance indicator. These two events consisted of a town hall meeting attended both in person and virtually and a formal consultation webinar. The town hall, entitled ''Town Hall Discussion: Effectiveness in Serving Employers Performance Indicator,'' occurred on September 21, 2021, at the 41st National Indian and Native American Employment and Training conference.[25] The consultation webinar, entitled ''Tribal Consultation for WIOA Effectiveness in Serving Employers Indicator Proposed Rulemaking,'' occurred on October 19, 2021.[26] At the consultation webinar, the Department provided an opportunity for stakeholders to submit written feedback through DOL's Tribal consultation email account by October 29, 2021.

At the two events, the Department received feedback from the INA community and the general public that established several areas of interest concerning the definition of the effectiveness in serving employers performance indicator for WIOA programs. These areas of interest are summarized below. The Department did not receive any written feedback through DOL's Tribal consultation email account. The Department received one letter after the consultation period that raised similar issues to those articulated at the consultation event and summarized below. This comment was not considered due to the late nature of its submission, though similar comments made during the feedback sessions were considered.

[25] NAETC, ''41st National Indian and Native American Employment and Training Program,'' Sept. 20–23, 2021, *http://www.ninaetc.net/41%20NINAETC%20PROGRAM_FINAL.pdf.*

[26] DOL, ''Tribal Consultation for WIOA Effectiveness in Serving Employers Indicator Proposed Rulemaking,'' *https://www.workforcegps.org/events/2021/09/14/13/57/Tribal-Consultation-for-WIOA-Effectiveness-in-Serving-Employers-Indicator-Proposed-Rulemaking* (last updated Nov. 3, 2021); see also ''Tribal Consultation; Workforce Innovation and Opportunity Act, Implementation of the Effectiveness in Serving Employers Performance Indicator; Notice of Tribal Consultation; Virtual Meeting,'' 86 FR 54244 (Sept. 30, 2021).

Employer, Wage, or Position Changes

Many commenters expressed concern about impacts of individuals changing employers for higher wages or different positions. Specifically, several commenters asked how the Retention with the Same Employer definition of the performance indicator would apply to individuals who have continuous employment through the second and fourth quarters, but with different employers. Some commenters expressed concern that this definition of the performance indicator would not consider individuals who advance to better employment opportunities. One commenter expressed concern that the program would be penalized if employees change employers.

Temporary, Seasonal, and Youth Employment

Many commenters expressed concern about how temporary jobs, such as seasonal or contract-based employment, would be considered. Specifically, one commenter gave an example of contractor jobs where individuals may not stay with the same employer and instead change from job to job, such as in construction. Additionally, another commenter stated that employers that regularly lay off and then rehire employees would affect outcomes.

A commenter asked if this measure applies to the INA youth program. Another commenter expressed concern about the impact on performance of limited-duration summer employment opportunities for high school students within INA youth programs. The commenter also questioned DOL's willingness to invest in developing a data collection and reporting process for INA youth programs.

Other commenters expressed concern about how seasonal jobs would be addressed and that certain areas have more seasonal employment than other areas do. Another commenter stated that individuals who participate in the program on a short-term basis while serving time with the Department of Corrections and later return to a different State may impact the performance indicator calculation. A different commenter stated that many participating employers primarily provide entry-level positions focused on gaining work experience.

Performance Indicator Calculation

Many commenters inquired about how the performance indicator is calculated. One commenter asked a question in which the sound quality of the audio was not clear. However, the subject-matter expert interpreted the

question to ask if supplemental wages are considered. One commenter stated that unemployment insurance (UI) records may not capture individuals who are self-employed. Another commenter said that certain States do not have access to UI information that would enable them to calculate the performance indicator.

Many commenters suggested other ways to calculate the performance indicator. Examples provided by one commenter included employer satisfaction surveys, number of employers served, number of repeat employers, and number of job fairs coordinated with employers. Another commenter said they measure success when an employer enquires about recent graduates to fill open positions. A different commenter stated that they understood the options DOL considered for how to measure effectiveness in serving employers to include how well programs have assisted employers in hiring new employees through job fairs, work experience to full-time hires, pre-screening of candidates, and individual hiring events for specific employers.

Tribal Community Impacts

Some commenters had questions and comments about how the performance indicator would specifically impact INA communities. One commenter expressed the need for consideration of all Tribal communities and their unique needs. The commenter stated that measures used for all INA programs must not only satisfy the intent of the performance indicator but also be meaningful, which is part of the purpose of WIOA sec. 166. The commenter also suggested that grantees should establish a work group within the NAETC to develop information to share with Tribal leaders so that they have background and can communicate what these performance indicators would mean for INA programs.

Another commenter cited the DOL-commissioned third-party study of the performance indicator, ''Measuring the Effectiveness of Service to Employers,'' and questioned why some States with many INA participants were not included in the pilot study. The commenter also asked if any INA WIOA programs were included in the study. Additionally, a commenter said that DOL is seeking support from Tribes on how to measure a performance indicator they may not want.

Process Questions and Other Observations

Many commenters asked questions about the rulemaking process and how the Department decided on the proposed definition of the performance indicator. Some commenters asked if this performance indicator is required. One commenter asked if the performance indicator can be customized based on the grantee's status, for example with different requirements for rural and urban programs. A different commenter asked if DOL would decide after consultation with Tribes whether or not to apply the performance indicator to INA programs. Other commenters asked if the definition of this performance indicator would be permanent or if it would be re-evaluated in the future. Additionally, a commenter asked if they could review the draft rule with others before it is published, when the proposed rule would be published, and when the final rule would take effect.

A commenter asked if other performance indicator definitions have been submitted for consideration, for example from the NAETC. Another commenter stated that grantees with direct employer relationships differ from grantees that work with American Job Centers to facilitate employment for employers. Additionally, a commenter asked how grantees can assist participants who are facing issues at a new employment site, such as being picked on or treated unfairly, and whether it would be appropriate to act as a mediator between the employer and the participant.

Conclusion

The Department appreciates the valuable feedback received through this Tribal consultation process and has considered this feedback carefully in crafting this proposed rule and its planned implementation, such as use of the waiver process outlined in TEGL No. 04–19, ''Waiver Authority for the INA Program and Implementation of Additional Indicators of Performance,'' and discussed in Section III.A of this document. The Department invites and encourages submission of public comments that provide further information, including detailed recommendations for program-specific alternatives for the effectiveness in serving employers performance indicator, so that it may take this information under further consideration when making determinations regarding a final rule.

List of Subjects

20 CFR Part 684

Employment, Grant programs—labor, Indians, Reporting and recordkeeping requirements.

20 CFR Part 686

Employment, Grant programs—labor, Job Corps.

20 CFR Part 688

Employment, Grant programs—labor, Youth, YouthBuild.

For the reasons discussed in the preamble, the Department of Labor proposes to amend 20 CFR parts 684, 686, and 688 as follows:

PART 684—INDIAN AND NATIVE AMERICAN PROGRAMS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 1. The authority citation for part 684 continues to read as follows:

Authority: Secs. 134, 166, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart D—Supplemental Youth Services

■ 2. Amend § 684.460 by revising paragraph (a)(6) to read as follows:

§ 684.460 What performance indicators are applicable to the supplemental youth services program?

(a) * * *

(6) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit.

* * * * *

Subpart F—Accountability for Services and Expenditures

■ 3. Amend § 684.620 by revising paragraph (a)(6) to read as follows:

§ 684.620 What performance indicators are in place for the Indian and Native American program?

(a) * * *

(6) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit.

* * * * *

PART 686—THE JOB CORPS UNDER TITLE I OF THE WORKFORCE INNOVATION AND OPPORTUNITY ACT

■ 4. The authority citation for part 686 continues to read as follows:

Authority: Secs. 142, 144, 146, 147, 159, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart J—Performance

■ 5. Amend § 686.1010 by revising paragraph (f) to read as follows:

§ 686.1010 What are the primary indicators of performance for Job Corps centers and the Job Corps program?

* * * * *

(f) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit.

PART 688—PROVISIONS GOVERNING THE YOUTHBUILD PROGRAM

■ 6. The authority citation for part 688 continues to read as follows:

Authority: Secs. 171, 189, 503, Pub. L. 113–128, 128 Stat. 1425 (Jul. 22, 2014).

Subpart D—Performance Indicators

■ 7. Amend § 688.400 by revising paragraph (f) to read as follows:

§ 688.400 What are the performance indicators for YouthBuild grants?

* * * * *

(f) The percentage of participants with wage records in the second quarter after exit who were employed by the same employer in the second and fourth quarters after exit.

* * * * *

Martin J. Walsh,

Secretary of Labor.

[FR Doc. 2022–19003 Filed 9–13–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF THE INTERIOR

Bureau of Safety and Environmental Enforcement

30 CFR Part 250

[Docket ID: BSEE–2022–0009; EEEE500000 223E1700D2 ET1SF0000.EAQ000]

RIN 1014–AA52

Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions

AGENCY: Bureau of Safety and Environmental Enforcement, Interior.

ACTION: Proposed rule.

SUMMARY: The Department of the Interior (DOI or Department), through the Bureau of Safety and Environmental Enforcement (BSEE), is proposing to revise certain regulatory provisions published in the 2019 final well control rule for drilling, workover, completion, and decommissioning operations. BSEE is proposing these revisions to clarify blowout preventer (BOP) system requirements and to modify certain specific BOP equipment capability requirements. This proposed rule would provide consistency and clarity to industry regarding the BOP equipment and associated operational requirements necessary for BSEE review and approval and would further ensure operations are conducted safely and in an environmentally responsible manner.

DATES: Send your comments on this proposed rule to BSEE on or before November 14, 2022. BSEE may not consider or include in the Administrative Record for the final rule comments that we receive after the close of the comment period (see **DATES**) or comments delivered to an address other than those listed below (see **ADDRESSES**).

Information Collection Requirements: If you wish to comment on the information collection requirements in this proposed rule, please note that the Office of Management and Budget (OMB) is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this proposed rule in the **Federal Register**. Therefore, comments should be submitted to OMB by October 14, 2022. The deadline for comments on the information collection burden does not affect the deadline for the public to comment to BSEE on the proposed regulations.

ADDRESSES: You may submit comments on the rulemaking by any of the following methods. Please use the Regulation Identifier Number (RIN) 1014–AA52 as an identifier in your message.

- *Federal eRulemaking Portal: http://www.regulations.gov.* In the entry entitled, ''Enter Keyword or ID,'' enter BSEE–2022–0009 then click search. Follow the instructions to submit public comments and view supporting and related materials available for this rulemaking. BSEE may post all submitted comments.
- *Mail or hand-carry comments to BSEE:* Attention: Regulations and Standards Branch, 45600 Woodland Road, VAE–ORP, Sterling, VA 20166. Please reference RIN 1014–AA52, ''Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions,'' in your comments, and include your name and return address.
- *Send comments on the information collection in this rule to:* Interior Desk Officer 1014–0028, Office of Management and Budget; 202–395–5806 (fax); email: *oira_submission@omb.eop.gov.* Please send a copy to BSEE at *regs@bsee.gov.*

Public Availability of Comments: Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. For BSEE to withhold from disclosure your personal identifying information, you must identify any information contained in your comment submittal that, if released, would constitute a clearly unwarranted invasion of your personal privacy. You must also briefly describe any possible harmful consequence(s) of the disclosure of information, such as embarrassment, injury, or other harm. While you may request that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

FOR FURTHER INFORMATION CONTACT: For questions, contact Kirk Malstrom, Regulations and Standards Branch, (202) 258–1518, or by email: *regs@bsee.gov.*

SUPPLEMENTARY INFORMATION:

Executive Summary

This rulemaking would revise certain regulatory provisions that were published in the 2019 final rule entitled ''Oil and Gas and Sulfur Operations in the Outer Continental Shelf–Blowout Preventer Systems and Well Control Revisions,'' 84 FR 21908 (May 15, 2019) (2019 WCR). On January 20, 2021, the President issued Executive Order (E.O.) 13990 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis) and the accompanying ''President's Fact Sheet: List of Agency Actions for Review.'' Within the President's Fact Sheet, DOI was specifically instructed to review the 2019 WCR to evaluate potential revisions to promote and protect public health and the environment, among other identified policy goals. This review confirmed that the 2019 WCR contains many provisions that help ensure that federally regulated outer Continental Shelf (OCS) oil and gas operations are conducted safely and in an environmentally responsible manner. Therefore, this proposed rule would address only select provisions that would further promote the President's policies and environmental objectives. At this time, BSEE is proposing a narrowly focused rulemaking to address the identified regulatory requirements to help improve operations that use a BOP, certain BOP capabilities and functionalities, and BSEE oversight of such operations. The proposed rule would:

- Clarify BOP system requirements,

• Remove the option for operators to submit failure data to designated third parties,

• Require accreditation of independent third party qualifications,

• Establish dual shear ram requirements for surface BOPs on existing floating production facilities when an operator replaces an entire surface BOP stack,

• Require ROV open functions as originally required in the 2016 WCR, and

• Require submittal of certain BOP test results if BSEE is unable to witness the testing.

BSEE will continue to evaluate the effectiveness of the 2019 WCR and all BSEE regulations for necessary and appropriate rulemakings in the future.

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I. Background

A. BSEE Statutory and Regulatory Authority and Responsibilities

BSEE's authority for this rule flows from the Outer Continental Shelf Lands Act (OCSLA), 43 U.S.C. 1331–1356a. OCSLA, enacted in 1953 and substantially revised in 1978, authorizes the Secretary of the Interior (Secretary) to lease the OCS for mineral development and to regulate oil and gas exploration, development, and production operations on the OCS. The Secretary has delegated authority to perform certain of these functions to BSEE.

To carry out its responsibilities, BSEE regulates offshore oil and gas operations to: enhance the safety of exploration for and development of oil and gas on the OCS, ensure that those operations protect the environment, and implement advancements in technology. BSEE also conducts onsite inspections to assure compliance with regulations, lease terms, and approved plans and permits. Detailed information concerning BSEE's regulations and guidance to the offshore oil and gas industry may be found on BSEE's website at: *https://www.bsee.gov/guidance-and-regulations.*

BSEE's regulatory program covers a wide range of OCS facilities and activities, including drilling, completion, workover, production, pipeline, and decommissioning operations. Drilling, completion, workover, and decommissioning operations are types of well operations that offshore operators [1] perform throughout the OCS. This rulemaking is applicable to these listed operational activities that involve certain BOP operations, capabilities, or functionalities.

B. Purpose and Summary of the Rulemaking

After the *Deepwater Horizon* incident in 2010, BSEE adopted several recommendations from multiple investigation teams to improve the safety of offshore operations. Subsequently, BSEE published the 2016 Blowout Preventer Systems and Well Control Final Rule on April 29, 2016 (81 FR 25888) (2016 WCR). The 2016 WCR consolidated the equipment and operational requirements for well control into one part of BSEE's regulations; enhanced BOP and well design requirements; modified well-control requirements; and incorporated certain industry technical standards. Most of the 2016 WCR provisions became effective on July 28, 2016.

Although the 2016 WCR addressed a significant number of issues that were identified during the analyses of the *Deepwater Horizon* incident, BSEE recognized that BOP equipment and systems continue to improve and that well control processes also evolve. Therefore, after the 2016 WCR took effect, BSEE continued to engage with the offshore oil and gas industry, Standards Development Organizations (SDOs), and other stakeholders. During these engagements, BSEE identified issues, and stakeholders expressed a variety of concerns regarding the implementation of the 2016 WCR. BSEE completed a review of the 2016 WCR and, on May 15, 2019, published the 2019 WCR in the **Federal Register** (84 FR 21908). The 2019 WCR left most of the 2016 WCR unchanged.

Following publication of the 2019 WCR, BSEE continued to engage with stakeholders to gather information to ensure an effective implementation of the governing regulatory requirements. The Department also identified areas for improvement to specific 2019 WCR provisions. Furthermore, on January 20, 2021, the President issued E.O. 13990 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis) and the accompanying ''President's Fact Sheet: List of Agency Actions for Review.'' Within the President's Fact Sheet, DOI was specifically instructed to review the 2019 WCR to evaluate potential revisions to promote and protect public health and the environment, among other identified policy priorities. The Department is proposing a narrowly focused rulemaking to address the identified regulatory requirements to help improve operations that use a BOP, certain BOP capabilities and functionalities, and BSEE oversight of such operations.

II. Section-by-Section Discussion of Proposed Changes

BSEE is proposing to revise the following regulations:

Subpart G—Well Operations and Equipment

What are the general requirements for BOP systems and system components? (§ 250.730)

Proposed Revisions to Paragraph (a)

BSEE proposes to revise the paragraph (a) by modifying the current requirement that the ''BOP system must be capable of closing and sealing the wellbore in the event of flow due to a kick, including under anticipated flowing conditions for the specific well conditions,'' to a requirement that the ''BOP system must be capable of closing and sealing the wellbore at all times to the well's maximum kick tolerance design limits.'' Additional minor, non-substantive wording and grammatical changes are proposed for readability to accommodate this proposed revision.

• *Summary of applicable 2016 WCR provisions:*

In the 2016 WCR, BSEE promulgated a revised final version of § 250.730(a) requiring the BOP system to be capable of closing and sealing the wellbore ''at all times'' under ''anticipated flowing conditions for the specific well conditions.''

• *Summary of applicable 2019 WCR provisions:*

In the 2019 WCR, BSEE modified these requirements to codify BSEE guidance developed in July 2016 based on experience implementing the 2016 WCR. In that posted guidance, BSEE clarified that the language of the 2016 WCR required that ''the BOP system . . . be designed to shut-in a well that is flowing due to a kick.'' A kick is defined as an influx of formation fluids or gas unexpectedly entering the wellbore. Flow from a kick represents the most critical and challenging

[1] BSEE's regulations at 30 CFR part 250 generally apply to ''a lessee, the owner or holder of operating rights, a designated operator or agent of the lessee(s)'' (30 CFR 250.105 (definition of ''you'')'' and ''the person actually performing the activity to which the requirement applies'' (30 CFR 250.146(c)). For convenience, this preamble will refer to these regulated entities as ''operators'' unless otherwise indicated.

circumstances a BOP must address. Accordingly, BSEE considers the capacity to close and seal under such conditions to correspond to the capacity to close and seal under any conditions. Further, other regulations contain requirements to ensure BOP functionality during non-kick conditions. For example, the operator must verify the ability of the BOP to function during a non-kick event through the regular function and pressure testing required by § 250.737. The operator also is required to obtain independent third party certification that the BOP is designed, tested, and maintained to perform under the maximum environmental and operational conditions anticipated to occur at the well under § 250.731. In modifying the regulatory language in 2019 to more clearly reflect BSEE's original 2016 intent, BSEE did not view the revisions as weakening or altering the existing requirement that the BOP system must function during all operations.

Explanation of Proposed Revisions to Paragraph (a)

Based on BSEE's experience with the implementation of these regulations, BSEE is proposing revisions to the general introductory language to provide additional clarity. Since the 2019 WCR, BSEE continues to receive questions and requests for clarity on this current provision. Therefore, BSEE determined that further clarification is necessary to help reduce any misconceptions or ambiguity. The proposed revisions would restore language referencing the BOP system's capacity to close and seal the wellbore at all times, while clarifying the necessary context of that requirement within the well's maximum kick tolerance design. Kick tolerance is defined as the maximum volume of gas kick influx that can be safely taken into the well bore and circulated out of the well without breaking down the surrounding formation. It is used in well design to plan the position of the casing shoes and ensures that protecting the formation integrity is an integral part of the well barrier design.

The volume of influx can be directly converted to a loss of hydrostatic pressure on the well prior to shut in. This loss of pressure in the wellbore is a mechanism for well flow. Simply stated, the larger the pressure change the greater the flow rate. The impact of the change in pressure is unique to each well condition, *e.g.,* a well with prolific exposed formations will have a higher flow rate with the same pressure change than a well with a lower permeability. The methodology for calculating this flow rate follows similar logic to that used in calculating worst case discharge rates, as well as in well testing and production change estimations.

A BOP functions as a mitigation device, designed to backstop other prevention mechanisms to keep a well from progressing to a full blowout; its purpose is not to halt a full blowout once it has commenced. Operators must ensure ram closure time and sealing integrity within the operational and mechanical design limits of the well and equipment. The anticipated flowrate is used to validate that the BOP will function under flowing conditions while maintaining well integrity, as clarified in the proposed text. The proposed clarifications to paragraph (a) further support and reflect the totality of the improved BOP equipment, procedures, and testing, while acknowledging the safe and appropriate purpose and function of the BOP, to clarify these requirements from the 2016 and 2019 WCRs.

Proposed Revisions to Paragraph (c)

BSEE proposes to revise paragraph (c) by removing, throughout the paragraph, the option for submission of failure reporting to a designated third party. BSEE also would revise paragraph (c)(2) to ensure that the operator starts a failure investigation and analysis within 90 days of the failure instead of within 120 days.

• *Summary of applicable 2016 WCR provisions:*

The 2016 WCR first established the process for failure analysis and reporting. It required that an investigation and a failure analysis be performed within 120 days of the failure to determine the cause of the failure. BSEE also required that certain failure reports be sent to BSEE headquarters to ensure that emerging trends occurring across various Districts and Regions are recognized early and that potentially serious issues can be addressed in a coordinated and uniform way nationwide.

BSEE also noted in the 2016 WCR, however, that the U.S. Bureau of Transportation Statistics (BTS) had developed (with BSEE's assistance) a voluntary near-miss reporting system for OCS facilities and operations at *www.SafeOCS.gov* (SafeOCS). As a result of the publication of the 2016 WCR, BSEE started using the BTS system for collecting information similar to that collected through failure reporting.

• *Summary of applicable 2019 WCR provisions:*

BSEE reevaluated the timeframes set forth in the 2016 WCR for performing the investigation and the failure analysis and determined that certain operations would not be able to meet the original deadlines. For example, investigations of certain failures cannot be commenced safely until active operations progress to the point where necessary actions—like retrieving a subsea BOP to the surface—can be performed safely. Further, BSEE determined that shifting immediately to investigation is not essential when the failure relates to a redundant component that does not affect required BOP functionality. BSEE also recognized that many investigations take a long time and require contracting with specialty engineering firms, who are often located overseas and whose workload may prohibit immediate analysis, as well as transporting components to those firms. Therefore, BSEE revised the timeframes to require that operators start their investigation and their failure analysis within 120 days of the failure and complete the investigation and the failure analysis within 120 days of starting the process.

The 2019 WCR also added provisions allowing BSEE to designate a third party to collect failure data and reports on behalf of BSEE and to require that failure data and reports be sent to the designated third party. These changes in the 2019 WCR codified BSEE guidance on the 2016 WCR posted on the BSEE website at *https://www.bsee.gov/guidance-and-regulations/regulations/well-control-rule.* Based on the 2019 WCR, BSEE currently is working through BTS, using SafeOCS, as the designated third party for receipt of failure reports and data. Reports submitted through SafeOCS are collected and analyzed by BTS and protected from release under the Confidential Information Protection and Statistical Efficiency Act (CIPSEA), which permits BTS to handle and store reported information confidentially.[2] Information submitted under this statute also is protected from release to other government agencies, Freedom of Information Act (FOIA) requests, and certain records requests.

Explanation of Proposed Revisions to Paragraph (c)

BSEE has continued to evaluate and analyze the data collected by the BTS system and is actively looking for trends in the failure data. BSEE also conducts investigations into certain incidents to

[2] OMB identifies BTS as one of 14 CIPSEA statistical agencies; BSEE is not a CIPSEA statistical agency. ''Implementation Guidance for [CIPSEA]'', 72 FR 33362 at 33368 (June 15, 2007).

verify/monitor BOP component root cause analysis. Upon further evaluation of the use of a designated third party to collect and analyze failure data and based in part on experience since the implementation of the 2019 WCR, this proposed rule would remove the option to send failure reports and data to a designated third party. BSEE has found value in using BTS for monitoring failure analysis and trend data. However, such a reporting arrangement limits BSEE's ability to efficiently and effectively address all of the issues associated with certain failures. For example, if BSEE does not become aware of certain failure reports and trend data until it receives an annual report from BTS, it limits BSEE's ability to address failures and trends in a timely and meaningful manner. Receiving failure reports directly would facilitate BSEE's timely review of the failure data to help more quickly identify trends and respond to systematic issues falling within BSEE's regulatory authority. Reviewing failure reports could also highlight companies that have a higher-than-average number of failures, which could be evidence of poor maintenance practices.

The proposed revisions to paragraph (c)(2) also would help ensure the operator starts a failure investigation and analysis in a timely manner. Based in part on experience gathered through implementation of the 2019 WCR, BSEE reevaluated the timeframes set forth in the 2019 WCR for performing the investigation and the failure analysis. BSEE determined that most operators can initiate the failure investigation and analysis more quickly without unnecessarily interrupting operations and jeopardizing safety and environmental protection. Accordingly, BSEE proposes to require that operators start the investigation and the failure analysis within 90 days of the failure. This proposed revision also would help limit the potential for evidence to dissipate over time, *e.g.,* through degradation of equipment or components, accessibility of certain records, and availability or memory of personnel.

What are the independent third party requirements for BOP systems and system components? (§ 250.732)

Proposed Revisions to Paragraph (b)

BSEE proposes to revise paragraph (b) by adding that an independent third party must be accredited by a qualified standards development organization and that BSEE may review the independent third party accreditation and qualifications to ensure that it has sufficient capabilities to perform the required functions.

• *Summary of applicable 2016 WCR provisions:*

BSEE introduced for the first time in the 2016 WCR the concept of using BSEE Approved Verification Organizations (BAVOs) to provide certain verifications, certifications, and inspections of BOP systems. BSEE explained that the objective of the use of BAVOs was to help ensure certain BOP equipment was monitored during its entire lifecycle by an independent third party to verify compliance with BSEE requirements, original equipment manufacturer recommendations, and recognized engineering practices. Previously, the independent third parties that performed such functions did not undergo a BSEE approval process. BSEE introduced such a process based on a perception that increased BSEE screening of the third parties would provide greater assurances surrounding the performance of these functions. BSEE stated that it would develop, and make available on its public website, a list of BAVOs—consisting of qualified third party organizations that BSEE determined were capable of performing the functions specified in the regulations—to help BSEE ensure that BOP systems are designed and maintained during their service life to minimize risk. BSEE never published a list of BAVOs, however. In the absence of that action, the 2016 WCR required industry to continue using qualified independent third parties to perform the identified functions to ensure that there was no diminution of the safety and environmental protection under the existing regulations.

• *Summary of applicable 2019 WCR provisions:*

In the 2019 WCR, BSEE removed all references to BAVOs and, where appropriate, replaced them with references to independent third parties. BSEE based these revisions on information from the Bureau's increased interactions with independent third parties following publication of the 2016 WCR and the successful use of such third parties in lieu of BAVOs in the absence of a published BAVO list. BSEE expected the majority of BAVOs would be drawn from the existing independent third parties, who would continue to conduct the same verifications, certifications, and inspections, yielding little actual change in the implementation of the program. BSEE also clarified the qualifications for independent third parties (*i.e.,* the third parties must be a technical classification society, a licensed professional engineering firm, or a registered professional engineer capable of performing the required actions), which aligned with the standards BSEE had anticipated applying to the approval of BAVOs.

Explanation of Proposed Revisions to Paragraph (b)

The proposed changes to paragraph (b) would provide an additional layer of assurance that independent third parties are capable of providing the required verifications and certifications and that BSEE may review the independent third party accreditation and qualifications to ensure that capability. These proposed revisions are derived in part from BSEE's increased interaction and experience with independent third party certification and verifications since the 2019 WCR, as well as BSEE's awareness of certain stakeholder concerns about independent third party qualifications. These revisions also would help increase accountability of independent third parties. It is BSEE's continued goal to ensure that independent third parties are properly qualified and have proven competencies to perform all required actions.

What are the requirements for a surface BOP stack? (§ 250.733)

Proposed Revisions to Paragraph (b)(1)

BSEE proposes to revise paragraph (b)(1) by adding that an operator also must follow the BOP requirements of § 250.734(a)(1) when replacing an entire surface BOP stack on an existing floating production facility.

• *Summary of applicable 2016 WCR provisions:*

The 2016 WCR added the requirement that surface BOPs installed on a floating production facility after 2019 must satisfy the dual shear ram requirements in § 250.734(a)(1). BSEE expected industry to be moving toward eventual use of dual shear rams in surface BOPs on new floating production facilities already. However, BSEE explained several practical concerns related to applying the dual shear ram requirement to existing facilities. For example, the dual shear ram requirement, if applied to existing floating production facilities, or facilities under construction or in advanced stages of development, potentially could have negative personnel safety and structural impacts due to the added weight of the dual shear ram equipment and due to the height and structural limits of those facilities. Accordingly, BSEE clarified in the final rule that existing floating production facilities did not need to

retrofit or replace their BOPs to meet the dual shear ram requirement. In effect, this meant that—under the 2016 WCR—surface BOPs on existing floating production facilities, or facilities installed on the OCS before 2019, were not required to meet the dual shear ram requirement unless those BOPs were removed or replaced after 2019.

BSEE further explained that these provisions reasonably balanced the practical concerns related to requiring dual shear rams on BOPs at existing floating facilities or those to be constructed in the near term, with the importance of improving the capabilities of surface BOPs on such facilities in the longer term. BSEE also explained that existing floating production facilities generally are less likely to have an event requiring a dual shear ram BOP (than, *e.g.,* exploratory drilling rigs), given that the majority of such facilities are located in depleted fields, with lower pressures due to ongoing production from those fields. In addition, there are large amounts of offset well data for those existing facilities in depleted fields (due to the multiple wells previously drilled into the same geologic formations and reservoirs), which allows for better prediction of drilling parameters and concomitant reduced risk of well control losses. Similarly, because of the previous production of the reservoirs at such facilities, the reservoir parameters and characteristics are generally well established.

• *Summary of applicable 2019 WCR provisions:*

The 2019 WCR revised § 250.733(b)(1) to require that, after April 29, 2021, operators must follow the dual shear ram requirements in § 250.734(a)(1) for new floating production facilities installed with a surface BOP. These revisions were based on comments seeking clarity. Following publication of the 2016 WCR, stakeholders expressed confusion about the requirements in this section that cross-reference the § 250.734 requirements regarding dual shear rams for subsea BOPs, which did not take effect until 2021. BSEE made the compliance dates the same for §§ 250.733(b)(1) and 250.734(a)(1) (*i.e.,* April 29, 2021) to avoid confusion. It also modified this provision to apply only to new floating production facilities (installed after April 2021) with a surface BOP. BSEE justified the exemption of existing facilities from these requirements, even if they are redeployed at another location or the BOP is removed or replaced, for various reasons, including, but not limited to, clearance and weight issues associated with facility and BOP design limitations.

Explanation of Proposed Revisions to Paragraph (b)(1)

Since the implementation of the 2019 WCR, BSEE has reviewed all existing surface BOP stacks on floating production facilities and evaluated facility limitations for expanding BOP systems to include dual shear rams. Dual shear ram BOPs have one blind shear ram that is able to cut certain equipment in the well (*e.g.,* drill pipe and wireline) and then seal the well, as well as a shear ram that is also used for cutting similar equipment in the well. BSEE is aware that certain existing floating production facilities cannot accommodate additional BOP components without significant facility modifications, which may present challenges due to facility design limitations. However, BSEE also recognizes that dual shear rams provide additional and redundant well control capabilities that ensure BOP function and effectiveness during a well control event. In short, dual shear rams increase safety. BSEE has determined that the few facilities with facility design limitations should meet the safety requirements of § 250.734(a)(1) at an appropriate time. Therefore, BSEE is proposing to require existing floating production facilities to satisfy the dual shear ram requirements when the operator replaces an entire surface BOP stack. Irrespective of such requirements, replacement of an entire BOP stack would entail rig downtime and require such facilities to consider facility modifications to accommodate the new BOP stack, making it an appropriate time to accommodate the dual shear rams. In addition, making any necessary facility modifications for the dual shear rams during BOP stack replacement will enable efficient implementation of the BOP requirements of § 250.734(a)(1) while operations are already paused. As noted in connection with the 2016 WCR, BSEE believes such provisions reasonably balance the practical concerns related to modifications of surface BOPs at existing floating facilities with the importance of improving the capabilities of such BOPs in the longer term.

What are the requirements for a subsea BOP system? (§ 250.734)

Proposed Revisions to Paragraph (a)(4)

BSEE proposes to revise paragraph (a)(4) by adding that the operator must have the Remotely Operated Vehicle (ROV) intervention capability to both open and close each shear ram, ram locks, and one pipe ram.

• *Summary of applicable 2016 WCR provisions:*

The 2016 WCR included requirements that the ROV must be capable of opening and closing each shear ram, ram locks, and one pipe ram, in addition to disconnecting the lower marine riser package (LMRP) under maximum anticipated surface pressure (MASP) conditions. Rams are components on a blowout preventer designed to close and seal the wellbore. There are generally three types or rams: blind, pipe, or shear. A blind shear ram is able to cut certain equipment in the well (*e.g.,* drill pipe and wireline) and then seal the well; a pipe ram can seal around pipe; and a shear ram is used for cutting certain equipment in the well (*e.g.,* drill pipe, tubing, and wireline). A ram lock is used to hold a ram closed. This provision was meant to help ensure consistency with the critical function terms in American Petroleum Institute (API) Standard 53, which is incorporated by reference in relevant regulations.

• *Summary of applicable 2019 WCR provisions:*

The 2019 WCR retained the requirements for ROVs to have full ram closure functions, but removed the requirement for the ROV to be capable of opening the rams. After publication of the 2016 WCR, the API Standard 53 committee clarified the definition of ROV ''operate'' critical functions to include ''close'' only and not to include ''open.'' For the purposes of well control, BSEE primarily focuses on closure of critical components. BSEE took the position that BOP ram closure is more important during a well-control event than ram opening for the purposes of well control. Removal of the open function reduced the required number of equipment alterations to the subsea ROV panel and associated control systems and made the regulatory requirements more consistent with updated provisions of API Standard 53. BSEE acknowledged that removing the ROV open function may limit certain options for well intervention after the well has already been secured; however, it believed technological advancements in well intervention capabilities could eliminate this issue.

Explanation of Proposed Revisions to Paragraph (a)(4)

Since implementation of the 2019 WCR, BSEE has gained an increased awareness of the importance of intervention capabilities and of alternative technologies. Immediate responses to losses of well control that

are designed to seal the well and prevent releases of formation fluids (*e.g.,* dual shear rams) are critical, and the previous rulemakings emphasized those aspects of well control capabilities. However, BSEE has determined that more comprehensive and longer-term solutions to well control issues often require additional BOP functionality to support subsequent intervention operations, for which closed rams can present operational complications.

For example, having an open function makes it easier for operators to conduct remedial operations following the loss of well control that may be necessary to maintain the security of the well, such as zonal isolation and equipment repair. Also, BSEE is not aware of technological advancements in well intervention capabilities that have eliminated the need for the ROV open function to facilitate these important well maintenance operations. Accordingly, this revision would require that the ROV open function be in place to allow for easier access to open a closed BOP component for well intervention purposes, including operations necessary to maintain the security of the well. BSEE also has reviewed existing subsea BOP capabilities and determined that most subsea BOPs currently incorporate the capability to open the shear rams from the ROV panel. BSEE therefore anticipates that only a minor number of equipment modifications would be necessary by reintroducing this requirement.

What are the BOP system testing requirements? (§ 250.737)

Proposed Revisions to Paragraphs (d)(2)(ii) and (d)(3)(iii)

BSEE proposes to revise paragraphs (d)(2)(ii) and (d)(3)(iii) by adding the requirement that, if BSEE is unable to witness the testing, the operator must provide the initial test results to the appropriate District Manager within 72 hours after completion of the tests.

• *Summary of applicable 2016 WCR provisions:*

The 2016 WCR required the operator to contact the District Manager at least 72 hours prior to beginning the initial test for a surface BOP, or the stump test for a subsea BOP, to allow BSEE representative(s) the option to witness the testing. If BSEE representative(s) were unable to witness the testing, the operator was required to provide the test results to the appropriate District Manager within 72 hours after completion of the tests.

• *Summary of applicable 2019 WCR provisions:*

The 2019 WCR removed the requirement for operators to submit the relevant test results to BSEE when BSEE cannot witness the testing. BSEE stated that the revisions would significantly reduce the number of submittals to BSEE and minimize the associated burden for BSEE to review those submittals, without reducing safety. If BSEE cannot witness the testing, BSEE still has access to the BOP testing documentation upon request pursuant to § 250.746, *What are the recordkeeping requirements for casing, liner, and BOP tests, and inspections of BOP systems and marine riser?* BSEE also reviews the test results during routine inspections of facilities and retained the option to witness the testing.

Explanation of Proposed Revisions to Paragraphs (d)(2)(ii) and (d)(3)(iii)

Based upon BSEE experience with implementing he 2019 WCR, BSEE has determined that consistent access to this data is necessary for BSEE to ensure BOP safety. Since implementation, BSEE has found it necessary to request this data from operators to verify that the necessary tests were conducted and passed. While the 2019 WCR cited the burden to BSEE from reviewing this data, BSEE has been reviewing the data even without the submission requirement, and its reintroduction will reduce the burden on BSEE from having to request the data. BSEE's experience has led it to determine that any additional burden is necessary to ensure compliance with BOP testing requirements. The burdens on operators from submission of the data are minimal. These revisions also would help BSEE ensure it has continued access to certain BOP testing data necessary to conduct its routine review. In the past, BSEE has utilized the BOP information for further review and investigations and has taken enforcement action as a result of the data review. BSEE retains the requirements for operators to produce certain records upon request and to provide advanced notice at least 72 hours before the testing to allow BSEE the option of sending representatives to witness the testing.

III. Procedural Matters

Regulatory Planning and Review (Executive Orders (E.O.) 12866 and 13563)

E.O. 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the OMB will review all significant rules. To determine if this proposed rulemaking is a significant rule, BSEE had an outside contractor prepare an economic analysis to assess the anticipated costs and potential benefits of the proposed rulemaking. The following discussion summarizes the economic analysis; a complete copy of the economic analysis can be viewed at *www.Regulations.gov* (use the keyword/ID ''BSEE–2022–0009'').

Changes to Federal regulations must undergo several types of economic analyses. First, E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of regulatory alternatives and, if regulation is necessary, to select a regulatory approach that maximizes net benefits (including potential economic, environmental, public health, and safety effects; distributive impacts; and equity). Under E.O. 12866, an agency must determine whether a regulatory action is significant and, therefore, subject to the requirements of the E.O. and review by OMB. Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as any regulatory action that is likely to result in a rule that:

—Has an annual effect on the economy of $100 million or more, or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities (also referred to as ''economically significant'');
—Creates serious inconsistency or otherwise interferes with an action taken or planned by another agency;
—Materially alters the budgetary impacts of entitlement grants, user fees, loan programs, or the rights and obligations of recipients thereof; or
—Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

BSEE has determined that this proposed rule is not significant within the definition of E.O. 12866 because the estimated annual costs or benefits would not exceed $100 million in any year of the 10-year analysis period and the rule will not meet any of the other significance triggers. Accordingly, OMB has not reviewed this proposed regulation.

1. Need for Regulatory Action

BSEE has identified a need to amend the existing well control regulations to ensure that oil and gas operations on the OCS are conducted in a safe and environmentally responsible manner. In particular, BSEE considers the proposed rule necessary to reduce the likelihood of an oil or gas blowout, which can lead to the loss of life, serious injuries, and

harm to the environment. As was evidenced by the *Deepwater Horizon* incident (which began with a blowout at the Macondo well on April 20, 2010), blowouts can result in catastrophic consequences.

After the *Deepwater Horizon* incident in 2010, BSEE adopted several recommendations from multiple investigation teams to improve the safety of offshore operations. Subsequently, BSEE published the 2016 WCR on April 29, 2016 (81 FR 25888; RIN 2014–AA11). The 2016 WCR consolidated the equipment and operational requirements for well control into one part of BSEE's regulations; enhanced BOP and well design requirements, modified well-control requirements; and incorporated certain industry technical standards. Most of the 2016 WCR provisions became effective on July 28, 2016.

Although the 2016 WCR addressed a significant number of issues that were identified during the analyses of the *Deepwater Horizon* incident, BSEE recognized that BOP equipment and systems continue to improve technologically and well control processes evolve. Therefore, after the 2016 WCR became effective, BSEE continued to engage with the offshore oil and gas industry, SDOs, and other stakeholders. During the course of these engagements, BSEE identified issues and stakeholders expressed a variety of concerns regarding implementation of the 2016 WCR. On May 15, 2019, BSEE addressed these issues and concerns by publishing the final 2019 WCR in the **Federal Register** (84 FR 21908; RIN 2014–AA39), which finalized the current regulatory requirements for BOP systems and operations. The 2019 WCR also incorporated by reference API Standard 53 (including the 2016 addendum) and the Second Edition of API RP 17H into the applicable sections of the regulatory text included in this proposed rule.

Since the publication of the 2019 WCR, BSEE has continued engaging with stakeholders to gather information to ensure effective implementation of the regulations. The Department subsequently identified areas for improvements to specific 2019 WCR provisions. Furthermore, on January 20, 2021, the President issued E.O. 13990 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis) and the E.O.'s accompanying ''President's Fact Sheet: List of Agency Actions for Review.'' Within the President's Fact Sheet, DOI was specifically instructed to review the 2019 WCR to evaluate potential revisions to promote and protect public health, safety, and the environment, among other identified policy goals.

BSEE is proposing a narrowly focused rulemaking to address the identified regulatory requirements to help improve operations that use a BOP, certain BOP capabilities and functionalities, and BSEE oversight of such operations. The proposed rule would:

(A) Clarify BOP system requirements,

(B) Remove the option for operators to submit failure data to designated third parties,

(C) Require accreditation of independent third party qualifications,

(D) Establish dual shear ram requirements for surface BOPs on existing floating production facilities when an operator replaces an entire surface BOP stack,

(E) Require ROV open functions as originally required in the 2016 WCR, and

(F) Require submittal of certain BOP test results if BSEE is unable to witness the testing.

2. Alternatives

BSEE has considered two regulatory alternatives:

(A) Promulgate the requirements contained within the proposed rule.

(B) Take no regulatory action and continue to rely on existing well control regulations in combination with permit conditions, deepwater operations plans (DWOPs), operator prudence, and industry standards.

Alternative 1—the proposed rule—would incorporate recommendations provided by government, industry, academia, and other stakeholders. In addition to addressing concerns and aligning with industry standards, this proposed rule would prudently improve efficiency and consistency of the regulations.

3. Economic Analysis

BSEE's economic analysis evaluated the expected impacts of the proposed rule compared with the baseline. The baseline refers to current industry practice in accordance with existing regulations, industry permits, DWOPs, and industry standards with which operators already comply. Impacts that exist as part of the baseline were not considered costs or benefits of the proposed rule. Thus, the cost analysis evaluates only activities, expenditures, and capital investments representing a change from the baseline that would result if the provisions of the proposed rule were finalized. BSEE quantified and monetized the costs, using 2022 data, of all the provisions in the proposed rule determined to result in a change compared to the baseline. These estimated compliance costs are discussed more specifically in the associated full initial regulatory impact analysis, which can be viewed at *www.regulations.gov* (use the keyword/ID ''BSEE–2022–0009'').

BSEE qualitatively assessed the benefits of the proposed rule. The rulemaking would allow BSEE to address stakeholder concerns related to the BOP and well control provisions in 30 CFR part 250 and would provide clarification about regulations in this section. The proposed amendments would have a positive net impact on worker safety and the environment. The benefits include clarification, more timely review of data to facilitate faster response to systemic risks, increased accountability of verification entities to ensure that risks are accurately assessed and verified, improved protection from a blowout, improved ability to manage a blowout, and the assurance that BSEE receives and is able to review BOP testing data to help identify risks.

The analysis assumes an effective date of January 1, 2023, and covers 10 years (2023 through 2032) to ensure it encompasses the significant costs and benefits likely to result from this proposed rule. A 10-year period was used for this analysis because of the uncertainty associated with predicting industry's activities and the advancement of technical capabilities beyond 10 years. It is very difficult to predict, plan, or project costs associated with technological innovation due to unknown technological or business constraints that could drive a product into mainstream adoption or into obsolescence. The regulated community itself has difficulty conducting business modeling beyond a 10-year time frame. Over time, the costs associated with a particular new technology may drop because of various supply and demand factors, causing the technology to be more broadly adopted. In other cases, an existing technology may be replaced by a lower-cost alternative as business needs may drive technological innovation.

Extrapolating costs and benefits beyond this 10-year time frame would produce more ambiguous results and therefore be disadvantageous in determining actual costs and benefits likely to result from this proposed rule. BSEE concluded that this 10-year analysis period provides the best overall ability to forecast reliable costs and benefits likely to result from this proposed rule. When summarizing the costs and benefits, we present the estimated annual effects, as well as the 10-year discounted totals using discount

rates of 3 and 7 percent, per OMB Circular A–4, ''Regulatory Analysis.''

Table 1 presents the total costs per year of the proposed rule. As can be seen in the table, the estimated costs over the ten-year period are $2.4 million undiscounted, $2.3 million discounted at 3%, and $2.2 million discounted at 7%.

TABLE 1—TOTAL COSTS ASSOCIATED WITH PROPOSED AMENDMENTS TO BOP AND WELL CONTROL REGULATIONS

[2022$]

Year	Undiscounted	Discounted at 3%	Discounted at 7%
2023	$1,801,301	$1,801,301	$1,801,301
2024	1,357	1,317	1,268
2025	1,357	1,279	1,185
2026	1,357	1,242	1,108
2027	557,653	495,467	425,431
2028	1,357	1,171	967
2029	1,357	1,136	904
2030	1,357	1,103	845
2031	1,357	1,071	790
2032	1,357	1,040	738
Total	2,369,809	2,306,128	2,234,537
Annualized	236,981	270,349	318,148

Note: Annualized costs are calculated by the annuity method.

BSEE welcomes comments on this analysis, including potential sources of data or information on the costs and benefits of this proposed rule.

Regulatory Flexibility Act and the Congressional Review Act

DOI certifies that this proposed rule is unlikely to have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA).

The RFA, at 5 U.S.C. 603, requires agencies to prepare a regulatory flexibility analysis to determine whether a regulation would have a significant economic impact on a substantial number of small entities. Further, under the Congressional Review Act, 5 U.S.C. 801 *et seq.,* an agency is required to produce compliance guidance for small entities if the rule would have a significant economic impact. For the reasons explained in this section, BSEE believes that this proposed rule likely would not have a significant economic impact on a substantial number of small entities. Although a regulatory flexibility analysis is not required by the RFA, BSEE provides this Initial Regulatory Flexibility Analysis to demonstrate the relatively minor impact of this proposed rule on small entities.

1. Description of the Reasons That Action by the Agency Is Being Considered

Since publication of the 2019 WCR, BSEE has continued to confer with stakeholders to ensure effective implementation of the regulations. BSEE also identified potential improvements to specific aspects of these provisions. Furthermore, on January 20, 2021, the President issued E.O. 13990 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis) and the E.O.'s accompanying ''President's Fact Sheet: List of Agency Actions for Review.'' Within the President's Fact Sheet, DOI was specifically instructed to review the 2019 WCR to evaluate potential revisions to promote and protect public health, safety, and the environment, among other identified policy goals.

2. Description and Estimated Number of Small Entities Regulated

Small entities, as defined by the RFA, consist of small businesses, small organizations, and small governmental jurisdictions. We have not identified any small organizations or small government jurisdictions that the rule would impact, so this analysis focuses on impacts to small businesses (hereafter referred to as ''small entities''). A small entity is one that is independently owned and operated and that is not dominant in its field of operation. The definition of small business varies from industry to industry to properly reflect industry size differences.

One of the changes in the proposed rule would have an impact on a substantial number of small entities. The proposed rule would affect all well drilling operators and Federal oil and gas lease holders on the OCS, primarily those working in the Gulf of Mexico. BSEE's analysis also shows that this would include 48 companies that drilled at least one offshore well during the period 2015 to 2021. Of these drilling operators, approximately 20 would be active in each given year. Entities that would operate under the proposed rule are classified primarily under North American Industry Classification System (NAICS) codes 211120 (Crude Petroleum Extraction), 211130 (Natural Gas Extraction), and 213111 (Drilling Oil and Gas Wells). For NAICS classifications 211120 and 211130, the Small Business Administration defines a small business as one with fewer than 1,251 employees; the rest are considered large businesses. BSEE considers that a rule has an impact on a ''substantial number of small entities'' when the total number of small entities impacted by the rule is equal to or exceeds 10 percent of the relevant universe of small entities in a given industry. BSEE estimates that approximately 83 percent of offshore operators drilling on the OCS are small and that the small entities impacted each year would comprise 34 percent of that universe.

3. Description and Estimate of Compliance Requirements

BSEE has estimated the incremental costs for small operators and lease holders in the offshore oil and natural gas production industry. Costs already incurred as a result of current industry practice in accordance with existing regulations, industry permits, DWOPs, and API industry standards with which operators already comply were not considered as costs of this rule because they are part of the baseline.

Only 1 of the proposed provisions would have cost impacts on small entities.

For proposed § 250.737(d)(2)(ii) and (d)(3)(iii), it is estimated that the annual cost per company would be $78.30, which is not a significant impact.

4. Identification of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The proposed rule would not conflict with any relevant Federal rules or duplicate or overlap with any Federal rules in any way that would unnecessarily add cumulative regulatory burdens on small entities without any gain in regulatory benefits. However, BSEE requests comments identifying any Federal rules that may duplicate, overlap, or conflict with the proposed rule.

5. Description of Significant Alternatives to the Proposed Rule

BSEE has considered two regulatory alternatives:

(1) Promulgate the requirements contained within the proposed rule.

(2) Take no regulatory action and continue to rely on existing well control regulations in combination with permit conditions, DWOPs, operator prudence, and industry standards.

Alternative 1—the proposed rule—would incorporate recommendations provided by government, industry, academia, and other stakeholders. In addition to addressing concerns and aligning with industry standards, this proposed rule would prudently improve efficiency and consistency of the regulations.

The potential costs to small entities are believed to be small; however, the risk of safety or environmental accidents for small companies would not necessarily be lower than it would be for larger companies. Offshore operations are highly technical and can be hazardous. Adverse consequences in the event of incidents are similar regardless of the operator's size. The proposed rule would reduce risk for entities of all sizes. Nonetheless, BSEE is requesting comment on the costs of these proposed policies to small entities, with the goal of ensuring thorough consideration and discussion at the final rule stage. BSEE specifically requests comments on the burden estimates discussed above as well as information on regulatory alternatives that would reduce the burden on small entities (*e.g.,* different compliance requirements for small entities, alternative testing requirements and periods, and exemption from regulatory requirements).

Unfunded Mandates Reform Act of 1995

This proposed rule would not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The proposed rule would not have a significant or unique effect on State, local, or tribal governments or the private sector. A statement containing the information required by Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings Implication Assessment (E.O. 12630)

Under the criteria in E.O. 12630, this proposed rule would not have significant takings implications. The rule is not a governmental action capable of interference with constitutionally protected property rights. A Takings Implication Assessment is not required.

Federalism (E.O. 13132)

Under the criteria in E.O. 13132, this proposed rule would not have federalism implications. This proposed rule would not substantially and directly affect the relationship between the Federal and State governments. To the extent that State and local governments have a role in OCS activities, this proposed rule would not affect that role. A federalism assessment is not required.

Civil Justice Reform (E.O. 12988)

This proposed rule complies with the requirements of E.O. 12988. Specifically, this rule:

(1) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and

(2) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation With Indian Tribes (E.O. 13175)

BSEE is committed to regular and meaningful consultation and collaboration with Tribes on policy decisions that have Tribal implications. Under the criteria in E.O. 13175 and DOI's Policy on Consultation with Indian Tribes (Secretarial Order 3317, Amendment 2, dated December 31, 2013), we have evaluated this proposed rule and determined that it has no substantial direct effects on federally recognized Indian Tribes.

Paperwork Reduction Act (PRA) of 1995

This proposed rule contains existing and new information collection (IC) requirements for regulations at 30 CFR part 250, subpart G, and submission to the OMB for review under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) is required. Therefore, BSEE will submit an IC request to OMB for review and approval and will request a new OMB control number. Once the 1014–AA52 final rule is effective, we will transfer the new hour burden and non-hour costs burden from 1014–NEW to 1014–0028 (160,842 hours, $867,500 non-hour cost burden, expiration January 31, 2023) 30 CFR part 250, subpart G, *Well Operations and Equipment,* then discontinue the new number associated with this rulemaking. We may not conduct or sponsor, and you are not required to respond to, a collection of information, unless it displays a currently valid OMB control number.

The proposed regulations would establish new and/or revise current requirements in Subpart G, *Well Operations and Equipment,* by revising regulatory provisions published in the 2019 WCR for drilling, workover, completion, and decommissioning operations. BSEE is providing clarity to BOP system requirements and revising a few specific BOP equipment capabilities.

The following provides a breakdown of the paperwork hour burdens and non-hour cost burdens for this proposed rule.

As discussed in the Section-by-Section analysis above, and in the supporting statement available at *RegInfo.gov*, this rule proposes to add/revise:

§ 250.730—This section would eliminate text allowing BSEE to designate a third party to receive notices and reports. No burden changes are being proposed.

§ 250.732(b)—This section would add to the current paragraph that BSEE may review independent third party accreditations and qualifications. This would add +10 hours.

§ 250.737(d)(2) and (3)—This section would add the requirement that if BSEE is unable to witness the testing, the operator must provide the initial test results to the appropriate District Manager within 72 hours after completion of the tests. The 2019 WCR provisions *removed* the requirement that operators submit testing results within 72 hours when a BSEE representative cannot witness the testing. BSEE inadvertently never removed the IC burden associated with this requirement; therefore, no burden changes are being proposed.

Title of Collection: 30 CFR part 250, subpart G, *Well Operations and Equipment.*

OMB Control Number: 1014–NEW.

Form Number: None.

Type of Review: New.

Respondents/Affected Public: Potential respondents comprise Federal OCS oil, gas, and sulfur lessees/operators and holders of pipeline rights-of-way.

Total Estimated Number of Annual Respondents: Currently there are approximately 550 Federal OCS oil, gas, and sulfur lessees and holders of pipeline rights-of-way. Not all the potential respondents will submit information in any given year, and some may submit multiple times.

Total Estimated Number of NEW Annual Responses: 5.

Estimated Completion Time per Response for NEW requirement: 2 hours.

Total Estimated Number of NEW Annual Burden Hours: 10.

Respondent's Obligation: Responses are mandatory.

Frequency of Collection: Generally, on occasion and as required in the regulations.

Total Estimated Annual Nonhour Burden Cost: none.

In addition, the PRA requires agencies to estimate the total annual reporting and recordkeeping non-hour cost burden resulting from the collection of information, and we solicit your comments on this item. For reporting and recordkeeping only, your response should split the cost estimate into two components: (1) total capital and startup cost component and (2) annual operation, maintenance, and purchase of service component. Your estimates should consider the cost to generate, maintain, and disclose or provide the information. You should describe the methods you use to estimate major cost factors, including system and technology acquisition, expected useful life of capital equipment, discount rate(s), and the period over which you incur costs. Generally, your estimates should not include equipment or services purchased: (1) before October 1, 1995; (2) to comply with requirements not associated with the information collection; (3) for reasons other than to provide information or keep records for the Government; or (4) as part of customary and usual business or private practices.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on any aspect of this information collection, including:

(1) Whether the collection of information is necessary, including whether the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on respondents.

Send your comments and suggestions on this information collection by the date indicated in the **DATES** section to the Desk Officer for the Department of the Interior at OMB–OIRA at (202) 395–5806 (fax) or via the *RegInfo.gov* portal (online). You may view the information collection request(s) at *http://www.reginfo.gov/public/do/PRAMain.* Please provide a copy of your comments to the BSEE Information Collection Clearance Officer (see the **ADDRESSES** section). You may contact Kye Mason, BSEE Information Collection Clearance Officer at (703) 787–1607 with any questions. Please reference Proposed Rule 1014–AA52, *Oil and Gas and Sulfur Operations in the Outer Continental Shelf-Blowout Preventer Systems and Well Control Revisions*—30 CFR part 250, subpart G, *Well Operations and Equipment* (OMB Control No. 1014–NEW), in your comments.

National Environmental Policy Act of 1969 (NEPA)

BSEE is analyzing the provisions of the proposed rule in compliance with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*) to determine whether they could have a significant impact on the quality of the human environment. Environmental Assessments were prepared for both the 2016 WCR and the 2019 WCR. Those prior NEPA analyses informed the drafting process for this proposed rule, and the proposed rule primarily proposes to restore provisions whose potential environmental impacts were analyzed in connection with those prior rulemakings (or which are purely administrative in nature with no potential for environmental impacts). Accordingly, at this time, we anticipate that the Environmental Assessments associated with the 2016 WCR and 2019 WCR will substantially inform the NEPA process and compliance for this rulemaking. We invite comments on this subject.

Data Quality Act

In developing this rule, we did not conduct or use a study, experiment, or survey requiring peer review under the Data Quality Act (Pub. L. 106–554, app. C, sec. 515, 114 Stat. 2763, 2763A–153–154).

Effects on the Nation's Energy Supply (E.O. 13211)

This proposed rule is not a significant energy action under the definition in E.O. 13211. The rule is not a significant regulatory action under E.O. 12866, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. A Statement of Energy Effects is not required.

Clarity of This Regulation

We are required by E.O. 12866, E.O. 12988, and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, or the sections where you feel lists or tables would be useful.

List of Subjects in 30 CFR Part 250

Administrative practice and procedure, Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Oil and gas exploration, Outer Continental Shelf—mineral resources, Outer Continental Shelf—rights-of-way, Penalties, Pipelines, Reporting and recordkeeping requirements, Sulfur.

Laura Daniel-Davis

Principal Deputy Assistant Secretary, Land and Minerals Management.

For the reasons stated in the preamble, the Department of the Interior proposes to amend 30 CFR part 250 as follows:

PART 250—OIL AND GAS AND SULFUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

■ 1. The authority citation for part 250 continues to read as follows:

Authority: 30 U.S.C. 1751, 31 U.S.C. 9701, 33 U.S.C. 1321(j)(1)(C), 43 U.S.C. 1334.

■ 2. Amend § 250.730 by revising paragraphs (a) and (c) to read as follows:

§ 250.730 What are the general requirements for BOP systems and system components?

(a) You must ensure that the BOP system and system components are designed, installed, maintained, inspected, tested, and used properly to ensure well control. The working-pressure rating of each BOP component (excluding annular(s)) must exceed MASP as defined for the operation. For a subsea BOP, the MASP must be determined at the mudline. The BOP system includes the BOP stack, control system, and any other associated system(s) and equipment. The BOP system and individual components must be able to perform their expected functions and be compatible with each other. Your BOP system must be capable of closing and sealing the wellbore at all times to the well's maximum kick tolerance design limits. The BOP system must be capable of closing and sealing without losing ram closure time and sealing integrity due to the corrosiveness, volume, and abrasiveness of any fluids in the wellbore that the BOP system may encounter. Your BOP system must meet the following requirements:

* * * * *

(c) You must follow the failure reporting procedures contained in API Standard 53, (incorporated by reference in § 250.198), and:

(1) You must provide a written notice of equipment failure to both the Chief, Office of Offshore Regulatory Programs (OORP), and the manufacturer of such equipment within 30 days after the discovery and identification of the failure. A failure is any condition that prevents the equipment from meeting the functional specification.

(2) You must start an investigation and a failure analysis within 90 days of the failure to determine the cause of the failure and complete the investigation and the failure analysis within 120 days after initiation. You also must document the results and any corrective action. You must submit the analysis report to both the Chief, OORP and the manufacturer. If you cannot complete the investigation and analysis within the specified time, you must submit an extension request detailing when and how you will complete the investigation and analysis to BSEE for approval. You must submit the extension request to the Chief, OORP.

(3) If the equipment manufacturer notifies you that it has changed the design of the equipment that failed or if you have changed operating or repair procedures as a result of a failure, then you must, within 30 days of such changes, report the design change or modified procedures in writing to the Chief, OORP.

(4) Submit notices and reports to the Chief, Office of Offshore Regulatory Programs; Bureau of Safety and Environmental Enforcement; 45600 Woodland Road, Sterling, Virginia 20166.

* * * * *

■ 3. Amend § 250.732 by revising paragraph (b) to read as follows:

§ 250.732 What are the independent third party requirements for BOP systems and system components?

* * * * *

(b) The independent third party must be accredited by a qualified standards development organization and must be a technical classification society, a licensed professional engineering firm, or a registered professional engineer capable of providing the required certifications and verifications. BSEE may review the independent third party accreditation and qualifications to ensure that the independent third party has sufficient capabilities to perform the required functions.

* * * * *

■ 4. Amend § 250.733 by revising paragraph (b)(1) to read as follows:

§ 250.733 What are the requirements for a surface BOP stack?

* * * * *

(b) * * *

(1) On new floating production facilities installed after April 29, 2021, that include a surface BOP, or when you replace an entire surface BOP stack on an existing floating production facility, follow the BOP requirements in § 250.734(a)(1).

* * * * *

■ 5. Amend § 250.734 by revising paragraph (a)(4) to read as follows:

§ 250.734 What are the requirements for a subsea BOP system?

(a) * * *

When operating with a subsea BOP system, you must:	Additional requirements
(4) * * *	You must have the ROV intervention capability to open and close each shear ram, ram locks, one pipe ram, and disconnect the LMRP under MASP conditions as defined for the operation. You must be capable of performing these functions in the response times outlined in API Standard 53 (as incorporated by reference in § 250.198). The ROV panels on the BOP and LMRP must be compliant with API RP 17H (as incorporated by reference in § 250.198).
* * * * * * *	

* * * * *

■ 6. Amend § 250.737 by revising paragraphs (d)(2)(ii) and (3)(iii), to read as follows:

§ 250.737 What are the BOP system testing requirements?

* * * * *

(d) * * *

You must	Additional requirements
(2) * * *	* * * (ii) Contact the District Manager at least 72 hours prior to beginning the initial test to allow BSEE representative(s) to witness the testing. If BSEE representative(s) are unable to witness the testing, you must provide the initial test results to the appropriate District Manager within 72 hours after completion of the tests.

You must	Additional requirements
* * *	* * *
(3) * * *	* * * (iii) Contact the District Manager at least 72 hours prior to beginning the stump test to allow BSEE representative(s) to witness the testing. If BSEE representative(s) are unable to witness the testing, you must provide the test results to the appropriate District Manager within 72 hours after completion of the tests.
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[FR Doc. 2022–19462 Filed 9–13–22; 8:45 am]

BILLING CODE 4310–VH–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 5, 25, and 97

[IB Docket No. 22–271; IB Docket No. 22–272; FCC 22–66; FR ID 102759]

Space Innovation; Facilitating Capabilities for In-Space Servicing, Assembly, and Manufacturing

AGENCY: Federal Communications Commission.

ACTION: Request for comment.

SUMMARY: In this document, the Federal Communications Commission (FCC) seeks comment through a Notice of Inquiry adopted by the FCC on August 5, 2022, on missions conducting in-space servicing, assembly, and manufacturing (ISAM) that may involve Commission licensing and rules, including the state of the industry, technological readiness, and what steps the Commission might take to facilitate progress and reduce barriers for ISAM missions, including clarifications, updates or modifications of rules.

DATES: Comments are due October 31, 2022. Reply comments are due November 28, 2022.

ADDRESSES: You may submit comments, identified by IB Docket No. 22–271 and IB Docket No. 22–272, by any of the following methods:

▪ *Federal Communications Commission's Website: http://apps.fcc.gov/ecfs/.* Follow the instructions for submitting comments.

▪ *People with Disabilities:* Contact the FCC to request reasonable accommodations (accessible format documents, sign language interpreters, CART, etc.) by email: *FCC504@fcc.gov* or phone: 202–418–0530 or TTY: 202–418–0432.

For detailed instructions for submitting comments and additional information on the rulemaking process, see the **SUPPLEMENTARY INFORMATION** section of this document. To request materials in accessible formats for people with disabilities, send an email to *FCC504@fcc.gov* or call the Consumer & Governmental Affairs Bureau at 202–418–0530 (voice), 202–418–0432 (TTY).

FOR FURTHER INFORMATION CONTACT: Jameyanne Fuller, International Bureau, Satellite Division, 202–418–0945, *jameyanne.fuller@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Inquiry, FCC 22–66, adopted August 5, 2022, and released August 8, 2022. The full text of the Notice of Inquiry is available at *https://www.fcc.gov/document/fcc-opens-proceeding-servicing-assembly-manufacturing-space-0.*

Comment Filing Requirements

Interested parties may file comments and reply comments on or before the dates indicated in the **DATES** section above. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS).

• *Electronic Filers.* Comments may be filed electronically using the internet by accessing the ECFS, *http://apps.fcc.gov/ecfs.*

• *Paper Filers.* Parties who choose to file by paper must file an original and one copy of each filing.

Filings can be sent by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

• Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9050 Junction Drive, Annapolis Junction, MD 20701. U.S. Postal Service first-class, Express, and Priority mail must be addressed to 45 L Street NE, Washington, DC 20554.

• Effective March 19, 2020, and until further notice, the Commission no longer accepts any hand or messenger delivered filings. This is a temporary measure taken to help protect the health and safety of individuals, and to mitigate the transmission of COVID–19. See FCC Announces Closure of FCC Headquarters Open Window and Change in Hand-Delivery Policy, Public Notice, DA 20–304 (March 19, 2020). *https://www.fcc.gov/document/fcc-closes-headquarters-open-window-and-changes-hand-delivery-policy.*

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

Ex Parte Presentations

The Commission will treat this proceeding as a ''permit-but-disclose'' proceeding in accordance with the Commission's *ex parte* rules. Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a

method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.,* .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Paperwork Reduction Act

This document contains no proposed new and modified information collection requirements.

Initial Regulatory Flexibility Analysis. Under the Regulatory Flexibility Act of 1980 (RFA), no Initial Regulatory Flexibility Analysis is required for this Notice of Inquiry.

Synopsis

In this Notice of Inquiry, the Commission seeks comment on in-space servicing, assembly, and manufacturing (ISAM) missions, including possible spectrum allocations and licensing processes of these missions, orbital debris implications of these missions and the potential for ISAM to remediate existing orbital debris, special considerations for ISAM missions taking place beyond Earth's orbit, and what role the Commission should play in regulating these missions to support sustainable growth of this sector of the space industry.

Notice of Inquiry

We are starting an effort to promote United States leadership in the emerging space economy. Space activities are rapidly accelerating, resulting in new opportunities in multiple sectors of society. In this Notice of Inquiry, we examine the opportunities and challenges of in-space servicing, assembly, and manufacturing—or ''ISAM''—that can support sustained economic activity in space. In particular, we seek comment on the status of ISAM: where the industry is today, how the Commission can best support its sustainable development, and what tangible economic and societal benefits may result from the development of these capabilities.

We believe ISAM activities are poised to transform the space economy. Missions in this category—which can include satellite refueling, inspecting and repairing in-orbit spacecraft, capturing and removing debris, and transforming materials through manufacturing while in space—have the potential to build entire industries, create new jobs, mitigate climate change, and advance our nation's economic, scientific, technological, and national security interests. At the same time, we also recognize that ISAM activities may raise new opportunities and challenges for the sustainability of the outer space environment and the space-based services on which the United States government, businesses, and individuals rely on every day to communicate, navigate, and perform other vital functions. As these capabilities evolve, the norms, rules, and principles that guide outer space activities may also require renewed attention.

This Notice of Inquiry thus seeks to develop a record on where these capabilities are today and the steps needed to promote their development. In particular, we seek comment through this Notice of Inquiry on the regulatory needs related to commercial and other non-governmental ISAM activities and whether such activities could further the Commission's policy goals and statutory obligations. We seek comment on ISAM activities that may involve Commission licensing and rules, on updates or modifications of our rules or licensing processes that might facilitate ISAM activities, on spectrum needs for ISAM missions, and on any regulatory issues presented by ISAM activities beyond Earth's orbit. In addition, we seek comment on space safety issues that may be implicated by ISAM activities, including orbital debris considerations. As part of this inquiry, for the first time, we seek to develop a record not only on efforts to minimize the creation of new debris in connection with ISAM, but on opportunities to leverage these capabilities to clean up existing debris. The information developed in this Notice of Inquiry can help position the United States to realize the critical benefits of ISAM while ensuring space safety and sustainability.

ISAM refers to a set of capabilities that are used on-orbit, in transit, or on the surface of space bodies. Within the category of ISAM, ''servicing'' includes activities such as use of one spacecraft to inspect another, to dock with other spacecraft and provide support such as maintaining the station in its orbital location in order to extend the period of operations, or to repair or modify a spacecraft after its initial launch. These activities typically include the process of maneuvering close to and operating in the near vicinity of the ''client'' spacecraft, a set of activities often referred to as rendezvous and proximity operations (RPO). ''Servicing'' also involves transport of a spacecraft from one orbit to another and debris collection and removal. ''Assembly'' refers to the construction of a space system using pre-manufactured components, and ''manufacturing'' is the transformation of raw or recycled materials into components, products, or infrastructure in space.

While many commercial and other non-governmental ISAM activities are still at an early stage, the Commission has played a role in authorizing a number of missions that include technologies relevant for ISAM or offer groundbreaking commercial servicing. Some of these include:

- Licensing of Space Logistics, LLC's Mission Extension Vehicle–1 (MEV–1). This spacecraft has successfully executed the first commercial mission servicing a commercial spacecraft, in this case by docking with and providing station-keeping support to a geostationary orbit (GSO) communications satellite.
- Licensing of Space Logistics, LLC's second Mission Extension Vehicle (MEV–2).
- Granting an experimental license to SpaceIce in October 2020 for a satellite designed to investigate freeze-casting in the microgravity environment.
- Authorizing U.S. earth station communications in November 2021 to support Astroscale Ltd.'s ELSA-d testing of spacecraft capabilities for orbital debris removal.
- Granting an experimental license to NanoRacks LLC in November 2021 for communications with an experimental component attached to the second stage of a SpaceX Falcon 9 launch vehicle, to demonstrate metal-cutting in space.

Additionally, topics related to ISAM capabilities have been raised in other Commission rulemaking proceedings. In the Commission's recent orbital debris proceeding, *Mitigation of Orbital Debris in the New Space Age,* the Commission sought comment on a variety of areas for rule updates, including, for example, whether it should update its rules specifically to address RPO. The Commission received a number of comments in the record, and ultimately adopted a requirement that space station applicants disclose whether a spacecraft is capable of, or will be, performing proximity operations, noting that this disclosure would identify situations where such operations are planned and provide a vehicle for further review of those operations.[1] At the time, the

[1] The rules adopted by the Commission state that applicants must disclose planned proximity operations, if any, and address debris generation that will or may result from the proposed operations, including any planned release of debris, the risk of accidental explosions, the risk of

Commission noted the evolving and developing nature of RPO and accordingly found that adoption of more specific technical or operational requirements would be premature. The Commission also sought comment on the role of spacecraft retrieval, also referred to as ''active debris removal'' as a debris mitigation strategy in certain circumstances, and concluded that this was also an area where it would be premature to establish more detailed regulations. Additionally, the Commission sought comment on several topics in a Further Notice of Proposed Rulemaking, including quantifying risks associated with multi-satellite systems and post-mission disposal performance bonds.

Similarly, in the Commission's launch frequency proceeding, *Allocation of Spectrum for Non-Federal Space Launch Operations,* some commenters addressed servicing capabilities. While that proceeding was more narrowly focused on several specific frequencies used for launch vehicles, we sought comment on ''payload'' operations that either utilize or could potentially utilize those frequencies, such as vehicles used for transport to the International Space Station. We also sought comment on cases in which an object that might otherwise function only as a launch vehicle upper stage would continue operations after the initial launch phase in order to support operations of customer instruments or radios.[2] The Commission received comments in the record that addressed a broader range of activities, including situations in which a spacecraft is used either to deploy or move other spacecraft that are already in orbit. Several commenters also advocated for a new licensing framework for on-orbit servicing (OOS) separate from the Commission's existing part 25 and part 5 licensing regimes.

Finally, in June 2022, we considered ISAM operations in our annual regulatory fee proceeding and sought comment on these nascent operations in the context of regulatory fee obligations. Some commenters suggested that creating a separate fee category or categories, along with service rules for OOS and RPO operations, would provide clarity. In the *FY 2022 Notice,* we observed that except for GSO servicing missions, we expect that most OOS and RPO will be non-geostationary orbit (NGSO) operations. We tentatively concluded that the technology for OOS and RPO missions was too nascent, however, to make broader determinations on the status of such operations for regulatory fee purposes, and we sought further comment on whether and how to assess fees for these types of spacecraft, as well as other types of satellites servicing other satellites, including those operating near the GSO arc.[3]

The Commission's ongoing work related to ISAM has dovetailed with other major federal government action. On April 4, 2022, the White House Office of Science and Technology Policy (OSTP) released the *ISAM National Strategy.* As discussed therein, the United States plans to support and stimulate government, academic, and commercial development of ISAM capabilities. In particular, the *ISAM National Strategy* identified six goals to advance ISAM capability development:

1. Advance ISAM research and development, including an ecosystem of capabilities to support ISAM such as standards and systems to implement standards.
2. In collaboration with academic and commercial ISAM stakeholders, prioritize expanding ground infrastructure and support the development of space-based infrastructure.
3. Accelerate the emerging ISAM commercial industry through providing a sustained demand signal for ISAM capabilities and increased collaboration between government stakeholders and industry.
4. Promote international collaboration and communication and support the development of voluntary international standards, best practices, guidelines, and norms for ISAM activities.
5. Prioritize environmental sustainability by developing and implementing best practices, collaborating with commercial partners to support cost-effective space debris removal, and developing new climate science approaches.
6. Inspire the future space workforce by collaborating with academic institutions developing ISAM-enabled research, supporting curriculum development, and advocating for apprenticeships to foster industry-academia collaborations.

We seek comment on Commission actions that can address the needs of ISAM activities, including whether there are any regulatory changes the Commission should consider to facilitate ISAM. For example, we ask questions about spectrum needs for ISAM missions, as well as whether there are clarification of or changes to our licensing processes that would support these types of missions. Recognizing the potential benefits of satellite servicing and orbital debris remediation, we also seek comment on the particular needs of these activities and whether they can further Commission policy goals and statutory obligations. In addition, we seek comment on the orbital debris implications and opportunities posed by ISAM missions, in view of the Commission's role in reviewing orbital debris mitigation plans for non-governmental spacecraft.

Spectrum Needs and Relevant Allocations

Generally, we seek comment on the variety of radiofrequency communications links that could be involved in ISAM missions, on potentially relevant international frequency allocations and allocations in the U.S. Table of Frequency Allocations, and on other considerations associated with spectrum licensing. To date, some spacecraft involved in ISAM missions have been licensed under part 25 of the Commission's rules, which generally apply to commercial and other non-experimental operations, while other spacecraft involved in ISAM missions have been licensed under part 5 of the Commission's rules, which addresses experimental licensing. Communications that are not consistent with the U.S. Table of Frequency Allocations and communications pursuant to a part 5 experimental license are authorized on a non-interference basis and cannot claim interference protection from authorized spectrum users.

Given the wide range of activities that could fall within the ISAM category, we seek comment on how to define the scope of ''typical'' spectrum usage for ISAM missions, including for such functions as OOS and RPO. While different types of ISAM missions will have different spectrum needs, is it possible to define the scope of typical spectrum use for these different types of missions? Are there useful sub-categories that can be identified within ISAM when it comes to spectrum use? What are the overall requirements for spectrum for these ISAM activities? What are the bandwidth requirements? What are the power requirements? To what degree are the needs short-term or episodic, or to what degree are the

accidental collision, and measures taken to mitigate those risks.

[2] The customer equipment is sometimes referred to as a ''payload'' or ''hosted payload'', but the meaning of the term ''payload'' in this context is generally distinct from the use of the term ''payload'' in the launch licensing context, where the term is used to refer to the object or objects that separate from the launch vehicle at the end of the launch activity.

[3] The GSO arc lies on the plane of the Earth's equator at an altitude of approximately 35,786 kilometers.

needs for ''always-on'' transmissions and reception?

We seek comment on relevant frequency allocations. What services, as defined by the ITU Radio Regulations and the Commission's rules, are most critical for ISAM capabilities? We note that in some instances ISAM missions have been supported by communications in the space operations service, which primarily covers telemetry, tracking, and command (TT&C). We seek comment on whether typical usage for ISAM missions could be considered a space operations service as currently defined. We also note the use of sensors and imaging equipment in some ISAM missions, equipment that may have spectrum needs distinct from the typical needs for obtaining TT&C operations of a spacecraft. Are the current non-Federal allocations for space operations or other relevant services adequate to address spectrum needs for ISAM missions? If not, what frequency ranges would be most viable to support these missions based on current technology and mission requirements, and are there satellite allocations in those frequency ranges? Is it reasonable to continue in some instances to authorize communications supporting ISAM capabilities on a non-interference, unprotected basis, particularly where the communications may be critical to conducting an RPO mission for example, or something similar? Are there conditions that could facilitate coordination with incumbent users, such as geographic or temporal limitations, thereby providing some assurance of interference-free use, even where the status of such operations remains inconsistent with an allocation.

Commercial space industry entities have previously observed that additional spectrum may be necessary to support types of missions that would fall under the category of ISAM. These entities also noted that investment has already been made in technologies to support OOS and RPO in some frequency bands. We seek comment on these issues, and on whether there are steps that can facilitate operations to support ISAM capabilities in frequency bands viewed by commercial and other non-governmental entities as compatible with their needs. For example, in frequency bands shared with Federal operations, what steps would facilitate sharing? What steps would facilitate sharing in frequency bands shared with terrestrial operations? To what extent is sharing with other operators, both federal and commercial, possible, depending on the type of ISAM mission? Are there frequency bands that could support ISAM missions, but that have not been used for these types of missions to date? What are the synergies, if any, between space launch activities and associated frequency uses and ISAM operations? Are there advances in equipment or other technologies that would allow for use of frequency bands to support these missions, or make sharing feasible in bands not previously utilized for space operations? What are the pros and cons of any necessary operational changes, and how do those affect the cost and viability of ISAM missions?

We observe that ISAM missions may involve communications links among spacecraft within or beyond Earth's orbit, among spacecraft and equipment or devices located on celestial bodies, or among equipment and devices located on a celestial body. We seek comment on the potential scope of these types of communications links and the unique issues presented by such communications when it comes to spectrum licensing. In so doing, we ask about the role of existing allocations for satellite services, including inter-satellite links, in supporting some of these communications. Inter-satellite communications may be useful for space-based tracking assets and can enable ultra-high-speed data transfer and quantum-encrypted communications. What are the spectrum needs for communications activities occurring beyond Earth's orbit, such as those between spacecraft or on or around celestial bodies—the moon, or an asteroid, for example? How can the Commission facilitate the development of communications networks on, or in the orbit of, other celestial bodies? What considerations should be made in assigning frequencies for communications on celestial bodies, such as between equipment on the lunar surface? What are the challenges with spectrum assignments for Earth station support for ISAM missions beyond Earth's orbit?

Licensing Processes

Licensing Processes in General

We seek comment on any updates or modifications to the Commission's licensing rules and processes that would facilitate ISAM capabilities. The Commission's licensing for space stations is ''facilities-based,'' meaning that the license is associated with a specific radio station. That station includes ''accessory equipment'' necessary to conduct communications activities at a location. For facilities involved in ISAM activities the licensing process would typically involve an application filed under part 25 or part 5 of the Commission's rules. Part 25 licenses are appropriate for commercial operations, including licenses for NGSO and GSO space stations, small satellites, and small spacecraft. Part 5 rules are more limited in scope to specific categories of noncommercial operations, including, among others, scientific experiments, communications research, product development, and market trials. Both part 25 and part 5 also provide for special temporary authority (STA). In general terms, the International Bureau and/or the Office of Engineering and Technology will evaluate the application and issue a grant, typically with conditions, upon a finding that the grant serves the ''public interest, convenience, and necessity.'' We seek comment on any updates to part 25 or part 5 of the Commission's rules for application processing to accommodate and facilitate ISAM missions.

Which of the Commission's current processes are suited for licensing different types of ISAM missions? As ISAM capabilities develop and are increasingly offered as commercial services, part 5 licensing may no longer be appropriate. Should ISAM missions generally be licensed under part 25 of the Commission's rules, or will part 5 experimental licensing continue to be appropriate in some instances, and under what circumstances? [4] Do such activities need a new licensing framework based on their needs, perhaps addressed under a new part of the Commission rules, or is continuation of the current approach, distinguishing between commercial and experimental uses, generally useful?

Given the Commission's ''facilities-based'' approach to licensing, we also seek comment on characteristics of ISAM activities and relevant considerations affecting Commission licensing that might be addressed through part 25 of the Commission's rules. What are the challenges, if any, presented by current Commission processes for missions of variable duration or missions exhibiting evolving characteristics? How should the Commission consider variable locations in space such as transition between orbital altitudes and inclinations? Are there other considerations the Commission should take into account regarding individual missions versus multiple, different missions? What application requirements best account for the evolving nature of ISAM

[4] We again note that part 5 experimental licensees must operate on a non-interference basis, meaning they are prohibited from causing harmful interference to other authorized operators and are not entitled to interference protection.

missions and activities? How can the Commission effectively regulate to anticipate variations in vehicle designs and mission capabilities depending on mission and stage of development? For missions that face multiple points of variability in mission type, duration, and spectral needs, such as servicers that may service multiple spacecraft, what are the challenges with licensing under existing rules, if any? For example, should these missions be handled under a single license that is modified as needed, or through multiple licenses or some other way? What are alternative ways to account for potential risks and different missions that such spacecraft may encounter? How should the licensing process accommodate spacecraft that provide more typical communications services, but may also be involved to some extent in ISAM activities? Are fixed-satellite service or mobile-satellite service allocations, to the extent that they include in-band space operations, sufficiently flexible to accommodate ISAM activities? If additional frequencies are required or desirable for the ISAM activities, and those activities occur at a different time than the regular communications operations, should there be some reporting required on the changes in the operations of the spacecraft to reflect changes in the use of the licensed frequencies? What are the ITU filing considerations associated with multi-part or complex missions?

Under part 25 of the Commission's rules, space stations are categorized as GSO or NGSO, and processed accordingly. In most cases, space stations involved in ISAM activities will likely be NGSO, but in some cases they could be engaged in activities near the GSO arc, or even co-located or attached to a GSO space station. How should these types of spacecraft be categorized for licensing purposes? [5] GSO space station applications are processed on a first-come, first-served basis, associated with particular frequencies and a specific orbital location in the GSO arc, whereas servicing or other similar missions in the GSO arc seem likely to move between orbital locations, and may or may not be engaged in more typical satellite communications services, such as fixed-satellite service. What are the key considerations in categorizing those types of missions as between GSO and NGSO? Are there additional flexibilities that should be built into the Commission's procedures to reflect these unique cases? Given the apparent need for flexibility, should spacecraft involved in ISAM missions be treated like NGSO applications in all cases? In such a regime, how should those planning to operate at the GSO arc be treated? NGSO applications, unless they are filed under the small satellite or small spacecraft process, are, absent a rule waiver, assessed as part of a processing round. Is it appropriate to exempt certain types of operations associated with ISAM missions from the Commission's processing round rules, or are their certain types of missions that might be categorized as or facilitate ISAM, such as in-space data relay networks, that would require the type of continuous, active spectrum use the Commission's processing round framework is designed to manage? Should the Commission consider process changes under part 25, similar to the streamlined process for small satellites and small spacecraft, to license space stations involving certain types of ISAM activities? What key requirements should the Commission consider?

We seek comment on the Commission's current technical disclosures, such as those in the Schedule S form required for part 25 space station license applications and the technical showings required under sections 25.114(c) and 25.114(d) of the Commission's rules. Are the required technical disclosures sufficient to capture the specifications of ISAM missions? If not, what other technical disclosures should be required? Similarly, for any ISAM missions that fit under the Commission's streamlined processes for small satellites and small spacecraft, are the technical showings required by these processes sufficient to capture the specifications of ISAM missions, and if not, what modifications to these required technical showings would better accommodate ISAM missions? Is the Schedule S format appropriate for ISAM missions? How might the Commission modify its Schedule S form or update the other disclosure requirements in its rules to accommodate ISAM missions?

Additionally, we seek comment on licensing processes for earth stations supporting ISAM missions. Are there updates or modifications to the earth station process that would facilitate ISAM missions?

Based on the wide array of ISAM operations, how can the Commission provide guidance on its application processes? Are there additional ways that the Commission can offer guidance such as public notices, FCC Fact Sheets, etc.?

Satellite Servicing Missions

We seek comment on any additional licensing considerations unique to satellite servicing missions. Servicing missions typically consist of multiple spacecraft. In some cases, servicing missions may involve a single operator or licensee that is operating more than one spacecraft. We expect, however, that servicing missions will also involve multiple spacecraft that are owned and operated by different entities. We seek comment on the licensing process for these, or similar missions. Our approach to date has been to treat both the servicer and client spacecraft as needing to be licensed for the scope of radio-frequency activities involved in the servicing operations. Should the licensing process require the servicer alone to be responsible for obtaining a Commission license for communications associated with the servicing activities? Alternatively, should the client operator (*i.e.,* the operator of the space station being serviced) also obtain authorization, either because the client space station may need to undertake radio-frequency operation at variance from what was originally granted in the client's license, or simply to address the additional scope of activity involving servicing? Should this be decided based on a preconceived set of criteria, or would this decision require a case-by-case analysis of individual service activities to better suit the diversity of scenarios? If a case-by-case analysis is considered appropriate, how can the Commission apply additional guidance, such as public notices, to provide clarity to commercial operators seeking licenses for OOS operations? If only the servicer obtains an authorization, what confirmation from the client should be required by the Commission to ensure that the scope of operations is fully agreed-upon by the client and servicer entities? Additionally, in some cases, either the client or servicer may not be a U.S.-licensed spacecraft, and may or may not have U.S. market access. In those instances, what information should the Commission require from the applicant (client or servicer)? Are there special considerations involved where there may be multiple administrations licensing the spacecraft and how should those considerations be taken into account in the Commission's licensing process?

Assembly, Manufacturing and Other Activities

We seek comment on any special considerations in licensing of assembly and manufacturing missions. Are

[5] We note that the Commission's fee schedules for application and regulatory fees also make this distinction between GSO and NGSO facilities.

existing part 5 and part 25 licensing frameworks sufficient for these missions or subsets of these missions? Are there any limitations resulting from existing Commission licensing rules for these missions? If so, how should the Commission consider revising its rules to facilitate the specific needs of these missions?

International Considerations

ISAM missions also raise the possibility of interactions between operators under the jurisdiction of multiple nations. Servicing and debris remediation missions, in particular, could involve operators or objects outside the jurisdiction of the United States. Assembly activities may also involve these concerns, to the extent assembly involves objects under the supervision of different countries. We seek comment on whether and how to take this into account in the Commission's licensing process. Would such a relationship be governed by a regulatory framework analogous to the U.S. market access framework, enabling non-U.S.-licensed space stations to access the U.S. satellite marketplace? Would documentation of consent from the non-U.S. operator or administration be appropriate? If so, what kind of documentation should the Commission require?

In the majority of countries with developing ISAM capabilities, both government and non-government entities have established partnerships with at least one other entity located in another country. What international coordination is needed for U.S.-licensed servicing of non-U.S. satellites, for example, and vice versa? How can the Commission ensure that operators and/or Administrations are in agreement on the scope of certain activities involving non-U.S. spacecraft? Are there circumstances in which the Commission should consult with the State Department to help ensure mutual understanding between Administrations, and if so, should such a process be formalized?

Orbital Debris Mitigation

The Commission's orbital debris mitigation rules apply to all space station operators seeking license and authorization under the Commission's rules, including operators of ISAM missions. All applicants, including applicants for operations involving ISAM activities, must provide a description of their orbital debris mitigation design and operational strategies consistent with the Commission's orbital debris mitigation rules, including, among other requirements, addressing release of debris during normal operations, risk of accidental explosions, and collision risk, casualty risk, and post-mission disposal reliability.

As the scope of commercial and other non-governmental in-space activities expands, some ISAM activities may present fact patterns that have not been specifically contemplated by current orbital debris mitigation rules and adopted practices. For example, the current practices focus on a ''use or deplete'' approach to stored energy.[6] Plans for utilizing in-space fuel storage for refueling operations, on the other hand, contemplate at least a temporary location in which energy remains stored in space when not being utilized. Are there additional risks of debris generation implicated in such operations, and if so, what steps can be taken to mitigate such risks? As another example, are there potentially byproducts from in-space assembly and manufacturing, such as small debris from cutting or manipulation of materials, or risks of unplanned release of objects that are not adequately addressed currently in the Commission's rules for which mitigation measures might be developed with greater specificity?[7] Are there other ISAM activities that do not fit with the typical mission profiles for which standard practices for mitigation, or standard disclosures about mitigation strategies that have to date not been developed? In general, are there updates to the Commission's orbital debris mitigation rules that would help to address such risks, through modified disclosure requirements, for example, that would facilitate Commission consideration of whether grant of a license would serve the public interest? If so, what would be the relevant changes to the Commission's rules to cover the additional risks, if any, presented by such activities?

Orbital Debris Remediation

A specific sub-category of ISAM missions are those performing a remediation or removal function for preexisting space debris, including defunct satellites, satellite fragments, and material released during normal operations. We look forward to the continued advancement of technologies that would enable remediation and removal of debris, and how the Commission can facilitate or support advancement of these technologies. What is the current reliability and technical readiness of these technologies? What is the state of the art in active debris remediation or removal technologies? Which technological approaches to address active debris remediation or removal are developed or being developed? What actions can the Commission take to promote continued growth, innovation, and development in debris remediation and removal?

We seek comment on whether and how the Commission should consider active debris removal as part of an operator's orbital debris strategy. Are these active disposal efforts, in particular retrieval of defunct satellites or related debris, at or close to a technological level that the Commission can consider them as part of an operator's orbital debris strategy for post-mission disposal or backup post-mission disposal? Would the Commission's consideration of active debris removal or remediation as part of its orbital debris mitigation review help to drive innovation in this sector? To ensure a sustainable space environment, should operators be required to utilize active debris removal if the primary post-mission disposal maneuvers fail? If used as a secondary or backup method, how much investment should operators be required to devote to the technological adaptation for disposal methods? What approaches to implement this requirement are possible? For example, to ensure active debris removal, would an operator bond associated with removal be appropriate?[8] Should space stations be required to have technical specifications compatible with active debris removal technology? What would these specifications look like (*e.g.,*

[6] Space station applicants are required to provide a statement that the operator has assessed and limited the probability of accidental explosions during and after the completion of mission operations. This statement must include a demonstration that debris generation will not result from the conversion of energy sources on board the spacecraft into energy that fragments the spacecraft. Energy sources include chemical, pressure, and kinetic energy. This demonstration needs to address whether stored energy will be removed at the spacecraft's end of life, by depleting residual fuel and leaving all fuel line valves open, venting any pressurized system, leaving all batteries in a permanent discharge state, and removing any remaining source of stored energy, or through other equivalent procedures specifically disclosed in the application.

[7] The Commission's rules require that space station applicants provide a statement that the operator has assessed and limited the amount of debris released in a planned manner during normal operations.

[8] We note that the Commission proposed a bond associated with successful spacecraft post-mission disposal in the Orbital Debris FNPRM. That proposal for a bond remains pending. A bond to incentivize active debris removal could potentially be tied to a general bond associated with successful post-mission disposal.

commercially adaptable docking components)? Are there standardization efforts currently underway for these types of systems/components and activities? Is it reasonable to expect that there could be one or more standards available for operators in the near term or longer term? How might such standards evolve? Are there any actions the Commission could and should take to support the future success of active debris remediation or removal technologies?

What industry adaptations could facilitate active debris removal with consideration to return on investment (*e.g.,* fuel costs, weight, import costs, procurement)? Are there generic technical requirements that could facilitate active debris removal across the industry (*e.g.,* with no consideration to orbit, service, or country of registration) or would requirements vary depending on the client and the servicer?

Activities Beyond Earth's Orbit

We seek comment on specific considerations for ISAM missions that go beyond Earth's orbit and the Commission's role in planetary protection. ISAM activities beyond Earth's orbit could include a wide range of operations, including missions to the Moon and asteroids.

In general, we seek comment on any updates to the Commission's rules that might facilitate licensing ISAM missions beyond Earth's orbit. The Commission recently adopted a set of rules designed for missions beyond Earth's orbit in the part 25 ''small spacecraft'' rules, but these rules were not adopted with a specific focus on ISAM activities. Are these rules sufficient for ISAM missions beyond Earth's orbit, or are there changes either generally or specific to ISAM activities that would be beneficial? Are there any changes to the Commission's part 5 experimental or regular part 25 processing rules that would facilitate the licensing of ISAM missions beyond Earth's orbit?

Planetary Protection. Planetary protection typically encompasses the policies and practices designed to protect celestial bodies from contamination by Earth life, and protect the Earth's biosphere from potential contamination from returning spacecraft. Article IX of the Outer Space Treaty states that, ''States Parties to the Treaty shall pursue studies of outer space, including the moon and other celestial bodies, and conduct exploration of them so as to avoid their harmful contamination and also adverse changes in the environment of the Earth resulting from the introduction of extraterrestrial matter.'' Planetary protection guidelines have historically been developed in the United States by National Aeronautics and Space Administration's (NASA's) Office of Planetary Protection and internationally by the Committee on Space Research (COSPAR). For commercial missions, oversight of planetary protection compliance has been undertaken through Federal Aviation Administration (FAA) payload review, which includes consultations with the Department of State and NASA. For civil space missions, planetary protection is largely coordinated by the Office of Planetary Protection, following NASA regulations.

The extent of planetary protection policies needed for an individual mission are determined by categorizing the mission based on the type of celestial body it will encounter (*i.e.,* how likely that body is to support life), and the nature of the encounter (*e.g.,* flyby, orbiting, or landing). For example, a Category I mission (*e.g.,* a flyby of an asteroid) will have minimal requirements relative to a Category IV mission (*e.g.,* a landing on Mars). ISAM operators must only consider planetary protection implications for missions performing a flyby, orbit, or landing on a celestial body. There are no planetary protection implications for on-orbit operations.

We seek comment on what, if any, role the Commission should play in reviewing planetary protection plans and implications for ISAM missions. What are the planetary protection implications of ISAM capabilities? Are there contractual mechanisms or governmental processes that ensure adequate supervision of missions with respect to planetary protection policies? What, if any, steps can the Commission take to facilitate planetary protection review? Are there any statutory limits for the Commission's involvement in ensuring that the United States meet its treaty obligations and international commitments? How can the commission best ensure our authorizations for these missions serve the public interest?

With respect to manufacturing missions, in-situ resource utilization (ISRU) is currently being considered for use in missions to the asteroids, the Moon, and Mars. Landing spacecraft at these destinations have varying degrees of planetary protection considerations: undifferentiated, metamorphosed asteroids are Category I; other asteroids and the Moon are Category II; and Mars is Category IV. Are there unique or specific planetary protection concerns for space resource utilization? What role should be appropriate for the Commission to play in overseeing such missions from a planetary protection perspective?

The ISAM National Strategy calls for the U.S. domestic regulatory regime to be updated as ISAM technologies mature to facilitate ISAM activities. How can the Commission's regulations, or the Commission's coordination with other government agencies, facilitate ISAM activities beyond Earth's orbit, including on other celestial bodies? What should be the extent of oversight by the Commission of objects remotely controlled via an FCC-licensed station?

Encouraging Innovation and Investments in ISAM

We also seek comment on ways to facilitate development of and competition in ISAM activities, provide a diversity of on-orbit service options, and promote innovation and investment in the ISAM field. Are there any regulatory barriers that may increase cost or prevent entry that can be removed or modernized to facilitate innovation and investment in ISAM in the public interest? How can the Commission encourage new operators to enter into the marketplace to provide commercial ISAM services as well as those wishing to expand their market access? What actions can the Commission take to promote continued growth, innovation, and development in ISAM operations? Moreover, how can we promote innovation and investment in ISAM without simultaneously reducing incentives for compliance with our rules for orbital debris mitigation, such as rules that encourage post-mission disposal?

The costs of commercial space activity are extensive and there are not necessarily immediate returns on investment opportunities for operations such as orbital debris remediation efforts. Aside from the incentives provided to ISAM operators, we seek to analyze the current state of ISAM technology and understand its economic impact on space-based services. To better understand this emerging market segment, we ask for comment on where ISAM fits within the broader satellite communications services sector. What firms currently supply ISAM services? What entities demand ISAM services? We also seek comment on the nature of the cost structure of firms supplying ISAM activities. How important are economies of scale in production? We seek comment on the current and future state of ISAM technology and its economic impact on space-based services. How does innovation in such technologies and services impact the space-based industry when evaluated

through long-term projections (*e.g.,* a five-year projection or a ten-year projection)?

What regulatory incentives can be provided to ISAM operators and developers to encourage innovation and growth in this field? What regulatory incentives can be provided to ISAM clients to encourage use of ISAM technology? What are ISAM operators' concerns with respect to the Commission's regulatory processes regarding their operations? How can the Commission address these concerns while also maintaining access to spectrum and a safe space environment for all operators?

Digital Equity and Inclusion

Finally, the Commission, as part of its continuing effort to advance digital equity for all, including people of color, persons with disabilities, persons who live in rural or tribal areas, and others who are or have been historically underserved, marginalized, or adversely affected by persistent poverty or inequality, invites comment on any equity-related considerations and benefits (if any) that may be associated with the topics discussed herein. Specifically, we seek comment on how the topics discussed and any related proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well as the scope of the Commission's relevant legal authority.

Procedural Matters

Initial Regulatory Flexibility Analysis

Under the Regulatory Flexibility Act (RFA), no Initial Regulatory Flexibility Analysis is required for this Notice of Inquiry.

Ordering Clauses

Accordingly, *it is ordered* that, pursuant to sections 4(i), 301, 302(a), 303(e), 303(f), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 301, 302(a), 303(e), 303(f), and 303(r), this Notice of Proposed Rulemaking *is hereby adopted.*

Federal Communications Commission.

Marlene Dortch,

Secretary.

[FR Doc. 2022–19748 Filed 9–13–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 391

[Docket No. FMCSA–2022–0111]

Qualifications of Drivers: Medical Examiner's Handbook and Medical Advisory Criteria Proposed Regulatory Guidance

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

ACTION: Notice of proposed regulatory guidance; extension of comment period.

SUMMARY: FMCSA extends the comment period for its August 16, 2022, notice of proposed regulatory guidance relating to the draft Medical Examiner's Handbook (MEH), which includes updates to the Medical Advisory Criteria published in the United States Code of Federal Regulations. FMCSA received requests for an extension to the comment period from the Owner-Operator Independent Drivers Association and two individuals. The Agency finds it is appropriate to extend the comment period to provide interested parties additional time to submit their responses to the notice. Therefore, the Agency extends the deadline for the submission of comments to October 31, 2022.

DATES: The comment period for the notice published August 16, 2022, at 87 FR 50282, is extended to October 31, 2022.

ADDRESSES: You may submit comments identified by the Federal Docket Management System Docket No. FMCSA–2022–0111 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov/,* insert the docket number, FMCSA–2022–0035, in the keyword box, and click ''Search.'' Next, sort the results by ''Posted (Newer-Older),'' choose the first notice listed, and click on the ''Comment'' button. Follow the online instructions for submitting comments.
- *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:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., ET, Monday through Friday, except Federal Holidays.
- *Fax:* (202) 493–2251.

To avoid duplication, please use only one of these four methods. See the ''Public Participation'' portion of the **SUPPLEMENTARY INFORMATION** section for instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: Ms. Christine A. Hydock, Chief, Medical Programs Division, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 366–4001, *FMCSAMedical@dot.gov.* If you have questions on viewing or submitting material to the docket, call Dockets Operations at (202) 366–9826.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0111), indicate the specific page and section of the MEH to which your comment applies, and provide a reason for each suggestion or recommendation. You may submit your comments and material online or by fax, mail, or hand delivery, but please use only one of these means. FMCSA recommends that you include your name and a mailing address, an email address, or a phone number in the body of your document so FMCSA can contact you if there are questions regarding your submission.

To submit your comment online, go to *https://www.regulations.gov/docket/FMCSA-2022-0111/document,* click on this request for comments, click ''Comment,'' and type your comment into the text box on the following screen.

If you submit your comments by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit comments by mail and would like to know that they reached the facility, please enclose a stamped, self-addressed postcard or envelope.

FMCSA will consider all comments and material received during the comment period.

B. Viewing Comments and Documents

To view any documents mentioned as being available in the docket, go to *https://www.regulations.gov/docket/FMCSA-2022-0111/document* and choose the document to review. To view comments, click this request for comments, and click ''Browse Comments.'' If you do not have access to the internet, you may view the docket online by visiting Dockets Operations in Room W12–140 on the ground floor of the DOT West Building, 1200 New

Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. Privacy Act

DOT solicits comments from the public to better inform its guidance 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,* the comments are searchable by the name of the submitter.

II. Background

The **Federal Register** notice published on August 16, 2022 (87 FR 50282) requested comments on FMCSA's proposed MEH. The MEH includes updates to the published Medical Advisory Criteria and proposed regulatory guidance. The **Federal Register** notice provided a 45-day comment period, which ends September 30, 2022.

FMCSA received a request from the Owner-Operator Independent Drivers Association to extend the comment period for an additional 60 days. A former truck driver (Bob Stanton) requested 180 days from publication of the notice to submit comments. Another individual (Daniel Spaulding) suggested that a longer period was necessary to understand the draft MEH. In summary they both stated that the draft MEH is 122 pages long with highly detailed and technical information, and that additional time is needed to thoroughly review the updated MEH and to develop meaningful feedback. Copies of the requests are available in the docket for this notice.

In consideration of these requests and to allow additional time to review and submit comments, FMCSA extends the deadline for submitting comments in response to the August 16, 2022 (87 FR 50282) **Federal Register** publication until October 31, 2022.

John Van Steenburg,

Executive Director and Chief Safety Officer.

[FR Doc. 2022–19847 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 594

[Docket No. NHTSA–2022–0081]

RIN 2127–AL74

Schedule of Fees

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes fees for Fiscal Year (FY) 2023 and future FYs relating to the registration of importers and the importation of motor vehicles not certified as conforming to the Federal motor vehicle safety standards (FMVSS). In addition to proposing new fee amounts, this document also proposes three modifications to existing provisions of part 594. The first seeks to modify our assessment of the administrative costs of registered importer (RI) renewals by authorizing collection of inspection costs as part of the inspected entity's monthly invoice instead of adding those costs to its annual renewal fee. The second proposal would seek to adjust how a vehicle inspection fee is determined in cases where an RI requests inspection of a vehicle subject to an eligibility petition. Finally, the third proposal would clarify circumstances in which NHTSA (the Agency) would charge additional fees for submission of conformity packages with errors or omissions. The fees in this update are mandated by statute and are necessary to maintain the RI program.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than September 29, 2022.

ADDRESSES: Comments should refer to the docket and notice numbers above and be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Mail:* Docket Management Facility: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.
- *Fax:* 202–493–2251.

Instructions: For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document. Note that all comments received will be posted without change to *http://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 *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the dockets.

FOR FURTHER INFORMATION CONTACT: Neil Thurgood, Office of Vehicle Safety Compliance, NHTSA at 202–366–5291. For legal issues, you may call Thomas Healy, Office of Chief Counsel, NHTSA at 202–366–2992.

SUPPLEMENTARY INFORMATION:

I. Introduction

What action is NHTSA taking?

The Imported Vehicle Safety Compliance Act of 1988, which took effect on January 31, 1990, established new requirements for the importation of vehicles that had not been certified as meeting applicable FMVSS. On and after that date, motor vehicles not manufactured to conform to the FMVSS may be imported on a permanent basis only by a person or entity known as a ''registered importer'' (RI) that has registered with NHTSA, or by persons who have contracts with RIs to perform conformance work. RIs are regulated by NHTSA and modify nonconforming vehicles to meet U.S. safety standards. Under the statutory scheme, the Agency must first determine that the nonconforming vehicle is eligible for importation. Eligible vehicles are accompanied by a bond given to secure the performance of the conformance work, or, if the vehicle is not brought into full conformance, to ensure its exportation or abandonment to the United States at no cost to the Federal government.

NHTSA must impose fees to cover administrative costs incurred in administering the registered importer program. 49 U.S.C. 30141(a)(1)(B)(3) and (e) direct NHTSA to establish fees to cover the costs of carrying out the registration program for importers, processing the vehicle bonds, and making import eligibility determinations. Section 30141(e) states that these fees must be reviewed and adjusted at least every 2 years and that the fees for a FY must be established before the FY in question.

On September 29, 1989, NHTSA issued 49 CFR part 594, establishing the initial fees authorized by the Imported Vehicle Safety Compliance Act of 1988. NHTSA has subsequently revised the fee schedules consistent with the directive that the fees be updated. NHTSA last set fees for FY 2015 and later through a final rule published in the **Federal Register** on September 24, 2014 (79 FR 57002). That final rule was preceded by a Notice of Proposed Rulemaking (NPRM) published on July 31, 2014, (79 FR 44363) in which the Agency explained that the methodology employed for calculating the fees and a more fulsome explanation of the regulatory history of fee setting could be found in a notice published on June 24, 1996 (61 FR 32411).

NHTSA is directed by statute to periodically review and make appropriate adjustments in the fees established for the administration of the RI program. *See* 49 U.S.C. 30141(e). The fees applicable in any FY are to be established before the beginning of such year. *Id.* The fees established in this proposed rule would come into effect beginning with FY 2023, which begins on October 1, 2022. A table comparing current fees with the fee amounts proposed in this update follows this section.

The statute authorizes fees to cover the costs of administering the importer registration program, of making import eligibility decisions, of reviewing vehicle-specific conformity documentation (conformity packages) submitted by RIs, and of processing the bonds furnished to the Department of Homeland Security (Customs and Border Protection, hereafter referred to as Customs).

The volume of nonconforming vehicles imported into the United States, primarily from Canada, has been steadily increasing in the years that have elapsed since these fees were last updated. In the 2014 calendar year (CY), 71 registered importers facilitated the importation of approximately 73,800 vehicles. By CY 2016, the number of RIs had risen to 87 and slightly more than 300,000 vehicles were processed by these RIs. The volume of imported vehicles held steady around 300,000 for the years that followed. In CY 2020, a year in which many businesses were shuttered or operating at decreased capacity owing to the COVID–19 public health crisis, 121 RIs still managed to import over 300,000 vehicles, and the total in CY 2021 exceeded 370,000. This protracted, large increase in volume has strained Agency resources while concurrently increasing NHTSA's concerns about enforcement. The increased numbers of conformity packages have required the Agency to authorize overtime, divert employees assigned to other tasks, and take other measures to complete timely reviews. While RIs have been submitting their conformity packages electronically as a temporary measure during the COVID–19 public health crisis, the bulk of these packages have historically been prepared in hard copy on paper. To reduce burdens associated with both preparing and processing conformity packages, NHTSA is currently developing a system that will serve as a permanent avenue for submitting conformity packages electronically rather than in hard copy.

Enforcement concerns have prompted the Agency to perform more inspections of RI facilities and records to ensure compliance and to initiate suspensions against RIs found to be operating in violation of the statutes and regulations administered by NHTSA. Actions to revoke or suspend RIs incur costs that are recoverable as a component of the RI annual fee. Five RIs were suspended in CY 2021, and the costs of those suspensions have been considered in calculation of the updated RI maintenance fee. Other ongoing investigative matters that conclude after this update will be considered in the next cyclical update to the schedule of fees.

TABLE I—COMPARISON OF CURRENT AND UPDATED FEE AMOUNTS

	Current	Update	Difference
Registration/Renewal:			
*New Applications**	$333	$437	$104
*Application Renewal**	215	488	273
RI Program Maintenance	511	3,131	2,620
Total Registration Application	844	3,568	2,724
Total Registration Renewal	726	3,619	2,893
Petitions for Eligibility:			
*Substantially Similar**	175	320	145
*Capable**	800	1,280	480
Vehicle Importations:			
Non-Canadian Substantially Similar	138	273	135
Non-Canadian Capable	138	273	135
Administrator initiated	125	125	0
Bond Processing:			
HS–474	9.34	11.20	1.86
Cash Deposits	499	499	0
Processing Conformity Certificate:			
Paper Entry	10	21	11
ABI Entry	6	14	8
ABI Entry W/Errors	57	58	1
Indirect Costs—Overhead	25.73	42.25	16.52

* *Does not include associated inspection costs.*

II. Requirements of the Fee Regulation

Section 594.6—Annual Fee for Administration of the Importer Registration Program

49 U.S.C. 30141(a)(3) directs that RIs must pay the annual fees established ''to pay for the costs of carrying out the registration program for importers. . . .'' This fee is payable by both new applicants and by existing RIs. To maintain its registration, each RI, at the time it submits its annual fee, must also file a statement affirming that the information it furnished in its registration application (or in later submissions amending that information) remains correct. *See* 49 CFR 592.5(f).

The regulation establishing the annual fees for facilitating registration of importers is found in 594.6. The initial annual fee for a new registrant contains three components for which both direct and indirect costs are to be recovered. The first component covers the cost of processing an application submitted by a person seeking to become a registered importer (49 CFR 594.6(a)(1)). The second component covers costs attributable to any necessary inspection of an applicant's facilities (49 CFR 594.6(a)(2)) and the third component covers the remaining costs (49 CFR 594.6(a)(3)). The first and third components are paid with the initial application. All inspection costs incurred before consideration of an initial application are payable by the end of the tenth calendar day after notification by the Agency (*See* 54 FR 40100, 40102, September 29, 1989, and 49 CFR 594.6(c)). Renewal fees after the initial fee have the same three components—processing costs, inspection costs and remaining costs (49 CFR 594.6(e)).

Section 594.6 also addresses the annual fees associated with continuous administration of the RI program. These costs include calculating, revising, and publishing the fees to apply in the next FY, processing and reviewing annual RI renewal statements, processing the annual fee, processing and reviewing changes to an RI's registration, conducting inspections to verify RIs are complying with regulations, and acting to suspend or revoke RI registrations (49 CFR 594.6(f)). The direct and indirect costs that NHTSA recovers for renewal applications, administration, and maintenance of the RI program are defined in § 594.6(g) and (h).

Direct costs are the estimated costs of professional and clerical staff time, computer and computer operator time, and postage dedicated to processing renewals and administering the registration, per RI. Under 49 CFR 592.6(j), the Agency may inspect a facility and the records that the RI must keep in fulfillment of its program responsibilities. Thus, the direct costs included in establishing the annual fee for a specific RI include costs of transportation and per diem attributable to inspections of that RI for administration of the registration program (to the extent those costs were not included in a previous annual fee) (49 CFR 594.6(g)).

Indirect costs included in renewing RI registrations include a pro rata allocation of the average benefits of persons employed in processing annual statements, or changes thereto, in recommending continuation of RI status, and a pro rata allocation of the costs attributable to maintaining the office space, computer systems and related items (49 CFR 594.6(h)). This update includes the to-date development costs of a computer system being developed to aid in cataloging information and reports related to RIs' registration records and activities. This cost will be distributed across all active RIs (121 as of the writing of this notice) and included in the maintenance fee for active registered importers with the goal that total development cost will be recovered after four years.

Historically, costs attributable to suspension and revocation actions have been included as an element of the program maintenance portion of the application and renewal fees, and have been composed of the direct and indirect costs attributable to investigation of the offending RI, as well as preparation of, distribution of, and reviewing responses to orders to show cause. Past fee updates typically covered two-year periods covering only one suspension or revocation. The five suspensions alluded to in the introduction happened in CY 2021 alone, and total $360,222.65 in direct and indirect costs to the Agency. In order to recover this amount over the two years this updated fee schedule is intended to cover, half of this amount is distributed across all RIs (121 present and any future) as a factor in the program maintenance cost that is ultimately included in both the registration and renewal fees.

To comply with the statutory directive to set fees, we reviewed the existing fees and their bases to establish fees sufficient to cover costs. The initial component of the Registration Program Fee is the fee to cover expenses attributable to processing and acting upon registration applications. We have determined that this fee should be increased from $333 to $437 for new applications. The adjustments reflect our time expenditures in reviewing applications and account for the increase in direct costs relating to the increases in salaries of employees on the General Schedule and the increase in contractor costs to the Agency, as well as the increases in indirect costs attributed to the Agency's overhead costs. Based upon our review of these costs, the portion of the fee attributable to the maintenance of the registration program is $3,1318 for each RI, which includes a portion attributable to the costs of suspending a number of registrations, as well as a portion of development costs of the new RI recordkeeping and investigation system. When this figure is added to the proposed $437 (representing the registration application component), the cost to a new applicant for RI status comes to $3,568, which is the fee we propose. This represents an increase of $2,724 over the existing fee.

We must also recover costs attributable to reviewing of a participating RI's annual statement and verifying the continuing validity of information already submitted. We have determined that the fee for the review of the annual statement—essentially the RI ''renewal fee''—should be increased from $215 to $488. When the $3,131 maintenance portion is added to the $488 annual statement component, the total cost to an RI for renewing its registration comes to $3,619, which represents an increase of $2,893. The increase in these fees is attributable primarily to the increase in costs over the last 8 years since fees were last increased, including increased maintenance costs arising from multiple suspensions, as well as to the increase in direct costs relating to the increases in salaries of employees on the General Schedule, increases in indirect costs attributed to overhead, and the increase in the maintenance portion of the fee attributable to development of the new investigative/recordkeeping tool for administering the RI program.

Authority for NHTSA to recover the costs of inspecting an RI's facility and examining an RI's records has been included in part 594 since it was first promulgated in 1989. *See* 54 FR 40100, 40102, September 29, 1989. As originally conceived, these costs would be recovered in one of two ways. In the case of an inspection conducted for the purposes of reviewing an initial registration, the Agency indicated that it would bill the applicant for these costs and require payment before proceeding to final review of the application. *Id.* In the case of renewal applications, NHTSA indicated that the costs of inspections would be incorporated into

the administrative costs that would be recovered from the inspected RI as part of its renewal fee. *Id.*

NHTSA is reaffirming that it will be including the cost of facility and recordkeeping inspections in the administrative costs that must be paid annually by an inspected RI. The Agency is, however, proposing that inspection costs be collected in the same fashion as inspection costs incurred in the initial application process. Therefore, an existing RI that has been inspected would be billed at the conclusion of the inspection, and would be subject to automatic suspension under 49 CFR 592.7(a)(1) if the Agency did not receive payment within fifteen calendar days of the date of the invoice. As noted above, 49 CFR 594.6(h) enumerates RI registration renewal indirect costs and provides that they represent a pro rata allocation of the average salary and benefits of employees who process the annual statements and perform related functions, and ''a pro rata allocation of the costs attributable to maintaining the office space, and the computer or word processor.'' *See* 49 CFR 594.6(h).

The indirect costs that are currently in effect are $25.73. These costs represent hourly overhead expenses attributed to the average NHTSA employee. We are increasing this figure by $16.52, to $42.25. This increase is based on increases in enacted budgetary costs within the DOT since the fees were last adjusted, which are primarily attributable to increases in operating expenses for the Agency over the 8 years since fees were last increased.

Sections 594.7, 594.8—Fees To Cover Agency Costs in Making Importation Eligibility Decisions

49 U.S.C. Section 30141(a)(3)(B) requires that RIs pay other fees the Secretary of Transportation establishes to cover the costs of ''making the [eligibility] decisions under this subchapter.'' This includes decisions on whether the vehicle subject to a petition for an eligibility determination is substantially similar to a motor vehicle that was originally manufactured for sale in the United States and certified by its original manufacturer as complying with all applicable FMVSS, and whether the vehicle is capable of being readily altered to meet those standards. Alternatively, where there is no substantially similar FMVSS-certified motor vehicle, the decision is made on whether the safety features of the subject vehicle comply with, or are capable of being altered to comply with, the FMVSS based on destructive test information or such other evidence that NHTSA deems to be adequate. These decisions are made in response to petitions submitted by RIs or manufacturers, under 49 CFR 593.5, or on the Administrator's own initiative under 49 CFR 593.8.

The fee for a vehicle imported under an eligibility decision made in response to a petition is payable in part by the petitioner requesting the decision, and in part by RIs importing vehicles rendered eligible under that decision. As a result, the fee to be charged for reviewing the submitted package covering each imported vehicle includes the estimated pro rata share of the costs, both direct and indirect, borne upon the Agency in making all the eligibility decisions in a FY.

Since we last amended the fee schedule, the overall number of vehicles imported by RIs has increased, while the number of petitions has decreased. The total number of vehicles imported by RIs over the period beginning with CY 2015 averaged 299,133 vehicles each year. Over the same period, the number of vehicles imported under an import eligibility petition that was submitted by an RI (as opposed to an import eligibility decision made on the Agency's initiative) was only 1,408 or approximately 201 vehicles each year.

Since the inception of the RI program, RIs have submitted 860 petitions to NHTSA, averaging 29 per year. However, in CYs 2015 through 2021, only 92 petitions were submitted by RIs, an average of about 12 each year. As a result, the Agency has devoted less staff time to reviewing and processing import eligibility petitions since we last revised the fees.

Despite these trends, however, increased direct and indirect costs since 2014, including costs associated with publication of notices in the **Federal Register**, will increase the pro rata share of petition costs assessed against the importer of each vehicle covered by the eligibility decision. We project that in each of the next two fiscal years, the Agency's annual costs for processing 12 petitions (the calculated annual average) will be $61,553.64. The petitioners, assuming the increased filing fees contemplated below, would pay $6,720 of that amount in processing fees, leaving the remaining $54,833.64 to be recovered from the importers of the approximately 201 vehicles projected to be imported under petition-based import eligibility decisions. Dividing $54,833.64 by 201 yields a pro rata fee of approximately $273 for each vehicle imported under an eligibility decision that results from the granting of a petition. We are therefore proposing to increase the pro rata share of petition costs that are to be assessed against the importer of each vehicle from $138 to $273. The same $273 fee would be paid regardless of whether the vehicle was petitioned under 49 CFR 593.6(a), based on the substantial similarity of the vehicle to a FMVSS-certified model, or was petitioned under 49 CFR 593.6(b), based on the safety features of the vehicle complying with, or being capable of being modified to comply with, all applicable FMVSS.

The above analysis incorporates proposed increases in the currently established fees of $175 and $800 that cover the initial processing of ''substantially similar'' petitions and petitions for vehicles that have no substantially similar U.S.-certified counterpart, respectively. These fees have not been adjusted over several iterations of fee updates, and therefore we propose to increase the fees to $320 and $1,280 for vehicles petitioned under 593.6(a) and 593.6(b), respectively. These adjustments more accurately reflect the costs associated with petition review and publication and maintain a ratio between petition costs paid by the petitioner and subsequent importers of the covered vehicles that is similar to the ratio found in earlier updates.

An RI has not requested inspection of a petition vehicle in recent history, so there is little evidence to suggest that the fee covering such inspections must be adjusted outside of potential adjustments to account for inflation. However, in the interest of unifying the Agency's approach with respect to recovering inspection costs, NHTSA is proposing to change this from a flat fee to inclusion of costs of transportation, lodging, and per diem [1] attributable to these inspections in the final petition review fee charged to the RI.

Section 594.9—Fee for Reimbursement of Bond Processing Costs and Costs for Processing Offers of Cash Deposits or Obligations of the United States in Lieu of Sureties on Bonds

49 U.S.C. Section 30141(a)(3) requires a registered importer to pay any other fees the Secretary of Transportation establishes ''to pay for the costs of . . . processing bonds provided to the Secretary of the Treasury . . .'' upon the importation of a nonconforming vehicle to ensure that the vehicle will be brought into compliance within a reasonable time, or if it is not brought into compliance within such time, that it be exported, without cost to the United States, or abandoned to the United States.

[1] At standard CONUS rate as established by the General Services Administration.

The Department of Homeland Security (Customs) exercises the functions associated with the processing of these bonds. To carry out the statute, we make a reasonable determination of the costs that Customs incurs in processing the bonds. The cost to Customs is based upon an estimate of the time that a GS–9, Step 5 employee spends on each entry, which Customs judged to be 20 minutes. To account for increases in General Schedule salary rates since this rule was last updated, we are increasing the processing fee from $9.34 per bond to $11.20.

In lieu of sureties on a DOT conformance bond, an importer may offer United States money, United States bonds (except for savings bonds), United States certificates of indebtedness, Treasury notes, or Treasury bills (collectively referred to as ''cash deposits'') in an amount equal to the amount of the bond. *See* 49 CFR 591.10(a). The receipt, processing, handling, and disbursement of the cash deposits that have been tendered by RIs cause the Agency to consume considerable staff time and material resources. NHTSA has concluded that the expense incurred by the Agency to receive, process, handle, and disburse cash deposits may be treated as part of the bond processing cost, for which NHTSA is authorized to set a fee under 49 U.S.C. 30141(a)(3)(A). We first established a fee of $495 for each vehicle imported on and after October 1, 2008, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond. *See* the final rule published on July 11, 2008, at 73 FR 39890. The fee was later increased to $499 in 2014.

In the years that have elapsed since this fee was last updated, there has been little demand on the part of RIs to submit cash deposits in lieu of conformance bonds. As we aim to maintain this fee in case it should prove useful in the future, the Agency considered its direct and indirect costs in calculating the fee for the review, processing, handling, and disbursement of cash deposits submitted by importers and RIs in lieu of sureties on a DOT conformance bond, and is proposing to maintain the fee of $499. NHTSA intends to revisit the methodology for calculating this review in a future update.

Section 594.10—Fee for Review and Processing of Conformity Certificate

In a final rule published in the **Federal Register** on September 29, 1997, NHTSA established a new fee for reviewing and processing conformity certificates (62 FR 50876). In the preamble to that final rule, the Agency explained that an annual volume of approximately 21,000 conformity packages which had to be processed and reviewed had prompted consideration of amending part 594 to add the new fee to cover expenses. The new section added, 594.10, declared that each RI must pay a fee based on the direct and indirect costs for the review and processing of each certificate of conformity submitted to the Agency. Those direct and indirect costs, defined in 594.10(b) and (c), are identical to those set forth elsewhere in part 594. Section 594.10(c) declares that the indirect costs of processing conformity packages are allocated on a pro rata basis.

In setting a value for this new fee, NHTSA calculated the direct costs (contract and professional staff time, computer costs, and costs for record assembly, marking, shipment, and storage) by surveying the resources being used to process and review 21,000 conformity packages each year. The analysis concluded that the work consumed annual staff time equivalent to 1.75 data entry personnel, .37 computer programmers and .90 safety and compliance analysts. *Id.* at 50880. Similar surveys were made of the costs in maintaining computer links with Customs, database maintenance, storage costs, shipping, and mail. NHTSA then set the direct cost component of the fee by dividing the sum of the direct costs by the number of conformity packages received. The identical methodology was used in calculating the indirect costs (benefits, rental and maintenance of office space and equipment, the use of office supplies, and other overhead items). Again, the costs incurred were divided by 21,000—the number of packages processed.

NHTSA adjusted this fee in 1998 (63 FR 45183, Aug. 25, 1998), and again periodically, until it was last adjusted in 2014 (79 FR 57002, Sept. 24, 2014). Except for adding provisions recognizing savings realized when payments are made by credit card and instituting special fees to recover the extra costs incurred when packages are found to contain errors, the Agency's cost analyses appear to have remained unchanged from the time § 594.10 was first instituted in 1997.

As noted above, large increases in the volume of vehicles imported from Canada since 2015 have resulted in NHTSA receiving anywhere from 250,000 to over 350,000 vehicle conformity packages annually. The Agency has responded to this increased volume by dedicating more resources to the task of reviewing those conformity packages. Accordingly, the methodology previously employed, which relied on 1997 level resource expenditures being distributed on a pro rata basis over the number of conformity packages received, is no longer valid.

For the purposes of this proposed rule, the Agency has calculated the costs of reviewing conformity packages by first assessing the resources now being applied to the task. The Agency calculated the direct cost of reviewing each conformity package as requiring a very conservative estimate of 10 minutes per package for a GS–12 step 5 employee—which establishes an absolute floor attributable to labor cost of $8.15 [2] per package. Storage costs of 26 cents ($0.26) were added to this processing cost, resulting in a review cost of $8.41 per conformity package. The annual cost of contract staff supporting the conformity review program imparts an additional direct cost of $975,378.01, which, when distributed over the annual expected volume of around 300,000 conformity packages submitted to NHTSA each year, amounts to approximately $3.25, which brings the total direct cost to $11.66 per conformity package.

NHTSA then added the indirect costs for three full-time analysts and a portion of electronic development costs for a system being developed to facilitate electronic submission of conformity packages ($460,504.50, which is one quarter of the to-date cost), and distributed this total, $796,217.94, over the estimated average of 300,000 conformity packages submitted to NHTSA each year, arriving at indirect costs of $2.66 for each conformity package. Adding the direct costs of $11.66 and indirect costs of $2.66 per package yields a total cost of approximately $14.32 per package, which is the fee NHTSA proposes should be assessed in the simplest case, where the vehicle at issue has been entered electronically through the Automated Broker Interface (ABI) maintained by Customs, and the RI submitting the certificate is capable of corresponding by email and pays by credit card.

The Agency is considering reducing the review fee assessed for conformity packages submitted through the electronic submission system that is currently under development. However, because it would be impossible at this stage to quantify savings to the government, and potentially to RIs, realized through use of this system, we

[2] This represents one-sixth of the hourly pay rate for a GS 12 step 5 employee according to 2021 Washington DC locality pay

are instead soliciting comments on whether and how reducing this fee should be pursued.

Other conformity packages that require additional handling and more cumbersome payment methods, amounting to approximately 50% additional review and handling time, incur additional costs. Accordingly, NHTSA is proposing to adjust the fee for these packages to 150% of the review fee assessed for the simpler packages, or approximately $21.

Finally, because incomplete or incorrect conformity packages are posing a significant problem for the Agency, NHTSA must address the fee attributable to review of conformity packages that contain one or more errors. This fee is being increased slightly under the new methodology for determining review fees to $58 per problematic package from the previous level of $57. Additionally, in order to account for escalating costs attributable to repeated resubmission of erroneous conformity packages, NHTSA is proposing to modify § 594.10(d) to clarify that the Agency reserves the right to assess the charge for each instance a conformity package is submitted containing errors, including instances in which a package is resubmitted with an error. Thus, the fee for reviewing packages containing errors is being adjusted to $58, which accounts for 45 minutes of review time and 150% increased processing and handling costs, and this fee may be assessed in each instance that an erroneous package is resubmitted.

III. Rulemaking Analyses

A. Executive Order (E.O.) 12866 (Regulatory Planning and Review), E.O. 13563, and DOT Regulatory Policies and Procedures

Executive Order 12866, ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993), provides for making determinations as to whether a regulatory action is ''significant'' and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a ''significant regulatory action'' as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

NHTSA has considered the impact of this proposed rule under Executive Order 12866, E.O. 13563, and the DOT's regulatory policies and procedures. NHTSA has determined that the proposed rule is not significant under Executive Order 12866, E.O. 13563, and the DOT's regulatory policies and procedures. Based on the level of the fees and the volume of affected vehicles, NHTSA anticipates that the costs of this rule are so minimal as not to warrant preparation of a full regulatory evaluation.

Furthermore, this action does not involve any substantial public interest or controversy. The rule will have no substantial effect upon State and local governments. There will be no substantial impact upon a major transportation safety program.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), whenever an agency is required to publish a notice of proposed rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions). The Small Business Administration's regulations at 13 CFR part 121 define a small business, in part, as a business entity ''which operates primarily within the United States.'' 13 CFR 121.105(a). No regulatory flexibility analysis is required if the head of an agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. The SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Agency has considered the effects of this proposed rule under the Regulatory Flexibility Act and certifies that the amendments will not have a significant economic impact upon a substantial number of small entities.

The following is NHTSA's statement providing the factual basis for the certification under 5 U.S.C. 605(b). The proposed amendments would affect entities that modify nonconforming vehicles and that are small businesses within the meaning of the Regulatory Flexibility Act; however, the Agency has no reason to believe that these companies will be unable to pay the fees adjusted by this action. This notice does not propose any new fees and the fee increases proposed herein represent overdue increases from the fees previously established by NHTSA. Moreover, consistent with prevailing industry practices, these fees are likely to be passed through to the ultimate purchasers of the vehicles that are altered and, in most instances, sold by the affected registered importers. The cost to owners or purchasers of nonconforming vehicles that are altered to conform to the FMVSS may be expected to increase to the extent necessary to reimburse the registered importer for the fees payable to NHTSA for the cost of carrying out the registration program and making eligibility decisions, and to compensate Customs for its bond processing costs.

Governmental jurisdictions will not be affected at all since they are generally neither importers nor purchasers of nonconforming motor vehicles.

C. Executive Order 13132 (Federalism)

Executive Order 13132 on ''Federalism'' requires NHTSA 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.'' Executive Order 13132 defines the term ''policies that have federalism implications'' 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, NHTSA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or NHTSA consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States,

on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government as specified in Executive Order 13132. State and local governments will not be affected at all since they do not regulate the importation of motor vehicles or import or purchase nonconforming vehicles. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

D. National Environmental Policy Act

NHTSA has analyzed this action for purposes of the National Environmental Policy Act. The proposed action will not have a significant effect upon the environment because it is not anticipated that the annual volume of motor vehicles manufactured, sold, or operated will vary significantly from that existing before the promulgation of the rule.

E. Executive Order 12988 (Civil Justice Reform)

Pursuant to Executive Order 12988, ''Civil Justice Reform,'' NHTSA has considered whether this proposed rule would have any retroactive effect. NHTSA concludes that this rule will not have any retroactive effect. Judicial review of a rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

F. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually (adjusted for inflation with the base year of 1995). Before promulgating a rule for which a written assessment is needed, Section 205 of the UMRA generally requires NHTSA to identify and consider a reasonable number of regulatory alternatives and to adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of Section 205 do not apply when they are inconsistent with applicable law. Moreover, Section 205 allows NHTSA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Agency publishes with the final rule an explanation why that alternative was not adopted. Because this proposed rule does not require the expenditure of resources beyond $100 million annually, this action is not subject to the requirements of Sections 202 and 205 of the UMRA.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. Part 594 is associated with a collection of information covered by OMB Clearance No. 2127–0002, a consolidated collection of information for ''Importation of Vehicles and Equipment Subject to the Federal Motor Vehicle Safety, Bumper, and Theft Prevention Standards.'' This proposed rule does not affect the burden hours associated with Clearance No. 2127–0002 because the rule only adjusts the fees associated with participating in the registered importer program. These new fees will not impose a new required collection of information or otherwise affect the scope of the program.

H. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113,15 U.S.C. 272, directs NHTSA to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.,* materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs the Agency to provide Congress, through the OMB, with explanations when we decide not to use available and applicable voluntary consensus standards.

In this proposed rule, we are adjusting the fees associated with the registered importer program. This document does not make substantive changes to the program nor do we adopt any technical standards. For these reasons, Section 12(d) of the NTTAA does not apply.

I. Privacy Act

Anyone can search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the Department of Transportation's (DOT) complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78) or you may visit *http://DocketInfo.dot.gov.*

J. Public Participation

1. How do I prepare and submit comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. *See* 49 CFR 553.21. We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management identified at the beginning of this document, under **ADDRESSES**. You may also submit your comments electronically to the docket following the steps outlined under **ADDRESSES**.

2. How can I be sure that my comments were received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

3. How do I submit confidential business information?

If you wish to submit any information under a claim of confidentiality, you should submit your complete submission, including the information you claim to be confidential business information (CBI), to the NHTSA Chief Counsel. When you send a comment containing CBI, you should include a cover letter setting forth the information specified in our CBI regulation.[3]

In addition, you should submit a copy from which you have deleted the claimed CBI to the Docket by one of the methods set forth above.

To facilitate social distancing due to COVID–19, NHTSA is treating electronic submission as an acceptable method for submitting CBI to the Agency under 49 CFR part 512.

Any CBI submissions sent via email should be sent to an attorney in the

[3] *See* 49 CFR part 512.

Office of Chief Counsel at the address given above under **FOR FURTHER INFORMATION CONTACT**. Likewise, for CBI submissions via a secure file transfer application, an attorney in the Office of Chief Counsel must be set to receive a notification when files are submitted and have access to retrieve the submitted files. At this time, regulated entities should not send a duplicate hardcopy of their electronic CBI submissions to DOT headquarters.

Please note that these modified submission procedures are only to facilitate continued operations while maintaining appropriate social distancing due to COVID–19. Regular procedures for Part 512 submissions will resume upon further notice, when NHTSA and regulated entities discontinue operating primarily in telework status.

If you have any questions about CBI or the procedures for claiming CBI, please consult the attorney identified in the **FOR FURTHER INFORMATION CONTACT** section.

4. How can I read the comments submitted by other people?

You may read the comments received by Docket Management at the address and times given near the beginning of this document under **ADDRESSES**.

You may also see the comments on the internet. To read the comments on the internet, go to *http://www.regulations.gov* and follow the online instructions provided.

You may download the comments. The comments are imaged documents, in either TIFF or PDF format. Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically search the Docket for new material.

K. Plain Language

E.O. 12866 requires each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

1. Have we organized the material to suit the public's needs?
2. Are the requirements in the rule clearly stated?
3. Does the rule contain technical language or jargon that isn't clear?
4. Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
5. Would more (but shorter) sections be better?
6. Could we improve clarity by adding tables, lists, or diagrams?
7. What else could we do to make the rule easier to understand?

If you have any responses to these questions, please include them in your comments on this proposal.

L. Regulation Identifier Number (RIN)

The DOT assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN that appears in the heading on the first page of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 594

Administrative practice and procedure, Imports, Motor vehicle safety, Motor vehicles.

For the reasons stated in the preamble, NHTSA proposes to amend 49 CFR part 594 as follows:

PART 594—SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

■ 1. The authority citation for part 594 is revised to read as follows:

Authority: 49 U.S.C. 30141, 31 U.S.C. 9701; delegation of authority at 49 CFR 1.95 and 49 CFR 501.8(g).

■ 2. Amend § 594.6 by:
■ a. Revising the introductory text of paragraph (a);
■ b. Revising paragraph (b);
■ c. Revising the first sentence of paragraph (d);
■ d. Revising paragraph (g);
■ e. Revising the second sentence of paragraph (h); and
■ f. Revising paragraph (i)

§ 594.6 Annual fee for administration of the registration program.

(a) Each person filing an application to be granted the status of a Registered Importer pursuant to part 592 of this chapter on or after October 1, 2022, must pay a fee of $3,568, as calculated below, based upon the direct and indirect costs attributable to: * * *

* * * * *

(b) That portion of the initial fee attributable to application processing for applications filed on and after October 1, 2022, is $437. The sum of $437, representing this portion, shall not be refundable if the application is denied or withdrawn.

* * * * *

(d) That portion of the initial annual fee attributable to the remaining activities of administering the registration program on and after October 1, 2022, is set forth in paragraph (i) of this section. * * *

* * * * *

(g) The direct costs included in establishing the annual fee for maintaining registered importer status are the estimated costs of professional and clerical staff time, computer and computer operator time, and postage, per Registered Importer. The direct costs included in establishing the annual fee for a specific Registered Importer include costs of transportation, lodging, and per diem allowance at the standard CONUS rate as established by the General Services Administration (*see https://www.gsa.gov/perdiem*), attributable to inspections conducted with respect to that Registered Importer in administering the registration program. If NHTSA makes an inspection of the Registered Importer's records or facilities, a supplemental fee will be required. NHTSA will notify the applicant in writing after the conclusion of any such inspection that a supplement to the annual fee in a stated amount is due upon receipt of such notice to recover the direct and indirect costs associated with such inspection and notification, and that the recipient will be subject to automatic revocation or suspension under 49 CFR 592.7(a)(1) if no such supplemental fee is received.

(h) * * * This cost is $42.25 per hour for the period beginning October 1, 2022.

(i) Based upon the elements and indirect costs of paragraphs (f), (g), and (h) of this section, the component of the initial annual fee attributable to administration of the registration program (excluding any charges for inspection costs), covering the period beginning October 1, 2022, is $3,131. When added to the costs of registration of $437, as set forth in paragraph (b) of this section, the costs per applicant to be recovered through the annual fee are $3,568. The annual renewal registration fee for the period beginning October 1, 2022, is $3,619.

■ 3. Amend § 594.7 by revising paragraph (e) to read as follows:

§ 594.7 Fee for filing petitions for a determination whether a vehicle is eligible for importation.

* * * * *

(e) For petitions filed on and after October 1, 2022, the fee payable for seeking a determination under paragraph (a)(1) of this section is $320. The fee payable for a petition seeking a determination under paragraph (a)(2) of this section is $1,280. If the petitioner requests an inspection of a vehicle, costs of transportation, lodging, and per diem

allowance at the standard CONUS rate as established by the General Services Administration (*see https://www.gsa.gov/perdiem*) attributable to the inspection shall be added to such fee. No portion of this fee is refundable if the petition is withdrawn or denied.

* * * * *

■ 4. Amend § 594.8 by revising the first sentences of paragraphs (b) and (c) to read as follows:

§ 594.8 Fee for importing a vehicle pursuant to a determination by the Administrator.

* * * * *

(b) If a determination has been made pursuant to a petition, the fee for each vehicle is $273. * * *

(c) If a determination has been made pursuant to the Administrator's initiative, the fee for each vehicle is $125. * * *

* * * * *

■ 5. Amend § 594.9 by revising paragraphs (c) and (e) to read as follows:

§ 594.9 Fee for reimbursement of bond processing costs and costs for processing offers of cash deposits or obligations of the United States in lieu of sureties on bonds.

* * * * *

(c) The bond processing fee for each vehicle imported on and after October 1, 2022, for which a certificate of conformity is furnished is $11.20.

* * * * *

(e) The fee for each vehicle imported on and after October 1, 2022, for which cash deposits or obligations of the United States are furnished in lieu of a conformance bond is $499.

■ 6. Amend § 594.10 by revising paragraph (d) to read as follows:

§ 594.10 Fee for review and processing of conformity certificate.

* * * * *

(d) The review and processing fee for each certificate of conformity submitted on and after October 1, 2022, is $21. However, if the vehicle covered by the certificate has been entered electronically with the U.S. Department of Homeland Security through the Automated Broker Interface and the registered importer submitting the certificate has an email address, the fee for the certificate is $14, provided that the fee is paid by a credit card issued to the registered importer. If NHTSA finds that the information in the entry or the certificate is incorrect, requiring further processing, the processing fee shall be $58 for every instance in which the foregoing materials are submitted incorrectly.

Issued in Washington, DC, under authority delegated in 49 CFR 1.95, 501.5 and 501.8.

Milton E. Cooper,

Director, Rulemaking Operations.

[FR Doc. 2022–19560 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R5–ES–2021–0163; FF09E21000 FXES1111090FEDR 223]

RIN 1018–BG15

Endangered and Threatened Wildlife and Plants; Endangered Species Status for Tricolored Bat

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose to list the tricolored bat *(Perimyotis subflavus),* a bat species from Guatemala, Honduras, Belize, Nicaragua, Mexico, a small part of southeastern Canada, and all or portions of the following 39 States and the District of Columbia: Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Wisconsin, West Virginia, and Wyoming, as an endangered species under the Endangered Species Act of 1973, as amended (Act). This determination also serves as our 12-month finding on a petition to list the tricolored bat. After a review of the best available scientific and commercial information, we find that listing the species is warranted. Accordingly, we propose to list the tricolored bat as an endangered species under the Act. If we finalize this rule as proposed, it will add this species to the List of Endangered and Threatened Wildlife and extend the Act's protections to the species. We find that designating critical habitat for this species is not prudent. We also are notifying the public that we have scheduled an informational meeting followed by a public hearing on the proposed rule.

DATES: We will accept comments received or postmarked on or before November 14, 2022. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date.

Public informational meeting and public hearing: We will hold a public informational meeting from 6:00 p.m. to 7:30 p.m., eastern time, followed by a public hearing from 7:30 p.m. to 8:30 p.m., eastern time, on October 12, 2022.

ADDRESSES: You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R5–ES–2021–0163, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R5–ES–2021–0163, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

Public informational meeting and public hearing: The public informational meeting and the public hearing will be held virtually using the Zoom platform. See Public Hearing, below, for more information.

FOR FURTHER INFORMATION CONTACT: Sonja Jahrsdoerfer, Field Supervisor, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 110 Radnor Rd, Suite 101, State College, PA 16801; telephone 814–234–4090. 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:

Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) The species' biology, range, and population trends, including:

(a) Biological or ecological requirements of the species, including habitat requirements for feeding, breeding, and sheltering;

(b) Genetics and taxonomy;

(c) Historical and current range, including distribution patterns;

(d) Historical and current population levels, and current and projected trends; and

(e) Past and ongoing conservation measures for the species, its habitat, or both.

(2) Factors that may affect the continued existence of the species, which may include habitat modification or destruction, overutilization, disease, predation, the inadequacy of existing regulatory mechanisms, or other natural or manmade factors.

(3) Biological, commercial trade, or other relevant data concerning any threats (or lack thereof) to this species and existing regulations that may be addressing those threats.

(4) Additional information concerning the historical and current status, range, distribution, and population size of this species, including the locations of any additional populations of this species.

(5) The reasons why we should or should not designate habitat as ''critical habitat'' under section 4 of the Act (16 U.S.C. 1531 *et seq.*), including information to inform the following factors that the regulations identify as reasons why designation of critical habitat may be not prudent:

(a) The species is threatened by taking or other human activity (including vandalism and disturbance of winter habitat) and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(b) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species, or whether any areas meet the definition of ''critical habitat.''

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, will not be considered in making a determination, as section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered or a threatened species must be made ''solely on the basis of the best scientific and commercial data available.''

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Because we will consider all comments and information we receive during the comment period, our final determinations may differ from this proposal. Based on the new information we receive (and any comments on that new information), we may conclude that the species is threatened instead of endangered, or we may conclude that the species does not warrant listing as either an endangered species or a threatened species.

Public Hearing

We have scheduled a public informational meeting with a public hearing on this proposed rule for the tricolored bat. We will hold the public informational meeting and public hearing on the date and time listed above under *Public informational meeting and public hearing* in **DATES**. We are holding the public informational meeting and public hearing via the Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://www.fws.gov/species/tricolored-bat-perimyotis-subflavus.* Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials *(https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public informational meeting and public hearing.

Previous Federal Actions

On June 14, 2016, we received a petition from the Center for Biological Diversity and Defenders of Wildlife requesting that the tricolored bat be listed as endangered or threatened and that critical habitat be designated for this species under the Act. On December 20, 2017, we published a finding that the petition presented substantial scientific or commercial information indicating that the petitioned action may be warranted (82 FR 60362).

Supporting Documents

A species status assessment (SSA) team prepared an SSA report for the tricolored bat. The SSA core team included Service biologists, who consulted with other species and analytical experts (Service 2021, entire). The SSA report represents a compilation of the best scientific and commercial data available concerning the status of the species, including the impacts of past, present, and future factors (both negative and beneficial) affecting the species. In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing actions under the Act, we sought review from six species experts regarding the SSA report. We received responses from two of the six experts. We also sent the SSA report to State, Federal, Tribal, and other (*e.g.,* nongovernmental organizations) entities with expertise in bat biology or threats *COM007*to the species for review.

I. Proposed Listing Determination

Background

A thorough review of the taxonomy, *life history, and ecology of the tricolored bat is presented in the SSA report (Service 2021, entire).

The tricolored bat is a wide-ranging bat species found in 39 States, the District of Columbia, 4 Canadian provinces, Belize, Guatemala, Honduras, Nicaragua, and Mexico. Tricolored bat is one of the smallest bats in eastern North America and is distinguished by its unique tricolored fur that appears dark at the base, lighter in the middle, and dark at the tip (Barbour and Davis 1969, p. 115). Tricolored bats often appear yellowish (varying from pale yellow to nearly orange), but may also appear silvery-gray, chocolate brown, or black (Barbour and Davis 1969, p. 115). Males and females are colored alike, and females consistently weigh more than males (LaVal and LaVal 1980, p. 44). Newly volant (able to fly) young are much darker and grayer than adults (Allen 1921, p. 55). Other distinguishing characteristics include 34 teeth (compared with 38 teeth in eastern North American *Myotis* spp. for which this species is sometimes confused), a calcar (*i.e.,* spur of cartilage arising from the inner side of the ankle) with no keel (ridge along the breastbone to which the flight muscles are attached), and only the anterior third of the uropatagium (*i.e.,* the membrane that stretches between the legs) is furred (Barbour and Davis 1969, p. 115; Hamilton and Whitaker 1979, p. 85).

Regulatory and Analytical Framework

Regulatory Framework

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species is an endangered species or a threatened species. On July 5, 2022, the U.S. District Court for the Northern District of California vacated regulations that the Service (jointly with the National Marine Fisheries Service) promulgated in 2019 modifying how the Services add, remove, and reclassify threatened and endangered species and the criteria for designating listed species' critical habitat (*Center for Biological Diversity* v. *Haaland,* No. 4:19–cv–05206–JST, Doc. 168 (*CBD* v. *Haaland*)). As a result of that vacatur, regulations that were in effect before those 2019 regulations now govern species classification and critical habitat decisions. Our analysis for this proposal applied those pre-2019 regulations. However, given that litigation remains regarding the court's vacatur of those 2019 regulations, we also undertook an analysis of whether the proposal would be different if we were to apply the 2019 regulations. We concluded that the proposal would have been the same if we had applied the 2019 regulations. The analyses under both the pre-2019 regulations and the 2019 regulations are included in the decision file for this proposal.

The Act defines an ''endangered species'' as a species that is in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether any species is an endangered species or a threatened species because of any of the following factors:

(A) The present or threatened destruction, modification, or curtailment of its habitat or range;

(B) Overutilization for commercial, recreational, scientific, or educational purposes;

(C) Disease or predation;

(D) The inadequacy of existing regulatory mechanisms; or

(E) Other natural or manmade factors affecting its continued existence.

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to or are reasonably likely to negatively affect individuals of a species. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition or the action or condition itself.

However, the mere identification of any threat(s) does not necessarily mean that the species meets the statutory definition of an ''endangered species'' or a ''threatened species.'' In determining whether a species meets either definition, we must evaluate all identified threats by considering the species' expected response and the effects of the threats—in light of those actions and conditions that will ameliorate the threats—on an individual, population, and species level. We evaluate each threat and its expected effects on the species, then analyze the cumulative effect of all of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that will have positive effects on the species, such as any existing regulatory mechanisms or conservation efforts. The Secretary determines whether the species meets the definition of an ''endangered species'' or a ''threatened species'' only after conducting this cumulative analysis and describing the expected effect on the species now and in the foreseeable future.

The Act does not define the term ''foreseeable future,'' which appears in the statutory definition of ''threatened species.'' Because the decision in *CBD* v. *Haaland* vacated our 2019 regulations regarding the foreseeable future, we refer to a 2009 Department of the Interior Solicitor's opinion entitled ''The Meaning of 'Foreseeable Future' in Section 3(20) of the Endangered Species Act'' (M–37021). That Solicitor's opinion that foreseeable future ''must be rooted in the best available data that allow predictions into the future'' and extends as far as those predictions are ''sufficiently reliable to provide a reasonable degree of confidence in the prediction, in light of the conservation purposes of the Act.'' *Id.* at 13.

It is not always possible or necessary to define the foreseeable future as a particular number of years. Analysis of the foreseeable future uses the best scientific and commercial data available and should consider the timeframes applicable to the relevant threats and to the species' responses to those threats in view of its life-history characteristics. Data that are typically relevant to assessing the species' biological response include species-specific factors such as lifespan, reproductive rates or productivity, certain behaviors, and other demographic factors.

Analytical Framework

The SSA report documents the results of our comprehensive biological review of the best scientific and commercial data regarding the status of the species, including an assessment of the potential threats to the species. The SSA report does not represent our decision on whether the species should be proposed for listing as an endangered or threatened species under the Act. However, it does provide the scientific basis that informs our regulatory decisions, which involve the further application of standards within the Act

and its implementing regulations and policies. The following is a summary of the key results and conclusions from the SSA report; the full SSA report can be found at Docket No. FWS–R5–ES–2021–0163 on *https://www.regulations.gov.*

To assess tricolored bat viability, we used the three conservation biology principles of resiliency, redundancy, and representation (Shaffer and Stein 2000, pp. 306–310). Briefly, resiliency supports the ability of the species to withstand environmental and demographic stochasticity (for example, wet or dry, warm or cold years), redundancy supports the ability of the species to withstand catastrophic events (for example, droughts, large pollution events), and representation supports the ability of the species to adapt over time to long-term changes in the environment (for example, climate changes). In general, the more resilient and redundant a species is and the more representation it has, the more likely it is to sustain populations over time, even under changing environmental conditions. Using these principles, we identified the species' ecological requirements for survival and reproduction at the individual, population, and species levels, and described the beneficial and risk factors influencing the species' viability.

The SSA process can be categorized into three sequential stages. During the first stage, we evaluated the individual species' life-history needs. The next stage involved an assessment of the historical and current condition of the species' demographics and habitat characteristics, including an explanation of how the species arrived at its current condition. The final stage of the SSA involved making predictions about the species' responses to positive and negative environmental and anthropogenic influences. Throughout all of these stages, we used the best available information to characterize viability as the ability of a species to sustain populations in the wild over time. We use this information to inform our regulatory decision.

Summary of Biological Status and Threats

The individual, population-level, and species-level needs of the tricolored bat are summarized below in Tables 1–3. For additional information, please see the SSA report (Service 2021, chapter 2).

TABLE 1—THE ECOLOGICAL REQUISITES FOR SURVIVAL AND REPRODUCTIVE SUCCESS OF TRICOLORED BAT INDIVIDUALS

Life stage	Season
Pups	*Summer*—roosting habitat with suitable conditions for lactating females and for pups to stay warm and protected from predators while adults are foraging.
Juveniles	*Summer*—other maternity colony members (colony dynamics, thermoregulation); suitable roosting and foraging habitat near abundant food and water resources. *Fall*—suitable roosting and foraging habitat near abundant food and water resources. *Winter*—habitat with suitable microclimate conditions.
Reproductive Females	*Summer*—other maternity colony members (colony dynamics); network of suitable roosts (*i.e.,* multiple summer roosts in close proximity) near conspecifics and foraging habitat near abundant food and water resources.
All Adults	*Spring*—suitable roosting and foraging habitat near abundant food and water resources; habitat connectivity and open-air space for safe migration between winter and summer habitats. *Summer*—roosts and foraging habitat near abundant food and water resources. *Fall*—suitable roosting and foraging habitat near abundant food and water resources; cave and/or mine entrances (or other similar locations, *e.g.,* culvert, tunnel) for conspecifics to swarm and mate; habitat connectivity and open-air space for safe migration between winter and summer habitats. *Winter*—habitat with suitable microclimate conditions.

TABLE 2—POPULATION-LEVEL REQUIREMENTS FOR A HEALTHY POPULATION OF TRICOLORED BATS

Parameter	Requirements
Population growth rate, λ	At a minimum, λ must be ≥ 1 for a population to remain stable over time.
Population size, *N*	Sufficiently large *N* to allow for essential colony dynamics and to be resilient to environmental fluctuations.
Winter roosting habitat	Safe and stable winter roosting sites with suitable microclimates.
Migration habitat	Safe space to migrate between spring/fall habitat and winter roost sites.
Spring and fall roosting, foraging, and commuting habitat.	A matrix of habitat of sufficient quality and quantity to support bats as they exit hibernation (lowest body condition) or as they enter into hibernation (need to put on body fat).
Summer roosting, foraging, and commuting habitat.	A matrix of habitat of sufficient quality and quantity to support maternity colonies.

TABLE 3—SPECIES-LEVEL ECOLOGY OF TRICOLORED BATS: REQUISITES FOR LONG-TERM VIABILITY (ABILITY TO MAINTAIN SELF-SUSTAINING POPULATIONS OVER A BIOLOGICALLY MEANINGFUL TIMEFRAME)

3 Rs	Requisites for long-term viability	Description
Resiliency (populations able to withstand stochastic events).	Demographic, physically, and genetically healthy populations across a diversity of environmental conditions.	Self-sustaining populations are demographically, genetically, and physiologically robust; have sufficient quantity of suitable habitat.
Redundancy (number and distribution of populations to withstand catastrophic events).	Multiple and sufficient distribution of populations within areas of unique variation, *i.e.,* representation units.	Sufficient number and distribution to guard against population losses and losses in species adaptive diversity, *i.e.,* reduce covariance among populations; spread out geographically but also ecologically.

TABLE 3—SPECIES-LEVEL ECOLOGY OF TRICOLORED BATS: REQUISITES FOR LONG-TERM VIABILITY (ABILITY TO MAINTAIN SELF-SUSTAINING POPULATIONS OVER A BIOLOGICALLY MEANINGFUL TIMEFRAME)—Continued

3 Rs	Requisites for long-term viability	Description
Representation (genetic and ecological diversity to maintain adaptive potential).	Maintain adaptive diversity of the species.	Populations maintained across breadth of behavioral, physiological, ecological, and environmental diversity.
	Maintain evolutionary processes ...	Maintain evolutionary drivers—gene flow, natural selection—to mimic historical patterns.

In this discussion, we review the biological condition of the species and its resources, and the threats that influence the species' current and future condition, in order to assess the species' overall viability and the risks to that viability. For a full description, see the SSA report (Service 2021, entire).

Although there are other stressors affecting tricolored bat, the primary factor influencing its viability is white-nose syndrome (WNS), a disease of bats caused by a fungal pathogen. Some of the other factors that influence tricolored bat's viability include wind-energy-related mortality, habitat loss, and effects from climate change. These stressors and their effects to tricolored bat are summarized below:

White Nose Syndrome

For over a decade, WNS has been the foremost stressor on tricolored bat. WNS is a disease of bats that is caused by the fungal pathogen *Pseudogymnoascus destructans* (*Pd*). *Pd* invades the skin of bats, initiating a cascade of physiological and behavioral processes that often lead to mortality. Infection leads to increases in the frequency and duration of arousals during hibernation and raises energetic costs during torpor bouts, both of which cause premature depletion of critical fat reserves needed to survive winter (Turner et al. 2011, p. 15; Reeder et al. 2012, p. 5; Carr et al. 2014, p. 21; McGuire et al. 2017, p. 682; Cheng et al. 2019, p. 2). Bats that do not succumb to starvation in hibernacula often seek riskier roosting locations near entrances to roosts or emerge from roosts altogether, where they face exposure to winter conditions and scarce prey resources on the landscape (Langwig et al. 2012, p. 2).

Pd continues to spread driven by natural interactions among bats and their environment, despite effective conservation measures to reduce human contributions to its spread. The fungus arrives on a few bats and spreads through the colony as a result of swarming and roosting interactions until most individuals are exposed to the pathogen. Such interactions may occur in hibernacula or at nearby roosts where conspecifics (members of the same species) engage in mating activity (Neubaum and Siemers, 2021, p. 2). Once *Pd* arrives, WNS soon develops in these infected populations. Since the arrival of *Pd* in 2006 and the writing of this proposed rule, it has spread to 40 States in the United States and 8 provinces in Canada.

Wind-Energy-Related Mortality

Wind-energy-related mortality of tricolored bat is a consequential stressor at local and regional levels. Tricolored bats are killed at wind energy projects primarily through collisions with moving turbine blades. Wind power is a rapidly growing portion of North America's energy portfolio in part due to changes in State energy goals (NCSL 2021, entire) and recent technological advancements (Berkeley Lab 2020, entire) and declining costs (Wiser et al. 2021, entire), allowing turbines to be placed in less windy areas.

Bat fatality varies across facilities, between seasons, and among species. Analyses suggest that the impact of wind related mortality is discernible from the effects of WNS in the ongoing decline of tricolored bat (Wiens et al. 2022, pp. 215–251; Whitby et al. 2022, pp. 145–163). Abundance of tricolored bat is projected to decrease by 19–21 percent by 2030 under current wind development scenarios (Wiens et al. 2022, pp. 215–251). As the wind energy risk index (the overall result of a risk assessment) increased, there is a decline in the predicted relative abundance of tricolored bats (Whitby et al. 2022, pp. 145–163). In other words, as wind energy installations increase in size, number, or distribution, tricolored bat survey counts declined.

Habitat Loss and Disturbance

Habitat loss and disturbance may result in the loss of suitable roosting or foraging habitat or loss of hibernacula. There are a variety of causes of habitat loss and disturbance that affect the tricolored bat such as (but not limited to) forest removal or conversion and anthropogenic hibernacula disturbance or destruction from human entry into hibernation sites. Loss of roosting, foraging, and commuting habitat may vary in the impacts to tricolored bats depending on the timing, location, and extent of the removal (Service 2021, pp. 49, 50). Although there have been losses of tricolored bat habitat and impacts could be high in the future, we find the current impact of habitat loss to be ''Low'' because the severity of population-level declines is slight. (Service 2021, p. 43). Forest removal may result in the following impacts to tricolored bats: loss of suitable roosting or foraging habitat, longer flights between suitable roosting and foraging due to habitat fragmentation of remaining forest patches, fragmentation of maternity colonies due to removal of travel corridors, and direct injury or mortality (during active season tree removal). Loss or modification of winter habitats may also result in negative impacts to tricolored bat, especially given the species' high site fidelity and narrow microclimate requirements for hibernation.

Additionally, disturbance (*e.g.,* human entry) during hibernation results in increased arousals in tricolored bat, which leads to increased energy expenditure at a time when food and water resources are scarce or unavailable. Disturbance is more impactful in hibernacula where a species is affected by WNS because more frequent arousals from torpor increases the probability of mortality in bats with limited fat stores (Boyles and Willis 2010, p. 96) and human entry is likely to contribute to the spread of *Pd* in both long and short distances (Bernard et al. 2020, p. 5–6).

While temporary or permanent habitat loss may occur throughout the species' range, impacts to tricolored bat and its habitat typically occur at a more local scale (*i.e.,* individuals and potentially colonies). However, mortality resulting from the loss of summer roosting and foraging habitat, winter hibernacula, or both may compound the impacts from WNS.

Climate Change

Climate change factors that may impact bats include changes in extreme drought, cold, or excessive rainfall, which may lead to changes in

hibernation patterns or direct mortality from extreme events (Jones et al. 2009, p. 94). Potential impacts of climate change that include effects to bat foraging, roosting, reproduction, and biogeography have also been reviewed and discussed (Sherwin et al. 2013). Additionally, climate change is likely to influence disease dynamics (for example, *Pd* survival) as temperature, humidity, phenology and other factors affect the interactions between *Pd* and hibernating bats (Hayman et al. 2016, p. 5; McClure et al. 2020, p. 2; Hoyt et al. 2021, p. 8).

Changing climatic conditions, including changes in temperature and precipitation, influence tricolored bat's resource needs, such as suitable summer and winter roosting habitat, foraging habitat, and prey availability. Although pervasive across tricolored bat's range, the magnitude, direction, and seasonality of climate change will vary geographically (*e.g.,* some regions will experience more frequent droughts, which may lead to reduced tricolored bat survival or reproductive success; alternatively, some regions will experience heavier and more frequent precipitation events that may lead to decreased foraging bouts and insect availability). In addition, the resiliency of populations and inherent differences (*e.g.,* genetics) among populations may result in differing ability for tricolored bat to respond to the same types of changes across the range. Therefore, the overall impact of climate change for such a wide-ranging species is challenging to describe. Although there may be some benefit to tricolored bat from a changing climate, overall negative impacts are anticipated.

In evaluating current conditions of the tricolored bat, we used the best available data (further described in the SSA report; Service 2021, pp. 51–57). Winter hibernacula counts provide the most consistent, long-term, reliable trend data and provide the most direct measure of WNS impacts. We also used summer data (mist-net capture data and mobile and stationary acoustic data) in evaluating population trends, although the availability and quality of summer data varies temporally and spatially.

Available evidence, including both winter and summer data, indicates tricolored bat abundance has and will continue to decline substantially under current demographic and stressor conditions, primarily driven by the effects of WNS. To assess changes in diversity (genetic and ecological), we identified and delineated the variation across tricolored bat's range into three geographical representation units using the following proxies: variation in biological traits, genetic diversity, peripheral populations, habitat niche diversity, and steep environmental gradients (marked change in bioclimate such as temperature or precipitation) (Service 2021, p. 27).

WNS has caused estimated tricolored bat population declines of 90–100 percent across 59 percent of the species' range (Cheng et al. 2021, p. 7). Current demographic conditions based on past declines indicate the rangewide number of tricolored bat's known extant winter colonies has declined by 29 percent; in other words, almost one third of the species known hibernacula are extirpated but steep declines have been observed across a larger portion of its range. For the purposes of our analysis an extant winter colony is one in which at least two tricolored bats have been found; therefore, although the number of extant winter colonies has declined by 29 percent, the number of bats within winter colonies across the range has declined substantially. Tricolored bat winter abundance has declined across all representation units but varies spatially (24–89 percent). Declining trends in tricolored bat occurrence and abundance is also evident from summer data: (1) tricolored bat rangewide occupancy declined 28 percent in the period 2010–2019; (2) mobile acoustic detections decreased 53 percent in the period 2009–2019; and (3) summer mist-net captures declined 12 to 19 percent compared to pre-WNS capture rates. Based on current demographic and stressor conditions, future projections of tricolored bat abundance, number of hibernacula, and spatial extent will continue to decline. Under these current conditions (no expansion or increase in threats), by 2030, rangewide abundance declines by 89 percent, the number of known winter colonies declines by 91 percent, and tricolored bat's spatial extent declines by 65 percent (Service 2021, entire). Projected declines in tricolored bat's abundance, number of winter colonies, and spatial extent are widespread across all representation units under current conditions.

As discussed above, multiple data types and analyses indicate downward trends in tricolored bat population abundance and distribution over the last 14 years, and the best available information indicate that this downward trend will continue. Tricolored bat abundance (winter and summer), number of known occupied hibernacula, spatial extent, and summer habitat occupancy across the range and within all representation units are decreasing.

Since the first detection of WNS in 2006, tricolored bat abundance has declined, leaving many individual colonies with small numbers of individuals. At these low population sizes, colonies are vulnerable to individual extirpations from stochastic events and are vulnerable to the effects of cumulative impacts from multiple stressors. Furthermore, small populations generally cannot rescue one another from such a depressed state owing to the tricolored bat's low reproductive output (two pups per year) and high philopatry (tending to return to or remain near a particular site or area). These inherent life-history traits limit the ability of populations to recover from these low abundances. Consequently, effects of small population sizes exacerbate the effects of current and future declines due to continued exposure to WNS, mortality from wind turbines, and impacts associated with habitat loss and climate change.

We note that, by using the SSA framework to guide our analysis of the scientific information documented in the SSA report, we have not only analyzed individual effects on the species, but we have also analyzed their potential cumulative effects. Using the SSA framework, we considered the cumulative impacts of white nose syndrome, wind energy-related mortality, habitat loss, and impacts of climate change on the tricolored bat. We incorporate the cumulative effects into our SSA analysis when we characterize the current and future condition of the species. To assess the current and future condition of the species, we undertake an iterative analysis that encompasses and incorporates the threats individually and then accumulates and evaluates the effects of all the factors that may be influencing the species, including threats and conservation efforts. Because the SSA framework considers not just the presence of the factors, but to what degree they collectively influence risk to the entire species, our assessment integrates the cumulative effects of the factors and replaces a standalone cumulative effects analysis.

Conservation Efforts and Regulatory Mechanisms

Below is a brief description of conservation measures and regulatory mechanisms that are currently in place. Please see the SSA report for a more detailed description (Service 2021, Appendix 4).

Multiple national and international efforts are underway in an attempt to reduce the impacts of WNS. To date, there are no proven measures to reduce the severity of impacts. More than 100

State and Federal agencies, Tribes, organizations, and institutions are engaged in this collaborative work to combat WNS and conserve affected bats. Partners from all 39 States in the tricolored bat range, Canada, and Mexico are engaged in collaborations to conduct disease surveillance, population monitoring, and management actions in preparation for or response to WNS; however, there are currently no conservation measures known to reduce the severity of WNS impacts.

To reduce bat fatalities, some wind facilities ''feather'' turbine blades (*i.e.,* pitch turbine blades parallel with the prevailing wind direction to slow rotation speeds) at low wind speeds when bats are more at risk. The wind speed at which the turbine blades begin to generate electricity is known as the ''cut-in speed,'' and this can be set at the manufacturer's speed or at a higher threshold, typically referred to as curtailment. The effectiveness of feathering below various cut-in speeds differs among sites and years (Arnett et al. 2013, entire; Berthinussen et al. 2021, pp. 94–106); nonetheless, most studies involving all bat species have shown fatality reductions of greater than 50 percent associated with raising cut-in speeds by 1.0–3.0 meters per second (m/s) above the manufacturer's cut-in speed (Arnett et al. 2013, entire; USFWS unpublished data).

All States have active forestry programs with a variety of goals and objectives. Several States have established habitat protection buffers around known Indiana bat *(Myotis sodalis)* hibernacula that will also serve to benefit other bat species by maintaining sufficient quality and quantity of swarming habitat. Some States conduct some of their forest management activities in the winter within known listed bat home ranges as a measure to protect maternity colonies and non-volant pups during summer months. Depending on the type and timing of activities, forest management can be beneficial to bat species (*e.g.,* maintaining or increasing suitable roosting and foraging habitat). Forest management that results in heterogeneous (including forest type, age, and structural characteristics) habitat may benefit tree-roosting bat species (Silvis et al. 2016, p. 37). Silvicultural practices can meet both male and female tricolored bat roosting requirements by maintaining large-diameter snags in early stages of decay, while allowing for regeneration of forests (Lacki and Schwierjohann 2001, p. 487).

Many State and Federal agencies, conservation organizations, and land trusts have installed bat-friendly gates to protect important hibernation sites. All known hibernacula within national grasslands and forestlands of the Rocky Mountain Region of the U.S. Forest Service (USFS) are closed during the winter hibernation period, primarily due to the threat of WNS; these closures also reduce disturbance to bats inhabiting these hibernacula (USFS 2013, unpaginated). Because of concern over the importance of bat roosts, including hibernacula, the American Society of Mammalogists developed guidelines for protection of roosts, many of which have been adopted by government agencies and special interest groups (Sheffield *et al.* 1992, p. 707). Also, regulations, such as those implementing the Federal Cave Resources Protection Act (16 U.S.C. 4301 *et seq.*), protect caves on Federal lands by limiting access to some caves, thereby reducing disturbance. Finally, many Indiana bat hibernacula have been gated and permanently protected, which consequently benefits tricolored bats also occupying these hibernacula.

Tricolored bat is listed as endangered under Canada's Species at Risk Act (COSEWIC 2013, entire). In addition, tricolored bat receives varying degrees of protection through State laws as it is designated as endangered in Connecticut, Indiana, Massachusetts, New Hampshire, Ohio, Pennsylvania, Vermont, and Virginia; State-threatened in Tennessee and Wisconsin; and special concern in Alabama, Georgia, Iowa, Maine, Michigan, Minnesota, Missouri, South Carolina, and West Virginia.

Future Condition

As part of the SSA, we also developed future condition scenarios to capture the range of uncertainties regarding future threats and the projected responses by the tricolored bat. To project future installed wind capacity, we relied upon National Renewable Energy Laboratory's (NREL; Cole et al. 2020) and Canadian Energy Regulator's (CER 2020) projections for the U.S. and Canada. To project future impacts of WNS, we relied on (1) predicted current and future occurrence of Pd on the landscape using two different models and (2) the WNS impacts schedule, both created from empirical *Pd* spread rates and WNS impact data. Because we determined that the current condition of the tricolored bat was consistent with an endangered species (see Determination of Tricolored Bat Status, below), we are not presenting the results of the future scenarios in this proposed rule. Please refer to the SSA report (Service 2021) for the full analysis of future scenarios.

Determination of Tricolored Bat Status

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations (50 CFR part 424) set forth the procedures for determining whether a species meets the definition of an endangered species or a threatened species. The Act defines an ''endangered species'' as a species in danger of extinction throughout all or a significant portion of its range, and a ''threatened species'' as a species likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The Act requires that we determine whether a species meets the definition of an endangered species or a threatened species because of any of the following factors: (A) The present or threatened destruction, modification, or curtailment of its habitat or range; (B) Overutilization for commercial, recreational, scientific, or educational purposes; (C) Disease or predation; (D) The inadequacy of existing regulatory mechanisms; or (E) Other natural or manmade factors affecting its continued existence.

Status Throughout All of Its Range

WNS has been the foremost stressor on tricolored bat for more than a decade and continues to be currently. The fungus that causes the disease, *Pd,* invades the skin of bats and leads to infection that increases the frequency and duration of arousals during hibernation that eventually deplete the fat reserves needed to survive winter, often resulting in mortality. WNS has caused estimated tricolored bat population declines of 90 to 100 percent across 59 percent of the species' range (Factor C). Winter abundance (from known hibernacula) has declined rangewide (52 percent) and across all representation units (24 to 89 percent), and the number of extant winter colonies also declined rangewide (29 percent). Rangewide summer occupancy (from mobile and stationary acoustic and mist-net capture data) declined by 28 percent from 2010 to 2019. Summer data collected from mobile acoustic transects found a 53-percent decline in rangewide relative abundance from 2009 to 2019, and summer mist-net captures declined by 12 to 19 percent (across representation units) compared to pre-WNS capture rates.

Tricolored bat abundance and spatial extent has also substantially declined. Consequently, the species is more vulnerable to catastrophic events because the risk is no longer spread across as large an area as it once was.

For example, the number of known extant winter colonies has declined 29 percent since the year 2000 and there has been a shift to smaller colony sizes in those that remain. Lastly, as populations have been extirpated and areas occupied by the species have declined, so has redundancy.

Tricolored bat representation has also been reduced with declines in abundance in all representation units and habitat types (loss of extent of occurrence). The steep declines in abundance and reductions in extent of occurrence have likely led to corresponding steep reductions in genetic diversity, and thereby has reduced tricolored bat adaptive capacity as the species loses inherent genetic material and variation in ecological settings.

As discussed above, multiple data types and analyses indicate downward trends in tricolored bat population abundance and distribution over the last 14 years, and to the best available scientific information indicates that this downward trend will change near term to the extent that we predict a decrease in rangewide abundance of 89 percent over the next decade. Additionally, the number of winter colonies will likely decline by 91 percent, and the species' spatial extent will likely decline by 65 percent by 2030. The projected widespread reduction in the distribution of occupied hibernacula under current conditions will lead to losses in the diversity of environments and climatic conditions occupied, which will impede the tricolored bat's ability to adapt to changing environmental conditions, more so as populations continue to decline in health and distribution. Moreover, at its current low abundance, loss of genetic diversity via genetic drift (random fluctuations in the numbers of gene variants in a population) will likely accelerate. Consequently, decreasing genetic diversity will further lessen tricolored bat's ability to adapt to novel changes (currently ongoing as well as future changes) and exacerbate declines due to continued exposure to WNS and other stressors.

After evaluating threats to the species and assessing the cumulative effect of the threats under the section 4(a)(1) factors, we find that the tricolored bat's current population status indicates that this species is currently in danger of extinction. The species continues to experience the catastrophic effects of WNS and the compounding effects of other stressors. These threats and their effects on the species are highly likely to continue.

Since the first detection of white nose syndrome in 2006, tricolored bat abundance declined, on average, by 93 percent in known hibernacula with WNS, with most (93%) winter colonies having fewer than 100 individuals (Cheng et al. 2021, p. 7). At these low population sizes, colonies are vulnerable to extirpation from stochastic events (resiliency). Furthermore, tricolored bat's ability to recover from low population size is limited given their low reproductive output (two pups per year). Therefore, tricolored bat's resiliency is greatly compromised in its current condition.

Additionally, under current conditions, tricolored bat's spatial extent has declined and is projected to continue decline, with a 65 percent reduction by 2030. As the tricolored bat's abundance and spatial extent declined, the species has become more vulnerable to catastrophic events (declined redundancy).

In addition to reduced redundancy and resiliency, the bat's representation has also been reduced. Tricolored bat's capacity to adapt is constrained by its life history and the current level of its intraspecific diversity (*e.g.,* genetic, phenotypic, behavioral, ecological variability). The declines in abundance have likely led to reductions in genetic diversity, and thereby reduced tricolored bat adaptive capacity and therefore its representation.

The species meets the definition of endangered rather than threatened. Thus, after assessing the best available information, we determine that tricolored bat is in danger of extinction throughout all of its range.

Status Throughout a Significant Portion of Its Range

Under the Act and our implementing regulations, a species may warrant listing if it is in danger of extinction or likely to become so in the foreseeable future throughout all or a significant portion of its range. We have determined that the tricolored bat is in danger of extinction throughout all of its range and accordingly did not undertake an analysis of any significant portion of its range. Because the tricolored bat warrants listing as endangered throughout all of its range, our determination does not conflict with the decision in *Center for Biological Diversity* v. *Everson,* 435 F. Supp. 3d 69 (D.D.C. 2020), because that decision related to significant portion of the range analyses for species that warrant listing as threatened, not endangered, throughout all of their range.

Determination of Status

Our review of the best available scientific and commercial information indicates that the tricolored bat meets the definition of an endangered species. Therefore, we propose to list the tricolored bat as an endangered species in accordance with sections 3(6) and 4(a)(1) of the Act.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened species under the Act include recognition as a listed species, planning and implementation of recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness, and conservation by Federal, State, Tribal, and local agencies, private organizations, and individuals. The Act encourages cooperation with the States and other countries and calls for recovery actions to be carried out for listed species. The protection required by Federal agencies and the prohibitions against certain activities are discussed, in part, below.

The primary purpose of the Act is the conservation of endangered and threatened species and the ecosystems upon which they depend. The ultimate goal of such conservation efforts is the recovery of these listed species, so that they no longer need the protective measures of the Act. Section 4(f) of the Act calls for the Service to develop and implement recovery plans for the conservation of endangered and threatened species. The goal of this process is to restore listed species to a point where they are secure, self-sustaining, and functioning components of their ecosystems.

The recovery planning process begins with development of a recovery outline made available to the public soon after a final listing determination. The recovery outline guides the immediate implementation of urgent recovery actions while a recovery plan is being developed. Recovery teams (composed of species experts, Federal and State agencies, nongovernmental organizations, and stakeholders) may be established to develop and implement recovery plans. The recovery planning process involves the identification of actions that are necessary to halt and reverse the species' decline by addressing the threats to its survival and recovery. The recovery plan identifies recovery criteria for review of when a species may be ready for reclassification from endangered to threatened (''downlisting'') or removal from

protected status (''delisting''), and methods for monitoring recovery progress. Recovery plans also establish a framework for agencies to coordinate their recovery efforts and provide estimates of the cost of implementing recovery tasks. Revisions of the plan may be done to address continuing or new threats to the species, as new substantive information becomes available. The recovery outline, draft recovery plan, final recovery plan, and any revisions will be available on our website as they are completed (*https://www.fws.gov/program/endangered-species* or *https://www.fws.gov/species/tricolored-bat-perimyotis-subflavus*) or from our Pennsylvania Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Implementation of recovery actions generally requires the participation of a broad range of partners, including other Federal agencies, States, Tribes, nongovernmental organizations, businesses, and private landowners. Examples of recovery actions include habitat restoration (*e.g.,* restoration of native vegetation), research, captive propagation and reintroduction, and outreach and education. The recovery of many listed species cannot be accomplished solely on Federal lands because their range may occur primarily or solely on non-Federal lands. To achieve recovery of these species requires cooperative conservation efforts on private, State, and Tribal lands.

If this species is listed, funding for recovery actions will be available from a variety of sources, including Federal budgets, State programs, and cost-share grants for non-Federal landowners, the academic community, and nongovernmental organizations. In addition, pursuant to section 6 of the Act, the States of Alabama, Arkansas, Colorado, Connecticut, Delaware, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, Wisconsin, West Virginia, and Wyoming would be eligible for Federal funds to implement management actions that promote the protection or recovery of the tricolored bat. Information on our grant programs that are available to aid species recovery can be found at: *https://www.fws.gov/grants.*

Although the tricolored bat is only proposed for listing under the Act at this time, please let us know if you are interested in participating in recovery efforts for this species. Additionally, we invite you to submit any new information on this species whenever it becomes available and any information you may have for recovery planning purposes (see **FOR FURTHER INFORMATION CONTACT**).

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as an endangered or threatened species and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal agency actions within the species' habitat that may require conference or consultation or both as described in the preceding paragraph include management and any other landscape-altering activities on Federal lands administered by the U.S. Fish and Wildlife Service, U.S. Forest Service, Bureau of Land Management, National Park Service, and other Federal agencies; issuance of section 404 Clean Water Act (33 U.S.C. 1251 *et seq.*) permits by the U.S. Army Corps of Engineers; forest management activities funded by Federal agencies on private lands (*e.g.,* Natural Resources Conservation Service); and construction and maintenance of roads or highways by the Federal Highway Administration.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to endangered wildlife. The prohibitions of section 9(a)(1) of the Act, codified at 50 CFR 17.21, make it illegal for any person subject to the jurisdiction of the United States to take (which includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect; or to attempt any of these) endangered wildlife within the United States or on the high seas. In addition, it is unlawful to import; export; deliver, receive, carry, transport, or ship in interstate or foreign commerce in the course of commercial activity; or sell or offer for sale in interstate or foreign commerce any species listed as an endangered species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to employees of the Service, the National Marine Fisheries Service, other Federal land management agencies, and State conservation agencies, as described below.

We may issue permits to carry out otherwise prohibited activities involving endangered wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22. With regard to endangered wildlife, a permit may be issued for the following purposes: for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. The statute also contains certain exemptions from the prohibitions, which are found in sections 9 and 10 of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994 (59 FR 34272), to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of a proposed listing on proposed and ongoing activities within the range of the species proposed for listing.

At this time, we are unable to identify specific activities that would not be considered to result in a violation of section 9 of the Act because the tricolored bat occurs in a variety of habitat conditions across its range and it is likely that site-specific conservation measures may be needed for activities that may directly or indirectly affect the species.

Based on the best available information, the following activities may potentially result in a violation of section 9 of the Act if they are not authorized in accordance with applicable law; this list is not comprehensive:

(1) Unauthorized collecting, handling, possessing, selling, delivering, carrying, or transporting of the species, including import or export across State lines and international boundaries, except for properly documented antique specimens of these taxa at least 100 years old, as defined by section 10(h)(1) of the Act.

(2) Disturbance or destruction (or otherwise making unsuitable) of known hibernacula due to commercial or

recreational activities during known periods of hibernation.

(3) Unauthorized destruction or modification of suitable forested habitat (including unauthorized grading, leveling, burning, herbicide spraying, or other destruction or modification of habitat) in ways that kill or injure individuals by significantly impairing the species' essential breeding, foraging, sheltering, commuting, or other essential life functions.

(4) Unauthorized removal or destruction of trees and other natural and manmade structures being used as roosts by the tricolored bat that results in take of the species.

(5) Unauthorized release of biological control agents that attack any life stage of this taxon.

(6) Unauthorized removal or exclusion from buildings or artificial structures being used as roost sites by the species, resulting in take of the species.

(7) Within areas used by the species, unauthorized building and operation of wind energy facilities that result in take of the species.

(8) Unauthorized discharge into sinkholes of chemicals, fill, or other materials that may lead to contamination of known tricolored bat hibernacula.

Questions regarding whether specific activities would constitute a violation of section 9 of the Act should be directed to the appropriate field office (see *https://www.fws.gov/our-facilities?program=%5B%22Ecological%20Services%22%5D*).

II. Critical Habitat

Background

Critical habitat is defined in section 3 of the Act as:

(1) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features

(a) Essential to the conservation of the species, and

(b) Which 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.

Our regulations at 50 CFR 424.02 define the geographical area occupied by the species as an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals).

Conservation, as defined under section 3 of the Act, means to use and the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which the measures provided pursuant to the Act are no longer necessary. Such methods and procedures include, but are not limited to, all activities associated with scientific resources management such as research, census, law enforcement, habitat acquisition and maintenance, propagation, live trapping, and transplantation, and, in the extraordinary case where population pressures within a given ecosystem cannot be otherwise relieved, may include regulated taking.

Critical habitat receives protection under section 7 of the Act through the requirement that Federal agencies ensure, in consultation with the Service, that any action they authorize, fund, or carry out is not likely to result in the destruction or adverse modification of critical habitat. The designation of critical habitat does not affect land ownership or establish a refuge, wilderness, reserve, preserve, or other conservation area. Such designation also does not allow the government or public to access private lands. Such designation does not require implementation of restoration, recovery, or enhancement measures by non-Federal landowners. Where a landowner requests Federal agency funding or authorization for an action that may affect a listed species or critical habitat, the Federal agency would be required to consult with the Service under section 7(a)(2) of the Act. However, even if the Service were to conclude that the proposed activity would result in destruction or adverse modification of the critical habitat, the Federal action agency and the landowner are not required to abandon the proposed activity, or to restore or recover the species; instead, they must implement ''reasonable and prudent alternatives'' to avoid destruction or adverse modification of critical habitat.

Under the first prong of the Act's definition of critical habitat, areas within the geographical area occupied by the species at the time it was listed are included in a critical habitat designation if they contain physical or biological features (1) which are essential to the conservation of the species and (2) which may require special management considerations or protection. For these areas, critical habitat designations identify, to the extent known using the best scientific and commercial data available, those physical or biological features that are essential to the conservation of the species (such as space, food, cover, and protected habitat).

Under the second prong of the Act's definition of critical habitat, we can designate critical habitat in 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. We note that the court in *CBD* v. *Haaland* vacated the provisions from the 2019 regulations that had modified the criteria for designating critical habitat, including designating critical habitat in areas outside the geographical area occupied by the species at the time of listing. Therefore, the regulations that now govern designations of critical habitat are the implementing regulations that were in effect before the 2019 regulations.

Section 4 of the Act requires that we designate critical habitat on the basis of the best scientific data available. Further, our Policy on Information Standards Under the Endangered Species Act (published in the **Federal Register** on July 1, 1994 (59 FR 34271)), the Information Quality Act (section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658)), and our associated Information Quality Guidelines provide criteria, establish procedures, and provide guidance to ensure that our decisions are based on the best scientific data available. They require our biologists, to the extent consistent with the Act and with the use of the best scientific data available, to use primary and original sources of information as the basis for recommendations to designate critical habitat.

When we are determining which areas should be designated as critical habitat, our primary source of information is generally the information from the SSA report and information developed during the listing process for the species. Additional information sources may include any generalized conservation strategy, criteria, or outline that may have been developed for the species; the recovery plan for the species; articles in peer-reviewed journals; conservation plans developed by States and counties; scientific status surveys and studies; biological assessments; other unpublished

materials; or experts' opinions or personal knowledge.

Habitat is dynamic, and species may move from one area to another over time. We recognize that critical habitat designated at a particular point in time may not include all of the habitat areas that we may later determine are necessary for the recovery of the species. For these reasons, a critical habitat designation does not signal that habitat outside the designated area is unimportant or may not be needed for recovery of the species. Areas that are important to the conservation of the species, both inside and outside the critical habitat designation, will continue to be subject to: (1) conservation actions implemented under section 7(a)(1) of the Act; (2) regulatory protections afforded by the requirement in section 7(a)(2) of the Act for Federal agencies to ensure their actions are not likely to jeopardize the continued existence of any endangered or threatened species; and (3) the prohibitions found in section 9 of the Act. Federally funded or permitted projects affecting listed species outside their designated critical habitat areas may still result in jeopardy findings in some cases. These protections and conservation tools will continue to contribute to recovery of the species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans (HCPs), or other species conservation planning efforts if new information available at the time of those planning efforts calls for a different outcome.

Prudency Determination

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary shall designate critical habitat at the time the species is determined to be an endangered or threatened species. Our regulations (50 CFR 424.12(a)(1)) currently in effect state that designation of critical habitat is not prudent when any of the following situations exist:

(i) The species is threatened by taking or other human activity and identification of critical habitat can be expected to increase the degree of such threat to the species; or

(ii) Such designation of critical habitat would not be beneficial to the species. In determining whether a designation would not be beneficial, the factors the Services may consider include but are not limited to: Whether the present or threatened destruction, modification, or curtailment of a species' habitat or range is not a threat to the species or, whether any areas meet the definition of ''critical habitat.''

We examined the types of habitat that the tricolored bat uses for roosting and hibernating, such as live and dead leaf clusters of live or recently dead deciduous hardwood trees, Spanish moss (*Tillandsia usneoides*), *Usnea trichodea* lichen, pine needles, eastern red cedar, and artificial roosts (*e.g.,* barns, beneath porch roofs, bridges, concrete bunkers). During the winter, tricolored bats hibernate predominately in caves and mines, although in the southern United States, where caves are sparse, tricolored bat often hibernate in road-associated culverts. Although individual bats are killed due to habitat loss, summer (roosting sites) and winter (hibernation sites) habitat is not limiting throughout the range of the species.

The individual needs of the tricolored bat (outlined above in Table 1) may be met in a variety of forested habitats, as evidenced by the species' large historical range over 39 States, southeastern Canada, and central America, in which it occupied, prior to WNS, a wide variety of elevations, forest community types, latitudes, and climates. While temporary or permanent suitable forested habitat loss may occur throughout the species' range, impacts to tricolored bat typically occur at a more local scale (*i.e.,* individuals and potentially colonies), and summer forested habitat continues to be widely available across the species' range. Based on this information, forested habitat loss is not a major driver of the species' status, and suitable forest habitat is not limiting for tricolored bat now nor is it likely to be limiting in the future. Therefore, we conclude that designating the forest habitat of the tricolored bat as critical habitat is not prudent.

In addition, the primary forms of human disturbance to hibernating bats result from human entry such as recreational caving, vandalism, cave commercialization (cave tours and other commercial uses of caves), and research-related activities (Service 2007, p. 80). Human disturbance at hibernacula can cause bats to arouse more frequently, causing premature energy store depletion and starvation (Thomas 1995, p. 944; Speakman et al. 1991, p. 1103), leading to marked reductions in bat populations (Tuttle 1979, p. 3) and increased susceptibility to disease. WNS infection leads to increases in the frequency and duration of arousals during hibernation and raises energetic costs during torpor bouts, both of which cause premature depletion of critical fat reserves needed to survive winter. In our April 27, 2016, determination that designating critical habitat for the northern long-eared bat is not prudent, we outlined a wide array of disturbances to hibernating bats resulting from the above activities (81 FR 24707). Given tricolored bat's similar susceptibility to the above-mentioned threats and overlapping range, we find that our not-prudent determination for the tricolored bat is consistent with our not-prudent finding for northern long-eared bat critical habitat. Identifying wintering habitat (hibernacula) as critical habitat on published maps for the tricolored bat would likely increase the threat from human entry and could increase the spread of WNS by identifying specific sensitive areas.

This not-prudent determination is based on the regulations that preceded the Service's 2019 revisions of 50 CFR part 424 (84 FR 45020; August 27, 2019) because on July 5, 2022, the U.S. District Court for the Northern District of California vacated those 2019 regulations. However, we considered whether the analysis of the prudency of designating critical habitat and the conclusion drawn from that analysis contained in this listing rule would be any different under the regulations at 50 CFR part 424 as they existed while the 2019 revisions were in place. We have concluded that our analysis and conclusion would not be different. To verify whether there would be a different outcome, we considered whether the tri-colored bat involves any of the circumstances in which designation of critical habitat may be not prudent under the 2019 revisions. We found that several of the circumstances for which designation of critical habitat would be not prudent under the 2019 revisions apply to the tri-colored bat. As a result of this analysis, we found that the outcome of the prudency determination would have remained the same under either situation.

Therefore, in accordance with 50 CFR 424.12(a)(1), we determine that designation of critical habitat is not prudent for the tricolored bat.

Public Hearings

We have scheduled a public informational meeting with a public hearing on this proposed rule for the tricolored bat. We will hold the public informational meeting and public hearing on the date and time listed above under *Public informational meeting and public hearing* in **DATES.** We are holding the public informational meeting and public hearing via the

Zoom online video platform and via teleconference so that participants can attend remotely. For security purposes, registration is required. To listen and view the meeting and hearing via Zoom, listen to the meeting and hearing by telephone, or provide oral public comments at the public hearing by Zoom or telephone, you must register. For information on how to register, or if you encounter problems joining Zoom the day of the meeting, visit *https://www.fws.gov/species/tricolored-bat-perimyotis-subflavus.* Registrants will receive the Zoom link and the telephone number for the public informational meeting and public hearing. If applicable, interested members of the public not familiar with the Zoom platform should view the Zoom video tutorials *(https://support.zoom.us/hc/en-us/articles/206618765-Zoom-video-tutorials*) prior to the public informational meeting and public hearing.

The public hearing will provide interested parties an opportunity to present verbal testimony (formal, oral comments) regarding this proposed rule. While the public informational meeting will be an opportunity for dialogue with the Service, the public hearing is not: It is a forum for accepting formal verbal testimony. In the event there is a large attendance, the time allotted for oral statements may be limited. Therefore, anyone wishing to make an oral statement at the public hearing for the record is encouraged to provide a prepared written copy of their statement to us through the Federal eRulemaking Portal, or U.S. mail (see **ADDRESSES,** above). There are no limits on the length of written comments submitted to us. Anyone wishing to make an oral statement at the public hearing must register before the hearing *https://www.fws.gov/species/tricolored-bat-perimyotis-subflavus.* The use of a virtual public hearing is consistent with our regulations at 50 CFR 424.16(c)(3).

Required Determinations

Clarity of the Rule

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

(2) Use the active voice to address readers directly;

(3) Use clear language rather than jargon;

(4) Be divided into short sections and sentences; and

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

National Environmental Policy Act (42 U.S.C. 4321 et seq.)

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act (NEPA; 42 U.S.C. 4321 *et seq.*), need not be prepared in connection with listing a species as an endangered or threatened species under the Endangered Species Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This position was upheld by the U.S. Court of Appeals for the Ninth Circuit (*Douglas County* v. *Babbitt,* 48 F.3d 1495 (9th Cir. 1995), cert. denied 516 U.S. 1042 (1996)).

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994 (Government-to-Government Relations with Native American Tribal Governments; 59 FR 22951), Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments), and the Department of the Interior's manual at 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. In accordance with Secretarial Order 3206 of June 5, 1997 (American Indian Tribal Rights, Federal-Tribal Trust Responsibilities, and the Endangered Species Act), we readily acknowledge our responsibilities to work directly with Tribes in developing programs for healthy ecosystems, to acknowledge that Tribal lands are not subject to the same controls as Federal public lands, to remain sensitive to Indian culture, and to make information available to Tribes. We solicited information, provided updates and invited participation in the SSA process in emails sent to Tribes, nationally, in April 2020 and November 2020. We will continue to work with Tribal entities during the development of a final rule for the tricolored bat.

References Cited

A complete list of references cited in this rulemaking is available on the internet at *https://www.regulations.gov* and upon request from the Pennsylvania Ecological Services Field Office (see **FOR FURTHER INFORMATION CONTACT**).

Authors

The primary authors of this proposed rule are the staff members of the U.S. Fish and Wildlife Service's Species Assessment Team and the Pennsylvania Ecological Services Field Office.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

■ 1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 1531–1544; and 4201–4245, unless otherwise noted.

■ 2. In § 17.11, amend paragraph (h) by adding an entry for ''Bat, tricolored *(Perimyotis subflavus)*'' in alphabetic order under Mammals to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Common name	Scientific name	Where listed	Status	Listing citations and applicable rules
		Mammals		
* *	*	*	*	* *
Bat, tricolored	*Perimyotis subflavus*	Wherever found	E	[**Federal Register** citation when published as a final rule].
* *	*	*	*	* *

* * * * *

Martha Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–18852 Filed 9–13–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 220908–0185; RTID 0648–BL55]

Fisheries of the Northeastern United States; Mid-Atlantic Golden Tilefish Fishery; Framework Adjustment 7 to Tilefish Fishery Management Plan

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

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes to approve and implement Framework Adjustment 7 to the Tilefish Fishery Management Plan, which includes 2022–2024 specifications for the golden tilefish fishery for fishing years 2022–2024, a change to the annual specifications process, and a change to the start of the golden tilefish fishing year. The proposed action is necessary to establish allowable harvest levels and other management measures to prevent overfishing while allowing optimum yield, consistent with the Magnuson-Stevens Fishery Conservation and Management Act and the Tilefish Fishery Management Plan. This action is intended to ensure measures are based on the best scientific information available and increase flexibility, where possible, for the tilefish fishery.

DATES: Comments must be received on September 29, 2022.

ADDRESSES: You may submit comments on this document, identified by NOAA–NMFS–2022–0087, by either of the following method:

• *Electronic Submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2022–0087 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the 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).

Copies of the Environmental Assessment prepared for this action, and other supporting documents for these proposed specifications, are available from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, 800 North State Street, Suite 201, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) manages the golden tilefish fishery under the Tilefish Fishery Management Plan (FMP), which outlines the Council's process for establishing annual specifications. The FMP requires the Council to recommend acceptable biological catch (ABC), annual catch limit (ACL), annual catch target (ACT), total allowable landings (TAL), and other management measures, currently for up to 3 years at a time. The directed fishery is managed under an individual fishing quota (IFQ) program, with small amounts of non-IFQ catch allowed under an incidental permit. The Council's Scientific and Statistical Committee (SSC) provides an ABC recommendation to the Council to derive these catch limits. The Council makes recommendations to NMFS that cannot exceed the recommendation of its SSC. The Council's recommendations must include supporting documentation concerning the environmental, economic, and social impacts of the recommendations. NMFS is responsible for reviewing these recommendations to ensure that they achieve the FMP objectives and are consistent with all applicable laws. Following this review, NMFS publishes the final specifications in the **Federal Register**.

2022–2024 Fishery Specifications

In 2020, the Council set specifications for 2021 and interim specifications for 2022. The 2022 interim specifications were set because of potential timing constraints associated with the 2021 management track stock assessment. The interim 2022 measures provided management measures for the start of the fishing year in the event that there was insufficient time for the Council to approve, and for us to implement, new specifications for the start of the 2022 fishing year (*i.e.,* November 1, 2021). The Council anticipated the use of the 2021 golden tilefish management track stock assessment to review, and possibly revise, the interim 2022 specifications and to set specifications for the 2023 and 2024 fishing seasons. At the July 2021 Scientific and Statistical Committee (SSC) and Monitoring Committee (MC) meetings, new catch and landing limits for the 2022 to 2024 fishing years were recommended to the Council.

After considering recommendations from the SSC, Tilefish MC, Tilefish Advisory Panel, and members of the public, the Council recommended specifications summarized in the table below. The new 2022 ABC represents a 20-percent increase from the interim

2022 specifications, and would maintain a constant ABC for 2023 and 2024. The Council did not recommend any changes to the current recreational bag limit or commercial/incidental trip limit.

TABLE 1—PROPOSED SPECIFICATIONS FOR 2022–2024

ABC	1,964,319 lb (891 mt).
ACL	1,964,319 (891 mt).
IFQ fishery ACT	1,763,478 (800 mt).
Incidental fishery ACT	92,815 (42 mt).
IFQ fishery TAL = ACT (no discards permitted in fishery)	1,763,478 lb (800 mt).
Incidental fishery TAL = Incidental fishery ACT—discards	75,410 lb (42 mt).
Incidental Trip Limit	500 lb (226.8 kg) or 50 percent, by weight, of all fish, including golden tilefish, on board the vessel, whichever is less.
Recreational Bag Limit	8-fish recreational bag-size limit per angler, per trip.

Multi-Year Specifications

Golden tilefish regulations currently allow multi-year annual specifications to be set for up to 3 years at a time. This action would modify the annual specifications process, so that specifications could be set for the maximum number of years needed to be consistent with the Northeast Region Coordinating Council approved stock assessment schedule. Multi-year regulations have been implemented for all fisheries managed by the Council to relieve some of the administrative demands on the Council and NMFS associated with annual specification requirements. Longer-term specifications also provide greater regulatory consistency and predictability to the fishing sectors. This action would provide additional flexibility as specifications could be set to cover the time period until a new golden tilefish stock assessment is available. Stock assessments provide critical information for setting specifications, and in the period between assessments, there often is no new information that would lead to changes to annual specifications. The Council will continue its process of reviewing multi-year specifications each year to determine if any modifications are necessary.

Fishing Year Timing

Current regulations define the golden tilefish fishing year as the 12-month period beginning with November 1. This action would change the fishing year to match the calendar year and would start on January 1. The current fishing year was initially established when the FMP was adopted in 2001 to avoid adding to the administrative burden associated with the start of the calendar year. However, improvements that have since been made in permitting and data-reporting systems have reduced this concern. Changing the fishing year to the calendar year will also match the period used in the stock assessments and the cost recovery program for the golden tilefish IFQ fishery.

The 2022 fishing year began on November 1, 2021, and is operating under interim specifications. If this rule is finalized as proposed, the 2022 fishing year would run through December 31, 2022. The 2023 fishing year, and all subsequent fishing years, would begin on January 1.

Classification

Pursuant to section 304(b)(1)(A) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the NMFS Assistant Administrator has determined that this proposed rule is consistent with the Tilefish FMP, other provisions of the Magnuson-Stevens Act, and other applicable law, subject to further consideration after public comment.

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

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

For Regulatory Flexibility Act purposes, NMFS has established a size standard for small businesses, including their affiliated operations, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as small 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 $11.0 million for all its affiliated operations worldwide. The determination as to whether the entity is large or small is based on the average annual revenue for the 3 years from 2018 through 2020. Data was used from 2018 to 2020, not 2021, because 2020 is the most recent full year of ownership data available. The Small Business Administration has established size standards for all other major industry sectors in the U.S., including defining for-hire fishing firms (NAICS code 487210) as small when their receipts are equal to or less than $8 million.

The measures proposed in this action apply to vessels that hold a federal permit for golden tilefish. According to the ownership database, 143 affiliate firms landed golden tilefish during the 2018–2020 period, with 141 of those business affiliates categorized as small business and 2 categorized as large business. The 3-year average (2018–2020) combined gross receipts (all species combined) for all small entities only was $132,194,765, and the average golden tilefish receipts was $4,973,718. This indicates that golden tilefish revenues contributed approximately 3.76 percent of the total gross receipts for these small entities. The 2 firms that were categorized as large entities had combined gross receipts of $53,450,954 and combined golden tilefish receipts of $417; as such, golden tilefish receipts as a proportion of gross receipts is <0.01 percent.

In general terms, the active commercial golden tilefish fishery participants (*i.e.,* small firms that catch golden tilefish in the directed and incidental fisheries) derive a small share of overall gross receipts from the golden tilefish fishery. However, for small firms generating on average $10,000 or more of their total revenues from golden tilefish revenues (*e.g.,* more dependent on golden tilefish), a large number of the active participants generate a large share of gross receipts from the tilefish fishery.

A business primarily engaged in for-hire fishing activity is classified as a small business if it has combined annual receipts not in excess of $8 million. According to the vessel ownership data, 361 for-hire affiliate firms generated revenues from fishing recreationally for various species during the 2018–2020 period; all of those

business affiliates are categorized as small business. It is not possible to derive what proportion of the overall revenues for these for-hire firms came from specific fishing activities (*e.g.,* summer flounder, scup, black sea bass, bluefish, groundfish, golden tilefish, weakfish, striped bass, tautog, pelagics). Nevertheless, given the relatively low popularity of golden tilefish as a recreational species in the Mid-Atlantic and New England regions, it is likely that revenues generated from golden tilefish is not significant for some, if not all, of these firms. The 3-year average (2018–2020) combined gross receipts (all for-hire fishing activity combined) for the small entities was $49,916,903, ranging from less than $10,000 for 105 entities (lowest value $46) to over $1,000,000 for 8 entities (highest value $3,587,272).

The proposed measures in this action are administrative and the proposed specifications should have no negative impacts on these small businesses. This action will not have a significant economic impact on a substantial number of small entities.

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

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: September 8, 2022.

Samuel D. Rauch, III,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is proposed to be amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

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

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

■ 2. Amend § 648.292 by revising the introductory text paragraph (a) and paragraph (a)(1) to read as follows:

§ 648.292 Tilefish specifications.

(a) *Golden Tilefish.* The golden tilefish fishing year is the 12-month period beginning with January 1, annually.

(1) *Annual specification process.* The Tilefish Monitoring Committee shall review the ABC recommendation of the SSC, golden tilefish landings and discards information, and any other relevant available data to determine if the golden tilefish ACL, ACT, or total allowable landings (TAL) for the IFQ and/or incidental sectors of the fishery require modification to respond to any changes to the golden tilefish stock's biological reference points or to ensure any applicable rebuilding schedule is maintained. The Monitoring Committee will consider whether any additional management measures or revisions to existing measures are necessary to ensure that the IFQ and/or incidental TAL will not be exceeded. Based on that review, the Monitoring Committee will recommend golden tilefish ACL, ACTs, and TALs to the Tilefish Committee of the MAFMC. Based on these recommendations and any public comment received, the Tilefish Committee shall recommend to the MAFMC the appropriate golden tilefish ACL, ACT, TAL, and other management measures for both the IFQ and the incidental sectors of the fishery for a single fishing year or up to the maximum number of years needed to be consistent with the Northeast Regional Coordinating Council-approved stock assessment schedule. The MAFMC shall review these recommendations and any public comments received, and recommend to the Regional Administrator, at least 120 days prior to the beginning of the next fishing year, the appropriate golden tilefish ACL, ACT, TAL, the percentage of TAL allocated to research quota, and any management measures to ensure that the TAL will not be exceeded, for both the IFQ and the incidental sectors of the fishery, for the next fishing year, or up to maximum number of fishing years consistent with the Northeast Regional Coordinating Council-approved stock assessment schedule. The MAFMC's recommendations must include supporting documentation, as appropriate, concerning the environmental and economic impacts of the recommendations. The Regional Administrator shall review these recommendations, and after such review, NMFS will publish a proposed rule in the **Federal Register** specifying the annual golden tilefish ACL, ACT, TAL, and any management measures to ensure that the TAL will not be exceeded for the upcoming fishing year or years for both the IFQ and the incidental sectors of the fishery. After considering public comments, NMFS will publish a final rule in the **Federal Register** to implement the golden tilefish ACL, ACTs, TALs and any management measures. The previous year's specifications will remain effective unless revised through the specification process and/or the research quota process described in paragraph (a)(5) of this section. NMFS will issue notification in the **Federal Register** if the previous year's specifications will not be changed.

* * * * *

[FR Doc. 2022–19801 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–22–P

Notices

Federal Register

Vol. 87, No. 177

Wednesday, September 14, 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

U.S. Codex Office

Codex Alimentarius Commission: Meeting of the Codex Committee on Food Hygiene

AGENCY: U.S. Codex Office, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The U.S Codex Office is sponsoring a virtual public meeting on October 27, 2022. The objective of the public meeting is to provide information and receive public comments on agenda items and draft U.S. positions to be discussed at the 53rd Session of the Codex Committee on Food Hygiene (CCFH) of the Codex Alimentarius Commission, which will take place November 29–December 2, 2022, with the report adoption on December 8, 2022. The U.S. Manager for Codex Alimentarius and the Acting Deputy Under Secretary for Trade and Foreign Agricultural Affairs recognize the importance of providing interested parties the opportunity to obtain background information on the 53rd Session of the CCFH and to address items on the agenda.

DATES: The public meeting is scheduled for October 27, 2022, from 1:00 p.m.–4:00 p.m. EST.

ADDRESSES: The public meeting will take place via video teleconference only. Documents related to the 53rd Session of the CCFH will be accessible via the internet at the following address: *https://www.fao.org/fao-who-codexalimentarius/meetings/detail/en/?meeting=CCFH&session=53.*

Ms. Jenny Scott, U.S. Delegate to the 53rd Session of the CCFH, invites interested U.S. parties to submit their comments electronically to the following email address: *jenny.scott@fda.hhs.gov.*

Registration: Attendees may register to attend the public meeting here: *https://www.zoomgov.com/meeting/register/vJIsf-urrz8iGN5BcwKKuIL3yAYvR__kbtU.* After registering, you will receive a confirmation email containing information about joining the meeting.

For further information about the 53rd Session of the CCFH, contact U.S. Delegate, Ms. Jenny Scott at *jenny.scott@fda.hhs.gov.* For further information about the public meeting, contact the U.S. Codex Office, 1400 Independence Avenue SW, Room 4861, South Agriculture Building, Washington, DC 20250. Phone: (202) 205–7760. Email: *uscodex@usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Codex Alimentarius Commission was established in 1963 by two United Nations organizations: the Food and Agriculture Organization and the World Health Organization. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to protect the health of consumers and ensure fair practices in the food trade.

The Terms of Reference of the Codex Committee on Food Hygiene (CCFH) are:

(a) to draft basic provisions on food hygiene applicable to all food;

(b) to consider, amend if necessary, and endorse provisions on hygiene prepared by Codex commodity committees and contained in Codex commodity standards, and

(c) to consider, amend if necessary, and endorse provisions on hygiene prepared by Codex commodity committees and contained in Codex codes of practice unless, in specific cases, the Commission has decided otherwise, or

(d) to draft provisions on hygiene applicable to specific food items or food groups, whether coming within the terms of reference of a Codex commodity committee or not;

(e) to consider specific hygiene problems assigned to it by the Commission;

(f) to suggest and prioritize areas where there is a need for microbiological risk assessment at the international level and to develop questions to be addressed by the risk assessors; and

(g) to consider microbiological risk management matters in relation to food hygiene and in relation to the risk assessment of FAO and WHO.

The CCFH is hosted by the United States of America.

Issues To Be Discussed at the Public Meeting

The following items on the agenda for the 53rd Session of the CCFH will be discussed during the public meeting:

- Matters referred by the Codex Alimentarius Commission and/or other Codex subsidiary bodies to the Committee
- Matters arising from the work of FAO and WHO (including the FAO/WHO Joint Expert Meetings on Microbiological Risk Assessment (JEMRA))
- Information from the World Organisation for Animal Health (WOAH)
- Proposed draft guidelines for the control of Shiga toxin-producing *Escherichia coli* (STEC) in raw beef, fresh leafy vegetables, raw milk and raw milk cheeses, and sprouts
- Proposed draft guidelines for the safe use and re-use of water in food production
- Discussion paper on revision of the *Guidelines on the Application of General Principles of Food Hygiene to the Control of Pathogenic Vibrio Species in Seafood* (CXG 73–2010)
- Discussion paper on revision of the *Guidelines on the Application of General Principles of Food Hygiene to the Control of Viruses in Food* (CXG 79–2012)
- Other Business and Future Work: (a) New Work/Forward Workplan

Public Meeting

At the public meeting on October 27, 2022, draft U.S. positions on the agenda items will be described and discussed, and attendees will have the opportunity to pose questions and offer comments. Written comments may be offered at the meeting or sent to Ms. Jenny Scott, U.S. Delegate to the 53rd Session of the CCFH (see **ADDRESSES**). Written comments should state that they relate to activities of the 53rd Session of the CCFH.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, the U.S.

Codex Office will announce this **Federal Register** publication on-line through the USDA web page located at: *https://www.usda.gov/codex,* a link that also offers an email subscription service providing access to information related to Codex. Customers can add or delete their subscriptions themselves and have the option to password protect their accounts.

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Mail: U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue SW, Washington, DC 20250–9410.

Fax: (202) 690–7442, Email: *program.intake@usda.gov.*

Persons with disabilities who require alternative means for communication (Braille, large print, audiotape, etc.) should contact USDA's TARGET Center at (202) 720–2600 (voice and TDD).

Done at Washington, DC, on September 8, 2022.

Mary Frances Lowe,

U.S. Manager for Codex Alimentarius.

[FR Doc. 2022–19819 Filed 9–13–22; 8:45 am]

BILLING CODE P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meetings

TIME AND DATE:

Thursday, October 27, 2022, 2:00 p.m. ET (2 hours)

Thursday, January 26, 2023, 2:00 p.m. ET (2 hours)

Thursday, April 27, 2023, 2:00 p.m. ET (2 hours)

Thursday, July 27, 2023, 2:00 p.m. ET (2 hours)

PLACE: The meetings will be held virtually via ZOOM. Links are below and will be available at: *www.csb.gov.*

October 27, 2022: *https://www.zoomgov.com/j/1604597489?pwd=UHp1Q0k4TUNBeDRRZ2ZOQUl3c3lzQT09*

January 26, 2023: *https://www.zoomgov.com/j/1605505000?pwd=Yyt4aXhQRmJ5Mm1xME5uSnltcEtVdz09*

April 27, 2023: *https://www.zoomgov.com/j/1613057790?pwd=QUp6aFdEQThIZUF1MFhXM3ZiSlppUT09*

July 27, 2023: *https://www.zoomgov.com/j/1609291492?pwd=VVM4QXVxU3lkSE83SUl5RE12Ui9jUT09*

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: The Chemical Safety and Hazard Investigation Board (CSB) will convene public meetings on October 27, 2022; January 26, 2023; April 27, 2023; and, July 27, 2023, at 2:00 p.m. ET. These meetings serve to fulfill the CSB's requirement to hold a minimum of four public meetings for Fiscal Year 2023 pursuant to 40 CFR 1600.5(c). The Board will review the CSB's progress in meeting its mission and as appropriate highlight safety products newly released through investigations and safety recommendations.

CONTACT PERSON FOR FURTHER INFORMATION: Hillary Cohen, Communications Manager, at *public@csb.gov* or (202) 446–8094. Further information about these public meetings can be found on the CSB website at: *www.csb.gov.*

ADDITIONAL INFORMATION:

Background: The CSB is an independent federal agency charged with investigating incidents and hazards that result, or may result, in the catastrophic release of extremely hazardous substances. The agency's Board Members are appointed by the President and confirmed by the Senate. CSB investigations look into all aspects of chemical accidents and hazards, including physical causes such as equipment failure as well as inadequacies in regulations, industry standards, and safety management systems.

Public Participation: The meetings are free and open to the public. These meetings will only be available via ZOOM. Close captions (CC) will be provided. At the close of each meeting, there will be an opportunity for public comment. To submit public comments for the record please email the agency at *public@csb.gov.*

Dated: September 9, 2022.

Tamara Qureshi,

Assistant General Counsel, Chemical Safety and Hazard Investigation Board.

[FR Doc. 2022–19932 Filed 9–12–22; 11:15 am]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Texas Advisory Committee; Correction

AGENCY: Commission on Civil Rights.

ACTION: Notice; revision to meeting date.

SUMMARY: The Commission on Civil Rights published a notice in the **Federal Register** on Tuesday, August 23, 2022, concerning a meeting of the Texas Advisory Committee. The meeting date has since changed.

FOR FURTHER INFORMATION CONTACT: Brooke Peery, *bpeery@usccr.gov,* (202) 701–1376.

SUPPLEMENTARY INFORMATION:

Correction: In the **Federal Register** on Tuesday, August 23, 2022, in FR Document Number 2022–18088, on page 51650, first column, change the October 4, 2022, meeting date to September 29, 2022. The meeting time will remain the same: 1 p.m.–2 p.m. CT. In addition, the link to join will remain the same: *https://www.zoomgov.com/meeting/register/vJItceytrTgpGN98b1Xe5v7Q0AgE-qEubLI.*

Dated: September 9, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–19866 Filed 9–13–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–890]

Wooden Bedroom Furniture From the People's Republic of China: Continuation of Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the respective determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on wooden bedroom furniture from the People's Republic of China (China) would likely lead to

continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing this notice of continuation of the AD order.

DATES: Applicable September 14, 2022.

FOR FURTHER INFORMATION CONTACT: Krisha Hill, AD/CVD Operations, Office IV, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4037.

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2005, Commerce published in the **Federal Register** the AD order on wooden bedroom furniture from China.[1] On January 3, 2022, Commerce initiated,[2] and the ITC instituted,[3] the third sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).

As a result of its review, Commerce determined, pursuant to sections 751(c)(1) and 752(c) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of dumping. Commerce, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Order* be revoked.[4] On September 8, 2022, the ITC published its determination that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time, pursuant to sections 751(c) and 752(a) of the Act.[5]

Scope of the Order

The product covered by the *Order* is wooden bedroom furniture. Wooden bedroom furniture is generally, but not exclusively, designed, manufactured, and offered for sale in coordinated groups, or bedrooms, in which all of the individual pieces are of approximately the same style and approximately the same material and/or finish. The subject merchandise is made substantially of wood products, including both solid wood and also engineered wood products made from wood particles, fibers, or other wooden materials such as plywood, strand board, particle board, and fiberboard, with or without wood veneers, wood overlays, or laminates, with or without non-wood components or trim such as metal, marble, leather, glass, plastic, or other resins, and whether or not assembled, completed, or finished.

The subject merchandise includes the following items: (1) wooden beds such as loft beds, bunk beds, and other beds; (2) wooden headboards for beds (whether stand-alone or attached to side rails), wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds; (3) night tables, night stands, dressers, commodes, bureaus, mule chests, gentlemen's chests, bachelor's chests, lingerie chests, wardrobes, vanities, chessers, chifforobes, and wardrobe-type cabinets; (4) dressers with framed glass mirrors that are attached to, incorporated in, sit on, or hang over the dresser; (5) chests-on-chests,[6] highboys,[7] lowboys,[8] chests of drawers,[9] chests,[10] door chests,[11] chiffoniers,[12] hutches,[13] and armoires; [14] (6) desks, computer stands, filing cabinets, book cases, or writing tables that are attached to or incorporated in the subject merchandise; and (7) other bedroom furniture consistent with the above list.

The scope of the *Order* excludes the following items: (1) seats, chairs, benches, couches, sofas, sofa beds, stools, and other seating furniture; (2) mattresses, mattress supports (including box springs), infant cribs, water beds, and futon frames; (3) office furniture, such as desks, stand-up desks, computer cabinets, filing cabinets, credenzas, and bookcases; (4) dining room or kitchen furniture such as dining tables, chairs, servers, sideboards, buffets, corner cabinets, china cabinets, and china hutches; (5) other non-bedroom furniture, such as television cabinets, cocktail tables, end tables, occasional tables, wall systems, book cases, and entertainment systems; (6) bedroom furniture made primarily of wicker, cane, osier, bamboo or rattan; (7) side rails for beds made of metal if sold separately from the headboard and footboard; (8) bedroom furniture in which bentwood parts predominate; [15] (9) jewelry armories; [16] (10) cheval mirrors; [17] (11) certain metal parts; [18]

[1] *See Notice of Amended Final Determination of Sales at Less Than Fair Value and Antidumping Duty Order: Wooden Bedroom Furniture from the People's Republic of China,* 70 FR 329 (January 4, 2005) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 76 (January 3, 2022).

[3] *See Wooden Bedroom Furniture from China; Institution of a Five-Year Review,* 87 FR 121 (January 3, 2022).

[4] *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of the Expedited Third Sunset Review of the Antidumping Duty Order,* 88 FR 27102 (May 6, 2022), and accompanying Issues and Decision Memorandum.

[5] *See Wooden Bedroom Furniture from China,* 87 FR 55036 (September 8, 2022).

[6] A chest-on-chest is typically a tall chest-of-drawers in two or more sections (or appearing to be in two or more sections), with one or two sections mounted (or appearing to be mounted) on a slightly larger chest; also known as a tallboy.

[7] A highboy is typically a tall chest of drawers usually composed of a base and a top section with drawers, and supported on four legs or a small chest (often 15 inches or more in height).

[8] A lowboy is typically a short chest of drawers, not more than four feet high, normally set on short legs.

[9] A chest of drawers is typically a case containing drawers for storing clothing.

[10] A chest is typically a case piece taller than it is wide featuring a series of drawers and with or without one or more doors for storing clothing. The piece can either include drawers or be designed as a large box incorporating a lid.

[11] A door chest is typically a chest with hinged doors to store clothing, whether or not containing drawers. The piece may also include shelves for televisions and other entertainment electronics.

[12] A chiffonier is typically a tall and narrow chest of drawers normally used for storing undergarments and lingerie, often with mirror(s) attached.

[13] A hutch is typically an open case of furniture with shelves that typically sits on another piece of furniture and provides storage for clothes.

[14] An armoire is typically a tall cabinet or wardrobe (typically 50 inches or taller), with doors, and with one or more drawers (either exterior below or above the doors or interior behind the doors), shelves, and/or garment rods or other apparatus for storing clothes. Bedroom armoires may also be used to hold television receivers and/or other audiovisual entertainment systems.

[15] As used herein, bentwood means solid wood made pliable. Bentwood is wood that is brought to a curved shape by bending it while made pliable with moist heat or other agency and then set by cooling or drying. *See* CBP's Headquarters Ruling Letter 043859, dated May 17, 1976.

[16] Any armoire, cabinet, or other accent item for the purpose of storing jewelry, not to exceed 24 inches in width, 18 inches in depth, and 49 inches in height, including a minimum of 5 lined drawers lined with felt or felt-like material, at least one side door or one front door (whether or not the door is lined with felt or felt-like material), with necklace hangers, and a flip-top lid with inset mirror. *See* Memorandum, ''Jewelry Armoires and Cheval Mirrors in the Antidumping Duty Investigation of Wooden Bedroom Furniture from the People's Republic of China,'' dated August 31, 2004; *see also Wooden Bedroom Furniture from the People's Republic of China: Final Changed Circumstances Review, and Determination To Revoke Order in Part,* 71 FR 38621 (July 7, 2006).

[17] Cheval mirrors are any framed, tiltable mirror with a height in excess of 50 inches that is mounted on a floorstanding, hinged base. Additionally, the scope of the Order excludes combination cheval mirror/jewelry cabinets. The excluded merchandise is an integrated piece consisting of a cheval mirror, *i.e.,* a framed tiltable mirror with a height in excess of 50 inches, mounted on a floor-standing, hinged base, the cheval mirror serving as a door to a cabinet back that is integral to the structure of the mirror and which constitutes a jewelry cabinet line with fabric, having necklace and bracelet hooks, mountings for rings and shelves, with or without a working lock and key to secure the contents of the jewelry cabinet back to the cheval mirror, and no drawers anywhere on the integrated piece. The fully assembled piece must be at least 50 inches in height, 14.5 inches in width, and 3 inches in depth. *See Wooden Bedroom Furniture from the People's Republic of China: Final Changed Circumstances Review and Determination To Revoke Order in Part,* 72 FR 948 (January 9, 2007).

[18] Metal furniture parts and unfinished furniture parts made of wood products (as defined above) that are not otherwise specifically named in this scope (*i.e.,* wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and

(12) mirrors that do not attach to, incorporate in, sit on, or hang over a dresser if they are not designed and marketed to be sold in conjunction with a dresser as part of a dresser-mirror set; (13) upholstered beds; [19] (14) toyboxes; [20] (15) certain enclosable wall bed units; [21] (16) certain shoe cabinets; [22] and (17) certain bed bases.[23]

Imports of subject merchandise are classified under subheadings 9403.50.9042 and 9403.50.9045 of the Harmonized Tariff Schedule of the United States (HTSUS) as ''wooden . . . beds'' and under subheading 9403.50.9080 of the HTSUS as ''other . . . wooden furniture of a kind used in the bedroom.'' In addition, wooden headboards for beds, wooden footboards for beds, wooden side rails for beds, and wooden canopies for beds may be entered under subheadings 9403.90.7005 or 9403.90.7080 of the HTSUS. Subject merchandise may also be entered under subheadings 9403.50.9041, 9403.60.8081, 9403.20.0018, or 9403.90.8041. Further, framed glass mirrors may be entered under subheading 7009.92.1000 or 7009.92.5000 of the HTSUS as ''glass mirrors . . . framed.'' The *Order* covers all wooden bedroom furniture meeting the above description, regardless of tariff classification. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Continuation of the Order

As a result of the respective determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States within a reasonably foreseeable time, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order*. U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise.

The effective date of the continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) review of this *Order* not later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order (APO)

This notice also serves as the only reminder to parties subject to an APO of their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and notice are in accordance with section 751(c) of the Act and the notice is published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: September 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19855 Filed 9–13–22; 8:45 am]

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wooden canopies for beds) and that do not possess the essential character of wooden bedroom furniture in an unassembled, incomplete, or unfinished form.

[19] Upholstered beds that are completely upholstered, *i.e.,* containing filling material and completely covered in sewn genuine leather, synthetic leather, or natural or synthetic decorative fabric. To be excluded, the entire bed (headboards, footboards, and side rails) must be upholstered except for bed feet, which may be of wood, metal, or any other material and which are no more than nine inches in height from the floor. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 72 FR 7013 (February 14, 2007).

[20] To be excluded the toy box must: (1) be wider than it is tall; (2) have dimensions within 16 inches to 27 inches in height, 15 inches to 18 inches in depth, and 21 inches to 30 inches in width; (3) have a hinged lid that encompasses the entire top of the box; (4) not incorporate any doors or drawers; (5) have slow-closing safety hinges; (6) have air vents; (7) have no locking mechanism; and (8) comply with American Society for Testing and Materials (''ASTM'') standard F963–03. Toy boxes are boxes generally designed for the purpose of storing children's items such as toys, books, and playthings. *See Wooden Bedroom Furniture from the People's Republic of China: Final Results of Changed Circumstances Review and Determination to Revoke Order in Part,* 74 FR 8506 (February 25, 2009). Further, as determined in the scope ruling memorandum, ''Wooden Bedroom Furniture from the People's Republic of China: Scope Ruling on a White Toy Box,'' dated July 6, 2009, the dimensional ranges used to identify the toy boxes that are excluded from the *Order* apply to the box itself rather than the lid.

[21] Excluded from the scope are certain enclosable wall bed units, also referred to as murphy beds, which are composed of the following three major sections: (1) a metal wall frame, which attaches to the wall and uses coils or pistons to support the metal mattress frame; (2) a metal frame, which has euro slats for supporting a mattress and two legs that pivot; and (3) wood panels, which attach to the metal wall frame and/or the metal mattress frame to form a cabinet to enclose the wall bed when not in use. Excluded enclosable wall bed units are imported in ready to assemble format with all parts necessary for assembly. Enclosable wall bed units do not include a mattress. Wood panels of enclosable wall bed units, when imported separately, remain subject to the *Order.*

[22] Excluded from the scope are certain shoe cabinets 31.5–33.5 inches wide by 15.5–17.5 inches deep by 34.5–36.5 inches high. They are designed strictly to store shoes, which are intended to be aligned in rows perpendicular to the wall along which the cabinet is positioned. Shoe cabinets do not have drawers, rods, or other indicia for the storage of clothing other than shoes. The cabinets are not designed, manufactured, or offered for sale in coordinated groups or sets and are made substantially of wood, have two to four shelves inside them, and are covered by doors. The doors often have blinds that are designed to allow air circulation and release of bad odors. The doors themselves may be made of wood or glass. The depth of the shelves does not exceed 14 inches. Each shoe cabinet has doors, adjustable shelving, and ventilation holes

[23] Excluded from the scope are certain bed bases consisting of: (1) a wooden box frame; (2) three wooden cross beams and one perpendicular center wooden support beam; and (3) wooden slats over the beams. These bed bases are constructed without inner springs and/or coils and do not include a headboard, footboard, side rails, or mattress. The bed bases are imported unassembled.

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of USMCA request for panel review.

SUMMARY: A Request for Panel Review was filed on behalf of the Government of Canada, the Governments of Alberta, British Columbia, New Brunswick, Ontario, and Québec; Alberta Softwood Lumber Trade Council, British Columbia Lumber Trade Council, Conseil de l'industrie forestière du Québec, and Ontario Forest Industries Association; Canfor Corporation, Fontaine, Inc., Mobilier Rustique (Beauce) Inc., J.D. Irving, Limited, Resolute FP Canada Inc., Tolko Marketing and Sales Ltd. and Tolko Industries Ltd., Gilbert Smith Forest Products, and West Fraser Mills Ltd. with the United States Section of the USMCA Secretariat on September 8, 2022, pursuant to USMCA Article 10.12. Panel Review was requested of the U.S. International Trade Administration's Final Results in the 2020 Countervailing Duty Administrative Review of Certain Softwood Lumber from Canada, which was published in the **Federal Register** on August 9, 2022. The USMCA Secretariat has assigned case number USA–CDA–2022–10.12–03 to this request.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary,

USMCA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: Article 10.12 of Chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews),* which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in accordance with Rule 40. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.*

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 11, 2022);

(b) A Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 24, 2022);

(c) The panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: September 9, 2022.

Vidya Desai,

U.S. Secretary, USMCA Secretariat.

[FR Doc. 2022–19880 Filed 9–13–22; 8:45 am]

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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 the Final Results of Antidumping Administrative Review; Notice of Amended Final Results of Antidumping Administrative Review; 2016–2017

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 17, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Saha Thai Steel Pipe Public Company Ltd. et al.* v. *United States,* 538 F. Supp. 3d 1350 (CIT 2021) (*Saha Thai III*), sustaining the U.S. Department of Commerce's (Commerce) second and final results of redetermination pertaining to the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand covering the period of review (POR) March 1, 2016, through February 28, 2017. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review and that Commerce is amending the final results of review with respect to the weighted-average dumping margin assigned to Pacific Pipe Public Company Limited (Pacific Pipe), Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai), and Thai Premium Pipe Company Ltd. (Thai Premium).

DATES: Applicable September 27, 2021.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, 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) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

On October 15, 2018, Commerce published its *Final Results* of the 2016–2017 antidumping duty administrative review of pipes and tubes from Thailand.[1] In the *Final Results,* Commerce determined that a particular market situation (PMS) existed in the Thai pipes and tubes market related to purchases of hot-rolled coil during the POR.

Mandatory respondents Pacific Pipe, Saha Thai, and Thai Premium challenged Commerce's *Final Results* before the CIT. On December 18, 2019, the CIT remanded the *Final Results* to Commerce for further consideration, holding that the PMS adjustment was not in accordance with law.[2] Specifically, the CIT stated that, although section 773(e) of the Tariff Act of 1930, as amended (the Act) ''grants Commerce discretion to adjust a respondent's cost of production in an antidumping margin calculation upon finding a particular market situation, the margin calculation must be based on a comparison of U.S. prices to constructed value, not home-market or third-country prices.'' [3]

In the *First Redetermination* issued in March 2020, Commerce continued to find that a cost-based PMS existed in Thailand that distorted the price of hot rolled coil.[4] Also, in response to the CIT's decision in *Saha Thai II* that, where Commerce determined a PMS existed, the PMS adjustment is limited to situations where normal value is based on constructed value, Commerce revised the margin calculations by basing normal value entirely on constructed value, and it continued to adjust each respondent's hot-rolled coil costs to account for the cost-based PMS.[5]

In December 2020, the CIT again remanded the issue to Commerce, holding that Commerce's *First Redetermination* was not in accordance with law. The CIT ordered Commerce to ''remove the cost-based {PMS} determinations and recalculate the relevant margins without a {PMS} adjustment.'' [6] The CIT held that nothing in the Act grants Commerce ''authority to bypass the sales-below-cost test, and the specificity of the { } test leaves no ambiguity.'' [7]

In the *Second Redetermination,* under protest, Commerce removed the cost-based PMS adjustments, and based normal value on each respondent's

[1] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2016–2017,* 83 FR 51927 (October 15, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *See Saha Thai Steel Pipe Pub. Co. Ltd.* v. *United States,* 422 F. Supp. 3d 1363, 1367–70, 1372 (CIT 2019).

[3] *Id.,* 422 F. Supp. 3d at 1369.

[4] *See Final Results of Redetermination Pursuant to Court Remand, Saha Thai Steel Pipe Pub. Co., Ltd.* v. *United States,* Court No. 18–00214, Slip Op. 19–165, dated March 10, 2020 (*First Redetermination*).

[5] *See First Redetermination.*

[6] *See Saha Thai Steel Pipe Pub. Co. Ltd.* v. *United States,* 487 F. Supp. 3d 1323, 1331–35 (CIT 2020) (*Saha Thai II*).

[7] *Id.,* 487 F. Supp. 3d at 1331–35.

respective home market sale prices.[8] Commerce also reasserted its affirmative cost-based PMS determination and emphasized that ''the clear intent of Congress'' was for Commerce to remedy a PMS, despite its inability to provide such a remedy because of the CIT's order.[9] On September 17, 2021, the CIT issued an opinion sustaining Commerce's *Second Redetermination.*[10] The CIT held that Commerce's continued PMS finding in the *Second Redetermination* was moot because Commerce's recalculation of the respondents' weighted-average dumping margins, without a cost-based PMS adjustment, was consistent with the CIT's order and the affirmative PMS determination would have no practical significance.[11]

Timken Notice

In its decision in *Timken,*[12] as clarified by *Diamond Sawblades,*[13] the U.S. Court of Appeals for the Federal Circuit held that, pursuant to sections 516A(c) and (e) of 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 September 17, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Pacific Pipe, Saha Thai, and Thai Premium. The revised dumping margins are as follows:

Exporter/producer	Final results of review: weighted-average dumping margin (percent)	Final results of redetermination: weighted-average dumping margin (percent)
Pacific Pipe Public Company Limited	30.61	7.38
Saha Thai Steel Pipe (Public) Company, Ltd.	28.00	0.00
Thai Premium Pipe Company Ltd.	30.98	5.23

Cash Deposit Requirements

Because Pacific Pipe, Saha Thai, and Thai Premium each have a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). These amended final results of review will not affect the current cash deposit rates.

Liquidation of Suspended Entries

At this time, Commerce remains enjoined by CIT order from liquidating entries that: were produced and exported by Pacific Pipe, Saha Thai, and Thai Premium, and were entered, or withdrawn from warehouse, for consumption during the period March 1, 2016, through February 28, 2017. These entries will remain enjoined unless the injunction is lifted by the court, pursuant to the terms of the injunction, during the pendency of any appeals process.

In the event the CIT's ruling is upheld by a final and conclusive court decision, Commerce intends to instruct CBP to assess antidumping duties on all appropriate entries covered by this review from Pacific Pipe, Saha Thai, and Thai Premium when the importer-specific *ad valorem* assessment rate is not zero or *de minimis.* Where either the 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 *ad valorem* assessment rate is zero or *de minimis,* we intend to instruct CBP to liquidate the appropriate entries without regard antidumping duties.[14]

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by companies included in these final results of review for which the reviewed companies did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[15]

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 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19859 Filed 9–13–22; 8:45 am]

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[8] *See Final Results of Redetermination Pursuant to Court Remand, Saha Thai Steel Pipe Pub. Co. Ltd.* v. *United States,* Court No. 18–00214, Slip Op. 20–181, dated March 15, 2020 (*Second Redetermination*).

[9] *Id.* at 2–3.

[10] *See Saha Thai III.*

[11] *Id.,* 538 F. Supp. 3d at 1353–54.

[12] *See Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

[13] *See Diamond Sawblades Manufacturers Coalition* v. *United States,* 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

[14] *See* 19 CFR 351.106(c)(2).

[15] For a full discussion of this practice, *see Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Mexico-Canada Agreement (USMCA), Article 10.12: Binational Panel Review: Notice of Request for Panel Review

AGENCY: United States Section, USMCA Secretariat, International Trade Administration, Department of Commerce.

ACTION: Notice of USMCA request for panel review.

SUMMARY: A Request for Panel Review was filed on behalf of the Government of Canada; Conseil de l'industrie forestière du Québec, Ontario Forest Industries Association; Canfor Corporation, Fontaine, Inc., Mobilier Rustique (Beauce) Inc., Resolute FP Canada Inc., Tolko Marketing and Sales Ltd., Tolko Industries Ltd., Gilbert Smith Forest Products, and West Fraser

Mills Ltd. with the United States Section of the USMCA Secretariat on September 8, 2022, pursuant to USMCA Article 10.12. Panel Review was requested of the U.S. International Trade Administration's Final Results in the 2020 Antidumping Duty Administrative Review of Certain Softwood Lumber Products From Canada, which was published in the **Federal Register** on August 9, 2022. The USMCA Secretariat has assigned case number USA–CDA–2022–10.12–02 to this request.

FOR FURTHER INFORMATION CONTACT: Vidya Desai, United States Secretary, USMCA Secretariat, Room 2061, 1401 Constitution Avenue NW, Washington, DC 20230, 202–482–5438.

SUPPLEMENTARY INFORMATION: Article 10.12 of Chapter 10 of USMCA provides a dispute settlement mechanism involving trade remedy determinations issued by the Government of the United States, the Government of Canada, and the Government of Mexico. Following a Request for Panel Review, a Binational Panel is composed to review the trade remedy determination being challenged and issue a binding Panel Decision. There are established USMCA *Rules of Procedure for Article 10.12 (Binational Panel Reviews),* which were adopted by the three governments for panels requested pursuant to Article 10.12(2) of USMCA which requires Requests for Panel Review to be published in accordance with Rule 40. For the complete Rules, please see *https://can-mex-usa-sec.org/secretariat/agreement-accord-acuerdo/usmca-aceum-tmec/rules-regles-reglas/article-article-articulo_10_12.aspx?lang=eng.*

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 44 no later than 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is October 11, 2022);

(b) A Party, an investigating authority or other interested person who does not file a Complaint but who intends to participate in the panel review shall file a Notice of Appearance in accordance with Rule 45 no later than 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is October 24, 2022);

(c) The panel review will be limited to the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and to the procedural and substantive defenses raised in the panel review.

Dated: September 9, 2022.

Vidya Desai,

U.S. Secretary, USMCA Secretariat.

[FR Doc. 2022–19879 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–953]

Narrow Woven Ribbons With Woven Selvedge From the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2020

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The U.S. Department of Commerce (Commerce) determines that certain producers/exporters of narrow woven ribbons with woven selvedge (ribbons) from the People's Republic of China (China) received countervailable subsidies during the period of review (POR) January 1, 2020, through December 31, 2020.

DATES: Applicable September 14, 2022.

FOR FURTHER INFORMATION CONTACT: Terre Keaton Stefanova, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1280.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 2022, Commerce published the *Preliminary Results* of this review and invited interested parties to comment.[1] We received no comments from interested parties on the *Preliminary Results.* Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The products covered by the order are narrow woven ribbons with woven selvedge from China. The merchandise subject to this order is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) statistical categories 5806.32.1020; 5806.32.1030; 5806.32.1050 and 5806.32.1060. Subject merchandise also may enter under subheadings 5806.31.00; 5806.32.20; 5806.39.20; 5806.39.30; 5808.90.00; 5810.91.00; 5810.99.90; 5903.90.10; 5903.90.25; 5907.00.60; and 5907.00.80 and under statistical categories 5806.32.1080; 5810.92.9080; 5903.90.3090; and 6307.90.9891. The HTSUS statistical categories and subheadings are provided for convenience and customs purposes; however, the written description of the merchandise under the order is dispositive.[2]

Final Results of Review

We received no comments from interested parties on the *Preliminary Results* and, therefore, have made no changes in the final results of this review. Accordingly, we continue to base the rate for the sole mandatory respondent, Yama Ribbons and Bows Co., Ltd. (Yama), entirely on facts available.[3] As a result, we have continued to assign to the non-individually examined respondents the rate calculated for Yama in the 2018 administrative review.[4] Thus, we determine the following net countervailable subsidy rates exist for the period January 1, 2020, through December 31, 2020:

Company	Subsidy rate (percent *ad valorem*)
Stribbons (Guangzhou) Ltd. aka MNC Stribbons	42.20
Xiamen Lude Ribbons and Bows Co., Ltd.	42.20
Yama Ribbons and Bows Co., Ltd.	176.95

Disclosure

Normally, Commerce discloses to interested parties the calculations performed in connection with the final results of review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final determination in the **Federal Register**, in accordance with 19 CFR 351.224(b). However, because we have made no changes from the *Preliminary Results,* there are no calculations to disclose.

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[1] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Preliminary Results of Countervailing Duty Administrative Review, Rescission in Part; 2020,* 87 FR 35158 (June 9, 2022) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).

[2] For a full description of the scope of the order, *see* the *Preliminary Results* PDM at 3–5.

[3] *See Preliminary Results,* 87 FR at 35159.

[4] *See Narrow Woven Ribbons with Woven Selvedge from the People's Republic of China: Final Results of Countervailing Duty Administrative Review; 2018*, 86 FR 40462 (July 28, 2021).

Assessment Rates

Consistent with section 751(a)(1) of the Act and 19 CFR 351.212(b)(2), upon completion of the administrative review, Commerce shall determine, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amount shown above, for the companies listed above, for shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this review. For all non-reviewed firms, Commerce will instruct CBP to continue to collect cash deposits 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.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return 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 these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: September 6, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19856 Filed 9–13–22; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–836]

Glycine From the People's Republic of China: Continuation of the Antidumping Duty Order

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: As a result of the determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC) that revocation of the antidumping duty (AD) order on glycine from the People's Republic of China (China) would likely lead to continuation or recurrence of dumping and material injury to an industry in the United States, Commerce is publishing a notice of continuation of the AD order.

DATES: Applicable September 14, 2022.

FOR FURTHER INFORMATION CONTACT: Harrison Tanchuck, 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) 482–7421.

SUPPLEMENTARY INFORMATION:

Background

On March 29, 1995, Commerce published in the **Federal Register** the AD order on glycine from China.[1] On January 3, 2022, Commerce published a notice of initiation of the fifth sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] Commerce conducted an expedited (120-day) sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2).

As a result of its review, pursuant to sections 751(c)(1) and 752(c) of the Act, Commerce determined that revocation of the *Order* on glycine from China would likely lead to continuation or recurrence of dumping. Commerce, therefore, notified the ITC of the magnitude of the margins of dumping likely to prevail should the *Order* be revoked.[3]

On September 2, 2022, the ITC published its determination, pursuant to sections 751(c) and 752(a) of the Act, that revocation of the *Order* would likely lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[4]

Scope of the Order

The product covered by the *Order* is glycine, which is a free-flowing crystalline material, like salt or sugar. Glycine is produced at varying levels of purity and is used as a sweetener/taste enhancer, a buffering agent, reabsorbable amino acid, chemical intermediate, and a metal complexing agent. This proceeding includes glycine of all purity levels. Glycine is currently classified under subheading 2922.49.4020 of the Harmonized Tariff Schedule of the United States (HTSUS).[5] Although the HTSUS subheading is provided for convenience and customs purposes, the written description of the merchandise under the *Order* is dispositive.

Continuation of the Order

As a result of the determinations by Commerce and the ITC that revocation of the *Order* would likely lead to continuation or recurrence of dumping as well as material injury to an industry in the United States, pursuant to section 751(d)(2) of the Act and 19 CFR 351.218(a), Commerce hereby orders the continuation of the *Order.*

U.S. Customs and Border Protection will continue to collect AD cash deposits at the rates in effect at the time of entry for all imports of subject merchandise. The effective date of continuation of the *Order* will be the date of publication in the **Federal Register** of this notice of continuation. Pursuant to section 751(c)(2) of the Act and 19 CFR 351.218(c)(2), Commerce intends to initiate the next five-year (sunset) review of the *Order* no later than 30 days prior to the fifth anniversary of the effective date of continuation.

Administrative Protective Order

This notice also serves as the only reminder to parties subject to an administrative protective order (APO) of

[1] *See Antidumping Duty Order: Glycine from the People's Republic of China,* 60 FR 16116 (March 29, 1995) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 87 FR 76 (January 3, 2022).

[3] *See Glycine from the People's Republic of China: Final Results of the Expedited Sunset Review of the Antidumping Duty Order,* 87 FR 25446 (April 25, 2022), and accompanying Issues and Decision Memorandum.

[4] *See Glycine from the People's Republic of China,* 87 FR 54263 (September 2, 2022).

[5] In separate scope rulings, Commerce determined that: (a) D(-)Phenylglycine Ethyl Dane Salt is outside the scope of the *Order;* and (b) Chinese glycine exported from India remains the same class or kind of merchandise as the China-origin glycine imported into India. *See Notice of Scope Rulings and Anticircumvention Inquiries,* 62 FR 62288 (November 21, 1997); and *Glycine from the People's Republic of China: Final Partial Affirmative Determination of Circumvention of the Antidumping Duty Order,* 77 FR 73426 (December 10, 2012), respectively.

their responsibility concerning the return, destruction, or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO which may be subject to sanctions.

Notification to Interested Parties

This five-year sunset review and this notice are in accordance with section 751I and (d)(2) of the Act and published pursuant to section 777(i)(1) of the Act and 19 CFR 351.218(f)(4).

Dated: September 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19857 Filed 9–13–22; 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 the Final Results of Antidumping Administrative Review; Notice of Amended Final Results of Antidumping Administrative Review; 2017–2018

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 17, 2021, the U.S. Court of International Trade (CIT) issued its final judgment in *Saha Thai Steel Pipe Public Company Ltd.* v. *United States,* 538 F. Supp. 3d 1354 (CIT 2021) (*Saha Thai II*), sustaining the U.S. Department of Commerce's (Commerce) final results of redetermination pertaining to the administrative review of the antidumping duty order on circular welded carbon steel pipes and tubes (pipes and tubes) from Thailand covering the period of review (POR) March 1, 2017, through February 28, 2018. Commerce is notifying the public that the CIT's final judgment is not in harmony with Commerce's final results of the administrative review, and that Commerce is amending the final results of review with respect to the weighted-average dumping margin assigned to Saha Thai Steel Pipe (Public) Company, Ltd. (Saha Thai).

DATES: Applicable September 27, 2021.

FOR FURTHER INFORMATION CONTACT: Charles DeFilippo, 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) 482–3797.

SUPPLEMENTARY INFORMATION:

Background

On November 20, 2019, Commerce published its *Final Results* in the 2017–2018 antidumping duty administrative review of pipes and tubes from Thailand.[1] In the *Final Results,* Commerce determined that a particular market situation (PMS) existed in the Thai pipes and tubes market related to purchases of hot-rolled coil during the POR.[2]

Mandatory respondent Saha Thai challenged Commerce's *Final Results* before the CIT. On October 19, 2020, the CIT remanded the *Final Results* and ordered Commerce to remove its cost-based PMS adjustment and recalculate Saha Thai's weighted-average dumping margin without a PMS adjustment.[3]

In the *Final Redetermination,* issued in March 2021, Commerce, under respectful protest, recalculated Saha Thai's weighted-average dumping margin without making a cost-based PMS adjustment.[4] The CIT held that Commerce's *Final Redetermination* was consistent with the CIT's order in *Saha Thai II.*[5]

Timken Notice

In its decision in *Timken,*[6] as clarified by *Diamond Sawblades,*[7] the U.S. 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 September 17, 2021, judgment constitutes a final decision of the CIT that is not in harmony with Commerce's *Final Results.* Thus, this notice is published in fulfillment of the publication requirements of *Timken.*

Amended Final Results

Because there is now a final court judgment, Commerce is amending its *Final Results* with respect to Saha Thai. The revised dumping margins are as follows:

Exporter/producer	Final results of review: weighted-average dumping margin (percent)	Final results of redetermination: weighted-average dumping margin (percent)
Saha Thai Steel Pipe (Public) Company, Ltd	5.15	0.00

Cash Deposit Requirements

Because Saha Thai has a superseding cash deposit rate, *i.e.,* there have been final results published in a subsequent administrative review, we will not issue revised cash deposit instructions to U.S. Customs and Border Protection (CBP). These amended final results of review will not affect the current cash deposit rate.

Liquidation of Suspended Entries

Commerce intends to instruct CBP to assess antidumping duties on unliquidated entries of subject merchandise, where appropriate,

[1] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2017- 2018,* 84 FR 64041 (November 20, 2019) (*Final Results*), and accompanying Issues and Decision Memorandum.

[2] *Id.; see also Circular Welded Carbon Steel Pipes and Tubes from Thailand: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2017–2018,* 84 FR 22450 (May 17, 2019), and accompanying Preliminary Decision Memorandum, at 6–7.

[3] *See Saha Thai Steel Pipe Pub. Co. Ltd.* v. *United States,* 476 F. Supp. 3d 1378, 1386 (CIT 2020) (*Saha Thai I*).

[4] *See Final Results of Redetermination Pursuant to Court Remand, Saha Thai Steel Pipe Pub. Co., Ltd., et al.* v. *United States,* Court No. 19–00208, Slip Op. 20–148, dated March 14, 2021 (*Final Redetermination*).

[5] *See Saha Thai II.*

[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*).

pursuant to the final and conclusive court decision and in accordance with 19 CFR 351.212(b). The time for appeals has expired. Because Saha Thai's weighted-average dumping margin is zero or *de minimis* within the meaning of 19 CFR 351.106(c)(1), we intend to instruct CBP to liquidate the appropriate entries without regard to antidumping duties.[8]

Commerce's ''reseller policy'' will apply to entries of subject merchandise during the POR produced by Saha Thai for which Saha Thai did not know that the merchandise they sold to the intermediary (*e.g.,* a reseller, trading company, or exporter) was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction.[9]

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 8, 2022.

Lisa W. Wang,

Assistant Secretary for Enforcement and Compliance.

[FR Doc. 2022–19858 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See* 19 CFR 351.106(c)(2).

[9] For a full discussion of this practice, *see* Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties, 68 FR 23954 (May 6, 2003).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC369]

Mid-Atlantic Fishery Management Council (MAFMC); Public Meeting

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

ACTION: Notice; public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Tilefish Advisory Panel and Communication and Outreach Advisory Panel will meet jointly to discuss future outreach efforts to improve awareness of, and compliance with, private recreational tilefish permitting and reporting requirements.

DATES: The meeting will be held on Wednesday, September 28, 2022, from 10 a.m. to 12 p.m. EDT. For agenda details, see **SUPPLEMENTARY INFORMATION.**

ADDRESSES: The meeting will be held via webinar. Webinar connection, agenda items, and any additional information will be available at *www.mafmc.org/council-events.*

Council address: Mid-Atlantic Fishery Management Council, 800 N State Street, Suite 201, Dover, DE 19901; telephone: (302) 674–2331 or on their website at *www.mafmc.org.*

FOR FURTHER INFORMATION CONTACT: Christopher M. Moore, Ph.D., Executive Director, Mid-Atlantic Fishery Management Council, telephone: (302) 526–5255.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to solicit input from the Tilefish and the Communication and Outreach Advisory Panels on ways to improve angler awareness of, and compliance with, tilefish permitting and reporting requirements. Advisory Panel input on both methods of communicating with the target audience as well as the content and clarity of communication is requested and will be considered by the Mid-Atlantic Fishery Management Council at the October meeting.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Shelley Spedden at the Council Office, (302) 526–5251, at least 5 days prior to the meeting date.

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

Dated: September 9, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19846 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC361]

South Atlantic Fishery Management Council; Public Meetings

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

ACTION: Notice of public meetings.

SUMMARY: The South Atlantic Fishery Management Council (Council) will hold a meeting of the Outreach and Communications Advisory Panel (AP) October 4–5, 2022, and a meeting of the Mackerel Cobia Advisory Panel October 5–6, 2022. The meetings will be held in Charleston, SC.

DATES: The Outreach and Communications AP meeting will be held October 4, 2022, from 1:30 p.m. until 5 p.m. and October 5, 2022, from 9 a.m. until 12 p.m. The Mackerel Cobia AP meeting will be held from 1:30 p.m. until 5 p.m. on October 5, 2022, and from 9 a.m. until 5 p.m. on October 6, 2022.

ADDRESSES:

Meeting address: The meetings will be held at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC 29407; phone: (843) 766–9444.

Council address: South Atlantic Fishery Management Council, 4055 Faber Place Drive, Suite 201, N Charleston, SC 29405.

The meetings are open to the public and will also be available via webinar. Registration is required. Webinar registration, an online public comment form, and briefing book materials will be available two weeks prior to the meeting at: *https://safmc.net/safmc-meetings/current-advisory-panel-meetings/.*

FOR FURTHER INFORMATION CONTACT: Kim Iverson, Public Information Officer, SAFMC; phone: (843) 571–4366 or toll free: (866) SAFMC–10; fax: (843) 769–4520; email: *kim.iverson@safmc.net.*

SUPPLEMENTARY INFORMATION:

Outreach and Communications AP

Agenda items for the Outreach and Communications AP meeting include: an overview of the Council's new website and analytics, presentations on Best Fishing Practices outreach and communication efforts, an update on the Council's Citizen Science Program and projects, and discussion of outreach and communication tools and strategies. The AP will address other business as needed and provide recommendations for Council consideration.

Mackerel Cobia AP

Agenda items for the Mackerel Cobia AP meeting include: an update on amendments recently submitted to NOAA Fisheries, presentation and discussion of Southeast Data, Assessment, and Review (SEDAR) 78: Atlantic Spanish Mackerel stock assessment, review of the Coastal Migratory Pelagics (CMP) Fishery Management Plan's goals and objectives and CMP Amendment 33 (Gulf king mackerel), discussion of the commercial electronic logbook, presentation and discussion of the Hudson Canyon National Marine Sanctuary proposal,

updates to the Fishery Performance Reports for Atlantic king mackerel and Florida east coast zone cobia, and updates on citizen science, SEDAR scheduling, and Climate Change Scenario Planning. The AP will address other business as needed and provide recommendations for Council consideration.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to the Council office (see **ADDRESSES**) 5 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 9, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19845 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC356]

Fisheries of the South Atlantic; National Marine Fisheries Service—Public Meetings

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

ACTION: Notice; public meetings.

SUMMARY: The National Marine Fisheries Service will hold a series of in-person Dolphin (*i.e.,* Dolphinfish or Mahi mahi) Management Strategy Stakeholder workshops on October 4, October 5, and October 6, 2022.

DATES: The workshop will be held on Tuesday, October 4, 2022, from 5:30 p.m. until 8:30 p.m. EDT, on Wednesday, October 5, 2022, from 5:30 p.m. until 8:30 p.m. EDT, and on Thursday, October 6, 2022, from 5:30 p.m. until 8:30 p.m. EDT.

ADDRESSES: *Meeting address:* The meeting is open to members of the public. The workshop on October 4 will be held at the West Palm Beach Fishing Club, 201 5th Street, West Palm Beach, FL 33401. The workshop on October 5 will be held at the History Fort Lauderdale Museum, 231 SW 2nd Avenue, Fort Lauderdale, FL 33301. The workshop on October 6 will be held at the Florida Keys History and Discovery Center, 82100 Overseas Highway, Islamorada, FL 33036. Those interested in participating should contact Cassidy Peterson (see **FOR FURTHER INFORMATION CONTACT**).

FOR FURTHER INFORMATION CONTACT: Cassidy Peterson, Management Strategy Evaluation Specialist, NMFS Southeast Fisheries Science Center, phone (910) 708–2686; email: *Cassidy.Peterson@noaa.gov.*

SUPPLEMENTARY INFORMATION: In collaboration with the South Atlantic Fishery Management Council, NMFS is embarking on a Management Strategy Evaluation (MSE) to guide dolphin (*i.e.,* dolphinfish or mahi mahi) management in the jurisdiction. The MSE will be used to develop a management procedure that best achieves the suite of management objectives for the U.S. Atlantic dolphin fishery. Stakeholder input is necessary for characterizing the management objectives of the fishery and stock, identifying any uncertainties in the system that should be built into the MSE analysis, and providing guidance on the acceptability of the proposed management procedures.

Agenda items for the meeting include: developing an understanding of management procedures and management strategy evaluation, developing conceptual management objectives, and clarifying uncertainties that should be addressed within the framework.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for auxiliary aids should be directed to Cassidy Peterson (see **FOR FURTHER INFORMATION CONTACT**) 5 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 8, 2022.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19795 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC367]

Fisheries of the Northeastern United States; Atlantic Surfclam and Ocean Quahog Fisheries; Notice That Vendor Will Provide 2023 Cage Tags

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

ACTION: Notice of vendor to provide fishing year 2023 cage tags.

SUMMARY: NMFS informs surfclam and ocean quahog individual transferable quota allocation holders that they will be required to purchase their fishing year 2023 (January 1, 2023–December 31, 2023) cage tags from the National Band and Tag Company. The intent of this notice is to comply with regulations for the Atlantic surfclam and ocean quahog fisheries and to promote efficient distribution of cage tags.

FOR FURTHER INFORMATION CONTACT: Aimee Ahles, Fishery Information Specialist, (978) 281–9373.

SUPPLEMENTARY INFORMATION: The Federal Atlantic surfclam and ocean quahog fishery regulations at 50 CFR 648.77(b) authorize the Regional Administrator of the Greater Atlantic Region, NMFS, to specify in the **Federal Register** a vendor from whom cage tags, required under the Atlantic Surfclam and Ocean Quahog Fishery Management Plan (FMP), shall be purchased. Notice is hereby given that National Band and Tag Company of Newport, Kentucky, is the authorized vendor of cage tags required for the fishing year 2023 Federal surfclam and ocean quahog fisheries. Detailed instructions for purchasing these cage tags will be provided in a letter to individual transferable quota allocation holders in these fisheries from NMFS within the next several weeks.

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

Dated: September 8, 2022.

Kelly Denit,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19792 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC357]

Caribbean Fishery Management Council; Public Meeting

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

ACTION: Notice of a public meeting.

SUMMARY: The Caribbean Fishery Management Council's (Council) Scientific and Statistical Committee (SSC) will hold a public virtual meeting

to address the items contained in the tentative agenda included in the **SUPPLEMENTARY INFORMATION**.

DATES: The public virtual meeting will be held on October 4, 2022, from 10 a.m. to 5 p.m., and October 5, 2022, from 10 a.m. to 5 p.m., Atlantic Standard Time (AST).

ADDRESSES: You may join the SSC 2-day public virtual meeting via Zoom by entering the following address: *https://us02web.zoom.us/j/81086075177?pwd=TlBLb0NjWmZaR2h0b2NEbmpOTWtiQT09.*

Meeting ID: 810 8607 5177.

Passcode: 546850.

One tap mobile

+19399450244,,87345855856#,,,,*793249# Puerto Rico

+17879451488,,87345855856#,,,,*793249# Puerto Rico

Dial by your location

+1 939 945 0244 Puerto Rico

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+1 787 966 7727 Puerto Rico

+1 312 626 6799 US (Chicago)

+1 346 248 7799 US (Houston)

+1 646 558 8656 US (New York)

+1 669 900 9128 US (San Jose)

+1 253 215 8782 US (Tacoma)

+1 301 715 8592 US (Washington DC)

Meeting ID: 810 8607 5177.

Passcode: 546850.

Find your local number: https://us02web.zoom.us/u/kQvrOfR9i.

In case there are problems and we cannot reconnect via Zoom, the meeting will continue via GoToMeeting. You may join from a computer, tablet or smartphone by entering the following address: *https://meet.goto.com/934508733.*

You can also dial in using your phone.

United States: +1 (646) 749–3122.

Access Code: 934–508–733.

Join from a video-conferencing room or system.

Dial in or type: 67.217.95.2 or *inroomlink.goto.com.*

Meeting ID: 934 508 733.

Or dial directly: 934508733@67.217.95.2 or 67.217.95.2##934508733.

Get the app now and be ready when the first meeting starts: https://meet.goto.com/install.

FOR FURTHER INFORMATION CONTACT: Miguel Rolón, Executive Director, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico 00918–1903, telephone: (787) 766–5926.

SUPPLEMENTARY INFORMATION: The following items included in the tentative agenda will be discussed:

October 4, 2022

10 a.m.–10:15 a.m.

—Call to Order

—Roll Call

—Approval of Verbatim Transcriptions

—Adoption of Agenda

10:15 a.m.–12:30 p.m.

—SEDAR 80 Queen Triggerfish Introductory Presentation—SEFSC

—Review SEDAR 80 Queen Triggerfish Assessments Term of References

—SEDAR 80 Queen Triggerfish Puerto Rico—SEFSC Presentation on sensitivity runs requested by the SSC

12:30 p.m.–1:30 p.m.

—Lunch

1:30 p.m.–3 p.m.

—SEDAR 80 Queen Triggerfish Puerto Rico—SEFSC Presentation on sensitivity runs requested by the SSC (continued)

—SSC Guidance (recommendations) for additional analysis including projections to finalize SEDAR 80 QT PR

3 p.m.–3:15 p.m.

—Break

3:15 p.m.–5 p.m.

—SSC Discussion on Standard Products to finalize SEDAR 80 Queen triggerfish assessments (Puerto Rico, St. Thomas-St. John, St. Croix)—SEFSC

—SSC Recommendations to CFMC

October 5, 2022

10 a.m.–11 a.m.

—SEDAR 57 Spiny Lobster Update Assessment Progress Report—SEFSC

—Review TORs SEDAR 84 yellowtail snapper (Puerto Rico and St. Thomas/St. John) and stoplight parrotfish (St. Croix)

—Appointments of SSC members

11 a.m.–12 p.m.

—SSC Recommendations to CFMC

—Island-Based Fishery Management Plan and Amendments Update—María López-Mercer, SERO/NOAA Fisheries

12 p.m.–1 p.m.

—Lunch

1 p.m.–3 p.m.

—National SSC (August 15–17, 2022) Update—Richard Appeldoorn, J.J. Cruz Motta

—Case Study 8: Multivariate approaches for EBFM implementation in the U.S. Caribbean

3 p.m.–3:15 p.m.

—Break

3:15 p.m.–5 p.m.

—Outreach and Education Advisory Panel Update—Alida Ortiz

—Other Business

—Adjourn

The order of business may be adjusted as necessary to accommodate the completion of agenda items. The meeting will begin on October 4, 2022, at 10 a.m., and will end on October 5, 2022, at 5 p.m. Other than the start time, interested parties should be aware that discussions may start earlier or later than indicated, at the discretion of the Chair. In addition, the meeting may be completed prior to the date established in this notice.

Special Accommodations

For any additional information on this public virtual meeting, please contact Dr. Graciela García-Moliner, Caribbean Fishery Management Council, 270 Muñoz Rivera Avenue, Suite 401, San Juan, Puerto Rico, 00918–1903, telephone: (787) 403–8337.

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

Dated: September 9, 2022.

Rey Israel Marquez,

Acting Deputy Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–19841 Filed 9–13–22; 8:45 am]

BILLING CODE 3510–22–P

CONSUMER PRODUCT SAFETY COMMISSION

[Docket No. CPSC–2022–0020]

Agency Information Collection Activities; Proposed Collection; Comment Request; Beta Pilot Test for eFiling Certificates of Compliance

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In the **Federal Register** of June 10, 2022, the U.S. Consumer Product Safety Commission (Commission or CPSC), together with U.S. Customs and Border Protection (CBP), published a notice announcing a joint intent to conduct a second test (a Beta Pilot) to assess the electronic filing of data from a certificate of compliance (certificate) for regulated consumer products under CPSC's jurisdiction (June 10 Notice). The June 10 Notice requested volunteers for the Beta Pilot Test, and also stated the intent to seek approval of a collection of information for the Beta Pilot Test, requesting comment on the proposed collection. The Commission did not receive any comments on the burden estimate for

the proposed collection of information. In accordance with the requirements of the Paperwork Reduction Act (PRA) of 1995, CPSC submitted information collection requirements for the Beta Pilot Test to the Office of Management and Budget (OMB) for approval of the new collection of information, without change.

DATES: Submit comments on the proposed collection of information by October 14, 2022.

ADDRESSES: Submit comments about this request by email: *OIRA_submission@omb.eop.gov* or fax: 202–395–6881. Comments by mail should be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the CPSC, Office of Management and Budget, Room 10235, 725 17th Street NW, Washington, DC 20503. In addition, written comments that are sent to OMB, also should be submitted electronically at: *http://www.regulations.gov,* under Docket No. CPSC–2022–0020.

FOR FURTHER INFORMATION CONTACT: Bretford Griffin, Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; (301) 504–7037, or by email to: *bgriffin@cpsc.gov*.

SUPPLEMENTARY INFORMATION: The June 10 Notice sought comment on CPSC's burden estimate for the Beta Pilot Test. 87 FR 35513, 35518–20. CPSC received no comment on the burden estimates provided. CPSC now seeks approval of a new collection of information for the Beta Pilot test, which contains information collection requirements that are subject to public comment and review by OMB under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).[1] In this document, pursuant to 44 U.S.C. 3507(a)(1)(D), we set forth:

- a title for the collection of information;
- a summary of the collection of information;
- a brief description of the need for the information and the proposed use of the information;
- a description of the likely respondents and proposed frequency of response to the collection of information;
- an estimate of the burden that shall result from the collection of information; and
- notice that comments may be submitted to the OMB.

Title: Beta Pilot Test for eFiling Certificates of Compliance.

Description: During the Beta Pilot test of CBP's Partner Government Agency (PGA) Message Set abilities through the Automated Commercial Environment (ACE), up to 50 participating importers of regulated consumer products will electronically file the requested certificate data, comprised of seven data elements, at the time of entry filing, or entry summary filing, if both entry and entry summary are filed together. Participants will have two ways to file certificate data during the Beta Pilot test: (1) filing certificate data in a CPSC-maintained Product Registry, and filing a reference number in ACE to this data set, through the Automated Broker Interface (ABI), each time the product is imported thereafter (Reference PGA Message Set), or (2) filing all certificate data elements directly through ABI each time the product is imported (Full PGA Message Set). CPSC will receive the information from CBP through a real-time transfer of import data, and risk score the information in CPSC's Risk Assessment Methodology (RAM) system, to assist in the interdiction of noncompliant consumer products.

As set forth in section VI.B of the June 10 Notice, the requirement to create and maintain certificates, including the data elements, is set forth in section 14 of the Consumer Product Safety Act (CPSA). Section 14(a) of the CPSA requires manufacturers (including importers) and private labelers of certain regulated consumer products manufactured outside the United States to test and issue a certificate certifying such products as compliant with applicable laws and regulations before importation. 15 U.S.C. 2063(a). Section 14(g)(1) of the CPSA describes the data required on a certificate. Section 14(g)(3) requires a certificate to accompany the applicable product or shipment of products covered by the certificate, and that certifiers furnish the certificate to each distributor or retailer of the product. Upon request, certificates must also be furnished to CPSC and CBP. Section 14(g)(4) provides that ''[i]n consultation with the Commissioner of Customs, the Commission may, by rule, provide for the electronic filing of certificates under this section up to 24 hours before arrival of an imported product.'' The Beta Pilot test described in this collection of information is in preparation for a rulemaking to implement section 14(g)(4) of the CPSA. 15 U.S.C. 2063(g)(4).

Because certificates are required by statute, this analysis focuses on the burden for CPSC to accept, and importers to provide, certificate data elements electronically at the time of entry filing, and not to collect and maintain certificate data more generally. Importer requirements in the Beta Pilot test for providing certificate data electronically at the time of entry filing fall within the definition of ''collection of information,'' as defined in 44 U.S.C. 3502(3).

Description of Respondents: Up to 50 importer participants who import regulated consumer products within CPSC's jurisdiction under the approximately 300 HTS codes included in the Beta Pilot test.

Estimated Burden: We estimate the burden of this collection of information as follows:

CPSC used information provided by the previous Alpha Pilot test participants to inform the estimated burden for the Beta Pilot test. The burden from participating in the eFiling Beta Pilot test can be broken down into the burden of preparing for participation in the Pilot, the burden of maintaining the data elements separately, and, as compared to the Alpha Pilot test, the additional burden of including the dates of manufacturing and lab testing. Based on feedback from the Alpha Pilot test participants, we also assume that if we have 50 Beta Pilot test participants, approximately 90 percent of them, or 45 respondents, will opt to use the Product Registry and Reference PGA Message Set exclusively, while 5 participants will opt to use the Full PGA Message Set exclusively.

For the 45 participants opting to use the Product Registry and Reference PGA Message Set, we estimate that there will be approximately 8,764 burden hours to complete the information collection burden associated with Beta Pilot test participation, and maintain the data elements, including the dates of manufacturing and lab testing. Based on feedback from Alpha Pilot test participants, participant staff costs for this burden will be about $383,000 or approximately $44 per hour ($382,990/8,764).

[1] The Commission voted 5–0 to issue this notice.

TABLE 1—BETA PILOT TEST BURDEN ESTIMATES
PRODUCT REGISTRY AND REFERENCE PGA MESSAGE SET

Type of respondent	Number of respondents	Number of responses per respondent	Number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average cost per response	Total annual respondent cost
Product registry only	A	B	C (=A×B)	D	E (=C×D)	F	G (=C×F)
Pilot Participation	45	1	45	91	4,095	$4,929	$221,805
Gathering and Submitting Data Elements	45	1	45	27	1,195	946	42,579
Survey	45	1	45	2.2	99	34.68	1,561
Filing Entry-Line	45	25,000	1,125,000	0.003	3,375	0.10	117,045
Total			1,125,135		8,764		382,990

Assumption:
Appx. 10% of the 50 respondents will elect to use only the Full PGA message set.
Estimated response costs based on costs information from Alpha Pilot test participants.
Wage data for survey and filing entry-line data comes from U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2021, Table 4, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*).

For the 5 participants opting to use the Full PGA Message Set, we estimate 452 hours to complete the pilot and maintain the data elements, including for each product the dates of manufacture and lab testing. The estimated associated participant staff costs will be about $21,800, or approximately $48 per hour ($21,774/452 hours).

TABLE 2—BETA PILOT TEST BURDEN ESTIMATES
FULL PGA MESSAGE SET

Type of respondent	Number of respondents	Number of responses per respondent	Number of responses	Average burden per response (in hours)	Total annual burden (in hours)	Average cost per response	Total annual respondent cost
Full PGA Message set Only	A	B	C (=A×B)	D	E (=C×D)	F	G (=C×F)
Pilot Participation	5	1	5	30	150	$2,245	$11,225
Gathering and Submitting Data Elements	5	1	5	13	66	515	2,573
Survey	5	1	5	2.2	11	34.68	173
Filing Entry-Line	5	1,500	7,500	0.030	225	1.04	7,803
Total			7,515		452		21,774

Assumptions:
Appx. 10% of the 50 respondents will elect to use the Full PGA message set.
Estimated response cost for based on cost information from the Alpha Pilot test participants.
Wage data for survey and filing entry-line data comes from U.S. Bureau of Labor Statistics, ''Employer Costs for Employee Compensation,'' September 2021, Table 4, total compensation for all sales and office workers in goods-producing private industries: *http://www.bls.gov/ncs/*).

The estimated total burden for participation in the Beta Pilot test is 9,217 hours, with an estimated cost of $404,800, or $44 per hour ($404,764/9,217).

TABLE 3—TOTAL ESTIMATED BURDEN OR BETA PILOT TEST

Type of respondent	Number of respondents	Number of responses per respondent	Number of responses	Average burden per , response (in hours)	Total annual burden (in hours)	Average cost per response	Total annual respondent cost
Product registry only	(A)	(B)	(C) (=A×B)	(D)	(E) (=C×D)	(F)	(G) (=C×F)
Pilot Participation	50	1	50	85	4,245	$4,661	$233,030
Gathering and Submitting Data Elements	50	1	50	25	1,262	903	45,152
Survey	50	1	50	2	110	35	1,734
Filing Entry-Line	50	22,650	1,132,500	0.003	3,600	0.11	124,848
Total			1,132,650		9,217		404,764

In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted the information collection requirements to the OMB for review.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

[FR Doc. 2022–19881 Filed 9–13–22; 8:45 am]

BILLING CODE 6355–01–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0164; FRL–10206–01–OCSPP]

SRC, Inc.; Transfer of Data (August 2022)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to SRC, Inc. in accordance with the CBI regulations. SRC, Inc. has been awarded a contract to perform work for the Office of Pollution Prevention and Toxics (OPPT), and access to this information will enable SRC, Inc. to fulfill the obligations of the contract.

DATES: SRC, Inc. will be given access to this information on or before September 19, 2022.

FOR FURTHER INFORMATION CONTACT: William Northern, Information Technology and Resources Management Division (7502P), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1493 email address: *northern.william@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–EPA–HQ–OPP–2022–0164, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (703) 305–5805. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. Contractor Requirements

Under Contract No. 68HERH19D0022, Task Order 68HERH19F0230, SRC will review data submitted to OPP under FIFRA for use in risk evaluations that are being developed by OPPT under the Toxic Substance Control Act. The task order ends on June 20, 2024.

This contract involves consultants, but they will not be handling FIFRA CBI under this task.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under FIFRA sections 3, 4, 6, and 7 and under FFDCA sections 408 and 409.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with SRC, Inc. prohibits use of the information for any purpose not specified in this contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the *FIFRA Information Security Manual.* In addition, SRC, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to SRC, Inc. until the requirements in this document have been fully satisfied. Records of information provided to SRC, Inc. will be maintained by EPA project officers for this contract. All information supplied to SRC, Inc. by EPA for use in connection with the contract will be returned to EPA when SRC, Inc. has completed its work.

Authority: 7 U.S.C. 136 *et seq.;* 21 U.S.C. 301 *et seq.*

Dated: September 8, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–19860 Filed 9–13–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0223; FRL–10192–01–OCSPP]

Cancellation Order for Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The Environmental Protection Agency (EPA) hereby announces its order for the cancellations, voluntarily requested by the registrants and accepted by the Agency, of the products listed in Table 1 and Table 1A of Unit II, pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). This cancellation order follows an April 28, 2022, **Federal Register** Notice of Receipt of Requests from the registrants listed in Table 2 of Unit II, to voluntarily cancel these product registrations. In the April 28, 2022, notice, EPA indicated that it would issue an order implementing the cancellations, unless the Agency received substantive comments within the 30-day comment period that would merit its further review of these requests, or unless the registrants withdrew their requests. The Agency received seven comments on the notice regarding the registrations containing the ingredient chlorpyrifos. The chlorpyrifos registrations are not included in this cancellation order and have been addressed in a separate order. Registrants did not withdraw their requests. Accordingly, EPA hereby issues in this cancellation order granting the requested cancellations shown in this cancellation order. Any distribution, sale, or use of the products subject to this cancellation order is permitted only in accordance with the terms of this order, including any existing stocks provisions.

DATES: The cancellations are effective September 14, 2022.

FOR FURTHER INFORMATION CONTACT: Christopher Green, Registration Division

(7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–2707; email address: *green.chrisopher@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general and may be of interest to a wide range of stakeholders including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the sale, distribution, or use of pesticides. Since others also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. How can I get copies of this document and other related information?

The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2022–0223, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20460–0001. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

II. What action is the Agency taking?

This notice announces the cancellation, as requested by registrants, of products registered under FIFRA section 3 (7 U.S.C. 136a). These registrations are listed in sequence by registration number in Table 1 and Table 1A of this unit.

TABLE 1—PRODUCT CANCELLATIONS

Registration No.	Company No.	Product name	Active ingredients
239–2657	239	Ortho Groundclear Total Vegetation Killer.	Glyphosate-isopropylammonium & Imazapyr, isopropylamine salt.
239–2686	239	Ground Clear RTU	Imazapyr, isopropylamine salt & Glyphosate-isopropylammonium.
279–3465	279	F–9559 Insecticide	Lambda-Cyhalothrin.
279–3551	279	Proaxis CHA	Gamma-Cyhalothrin.
279–3574	279	Proaxis EX	Gamma-Cyhalothrin.
279–3578	279	Fyfanon Plus ULV	Malathion (NO INERT USE) & gamma-Cyhalothrin.
279–3582	279	Prolex	Gamma-Cyhalothrin.
279–3598	279	Malathion 851 G/L + Gamma-Cyhalothrin 12.8 G/L EC.	Gamma-Cyhalothrin & Malathion (NO INERT USE).
279–9570	279	Gat Lambda 25 CS	Lambda-Cyhalothrin.
1381–210	1381	Mystic Z Insecticide	Lambda-Cyhalothrin.
1381–211	1381	Grizzly Z Insecticide	Lambda-Cyhalothrin.
1381–257	1381	Grizzly Too	Lambda-Cyhalothrin.
6836–276	6836	Lonza Dc-101 RTU	Alkyl* dimethyl benzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride; 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride & 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride.
7969–144	7969	Frontier Herbicide	Dimethenamid.
7969–147	7969	Frontier 6.0 Herbicide	Dimethenamid.
9688–124	9688	Fungicide M1	Myclobutanil.
9688–157	9688	Chemsico Aerosol M	Myclobutanil.
9688–158	9688	Chemsico RTU M	Myclobutanil.
9688–160	9688	Chemsico Fungicide Concentrate M6	Myclobutanil.
9688–165	9688	Chemsico Fungicide Concentrate 3000	Myclobutanil.
9688–219	9688	Chemsico Lawn Granules 4LF	Lambda-Cyhalothrin.
9688–220	9688	Chemsico Lawn Granules 3LF	Lambda-Cyhalothrin.
34704–917	34704	Isoxaben 75DF Specialty Herbicide	Isoxaben.
34704–968	34704	LPI Iprodione Fungicide	Iprodione.
53883–70	53883	Martin's Insectitabs	Lambda-Cyhalothrin.
53883–260	53883	CSI Lambda 25 CS	Lambda-Cyhalothrin.
53883–261	53883	CSI Lambda 9.7 CS	Lambda-Cyhalothrin.
53883–292	53883	CSI Lambda-Cyhalothrin Technical	Lambda-Cyhalothrin.
83222–23	83222	Lambda 25 CS	Lambda-Cyhalothrin.
83402–1	83402	Zestat A–100	Cetyl pyridinium chloride.
83402–2	83402	Zestat Preservative	Cetyl pyridinium chloride.
87373–41	87373	A364.02	Paraquat dichloride.
87373–112	87373	Paraquat Technical	Paraquat dichloride.
91234–87	91234	A364.01	Paraquat dichloride.
92061–1	92061	United Disinfectant Wipes	Alkyl* dimethyl 3,4-dichlorobenzyl ammonium chloride *(50%C14, 40%C12, 10%C16); 1-Decanaminium, N-decyl-N,N-dimethyl-, chloride; 1-Octanaminium, N,N-dimethyl-N-octyl-, chloride & 1-Decanaminium, N,N-dimethyl-N-octyl-, chloride.
AZ–190001	62719	Enlist Duo	2,4-D, Choline salt & Glycine, N-(phosphonomethyl)-, compd. with N-methylmethanamine (1:1).
AZ–200001	62719	GF–3335	2,4-D, Choline salt.
CA–050012	264	Buctril 4EC Herbicide	Bromoxynil octanoate & Bromoxynil heptanoate.
ID–000009	5481	Amvac AZA 3% EC	Azadirachtin.

TABLE 1—PRODUCT CANCELLATIONS—Continued

Registration No.	Company No.	Product name	Active ingredients
MT–060001	400	Dimilin 2L	Diflubenzuron.
MT–090004	70506	Bifenture EC Agricultural Insecticide	Bifenthrin.
MT–180001	66222	ADA 11280 Insecticide	Acetamiprid & Novaluron.
NC–050004	95290	Curfew	Telone.
ND–090001	70506	Super Tin 4L Fungicide	Fentin hydroxide.
NY–080010	70506	Kraken	Triclopyr, triethylamine salt.
OR–110007	62719	Entrust	Spinosad.
OR–160013	62719	Entrust SC	Spinosad.
TX–120010	100	Gramoxone SL 2.0	Paraquat dichloride.
UT–180010	5481	Parazone 3SL Herbicide	Paraquat dichloride.
WA–010004	5481	K-Salt Fruit Fix 200	Potassium 1-naphthaleneacetate.
WA–100005	62719	Stinger	Clopyralid, monoethanolamine salt.
WA–160005	279	Dupont Coragen Insect Control	Chlorantraniliprole.
WA–960002	100	Beacon Herbicide	Primisulfuron-methyl

TABLE 1A—PRODUCT CANCELLATION

Registration No.	Company No.	Product name	Active ingredients
MT–120005	62719	Entrust.	Spinosad.

The registration listed in Table 1A of Unit II, requested the effective date of cancellation to be, March 3, 2022.

Table 2 of this unit includes the names and addresses of record for all registrants of the products in Table 1 and Table 1A of this unit, in sequence by EPA company number. This number corresponds to the first part of the EPA registration numbers of the products listed in this unit.

TABLE 2—REGISTRANTS OF CANCELLED PRODUCTS

EPA company No.	Company name and address
100	Syngenta Crop Protection, LLC, 410 Swing Road, P.O. Box 18300, Greensboro, NC 27419–8300.
239	The Scotts Company, d/b/a, The Ortho Group, P.O. Box 190, Marysville, OH 43040.
264	Bayer CropScience, LP, Agent Name: Bayer CropScience, LLC, 801 Pennsylvania Avenue, Suite 900, Washington, DC 20004.
279	FMC Corporation, 2929 Walnut Street, Philadelphia, PA 19104.
400	MacDermid Agricultural Solutions, Inc., Agent Name: UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
1381	Winfield Solutions, LLC, P.O. Box 64589, St. Paul, MN 55164–0589.
5481	Amvac Chemical Corporation, 4695 Macarthur Court, Suite 1200, Newport Beach, CA 92660–1706.
6836	Arxada, LLC, 412 Mount Kemble Avenue, Suite 200S, Morristown, NJ 07960.
7969	BASF Corporation, Agricultural Products, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709–3528.
9688	Chemsico, A Division of United Industries Corp., P.O. Box 142642, St. Louis, MO 63114–0642.
34704	Loveland Products, Inc., P.O. Box 1286, Greeley, CO 80632–1286.
53883	Control Solutions, Inc., 5903 Genoa Red Bluff Road, Pasadena, TX 77507.
62719	Corteva Agriscience, LLC, 9330 Zionsville Road, Indianapolis, IN 46268.
66222	Makhteshim Agan of North America, Inc., d/b/a, Adama, 3120 Highwoods Blvd., Suite 100, Raleigh, NC 27604.
70506	UPL NA, Inc., 630 Freedom Business Center, Suite 402, King of Prussia, PA 19406.
83222	Winfield Solutions, LLC, 1080 County Rd., F West, MS5705, P.O. Box 64589, St. Paul, MN 55164.
83402	Vertellus, LLC, Agent Name: The Acta Group, L.L.C., 201 N Illinois St., Suite 1800, Indianapolis, IN 46204.
87373	Argite, LLC, Agent Name: Wagner Regulatory Associates, P.O. Box 640, Hockessin, DE 19707–0640.
91234	Atticus, LLC, Agent Name: Pyxis Regulatory Consulting, Inc., 4110 136th Street Ct. NW, Gig Harbor, WA 98332–9122.
92061	VRC Technologies, Inc., Agent Name: Mandava Chemical Consulting, 68602 N Dallas Parkway, Suite 200, Plano, TX 75024.
95290	Salt Lake Holding, LLC, 2211 H.H. Dow Way, Midland, MI 48674.

III. Summary of Public Comments Received and Agency Response to Comments

The Agency received seven comments on the notice regarding the registrations containing the ingredient chlorpyrifos. The chlorpyrifos registrations have been removed from this cancellation order. The cancellation order and comments received for the registrations containing the ingredient chlorpyrifos can be found in the cancellation order, published in the **Federal Register** of August 31, 2022 (87 FR 53473) (FRL–10138–01–OCSPP). During the public comment period provided, EPA received no comments in response to the April 28, 2022, **Federal Register** notice announcing the

Agency's receipt of the requests for voluntary cancellations of all other products listed in this cancellation order in Table 1 and Table 1A of Unit II.

IV. Cancellation Order

Pursuant to FIFRA section 6(f) (7 U.S.C. 136d(f)), EPA hereby approves the requested cancellations of the registrations identified in Table 1 and Table 1A of Unit II. Accordingly, the Agency hereby orders that the product registrations identified in Table 1 and Table 1A of Unit II, are canceled. The effective date of the cancellation listed in Table 1A of Unit II, is effective March 3, 2022. The effective date of the cancellations in Table 1 of Unit II, that are the subject of this notice is September 14, 2022. Any distribution, sale, or use of existing stocks of the products identified in Table 1 and Table 1A of Unit II, in a manner inconsistent with any of the provisions for disposition of existing stocks set forth in Unit VI, will be a violation of FIFRA.

V. What is the Agency's authority for taking this action?

FIFRA section 6(f)(1) (7 U.S.C. 136d(f)(1)) provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be canceled or amended to terminate one or more uses. FIFRA further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, following the public comment period, the EPA Administrator may approve such a request.

The notice of receipt for this action was published for comment in the **Federal Register** of April 28, 2022 (87 FR 25256) (FRL–9723–01–OCSPP). The comment period closed on May 31, 2022.

VI. Provisions for Disposition of Existing Stocks

Existing stocks are those stocks of registered pesticide products which are currently in the United States, and which were packaged, labeled, and released for shipment prior to the effective date of the cancellation action. The existing stocks provisions for the products subject to this order are as follows.

For the registration MT–120005, listed in Table 1A of Unit II, the registrant requested the effective date of cancellation to be March 3, 2022. The registrant may continue to sell and distribute existing stocks of the product listed in Table 1A of Unit II, until March 3, 2023. Thereafter, the registrant is prohibited from selling or distributing the product listed in Table 1A of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal.

The registrants may continue to sell and distribute existing stocks of the products listed in Table 1 of Unit II, until September 14, 2023, which is 1 year after the publication of the Cancellation Order in the **Federal Register**. Thereafter, the registrants are prohibited from selling or distributing products listed in Table 1 of Unit II, except for export in accordance with FIFRA section 17 (7 U.S.C. 136o), or proper disposal.

Persons other than the registrants may sell, distribute, or use existing stocks of products listed in Table 1 and Table 1A of Unit II, until existing stocks are exhausted, provided that such sale, distribution, or use is consistent with the terms of the previously approved labeling on, or that accompanied, the cancelled products.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 8, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2022–19793 Filed 9–13–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0092; –0113; –0174]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Agency information collection activities: submission for OMB review; comment request.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0092, –0113 and –0174). The notice of the proposed renewal for these information collections was previously published in the **Federal Register** on June 21, 2022, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before October 14, 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.

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: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Community Reinvestment Act
OMB Number: 3064–0092.
Form Number: None.
Affected Public: Insured state nonmember banks and state savings associations.
Burden Estimate:

SUMMARY OF ANNUAL BURDEN AND INTERNAL COST (OMB 3064–0092)

Information collection description	Type of burden (obligation to respond)	Estimated number of respondents	Estimated number of responses per respondent	Estimated average time per response (hours)	Total estimated annual burden
Request for designation as a wholesale or limited purpose bank—Banks requesting this designation shall file a request in writing with the FDIC at least 3 months prior to the proposed effective date of the designation.	Reporting (Mandatory)	1	1	4	4
Strategic plan—Applies to banks electing to submit strategic plans to the FDIC for approval.	Reporting (Voluntary)	11	1	400	4,400
Small business/small farm loan data—Large banks shall and Small banks may report annually in machine readable form the aggregate number and amount of certain loans.	Reporting (Mandatory)	274	1	8	2,192
Community development loan data—Large banks shall and Small banks may report annually, in machine readable form, the aggregate number and aggregate amount of community development loans originated or purchased.	Reporting (Mandatory)	274	1	13	3,562
Home mortgage loans—Large banks, if subject to reporting under part 203 (Home Mortgage Disclosure (HMDA)), shall, and Small banks may report the location of each home mortgage loan application, origination, or purchase outside the MSA in which the bank has a home/branch office.	Reporting (Mandatory)	350	1	253	88,550
Data on affiliate lending—Banks that elect to have the FDIC consider loans by an affiliate, for purposes of the lending or community development test or an approved strategic plan, shall collect, maintain and report the data that the bank would have collected, maintained, and reported pursuant to § 345.42(a), (b), and (c) had the loans been originated or purchased by the bank. For home mortgage loans, the bank shall also be prepared to identify the home mortgage loans reported under HMDA.	Reporting (Mandatory)	307	1	38	11,666
Data on lending by a consortium or a third party—Banks that elect to have the FDIC consider community development loans by a consortium or a third party, for purposes of the lending or community development tests or an approved strategic plan, shall report for those loans the data that the bank would have reported under § 345.42(b)(2) had the loans been originated or purchased by the bank.	Reporting (Mandatory)	118	1	17	2,006
Assessment area data—Large banks shall and Small banks may collect and report to the FDIC a list for each assessment area showing the geographies within the area.	Reporting (Mandatory)	372	1	2	744
					113,124
Small business/small farm loan register—Large banks shall and Small banks may collect and maintain certain data in machine-readable form.	Recordkeeping (Mandatory) ..	372	1	219	81,468
Optional consumer loan data—All banks may collect and maintain in machine readable form certain data for consumer loans originated or purchased by a bank for consideration under the lending test.	Recordkeeping (Mandatory) ..	10	1	326	3,260

SUMMARY OF ANNUAL BURDEN AND INTERNAL COST (OMB 3064–0092)—Continued

Information collection description	Type of burden (obligation to respond)	Estimated number of respondents	Estimated number of responses per respondent	Estimated average time per response (hours)	Total estimated annual burden
Other loan data—All banks optionally may provide other information concerning their lending performance, including additional loan distribution data.	Recordkeeping (Voluntary)	98	1	25	2,450
					87,178
Content and availability of public file—All banks shall maintain a public file that contains certain required information.	Disclosure (Mandatory)	3,128	1	10	31,280
					31,280
Total Estimated Annual Burden	.....	.....	.....	.....	**231,582**

General Description of Collection: The Community Reinvestment Act regulation requires the FDIC to assess the record of banks and thrifts in helping meet the credit needs of their entire communities, including low- and moderate-income neighborhoods, consistent with safe and sound operations; and to take this record into account in evaluating applications for mergers, branches, and certain other corporate activities. There is no change in the method or substance of the collection. The overall decrease in burden hours is a result of decreases in the estimated number of respondents. On June 3, 2022, the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the FDIC (the Agencies) published a proposal to amend the Agencies' Community Reinvestment Act regulations.[1] The agencies are expecting comments from the industry and other concerned parties which will be considered and addressed when a final rule is issued. The FDIC does not wish to discontinue this information collection while the proposed revisions are considered and a new rule is issued and is, therefore, extending its Community Reinvestment Act information collection as-is, without revision, to preserve its validity.

2. *Title:* External Audits.

OMB Number: 3064–0113.

Form Number: None.

Affected Public: All insured financial institutions with total assets of $500 million or more and other insured financial institutions with total assets of less than $500 million that voluntarily choose to comply.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDENS (OMB NO. 3064–0013)

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
FDIC-Supervised Institutions with $10 Billion or More in Consolidated Total Assets						
Annual Report (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	59	1	150	8,850
Annual Report (Reporting)	Reporting (Mandatory)	Annually ...	59	1	150	8,850
Audit Committee Composition (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	59	1	3	177
Audit Committee Composition (Reporting).	Reporting (Mandatory)	Annually ...	59	1	3	177
Filing of Other Reports (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	59	1	0.13	7.38
Filing of Other Reports (Reporting).	Reporting (Mandatory)	Annually ...	59	1	0.13	7.38
Notice of Change in Accountants (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	15	1	0.25	3.75
Notice of Change in Accountants (Reporting).	Reporting (Mandatory)	Annually ...	15	1	0.25	3.75
FDIC-Supervised Institutions with $3 billion to less than $10 billion in Consolidated Total Assets						
Annual Report (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	128	1	125	16,000
Annual Report (Reporting)	Reporting (Mandatory)	Annually ...	128	1	125	16,000
Audit Committee Composition (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	128	1	3	384
Audit Committee Composition (Reporting).	Reporting (Mandatory)	Annually ...	128	1	3	384
Filing of Other Reports (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	128	1	0.13	16

[1] 87 FR 33884, June 3, 2022.

SUMMARY OF ESTIMATED ANNUAL BURDENS (OMB NO. 3064–0013)—Continued

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Filing of Other Reports (Reporting).	Reporting (Mandatory)	Annually ...	128	1	0.13	16
Notice of Change in Accountants (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	32	1	0.25	8
Notice of Change in Accountants (Reporting).	Reporting (Mandatory)	Annually ...	32	1	0.25	8
FDIC-Supervised Institutions with $1 billion to less than $3 billion in Consolidated Total Assets						
Annual Report (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	342	1	100	34,200
Annual Report (Reporting)	Reporting (Mandatory)	Annually ...	342	1	100	34,200
Audit Committee Composition (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	342	1	2	684
Audit Committee Composition (Reporting).	Reporting (Mandatory)	Annually ...	342	1	2	684
Filing of Other Reports (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	342	1	0.13	42.75
Filing of Other Reports (Reporting).	Reporting (Mandatory)	Annually ...	342	1	0.13	42.75
Notice of Change in Accountants (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	86	1	0.25	21.5
Notice of Change in Accountants (Reporting).	Reporting (Mandatory)	Annually ...	86	1	0.25	21.5
FDIC-Supervised Institutions with $500 million to less than $1 billion in Consolidated Total Assets						
Annual Report (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	483	1	12.5	6,037.5
Annual Report (Reporting)	Reporting (Mandatory)	Annually ...	483	1	12.5	6,037.5
Audit Committee Composition (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	483	1	1	483
Audit Committee Composition (Reporting).	Reporting (Mandatory)	Annually ...	483	1	1	483
Filing of Other Reports (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	483	1	0.13	60.38
Filing of Other Reports (Reporting).	Reporting (Mandatory)	Annually ...	483	1	0.13	60.38
Notice of Change in Accountants (Recordkeeping).	Recordkeeping (Mandatory)	Annually ...	121	1	0.25	30.25
Notice of Change in Accountants (Reporting).	Reporting (Mandatory)	Annually ...	121	1	0.25	30.25
FDIC-Supervised Institutions with less than $500 million in Consolidated Total Assets						
Filing of Other Reports (Recordkeeping).	Recordkeeping (Voluntary) ..	Annually ...	2,116	1	0.25	529
Filing of Other Reports (Reporting).	Reporting (Voluntary)	Annually ...	2,116	2	0.25	1,058
Total Annual Burden Hours:.	.....	.....	.....	.....	.....	135,598

Source: FDIC.

General Description of Collection: FDIC's regulations at 12 CFR part 363 establish annual independent audit and reporting requirements for financial institutions with total assets of $500 million or more. The requirements include the submission of an annual report on their financial statements, recordkeeping about management deliberations regarding external auditing and reports about changes in auditors. The information collected is used to facilitate early identification of problems in financial management at financial institutions. There is no change in the substance or methodology of this information collection. The overall increase in burden hours is a result of the increase in the estimated number of respondents with consolidated total assets greater than $500 million.

3. *Title:* Funding and Liquidity Risk Management.

OMB Number: 3064–0174.

Form Number: None.

Affected Public: Businesses or other for-profits.

Burden Estimate:

Information collection description	Type of burden	Estimated number of respondents	Estimated number of responses per respondent	Estimated time per response (hours)	Estimated annual burden (hours)
Paragraph 14—Strategies, policies, procedures, and risk tolerances.	Recordkeeping (Voluntary) ..	3,128	1	83.94	262,564
Paragraph 20—Liquidity risk management measurement, monitoring, and reporting.	Reporting (Voluntary)	3,128	12	4	150,144
Total Annual Burden	.....	.....	.....	.....	412,708

General Description of Collection: The information collection includes reporting and recordkeeping burdens related to sound risk management principles applicable to insured depository institutions. To enable an institution and its supervisor to evaluate the liquidity risk exposure of an institution's individual business lines and for the institution as a whole, the Interagency Policy Statement on Funding and Liquidity Risk Management (Interagency Statement) summarizes principles of sound liquidity risk management and advocates the establishment of policies and procedures that consider liquidity costs, benefits, and risks in strategic planning. In addition, the Interagency Statement encourages the use of liquidity risk reports that provide detailed and aggregate information on items such as cash flow gaps, cash flow projections, assumptions used in cash flow projections, asset and funding concentrations, funding availability, and early warning or risk indicators. This is intended to enable management to assess an institution's sensitivity to changes in market conditions, the institution's financial performance, and other important risk factors. There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents

Request for Comment

Comments are invited on: (a) Whether the collection of information is 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 collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on 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 8, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–19802 Filed 9–13–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0139; –0169; –0189; –0202]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collections described below (OMB Control No. 3064–0139, –0169, –0189, and—0202).

DATES: Comments must be submitted on or before November 14, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7:00 a.m. and 5:00 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal To Renew the Following Currently Approved Collection of Information

1. *Title:* CRA Sunshine.

OMB Number: None.

Affected Public: Insured state nonmember banks and state savings associations and their affiliates and nongovernmental entities and persons.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0139)

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)
1. Reporting burden by covered banks—list of agreements, 12 CFR 346.6(d)(1)(ii) (Mandatory).	Reporting (On occasion)	1	1	1:00	1

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0139)—Continued

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)
2. Reporting burden by covered banks—copies of agreements, 12 CFR 346.6(d)(1)(i) (Mandatory).	Reporting (On occasion)	1	1	1:00	1
3. Reporting burden by NGEPs—copies of agreements, 12 CFR 346.6(c) (Mandatory).	Reporting (On occasion)	1	1	1:00	1
4. Reporting burden by covered banks—annual report, 12 CFR 346.7(b) (Mandatory).	Reporting (Annual)	3	1	4:00	12
5. Reporting burden by NGEPs—annual report, 12 CFR 346.7(b) (Mandatory).	Reporting (Annual)	4	1	4:00	16
6. Reporting burden by covered banks—filing NGEP report, 12 CFR 346.7(f)(2)(ii) (Mandatory).	Reporting (Annual)	3	1	1:00	3
7. Disclosure burden by covered banks—covered agreements to public, 12 CFR 346.6(b) (Mandatory).	Disclosure (On occasion)	3	1	1:00	3
8. Disclosure burden by NGEPs—covered agreements to public, 12 CFR 346.6(b) (Mandatory).	Disclosure (On occasion)	4	1	1:00	4
9. Disclosure burden by covered banks to NGEPs—CRA affiliate activities, 12 CFR 346.4(b) (Mandatory).	Disclosure (On occasion)	1	1	1:00	1
Total Annual Burden (Hours):					*42*

Source: FDIC.

General Description of Collection: This collection implements a statutory requirement imposing reporting, disclosure and recordkeeping requirements on some community reinvestment-related agreements between insured depository institutions or affiliates, and nongovernmental entities or persons. The information assists interested members of the public in assessing whether the parties are fulfilling their agreements, and helps the agencies understand how the institutions they regulate are fulfilling their CRA responsibilities.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the decline in the estimated overall annual time burden from 100 hours in 2021 to 42 hours in 2022 is the result of a reduction in the number of banks and NGEPs reporting.

2. *Title:* Qualifications for Failed Bank Acquisitions.

OMB Number: 3064–0169.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0169)

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)
1. Section D—Investor Reports on Affiliates (Required to Obtain or Retain a Benefit).	Third-Party Disclosure (Annual)	3	12	2:00	72
2. Section E—Maintenance of Business Books and Records (Required to Obtain or Retain a Benefit).	Recordkeeping (Annual)	3	4	2:00	24
3. Section I—Disclosures Regarding Investors and Entities in Ownership Chain (Required to Obtain or Retain a Benefit).	Reporting (On occasion)	1	1	4:00	4
Total Annual Burden:					*100*

Source: FDIC.

General Description of Collection: The FDIC's policy statement on Qualifications for Failed Bank Acquisitions provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions. The information collected pursuant to the policy statement allows the FDIC to evaluate, among other things, whether such investors (and their related interests) could negatively impact the Deposit Insurance Fund, increase

resolution costs, or operate in a manner that conflict with statutory safety and soundness principles and compliance requirements.

There is no change in the method or substance of the collection. The overall reduction in burden hours is due to economic fluctuations. In particular, no private capital investors have attempted to bid on failed banks in the years since the last financial crisis. FDIC is using a placeholder estimate of 1 respondent in recognition that a private capital group could participate in the bidding process.

3. *Title:* Stress Testing Recordkeeping and Reporting.

OMB Number: 3064–0189.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0189)

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)
1. Annual Stress Test Reporting Template and Documentation for covered banks, 12 CFR Part 325.6 (Mandatory)*.	Reporting (Biennial)	1	1	80:00	80
2. Methodologies and Practices for covered banks, 12 CFR Part 325.5 (Mandatory)*.	Recordkeeping (Biennial)	1	1	213:00	213
3. Publication—covered banks, 12 CFR Part 325.7 (Mandatory)*.	Third-Party Disclosure (Biennial)	1	1	53:00	53
4. Documentation of Assumptions, Uncertainties and Limitations for FDIC-supervised IDIs with total consolidated assets of $10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	56	1	40:00	2,240
5. Summary of Test Result for FDIC-supervised IDIs with total consolidated assets of $10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	56	1	40:00	2,240
6. Policies and Procedures for FDIC-supervised IDIs with total consolidated assets of $10 billion or more, 2009 Interagency Guidance (Voluntary).	Recordkeeping (Annual)	5	1	180:00	900
Total Annual Burden (Hours):					*5,726*

Source: FDIC.

General Description of Collection: The Federal Deposit Insurance Corporation (FDIC) has issued a rule requiring periodic stress testing by FDIC-supervised institutions having more than $250 billion in total assets, consistent with changes made by Section 401 of the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA). Section 165(i)(2) of the Dodd-Frank Act requires each primary Federal regulator to issue consistent and comparable regulations to: (1) ensure that certain financial companies conduct stress tests; (2) establish the form and content of the required reports of such stress tests, and (3) require companies to publish a summary of the stress test results. As originally enacted, section 165(i)(2)(C) applied to all IDIs with average total consolidated assets of $10 billion or greater, required such IDIs to conduct annual stress tests, and required the use of three scenarios: baseline, adverse, and severely adverse. Consistent with the requirements of section 165(i)(2)(C), as originally enacted, the FDIC published its Final Rule implementing Section 165(i)(2) on October 15, 2012.[1] The requirements under part 325 applied to FDIC-supervised IDIs with average total consolidated assets of $10 billion or greater.

The Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA), enacted on May 24, 2018, amended certain aspects of the company-run stress-testing requirements in section 165(i)(2) of the Dodd-Frank Act. Specifically, section 401 of EGRRCPA raises the minimum asset threshold from $10 billion[2] to $250 billion;[3] replaces the requirement for covered banks to conduct stress tests ''annually'' with the requirement to conduct stress tests ''periodically;'' and no longer requires the ''adverse'' stress-testing scenario, thus reducing the number of required stress test scenarios from three to two. EGRRCPA also makes certain conforming and technical changes that were previously included in an April 2018 notice of proposed rulemaking[4] that was superseded, in part, by the enactment of EGRRCPA. The EGRRCPA amendments to the section 165(i)(2) stress testing requirements became effective eighteen months after enactment.

[1] *See https://www.govinfo.gov/content/pkg/FR-2012-10-15/pdf/FR-2012-10-15.pdf* (pp. 8–18). While the Dodd-Frank Act specified a total consolidated asset size threshold of $10 billion, it did not specify a calculation methodology. As such, the FDIC's implementing regulations determined applicability by assessing *average* total consolidated assets over the last four consecutive Call Reports.

[2] *See https://www.govinfo.gov/content/pkg/FR-2012-10-15/pdf/2012-25194.pdf.*

[3] *See https://www.govinfo.gov/content/pkg/FR-2019-10-24/pdf/2019-23036.pdf.*

[4] *https://www.federalregister.gov/documents/2018/04/02/2018-06162/annual-stress-test-applicability-transition-for-covered-banks-with-50-billion-or-more-in-assets.*

The FDIC's Final Rule [5] implementing EGRRCPA specified that, in light of the frequency change from ''annually'' to ''periodically,'' stress tests would be conducted biennially, unless the covered bank is consolidated under a bank holding company that is required by Federal Reserve Board to conduct annual stress tests, in which case such IDI subsidiaries are also to conduct annual stress tests.[6]

The aspects of part 325 that constitute an information collection are those that require a banking organization to (i) file stress test reports to be filed periodically with the FDIC and the Board of Governors of the Federal Reserve System (the Board) in the time, manner, and form specified by the FDIC (12 CFR part 325.6); (ii) establish and maintain a system of controls, oversight, and documentation, including policies and procedures that describe the covered bank's stress test practices and methodologies, as well as processes for updating such bank's stress test practices, as well as specific calculations that must be made by the banking organization during its stress tests (12 CFR part 325.5); and (iii) publish a summary of the results of its stress tests (12 CFR part 325.7).

On May 17, 2012, the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the Board of Governors of the Federal Reserve (FRB), published the 2012 Interagency Guidance on the use of stress testing as a means to better understand the range of a banking organization's potential risk exposures. The guidance is intended for IDIs with total consolidated assets of more than $10 billion [7] and provides an overview of how a banking organization should structure its stress testing activities to ensure they fit into the banking organization's overall risk management program. The purpose of the guidance is to outline broad principles for a satisfactory stress testing framework and describe the manner in which stress testing should be used, that is as an integral component of risk management applicable at various levels of aggregation within a banking organization as well as a tool for capital and liquidity planning. The 2012 Interagency Guidance recommends that IDIs stress test in coordination with a their ''overall strategy and annual planning cycles'' and assess and review their stress testing frameworks at least once a year to ensure that stress testing coverage is comprehensive, tests are relevant and current, methodologies are sound, and results are properly considered.''

The aspects of the 2012 Interagency Guidance that constitute an information collection are the provisions that state a banking organization should (i) have a stress testing framework that includes clearly defined objectives, well-designed scenarios tailored to the banking organization's business and risks, well documented assumptions, conceptually sound methodologies to assess potential impact on the banking organization's financial condition (Section II); (ii) maintain an internal summary of test results to document at a high level the range of its stress testing activities and outcomes, as well as proposed follow-up actions (Section III); and (iii) have policies and procedures for a stress testing framework (Section VI).

There has been no change in the substance or methodology of this information collection. The 1,386 hour increase in total estimated annual burden from 4,340 hours in 2019 to 5,726 hours currently is driven by an increase in the number of FDIC-supervised IDIs that have at least $10 billion in total consolidated assets, which results in an increase in the estimated number of respondents for IC 4 and IC 5 from 39 to 56 each, as well as an increase in the estimated number of annual respondents in IC 6 from 1 to 5. This change is attenuated by the change in stress testing frequency for institutions subject to stress testing requirements under the Dodd-Frank Act, as amended by EGRRCPA, from annually to biennially.

4. *Title:* Recordkeeping for Timely Deposit Insurance Determination.

OMB Number: 3064–0202.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0202)

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)
1. Implementation—Lowest Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	1	1	3145:00	3,145
2. Implementation—Middle Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	1	1	5960:00	5,960
3. Implementation—Highest Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	1	1	36307:00	36,307
4. Ongoing—Lowest Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	3	1	5:00	15
5. Ongoing—Middle Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	15	1	60:00	900
6. Ongoing—Highest Complexity, 12 CFR 370 (Mandatory).	Recordkeeping (Annual)	10	1	20:00	200
7. Request for Exception, 12 CFR 370.8(b) (RtoB).	Reporting (On occasion)	1	1	20:00	20
8. Request for Release, 12 CFR 370.8(c) (RtoB).	Reporting (On occasion)	1	1	200:00	200

[5] *See https://www.govinfo.gov/content/pkg/FR-2019-10-24/pdf/2019-23036.pdf.*

[6] *See https://www.federalregister.gov/documents/2018/11/29/2018-24464/prudential-standards-for-large-bank-holding-companies-and-savings-and-loan-holding-companies*—Category I and Category II bank holding companies and their IDI subsidiaries are required to stress test annually.

[7] The $10 billion asset threshold in the 2012 Interagency Guidance was calculated using total consolidated assets as of the most recent period, instead of the four-quarter rolling average of total consolidated assets that was used in determining eligibility for stress tests under the Dodd-Frank Act. However, the 2012 Interagency Guidance also recommends that ''banking organizations with assets near the threshold should use reasonable judgment and consider, in conjunction with their primary federal supervisor as appropriate, whether they should consider preparing to follow the guidance.'' See *https://www.federalregister.gov/documents/2012/05/17/2012-11989/supervisory-guidance-on-stress-testing-for-banking-organizations-with-more-than-10-billion-in-total.*

SUMMARY OF ESTIMATED ANNUAL BURDEN (OMB NO. 3064–0202)—Continued

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)
9. Request for Extension, 12 CFR 370.6(b) (RtoB).	Reporting (On occasion)	1	1	162:00	162
10. Request for Exemption, 12 CFR 370.8(a) (RtoB).	Reporting (On occasion)	1	1	163:00	163
11. Annual Certification and Report, 12 CFR 370.10(a) (Mandatory).	Reporting (Annual)	30	1	186:00	5,580
Total Annual Burden (Hours):					*52,652*

Source: FDIC.

General Description of Collection: When a bank fails, the FDIC must provide depositors insured funds ''as soon as possible'' after failure while also resolving the failed bank in the least costly manner. The 12 CFR part 370 facilitates prompt payment of FDIC-insured deposits when large insured depository institutions fail. The rule requires insured depository institutions that have two million or more deposit accounts (''covered institutions''), to maintain complete and accurate data on each depositor's ownership interest by right and capacity for all of the covered institution's deposit accounts. The covered institutions are required to develop the capability to calculate the insured and uninsured amounts for each deposit owner, by ownership right and capacity, for all deposit accounts. This data would be used by the FDIC to make timely deposit insurance determinations in the event of a covered insured depository institution's failure.

There is no change in the method or substance of the collection. The overall reduction in burden hours arises almost entirely from the reduction in the number of respondents for ICs 1–3 capturing the implementation burdens, especially the reduction in the number of covered institutions of Highest Complexity. The reduction for that IC alone is almost 400,000 hours per year.

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 9, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–19803 Filed 9–13–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm*. Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington DC 20551–0001, not later than September 29, 2022.

A. Federal Reserve Bank of Atlanta (Erien O. Terry, Assistant Vice President) 1000 Peachtree Street NE, Atlanta, Georgia 30309. Comments can also be sent electronically to *Applications.Comments@atl.frb.org*:

1. *Strategic Value Investors, LP; Strategic Value Bank Partners, LLC; Strategic Value Opportunities, LP; Strategic Value Private Partners, LLC; and Benjamin Mackovak and Martin Adams, each a managing member of Strategic Value Bank Partners, LLC, and Strategic Value Private Partners, LLC, all of Cleveland, Ohio;* as a group acting in concert, to acquire additional voting shares of FineMark Holdings, Inc., and thereby indirectly acquire voting shares of FineMark National Bank & Trust, both of Fort Myers, Florida.

B. *Federal Reserve Bank of Chicago* (Colette A. Fried, Assistant Vice President) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. *Bernard Bennett Banks, Evanston, Illinois, as trustee of a to-be-formed voting trust, Miami, Florida, for the benefit of Stephen Calk, Miami, Florida;* to acquire voting shares of National Bancorp Holdings, Inc., and thereby indirectly acquire voting shares of The Federal Savings Bank, both of Chicago, Illinois. This notification replaces and supersedes the document published on 09–02–2022 at 87 FR 54217.

Board of Governors of the Federal Reserve System.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–19862 Filed 9–13–22; 8:45 am]

BILLING CODE P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites

comment on a proposal to extend for three years, with revision, the Federal Reserve Membership Application (FR 2083, FR 2083A, FR 2083B, and FR 2083C; OMB No. 7100–0046) and the Federal Reserve Bank Stock Applications (FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087; OMB No. 7100–0042).

DATES: Comments must be submitted on or before November 14, 2022.

ADDRESSES: You may submit comments, identified by FR 2030, FR 2030a, FR 2056, FR 2083, FR 2083A, FR 2083B, FR 2083C, FR 2086, FR 2086a, or FR 2087, by any of the following methods:

- Agency Website: *https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the 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.

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, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

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. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement, and other documentation, will be made available on the 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 versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposals

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collections [1]

Collection title: Federal Reserve Membership Application.

Collection identifier: FR 2083, FR 2083A, FR 2083B, and FR 2083C.

OMB control number: 7100–0046.

Frequency: On occasion.

Respondents: State-chartered banks (or national banks converting to become state-chartered banks) applying for membership in the Federal Reserve System.

Estimated number of respondents: 13.

Estimated average hours per response: 5.

Estimated annual burden hours: 65.

General description of collection: Any state-chartered bank (or national bank converting to become a state-chartered bank) applying for membership in the Federal Reserve System must file an application with the appropriate Federal Reserve Bank. The four individual application forms in the FR 2083/A/B/C series (membership application and relevant attachments) are all one-time submissions that are used by new or existing state-chartered banks to apply for membership in the Federal Reserve System:

- FR 2083—Cover sheet, with general information and instructions detailing the information to be submitted according to the type of applicant bank,
- FR 2083A—Application form for the purchase of Federal Reserve Bank stock by state banks (except mutual savings banks) and by national banks converting into state member banks,
- FR 2083B—Application form for the purchase of Federal Reserve Bank stock by mutual savings banks, and
- FR 2083C—Certificate of Organizers or Directors certifying that the information being submitted is true and complete, and the proposed capital is not impaired.

Proposed revisions: The Board is not proposing any changes to the FR 2083A, FR 2083B, or FR 2083C. The Board is

[1] As part of this clearance, the Board will clear the FR 2083, FR 2083A, FR 2083B, and FR 2083C (FR 2083/A/B/C) under the FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087 OMB control number (7100–0042), and then discontinue the FR 2083/A/B/C's separate OMB control number (7100–0046). This change is aimed at simplifying the tracking and clearance process for the two related sets of forms. This change would not modify the reporting requirements of the forms in any way. The collection will then be titled ''The Federal Reserve Membership and Bank Stock Applications'' (FR 2030, FR 2030a, FR 2056, FR 2083, FR 2083A, FR 2083B, FR 2083C, FR 2086, FR 2086a, and FR 2087; 7100–0042).

proposing the following changes to the FR 2083:

A. Remove language from questions 2f. and 3 in Section II Financial and Managerial Information for currently operating banks. The first sentence of question 2f. would be removed, reducing the Applicant's Interagency Biographical and Financial Report (FR 2081c; OMB No. 7100–0134) filing obligations for principals, as defined in footnote 1 of the form, owning less than 10 percent of the Applicant or the Applicant's parent company. Language in the second sentence of question 3 would be removed, which would increase the amount of information received on the Interagency Biographical and Financial Report for any proposed new officers or directors of the Applicant or the Applicant's parent company.

(a) These revisions would provide more information on shareholders, directors, and executive officers with greater control over the Applicant and also reduce the amount of information collected on shareholders with less decision-making authority to allow Federal Reserve staff to better assess the general character of the Applicant's management as provided by the statutory factors of the Board's Regulation H.

B. Add the requirement to include an updated copy of the Applicant's shareholder list reflecting any ownership changes or additions after achieving membership for currently operating banks.

(a) This revision would allow staff to determine the total number of shares owned by each shareholder and the relationships amongst the shareholders in order to better assess which shareholder(s) exercise control over the Applicant and to assist the Federal Reserve staff in better assessing the general character of the Applicant's management as provided by Regulation H.

C. Add two footnotes and one clarifying note in the instructions to direct Applicants to additional resources when completing the application.

Collection title: Federal Reserve Bank Stock Applications.

Collection identifier: FR 2030, FR 2030a, FR 2056, FR 2086, FR 2086a, and FR 2087.

OMB control number: 7100–0042.

Frequency: On occasion.

Respondents: Banks seeking to become state member banks, existing banks or savings institutions seeking to convert to state member bank status, national banks seeking to purchase stock in the Federal Reserve System, and member banks seeking to increase, decrease, or cancel their Federal Reserve Bank stock holdings.

Estimated number of respondents: FR 2030, 2; FR 2030a, 5; FR 2056, 50; FR 2086, 1; FR 2086a, 31; and FR 2087, 1.

Estimated average hours per response: FR 2030, 0.5; FR 2030a, 0.5; FR 2056, 0.5; FR 2086, 0.5; FR 2086a, 0.5; and FR 2087, 0.5.

Estimated annual burden hours: FR 2030, 1; FR 2030a, 3; FR 2056, 25; FR 2086, 1; FR 2086a, 16; and FR 2087, 1.

General description of collection: Any national bank seeking to purchase stock in the Federal Reserve System, any member bank seeking to increase or decrease its Federal Reserve Bank stock holdings, or any member bank seeking to cancel its stock holdings must file an application with the appropriate Federal Reserve Bank. The application forms for the initial subscription of Federal Reserve Bank stock filed by organizing national banks and nonmember state banks converting to national banks or federal savings associations electing to operate as a CSA (FR 2030 and 2030a, respectively) and the application forms for the cancellation of Federal Reserve Bank stock filed by liquidating member banks, member banks merging or consolidating with nonmember banks or CSAs terminating an election to operate as a CSA, and insolvent member banks (FR 2086, FR 2086a, and FR 2087, respectively) may require one or more of the following: a resolution by the applying bank's board of directors authorizing the transaction, an indication of the capital and surplus of the bank as of the date of application, a certification (by official signatures) of the resolution, and/or an indication of the number of shares and dollar amount of the Federal Reserve Bank stock to be purchased or canceled.

The application form for an adjustment in a member bank's holdings of Federal Reserve Bank stock (FR 2056) requires an indication of the capital and surplus of the bank as of the date of application and an indication of the number of shares held and the number of shares to be acquired or canceled. A completed application form must be submitted for each required adjustment by the survivor member bank due to legal merger or other consolidation as a result of Regulation I. The amount of Federal Reserve Bank stock actually held by the member bank is determined by the Reserve Bank through its monitoring of the member bank's capital accounts reported quarterly on the Consolidated Reports of Condition and Income (Call Report) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 7100–0036). The Federal Reserve Bank stock applications are distributed by the Federal Reserve Banks and the information collected enables them to account for required subscription, adjustment, or cancellation payments to and from the System and for dividends paid by the System on any outstanding stock.

Proposed revisions: The Board is not proposing any changes to the FR 2030 or FR 2030a. The Board is proposing the following changes to the FR 2056, FR 2086, FR 2086a, and FR 2087:

A. FR 2056

a. Add dollar amounts of surviving commercial banks' perpetual preferred stock and related surplus, common stock, paid-in surplus, and retained earnings and accumulated other comprehensive income.

i. These revisions provide information needed to process these transactions.

B. FR 2086

a. Remove the requirement to include Charter Number and add the requirement to include ABA number instead.

i. This revision is intended to simplify the information required.

C. FR2086A and FR 2087

a. Remove the requirement to include Charter Number.

i. This revision is intended to make the process more efficient by removing a field that is no longer needed.

Legal authorization and confidentiality: The Federal Reserve Membership Application is authorized by section 9 of the Federal Reserve Act (FRA).[2] The Federal Reserve Bank Stock Applications are authorized by sections 9[3] and 11(a)[4] of the FRA for state banks and national banks and by section 5A[5] of the Home Owners' Loan Act for covered savings associations. Additionally, the FR 2030 is specifically authorized by section 2 of the FRA;[6] the FR 2030a is authorized by section 2 of the FRA;[7] the FR 2056, FR 2086, and FR 2086a are authorized by section 5 of the FRA;[8] and the FR 2087 is authorized by section 6 of the FRA.[9] The Federal Reserve Membership Applications are required to obtain a benefit. The Federal Reserve Bank Stock Applications are mandatory.

Information submitted to the Board under these collections may be

[2] 12 U.S.C. 321, 322, 323, 329, and 333.

[3] *Id.*

[4] 12 U.S.C. 248(a).

[5] 12 U.S.C. 1464a(c).

[6] 12 U.S.C. 222 and 282.

[7] *Id.*

[8] 12 U.S.C. 287.

[9] 12 U.S.C. 288.

protected from disclosure pursuant to exemption 8 of the FOIA if it is 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] Individual respondents may also request confidential treatment in accordance with the Board's Rules Regarding Availability of Information.[11] Requests for confidential treatment of information are reviewed on a case-by-case basis. To the extent information provided under these collections is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, or to the extent the information reflects personnel and medical files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, the information may be protected from disclosure pursuant to FOIA exemption 4 or 6, respectively.[12]

Board of Governors of the Federal Reserve System, September 8, 2022.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2022–19791 Filed 9–13–22; 8:45 am]

BILLING CODE 6210–01–P

[10] 5 U.S.C. 552(b)(8).

[11] 12 CFR 261.17.

[12] 5 U.S.C. 552(b)(4); (b)(6).

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0077; Docket No. 2022–0053; Sequence No. 17]

Submission for OMB Review; Federal Acquisition Regulation Part 46 Requirements

AGENCY: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice.

SUMMARY: Under the provisions of the Paperwork Reduction Act, the Regulatory Secretariat Division has submitted to the Office of Management and Budget (OMB) a request to review and approve a revision of a previously approved information collection requirement regarding Federal Acquisition Regulation part 46 requirements.

DATES: Submit comments on or before October 14, 2022.

ADDRESSES: Written comments and recommendations for this information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

Additionally, submit a copy to GSA through *https://www.regulations.gov* and follow the instructions on the site. This website provides the ability to type short comments directly into the comment field or attach a file for lengthier comments.

Instructions: All items submitted must cite OMB Control No. 9000–0077, Federal Acquisition Regulation Part 46 Requirements. 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 *www.regulations.gov,* approximately two-to-three days after submission to verify posting. If there are difficulties submitting comments, contact the GSA Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.*

FOR FURTHER INFORMATION CONTACT: Zenaida Delgado, Procurement Analyst, at telephone 202–969–7207, or *zenaida.delgado@gsa.gov.*

SUPPLEMENTARY INFORMATION:

A. OMB Control Number, Title, and Any Associated Form(s)

9000–0077, Federal Acquisition Regulation Part 46 Requirements

B. Need and Uses

DoD, GSA, and NASA are combining OMB Control Nos. for the Federal Acquisition Regulation (FAR) by FAR part. This consolidation is expected to improve industry's ability to easily and efficiently identify burdens associated with a given FAR part. The review of the information collections by FAR part allows improved oversight to ensure there is no redundant or unaccounted for burden placed on industry. Lastly, combining information collections in a given FAR part is also expected to reduce the administrative burden associated with processing multiple information collections.

This justification supports the revision of OMB Control No. 9000–0077 and combines it with the previously approved information collections under OMB Control No. 9000–0187, with the new title ''Federal Acquisition Regulation Part 46 Requirements''. Upon approval of this consolidated information collection, OMB Control No. 9000–0187 will be discontinued. The burden requirements previously approved under the discontinued number will be covered under OMB Control No. 9000–0077.

This clearance covers the information that contractors may be required to submit to comply with the following FAR clauses:

- FAR Inspection Clauses
- 52.246–2, Inspection of Supplies—Fixed-Price
- 52.246–3, Inspection of Supplies—Cost-Reimbursement
- 52.246–4, Inspection of Services—Fixed-Price
- 52.246–5, Inspection of Services—Cost-Reimbursement
- 52.246–6, Inspection—Time-and-Material and Labor-Hour
- 52.246–7, Inspection of Research and Development—Fixed-Price
- 52.246–8, Inspection of Research and Development—Cost-Reimbursement
- 52.246–12, Inspection of Construction

These FAR clauses require the contractor to provide and maintain an inspection system that is acceptable to the Government, and to keep complete records of all inspection work performed and make it available to the Government. These clauses give the Government the right to inspect and test all work.

Records required under these clauses are kept as a part of a contractor's normal business operations. To ensure they provide a quality product or service, every business must have standards and methods for reviewing or inspecting the quality of their product or service. These standards will differ by industry and the complexity of the product or service provided.

The Government relies on a contractor's existing quality assurance system for contracts for commercial products. The Government relies on the contractor to accomplish all inspection and testing needed to ensure that acquired commercial services conform to contract requirements before they are tendered to the Government. See FAR 12.208 and 46.202–1. Likewise, when the contract amount is expected to be less than the simplified acquisition threshold, these clauses do not apply.

The FAR ''inspection clauses'' are used for quality assurance depending on the type of contract, or the product or service being provided. These clauses do not require the transmittal or sending of documentation to the Government, but they have record keeping requirements. The Government may

review these records to confirm the contract quality requirements are being met. This review is risk-based and may or may not include the review of all quality assurance records. Generally, the records are more likely to be reviewed when the contractor is not meeting quality standards or as part of Government Contract quality assurance surveillance for complex requirements. Subject matter experts estimate these records are requested from 10 percent or fewer of contractors.

The information is used to assure that supplies and services provided under Government contracts conform to contract requirements.

• FAR 52.246–15, Certificate of Conformance. This clause requires the contractor to complete and sign a certificate of conformance (CoC). This clause is used in solicitations and contracts for supplies or services at the discretion of the contracting officer when it is in the Government's interest, small losses would be incurred in the event of a defect; or because of the contractor's reputation or past performance, or when it is likely that the supplies or services furnished will be acceptable and any defective work would be replaced, corrected, or repaired without contest.

• FAR 52.246–26, Reporting Nonconforming Items. This clause requires contractors to provide written notification to the contracting officer within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that any end item, component, subassembly, part, or material contained in supplies purchased by the contractor for delivery to, or for, the Government is counterfeit or suspect counterfeit. This clause requires certain contractors to submit a report to the Government-Industry Data Exchange Program (GIDEP) system at *www.gidep.org* within 60 days of becoming aware or having reason to suspect, such as through inspection, testing, record review, or notification from another source (*e.g.,* seller, customer, third party) that an item purchased by the contractor for delivery to, or for, the Government is a counterfeit or suspect counterfeit item; or a common item that has a major or critical nonconformance.

This information will be used by the Government to address and detect nonconforming and counterfeit items. Perhaps more important, this information will be available to businesses for searching prior to placing orders, thus enabling the avoidance of purchasing counterfeit items in the first place.

C. Annual Burden

Respondents: 7,859.
Total Annual Responses: 9,301.
Total Burden Hours: 33,015.

D. Public Comment

A 60-day notice was published in the **Federal Register** at 87 FR 40842, on July 8, 2022. No comments were received.

Obtaining Copies: 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. 9000–0077, Federal Acquisition Regulation Part 46 Requirements.

Janet Fry,

Director, Federal Acquisition Policy Division, Office of Governmentwide Acquisition Policy, Office of Acquisition Policy, Office of Governmentwide Policy.

[FR Doc. 2022–19806 Filed 9–13–22; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Formative Evaluation of the Demonstration Grants To Strengthen the Response to Victims of Human Trafficking in Native Communities Program (New Collection)

AGENCY: Office of Planning, Research, and Evaluation, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Administration for Children and Families (ACF) is proposing a new data collection activity for the Formative Evaluation of the Demonstration Grants to Strengthen the Response to Victims of Human Trafficking in Native Communities (VHT–NC) Program. The overarching goals of the formative evaluation are to understand the context in which the VHT–NC projects are implemented, the projects' goals, and the paths they take to achieve their goals. The proposed data collection will include semi-structured interviews with project staff, project participants, and key partners.

DATES: *Comments due within 60 days of publication.* In compliance with the requirements of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

ADDRESSES: You can obtain copies of the proposed collection of information and submit comments by emailing *OPREinfocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: In 2020, ACF's Office on Trafficking in Persons issued six VHT–NC demonstration grants to fund projects to build, expand, and sustain organizational and community capacity to deliver services to Native Americans (*i.e.,* American Indians, Alaska Natives, Native Hawaiians, and/or Pacific Islanders) who have experienced human trafficking through the provision of direct services, assistance, and referrals. The purpose of the proposed data collection is to obtain a comprehensive understanding of the VHT–NC projects and their communities, including implementation strengths and challenges. A primary aim is to conduct a participatory and culturally responsive formative evaluation that is informed by and respects the knowledge, values, and traditions of the communities implementing the VHT–NC projects.

The proposed data collection will include semi-structured interviews with VHT–NC project staff, project participants (adults who have received assistance from the VHT–NC project), and key project partners. Interviews with project staff and partners will be conducted individually or, if appropriate and requested by respondents, in small groups. Interview topics will include community context, project goals and design, organizational and staff characteristics, partnerships, outreach and identification approaches, case management and service provision, survivor engagement, and community training. Interviews with project participants will be conducted individually. Participant interviews will focus on the project services and assistance received by participants, including those most helpful to healing and recovery.

Respondents: Respondents include VHT–NC project staff (*e.g.,* project directors, project coordinators, case managers/advocates, specialized services staff), project participants (adults who have received assistance from the VHT–NC project), and key project partner staff.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents (total over request period)	Number of responses per respondent (total over request period)	Avg. burden per response (in hours)	Total/annual burden (in hours)
Project leadership interview	18	1	1.5	27
Direct services staff interview	24	1	1.25	30
Participant interview	30	1	1	30
Partner interview	36	1	1.25	45

Estimated Total Annual Burden Hours: 132.

Comments: The Department specifically requests comments on (a) 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; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) 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. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Authority: Section 105(d)(2) of the Trafficking Victims Protection Act of 2000 (Pub. L. 106–386) [22 U.S.C. 7103].

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–19796 Filed 9–13–22; 8:45 am]

BILLING CODE 4184–47–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

OWH Observance Champions

AGENCY: Office of the Secretary, HHS.

ACTION: Notice.

SUMMARY: The U.S. Department of Health and Human Services' (HHS) Office on Women's Health (OWH) invites public and private sector organizations to apply to become a Women's Health Champion during National Women's Blood Pressure Awareness Week (NWBPAW), National Eating Disorder Awareness Week (NEDAW), National Women and Girls' HIV/AIDS Awareness Day (NWGHAAD), National Women's Health Week (NWHW), and/or other OWH observances.

DATES: Letters of interest will be accepted starting September 15, 2022, and will be reviewed periodically.

ADDRESSES: Letters of interest can be submitted via email to *womenshealth@hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Jeff Ventura. Office on Women's Health, Office of the Assistant Secretary for Health, U.S. Department of Health and Human Services; 1101 Wootton Parkway, Rockville, MD 20852; Telephone: (202) 690–7650. Email: *womenshealth@hhs.gov.*

SUPPLEMENTARY INFORMATION:

Background: The HHS Office on Women's Health (OWH) is charged with providing expert advice and consultation to the Secretary concerning scientific, legal, ethical, and policy issues related to women's health. OWH establishes short-range and long-range goals within the Department and coordinates on activities within the Department that relate to disease prevention, health promotion, service delivery, research, and public and health care professional education, for issues of particular concern to women throughout their lifespan. OWH monitors the Department's activities regarding women's health and identifies needs regarding the coordination of activities. OWH is also responsible for facilitating the exchange of information through the National Women's Health Information Center. Additionally, OWH coordinates efforts to promote women's health programs and policies with the private sector.

Eligibility: Any organization may apply to become a Women's Health Champion. The selected Women's Health Champions may be recognized for their commitment and their work toward achieving the goals of the observance(s).

Women's Health Champions can be public and/or private organizations such as those at the state, local, county, and tribal levels, non-governmental organizations, non-profit organizations, businesses, academic organizations, organizations that impact health outcomes, philanthropic organizations, and tribal organizations that identify themselves as being aligned with or promoting the goals of the observance(s).

All organizations may apply.

Organizations that work to improve health outcomes in women may apply. Social organizations that work with, and/or have access to large populations of women may apply.

Individuals are not eligible to become Women's Health Champions.

Applicants shall submit a letter of interest and identify how they support or plan to support the observance(s)'s goals. Applicants will be considered according to the organization's commitment to support those goals.

Women's Health Champions may receive recognition from OWH on *womenshealth.gov, girlshealth.gov,* or OWH Social Media platforms. They may also receive information and resources for dissemination.

Funds: None. Neither HHS nor OWH will provide funds to support Women's Health Champions. Applicants, OWH, and Women's Health Champions will not be expected to contribute funds.

Application: Organizations may apply to become a Women's Health Champion. Organizations should submit a letter of interest acknowledging their support of the observance(s)'s overarching goals. Organizations interested in becoming Women's Health Champions shall identify in their letters of interest those activities that demonstrate commitment to the observance(s)'s overarching goals and objectives and indicate how they address or support those goals.

Office on Women's Health Programs and Activities: To achieve its mission, the Office on Women's Health leads a wide range of activities and programs, including several key observances. To learn more about our key observances, visit: *https://www.womenshealth.gov/about-us/what-we-do/observances.*

Requirements of Interested Organizations: Organizations must submit a letter of interest to become a Women's Health Champion.

Organizations selected by OWH to be Women's Health Champions will sign a letter of understanding (LOU) with OWH outlining the terms and parameters of their support for the observance(s). Selection as a Women's Health Champion does not imply any federal endorsement of the collaborating organization's general policies, activities, or products.

Eligibility for Interested Organizations: To be eligible to become a Women's Health Champion, an organization shall: (1) Have a demonstrated interest in, understanding of, and experience promoting access to resources and information regarding the observance's goals; or (2) have an organizational or corporate mission that is aligned with the observance's goals; and (3) agree to sign a LOU with OWH, which will set forth the details of how the organization is supporting the goals of the observance.

Letter of Interest Requirements: Each letter of interest shall contain: (1) Organization name, location, website, and submitter's contact information; (2) a brief description of the organization's mission and/or values; and (3) a description of how the organization supports or plans to support the observance(s).

Submission of a letter of interest does not guarantee acceptance as a Women's Health Champion.

Authority: 42 U.S.C. 237a; 42 U.S.C. 300u–2(a) and 300u–3; and section 13005 of the 21st Century Cures Act.

Dated: August 25, 2022.

Dorothy Fink,

Deputy Assistant Secretary for Women's Health, Office of the Assistant Secretary for Health.

[FR Doc. 2022–19839 Filed 9–13–22; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Listening Session on Intimate Partner Violence

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of public meeting.

SUMMARY: The U.S. Department of Health and Human Services Office on Women's Health (OWH) is announcing a virtual listening session on the impact that COVID–19 has had on intimate partner violence (IPV). The purpose of the listening session is to exchange information about this topic and seek input from stakeholders and subject matter experts on an individual basis. OWH may use that information to inform our work in this area. Members of the general public are also invited to view the meeting.

DATES: The listening session will be held on September 28, 2022, from 10 a.m. to 12:00 p.m. Eastern Time.

Procedure for Attendance: Register for the listening session: *https://www.zoomgov.com/meeting/register/vJItfuGgrDsoGxF_gSJjxdsDaFplyPZKdVo.*

Website: You can find more information on *https://www.womenshealth.gov/ipvlisteningsession.*

Questions for Discussion: OWH seeks to better understand the role the COVID–19 pandemic may play in the reported rise of IPV. Questions for discussion at the public session may include, but are not limited to:

- What are you seeing in terms of the pandemic's impact on IPV trends?
- What effective interventions have you identified to address IPV?
- How and when can we best engage organizations around IPV in the future?
- What are your organization's suggestions on including perspectives of underserved communities?
- What has worked well in your collaboration with government agencies and offices around IPV? Conversely, what is one key barrier you encountered?
- How can we improve trust with the communities you represent, work most closely with, and/or advocate on behalf of?
- What is your top priority related to the impact of COVID–19 on IPV?
- What should we continue to focus on?
- Are there any missed opportunities?
- How do you think we can best provide access to information related to COVID–19's impact on IPV?

SUPPLEMENTARY INFORMATION:

I. *Background:* One recent study in the *Journal of Interpersonal Violence* revealed 64 percent of individuals who experienced IPV since the start of the COVID–19 pandemic reported that violence was a new characteristic of their relationship (Peitzmeier 2021).

We invite organizations who work with victims of IPV; Federal, State, local, and tribal public health officials; and law enforcement to provide insights into the current state of IPV and the impact of the COVID–19 pandemic on IPV. Members of the general public are also invited to view the session.

Topics for Listening Session: The listening session is an opportunity for the HHS OWH to hear what individual stakeholders and subject matter experts are experiencing with regard to the pandemic's influence on IPV, what we should consider when providing assistance or programming, how to include the perspectives of underserved communities, and what stakeholders see as the top priorities in addressing IPV.

II. *Participation:* The meeting is free and open to the public. Registration is required. Details on how to register for this listening session can be found at the top of the Notice.

Listening Session Availability: A recording of the listening session will be posted to the OWH YouTube channel, and a transcript of the listening session will be posted at *https://www.regulations.gov.*

References

Peitzmeier, Sarah M., Lisa Fedina, Louise Ashwell, et. al. 2021. ''Increases in Intimate Partner Violence During COVID–19: Prevalence and Correlates.'' *Journal of Interpersonal Violence* 8862605211052586. doi: 10.1177/08862605211052586.

Dated: August 24, 2022.

Dorothy Fink,

Deputy Assistant Secretary for Women's Health, Office of the Assistant Secretary for Health.

[FR Doc. 2022–19850 Filed 9–13–22; 8:45 am]

BILLING CODE 4150–33–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the National Vaccine Advisory Committee

AGENCY: Office of Infectious Disease and HIV/AIDS Policy, Office of the Assistant Secretary for Health, Office of the Secretary, Department of Health and Human Services.

ACTION: Notice.

SUMMARY: As stipulated by the Federal Advisory Committee Act, the Department of Health and Human Services (HHS) is hereby giving notice that the National Vaccine Advisory Committee (NVAC) will hold an in-person meeting. The meeting will be open to the public and public comment will be heard during the meeting.

DATES: The meeting will be held June 22–23, 2022. The confirmed meeting times and agenda will be posted on the NVAC website at *http://www.hhs.gov/nvpo/nvac/meetings/index.html* as soon as they become available.

ADDRESSES: Instructions regarding attending this meeting will be posted online at: *http://www.hhs.gov/nvpo/nvac/meetings/index.html* at least one week prior to the meeting. Pre-

registration is required for those who wish to attend the meeting or participate in public comment. Please register at *http://www.hhs.gov/nvpo/nvac/meetings/index.html.*

FOR FURTHER INFORMATION CONTACT: Ann Aikin, Acting Designated Federal Officer at the Office of Infectious Disease and HIV/AIDS Policy, U.S. Department of Health and Human Services, Mary E. Switzer Building, Room L618, 330 C Street SW, Washington, DC 20024. Email: *nvac@hhs.gov.* Telephone: 202–494–1719.

SUPPLEMENTARY INFORMATION: Pursuant to section 2101 of the Public Health Service Act (42 U.S.C. 300aa–1), the Secretary of HHS was mandated to establish the National Vaccine Program to achieve optimal prevention of human infectious diseases through immunization and to achieve optimal prevention against adverse reactions to vaccines. The NVAC was established to provide advice and make recommendations to the Director of the National Vaccine Program on matters related to the Program's responsibilities. The Assistant Secretary for Health serves as Director of the National Vaccine Program.

The NVAC will hear presentations on COVID–19, monkeypox, influena, and polio vaccination, as well as vaccine safety, innovation, and gaps in rural vaccination coverage. Please note that agenda items are subject to change, as priorities dictate. Information on the final meeting agenda will be posted prior to the meeting on the NVAC website: *http://www.hhs.gov/nvpo/nvac/index.html.*

Members of the public will have the opportunity to provide comment at the NVAC meeting during the public comment period designated on the agenda. Public comments made during the meeting will be limited to three minutes per person to ensure time is allotted for all those wishing to speak. Individuals are also welcome to submit written comments in advance. Written comments should not exceed three pages in length. Individuals submitting comments should email their written comments or their request to provide a comment during the meeting to *nvac@hhs.gov* at least five business days prior to the meeting.

Dated: 08/22/2022.

Ann Aikin,

Acting Designated Federal Official, Office of the Assistant Secretary for Health.

[FR Doc. 2022–19849 Filed 9–13–22; 8:45 am]

BILLING CODE 4150–44–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Allergy, Immunology, and Transplantation Research Committee Allergy, Immunology, and Transplantation Research Committee (AITC).

Date: October 6–7, 2022.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Allergy and Infectious Diseases, National Institutes of Health, 5601 Fishers Lane, Room 3G51, Rockville, MD 20892 (Virtual Meeting).

Contact Person: Thomas F. Conway, Ph.D., Scientific Review Officer, Scientific Review Program, Division of Extramural Activities, National Institute of Allergy and Infectious, National Institutes of Health, NIAID, 5601 Fishers Lane, Room 3G51, Bethesda, MD 20892–9834, 240–669–5075, *thomas.conway@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: September 8, 2022.

Tyeshia M. Roberson-Curtis,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19832 Filed 9–13–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Initial Review Group Genome Research Study Section GNOM–G—CEGS.

Date: November 3–4, 2022.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Keith McKenney, Ph.D., Scientific Review Officer, National Human Genome Research Institute, National Institutes of Health, 6700B Rockledge Drive, Suite 3100, Bethesda, MD 20817, 301–594–4280, *mckenneyk@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS.)

Dated: September 9, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19871 Filed 9–13–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; 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 NIH Clinical Center Research Hospital Board.

The meeting will be held as a virtual meeting and open to the public. Individuals who plan to view the virtual meeting and need special assistance or other reasonable accommodations to view the meeting should notify the Contact Person(s) listed below in advance of the meeting. The meeting can be accessed from the NIH video *https://videocast.nih.gov/* and the CCRHB website *https://ccrhb.od.nih.gov/meetings.html.*

Name of Committee: NIH Clinical Center Research Hospital Board.

Date: October 21, 2022.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: NIH and Clinical Center (CC) Leadership Announcements, CC CEO Update of Recent Activities and Organizational Priorities, Status Report on Key 2019 CC Strategic Plan Initiatives and other Business of the Board.

Place: National Institutes of Health, Building 1, 1 Center Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Persons: Patricia Piringer, RN, MSN (C), National Institutes of Health Clinical Center, 10 Center Drive, Bethesda, MD 20892, *ppiringer@cc.nih.gov,* (301) 402–2435, (202) 460–7542 (direct).

Natascha Pointer, Management Analyst, Executive Assistant to Dr. Gilman, Office of the Chief Executive Officer, National Institutes of Health Clinical Center, Bethesda, MD 20892, *npointer@cc.nih.gov*, (301) 496–4114, (301) 402–2434 (direct).

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.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds, National Institutes of Health, HHS)

Dated: September 9, 2022.

Patricia B. Hansberger,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19873 Filed 9–13–22; 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; mTOR in Aging.

Date: October 7, 2022.

Time: 10:00 a.m. to 5:00 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: Nijaguna Prasad, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute on Aging, 7201 Wisconsin Avenue, Gateway Bldg., Suite 2W200, Bethesda, MD 20892, (301) 496–9667, *prasadnb@nia.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 8, 2022.

Miguelina Perez,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19848 Filed 9–13–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; 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 Institute on Minority Health and Health Disparities Special Emphasis Panel; NIH Support for Conferences and Scientific Meetings.

Date: October 20, 2022.

Time: 11 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Plaza, 7201 Wisconsin Ave, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Karen Nieves-Lugo, M.P.H., Ph.D., Scientific Review Officer, Office of Extramural Research, Activities National Institute on Minority Health and Health Disparities, National Institutes of Health Gateway Building, 7201 Wisconsin Avenue, Bethesda, MD 20892, (301) 480–4727, *karen.nieveslugo@nih.gov.*

Name of Committee: National Institute on Minority Health and Health Disparities Special Emphasis Panel; NIMHD Mentored Career and Research Development Awards (Ks).

Date: October 27–28, 2022.

Time: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Gateway Plaza, 7201 Wisconsin Ave, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Deborah Ismond, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, Gateway Plaza, 7201 Wisconsin Avenue, Bethesda, MD 20892, 301–402–1366, *ismonddr@mail.nih.gov.*

Dated: September 9, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19885 Filed 9–13–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; 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: Environmental Health Sciences Review Committee.

Date: October 5–6, 2022.

Time: 10 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530

Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Varsha Shukla, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 530 Davis Drive, Keystone Building, Room 3094, Durham, NC 27713, 984–287–3288, *Varsha.shukla@nih.gov.*

Name of Committee: Environmental Health Sciences Review Committee.

Date: November 8–9, 2022.

Time: 11 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

Contact Person: Varsha Shukla, Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, National Institute of Environmental Health Sciences, 530 Davis Drive, Keystone Building, Room 3094 Durham, NC 27713, 984–287–3288, *Varsha.shukla@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS.)

Dated: September 9, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19884 Filed 9–13–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; 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 Human Genome Research Institute Special Emphasis Panel; Genetic Counselors R25.

Date: December 2, 2022.

Time: 12:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute for Human Genome Research, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Sarah Jo Wheelan, Ph.D., Scientific Review Officer, Scientific Review Branch, National Institute for Human Genome Research, National Institutes of Health, 6700B Rockledge Drive, Suite 300, Bethesda, MD 20892, (301) 435–1580, *wheelansj@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: September 9, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19872 Filed 9–13–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Pathophysiology of Eye Disease—2 Study Section.

Date: October 13–14, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Embassy Suites—Chevy Chase Pavilion, 4300 Military Road NW, Washington, DC 20015.

Contact Person: Cibu Paul Thomas, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1011–H, Bethesda, MD 20894, (301) 402–4341, *thomascp@mail.nih.gov.*

Name of Committee: Brain Disorders and Clinical Neuroscience Integrated Review Group Aging Systems and Geriatrics Study Section.

Date: October 13–14, 2022.

Time: 9:30 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Residence Inn Bethesda, 7335 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Roger Alan Bannister, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1010–D, Bethesda, MD 20892, (301) 435–1042, *bannisterra@csr.nih.gov.*

Name of Committee: Risk, Prevention and Health Behavior Integrated Review Group Lifestyle Change and Behavioral Health Study Section.

Date: October 13–14, 2022.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pamela Jeter, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 10J08, Bethesda, MD 20892, (301) 827–6401, *pamela.jeter@nih.gov.*

Name of Committee: Biology of Development and Aging Integrated Review Group Drug Discovery and Molecular Pharmacology Study Section.

Date: October 17–18, 2022.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Bethesda, 1 Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Jeffrey Smiley, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6194, MSC 7804, Bethesda, MD 20892, 301–594–7945, *smileyja@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel Special Topics: Noninvasive Neuromodulation and Neuroimaging Technologies.

Date: October 18–19, 2022.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Pablo Miguel Blazquez Gamez, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 435–1042, *pablo.blazquezgamez@nih.gov.*

Name of Committee: Molecular, Cellular and Developmental Neuroscience Integrated Review Group Neurodifferentiation, Plasticity, Regeneration and Rhythmicity Study Section.

Date: October 19–20, 2022.

Time: 9:00 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Hilton Alexandria Old Town, 1767 King Street, Alexandria, VA 22314.

Contact Person: Jacek Topczewski, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 1002A1, Bethesda, MD 20892, (301) 594–7574, *topczewskij2@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: September 9, 2022.

Melanie J. Pantoja,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–19870 Filed 9–13–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2272]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov*; or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arizona:						
Maricopa	City of Glendale (21–09–1877P).	The Honorable Jerry Weiers, Mayor, City of Glendale, 5850 West Glendale Avenue, Suite 451, Glendale, AZ 85301.	City Hall, 5850 West Glendale Avenue, Glendale, AZ 85301.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	040045
Maricopa	City of Goodyear (21–09–1877P).	The Honorable Joe Pizzillo, Mayor, City of Goodyear, 190 North Litchfield Road, Goodyear, AZ 85338.	Engineering and Development Services, 14455 West Van Buren Street, Suite D101, Goodyear, AZ 85338.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	040046

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Maricopa	City of Phoenix (21–09–1437P).	The Honorable Kate Gallego, Mayor, City of Phoenix, City Hall, 200 West Washington Street, Phoenix, AZ 85003.	Street Transportation Department, 200 West Washington Street, 5th Floor, Phoenix, AZ 85003.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	040051
Maricopa	Unincorporated Areas of Maricopa County (21–09–1437P).	The Honorable Bill Gates, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	040037
Maricopa	Unincorporated Areas of Maricopa County (21–09–1877P).	The Honorable Bill Gates, Chair, Board of Supervisors, Maricopa County, 301 West Jefferson Street, 10th Floor, Phoenix, AZ 85003.	Flood Control District of Maricopa County, 2801 West Durango Street, Phoenix, AZ 85009.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	040037
Yavapai	Town of Prescott Valley (21–09–1114P).	The Honorable Kell Palguta, Mayor, Town of Prescott Valley, Civic Center, 7501 East Skoog Boulevard, 4th Floor, Prescott Valley, AZ 86314.	Town Hall, Engineering Division, 7501 East Civic Circle, Prescott Valley, AZ 86314.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2022	040121
California:						
San Mateo	City of South San Francisco (21–09–0918P).	The Honorable Mark Nagales, Mayor, City of South San Francisco, 400 Grand Avenue, South San Francisco, CA 94080.	City Hall, 400 Grand Avenue, South San Francisco, CA 94080.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 17, 2022	065062
San Mateo	Town of Colma (21–09–0918P).	The Honorable Helen Fisicaro, Mayor, Town of Colma, 1198 El Camino Real, Colma, CA 94014.	Town Hall, 1198 El Camino Real, Colma, CA 94014.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 17, 2022	060316
Hawaii: Hawaii	Hawaii County (20–09–1349P).	The Honorable Mitch Roth, Mayor, County of Hawaii, 25 Aupuni Street, Hilo, HI 96720.	Hawaii County, Department of Public Works, Engineering Division, 101 Pauahi Street, Suite 7, Hilo, HI 96720.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2022	155166
Illinois:						
Will	City of Lockport (22–05–1296P).	The Honorable Steven Streit, Mayor, City of Lockport, 222 East 9th Street, Lockport, IL 60441.	Public Works and Engineering Department, 17112 South Prime Boulevard, Lockport, IL 60441.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	170703
Will	Unincorporated Areas of Will County (22–05–1296P).	The Honorable Jennifer Bertino-Tarrant, Will County Executive, Will County Office Building, 302 North Chicago Street, Joliet, IL 60432.	Will County Land Use Department, 58 East Clinton Street, Suite 100, Joliet, IL 60432.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	170695
Kentucky: Scott	Unincorporated Areas of Scott County (21–04–4848P).	Executive Joe Pat Covington, Scott County, 101 East Main Street, Suite 210, Georgetown, KY 40324.	Georgetown-Scott County Planning Commission, 230 East Main Street, Georgetown, KY 40324.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 21, 2022	210207
Michigan: Wayne	Township of Canton (22–05–0850P).	Supervisor Anne Marie Graham-Hudak, Township of Canton, 1150 Canton Center South, Canton, MI 48188.	Canton Municipal Complex, 1150 South Canton Center Road, Canton, MI 48188.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 28, 2022	260219
New York:						
Erie	Town of Evans (21–02–0897P).	Supervisor Mary Hosler, Town of Evans Board Members, 8787 Erie Road, Angola, NY 14006.	Town Hall, 8787 Erie Road, Angola, NY 14006.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 26, 2023	360240
Orange	Village of Harriman (21–02–0938P).	The Honorable Lou Medina, Mayor, Village of Harriman, 1 Church Street, Harriman, NY 10926.	Village Hall, 1 Church Street, Harriman, NY 10926.	*https://msc.fema.gov/portal/advanceSearch.*	Jan. 12, 2023	360618
Texas: Tarrant	City of North Richland Hills (21–06–2663P).	The Honorable Oscar Trevino, Jr., Mayor, City of North Richland Hills, P.O. Box 820609, North Richland Hills, TX 76182.	City Hall, 4301 City Point Drive, North Richland Hills, TX 76180.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 15, 2022	480607

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Wisconsin: Waukesha.	Village of Summit (21–05–1028P).	President Jack Riley, Village of Summit, 37100 Delafield Road, Summit, WI 53066.	Village Hall, 2911 North Dousman Road, Oconomowoc, WI 53066.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 28, 2022	550663

[FR Doc. 2022–19834 Filed 9–13–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2255]

Proposed Flood Hazard Determinations; Correction

AGENCY: Federal Emergency Management Agency; Department of Homeland Security.

ACTION: Notice; correction.

SUMMARY: On August 2, 2022, FEMA published in the **Federal Register** a proposed flood hazard determination notice that contained an erroneous table. This notice provides corrections to that table to be used in lieu of the erroneous information. The table provided here represents the proposed flood hazard determinations and communities affected for San Luis Obispo County, California and Incorporated Areas.

DATES: Comments are to be submitted on or before October 31, 2022.

ADDRESSES: The Preliminary Flood Insurance Rate Map (FIRM), and where applicable, the Flood Insurance Study (FIS) report for each community are available for inspection at both the online location and the respective Community Map Repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

You may submit comments, identified by Docket No. FEMA–B–2255, to Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov.*

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: FEMA proposes to make flood hazard determinations for each community listed in the table below, in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP may only be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://floodsrp.org/pdfs/srp_fact_sheet.pdf.*

The communities affected by the flood hazard determinations are provided in the table below. Any request for reconsideration of the revised flood hazard determinations shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations will also be considered before the FIRM and FIS report are made final.

Correction

In the proposed flood hazard determination notice published at 87 FR 47225 in the August 2, 2022, issue of the **Federal Register**, FEMA published a table titled San Luis Obispo County, California. This table contained inaccurate information as to the title of the table. In this document, FEMA is publishing a table containing the accurate information. The information provided below should be used in lieu of that previously published.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
San Luis Obispo County, California and Incorporated Areas Project: 18–09–0044S Preliminary Dates: September 28, 2021 and April 29, 2022	
City of Arroyo Grande.	City Hall, 300 East Branch Street, Arroyo Grande, CA 93420.
City of El Paso de Robles.	City Hall, 1000 Spring Street, Paso Robles, CA 93446.
City of Grover Beach.	City Hall, 154 South Eighth Street, Grover Beach, CA 93433.
City of Pismo Beach.	City Hall, 760 Mattie Road, Pismo Beach, CA 93449.
City of San Luis Obispo.	City Hall, 990 Palm Street, San Luis Obispo, CA 93401.
San Luis Obispo County Unincorporated Areas.	San Luis Obispo County Government Center, 1055 Monterey Street, Room D–430, San Luis Obispo, CA 93408.

[FR Doc. 2022–19833 Filed 9–13–22; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002; Internal Agency Docket No. FEMA–B–2274]

Changes in Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice lists communities where the addition or modification of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or the regulatory floodway (hereinafter referred to as flood hazard determinations), as shown on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports, prepared by the Federal Emergency Management Agency (FEMA) for each community, is appropriate because of new scientific or technical data. The FIRM, and where applicable, portions of the FIS report, have been revised to reflect these flood hazard determinations through issuance of a Letter of Map Revision (LOMR), in accordance with Federal Regulations. The currently effective community number is shown in the table below and must be used for all new policies and renewals.

DATES: These flood hazard determinations will be finalized on the dates listed in the table below and revise the FIRM panels and FIS report in effect prior to this determination for the listed communities.

From the date of the second publication of notification of these changes in a newspaper of local circulation, any person has 90 days in which to request through the community that the Deputy Associate Administrator for Insurance and Mitigation reconsider the changes. The flood hazard determination information may be changed during the 90-day period.

ADDRESSES: The affected communities are listed in the table below. Revised flood hazard information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

Submit comments and/or appeals to the Chief Executive Officer of the community as listed in the table below.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The specific flood hazard determinations are not described for each community in this notice. However, the online location and local community map repository address where the flood hazard determination information is available for inspection is provided.

Any request for reconsideration of flood hazard determinations must be submitted to the Chief Executive Officer of the community as listed in the table below.

The modifications are made pursuant to section 201 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4105, and are in accordance with the National Flood Insurance Act of 1968, 42 U.S.C. 4001 *et seq.,* and with 44 CFR part 65.

The FIRM and FIS report are the basis of the floodplain management measures that the community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

These flood hazard determinations, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own or pursuant to policies established by other Federal, State, or regional entities. The flood hazard determinations are in accordance with 44 CFR 65.4.

The affected communities are listed in the following table. Flood hazard determination information for each community is available for inspection at both the online location and the respective community map repository address listed in the table below. Additionally, the current effective FIRM and FIS report for each community are accessible online through the FEMA Map Service Center at *https://msc.fema.gov* for comparison.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
Arkansas: Boone ...	City of Harrison (21–06–2249P).	The Honorable Jerry Jackson, Mayor, City of Harrison, P.O. Box 1715, Harrison, AR 72602.	Department of Public Works, 303 North 3rd Street, Harrison, AR 72601.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 28, 2022	050020
Colorado:						
Broomfield	City and County of Broomfield (21–08–0472P).	The Honorable Guyleen Castriotta, Mayor, City and County of Broomfield, 1 DesCombes Drive, Broomfield, CO 80020.	Engineering Department, 1 DesCombes Drive, Broomfield, CO 80020.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2022	085073
Colorado: El Paso	City of Colorado Springs (22–08–0015P).	The Honorable John Suthers, Mayor, City of Colorado Springs, 30 South Nevada Avenue, Colorado Springs, CO 80903.	City Hall, 30 South Nevada Avenue, Colorado Springs, CO 80903.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 19, 2022	080060

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
El Paso	City of Fountain (21–08–0935P).	The Honorable Sharon Thompson, Mayor, City of Fountain, 116 South Main Street, Fountain, CO 80817.	City Hall, 116 South Main Street, Fountain, CO 80817.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 12, 2022	080061
El Paso	Unincorporated areas of El Paso County (21–08–0935P).	The Honorable Stan VanderWerf, Chair, El Paso County Board of Commissioners, 200 South Cascade Avenue, Suite 100, Colorado Springs, CO 80903.	El Paso County Pikes Peak Regional Building Department, 2880 International Circle, Colorado Springs, CO 80910.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 12, 2022	080059
Connecticut: New Haven.	City of New Haven (22–01–0224P).	The Honorable Justin Elicker, Mayor, City of New Haven, 165 State Street, New Haven, CT 06510.	Planning Department, 165 State Street, New Haven, CT 06510.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2022	090084
Florida:						
Duval	City of Jacksonville (22–04–2659P).	The Honorable Lenny Curry, Mayor, City of Jacksonville, 117 West Duval Street, Suite 400, Jacksonville, FL 32202.	Planning and Development Department, 214 North Hogan Street, Suite 300, Jacksonville, FL 32202.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 12, 2022	120077
Miami-Dade	City of Miami (22–04–3664P).	The Honorable Francis X. Suarez, Mayor, City of Miami, 3500 Pan American Drive, Miami, FL33133.	Building Department 444 Southwest 2nd Avenue, 4th Floor Miami, FL33130.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 5, 2022	120650
Monroe	Unincorporated areas of Monroe County (22–04–2344P).	The Honorable David Rice, Mayor, Monroe County Board of Commissioners, 9400 Overseas Highway, Suite 210, Marathon, FL 33050.	Monroe County Building Department, 2798 Overseas Highway, Suite 300, Marathon, FL 33050.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 12, 2022	125129
Monroe	Village of Islamorada (22–04–3158P).	The Honorable Pete Bacheler, Mayor, Village of Islamorada, 86800 Overseas Highway, Islamorada, FL 33036.	Building Department, 86800 Overseas Highway, Islamorada, FL 33036.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2022	120424
Osceola	Unincorporated areas of Osceola County (21–04–6031P).	Don Fisher, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Public Works Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	120189
Osceola	Unincorporated areas of Osceola County (22–04–3663P).	Don Fisher, Osceola County Manager, 1 Courthouse Square, Suite 4700, Kissimmee, FL 34741.	Osceola County Public Works Department, 1 Courthouse Square, Suite 3100, Kissimmee, FL 34741.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 18, 2022	120189
Pasco	Unincorporated areas of Pasco County, (22–04–3652P).	The Honorable Kathryn Starkey, Chair, Pasco County Board of Commissioners, 37918 Meridian Avenue, Dade City, FL 33525.	Pasco County Building Construction Services Department, 8731 Citizens Drive, Suite 230, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 5, 2022	120230
Pasco	Unincorporated areas of Pasco County (22–04–3661P).	The Honorable Kathryn Starkey, Chair, Pasco County Board of Commissioners, 37918 Meridian Avenue, Dade City, FL 33525.	Pasco County Building Construction Services Department, 8731 Citizens Drive, Suite 230, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 15, 2022	120230
Polk	Unincorporated areas of Polk County (22–04–1908P).	Bill Beasley, Manager, Polk County, 330 West Church Street, Bartow, FL 33831.	Polk County Land Development Division, 330 West Church Street, Bartow, FL 33831.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 22, 2022	120261
Georgia: Columbia	Unincorporated areas of Columbia County (22–04–1178P).	The Honorable Douglas R. Duncan, Jr., Chair, Columbia County Board of Commissioners, P.O. Box 498, Evans, GA 30809.	Columbia County Engineering Services Department, 630 Ronald Reagan Drive, Evans, GA 30809.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 25, 2022	130059
North Carolina: Guilford.	City of Greensboro (22–04–0428P).	The Honorable Nancy Vaughan, Mayor, City of Greensboro, P.O. Box 3136, Greensboro, NC 27402.	Stormwater Planning Division, 300 West Washington Street, Greensboro, NC 27401.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 20, 2022	375351

State and county	Location and case No.	Chief executive officer of community	Community map repository	Online location of letter of map revision	Date of modification	Community No.
North Dakota:						
Burleigh.	City of Bismarck (21–08–1169P).	The Honorable Michael T. Schmitz, Mayor, City of Bismarck, P.O. Box 5503, Bismarck, ND 58506.	City Hall, 221 North 5th Street, Bismarck, ND 58501.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 13, 2022	380149
South Carolina:						
Dorchester	Unincorporated areas of Dorchester County (21–04–5781P).	Jason L. Ward, Dorchester County Administrator, 201 Johnston Street, St. George, SC 29477.	Dorchester County Building Services Department, 500 North Main Street, Summerville, SC 29483.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 25, 2022	450068
South Carolina: Sumter.	City of Sumter (22–04–1578P).	The Honorable David P. Merchant Mayor, City of Sumter 21 North Main Street Sumter, SC 29150.	Sumter City-County Planning Department 12 West Liberty Street Sumter, SC 29150.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 25, 2022	450184
Sumter	Unincorporated areas of Sumter County (22–04–1578P).	The Honorable James T. McCain, Jr., Chair, Sumter County Council, 13 East Canal Street, Sumter, SC 29150.	Sumter City-County Planning Department, 12 West Liberty Street, Sumter, SC 29150.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 25, 2022	450182
Tennessee:						
Williamson.	City of Brentwood (22–04–1349P).	The Honorable Rhea E. Little, Mayor, City of Brentwood, 5211 Maryland Way, Brentwood, TN 37027.	City Hall, 5211 Maryland Way, Brentwood, TN 37027.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2022	470205
Texas:						
Bexar	City of San Antonio (22–06–0410P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capitol Improvements Department, Storm Water Division, 1901 South Alamo Street, San Antonio, TX 78204.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 14, 2022	480045
Collin	Unincorporated areas of Collin County (22–06–1296P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomdale Road, Suite 4192, McKinney, TX 75071.	Collin County Engineering Department, 4690 Community Avenue, Suite 22, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 28, 2022	480130
Galveston	City of League City (21–06–2885P).	The Honorable Pat Hallisey, Mayor, City of League City, 300 West Walker Street, League City, TX 77573.	Engineering Department, 500 West Walker Street, League City, TX 77573.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 21, 2022	485488
Webb	City of Laredo (21–06–2407P).	The Honorable Pete Saenz, Mayor, City of Laredo, 1110 Houston Street, 3rd Floor, Laredo, TX 78040.	Planning and Zoning Department, 1413 Houston Street, Laredo, TX 78040.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 28, 2022	480651
Utah:						
Salt Lake	City of Herriman City (22–08–0046P).	Nathan Cherpeski, Manager, City of Herriman City, 5355 West Herriman Main Street, Herriman, UT 84096.	GIS Department, 5355 West Herriman Main Street, Herriman, UT 84096.	*https://msc.fema.gov/portal/advanceSearch.*	Nov. 21, 2022	490182
Washington	City of Washington City (22–08–0088P).	The Honorable Kress Staheli, Mayor, City of Washington City, 111 North 100 East, Washington City, UT 84780.	Public Works Department, 1305 East Washington Dam Road, Washington City, UT 84780.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 7, 2022	490182
Washington	Unincorporated areas of Washington County (22–08–0088P).	The Honorable Victor Iverson, Chair, Washington County Commission,197 East Tabernacle Street, St. George, UT 84770.	Washington County Administration Building, 197 East Tabernacle Street, St. George, UT 84770.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 7, 2022	490224
Virginia:						
Fairfax	Unincorporated areas of Fairfax County (22–03–0497P).	The Honorable Jeffrey C. McKay, Chair, Fairfax County Board of Supervisors, 12000 Government Center Parkway, Fairfax, VA 22035.	Fairfax County Planning Division, 12000 Government Center Parkway, Suite 449, Fairfax, VA 22035.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 7, 2022	515525
Independent City.	City of Falls Church (22–03–0497P).	The Honorable P. David Tarter, Mayor, City of Falls Church, 300 Park Avenue, Falls Church, VA 22046.	Public Works Department, 300 Park Avenue, Suite 103E, Falls Church, VA 22046.	*https://msc.fema.gov/portal/advanceSearch.*	Dec. 7, 2022	510054

[FR Doc. 2022–19835 Filed 9–13–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2022–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a community is required either to adopt or to show evidence of having in effect in order to qualify or remain qualified for participation in the Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of January 12, 2023 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

FOR FURTHER INFORMATION CONTACT: Rick Sacbibit, Chief, Engineering Services Branch, Federal Insurance and Mitigation Administration, FEMA, 400 C Street SW, Washington, DC 20472, (202) 646–7659, or (email) *patrick.sacbibit@fema.dhs.gov;* or visit the FEMA Mapping and Insurance eXchange (FMIX) online at *https://www.floodmaps.fema.gov/fhm/fmx_main.html.*

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) makes the final determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes has been published in newspapers of local circulation and 90 days have elapsed since that publication. The Deputy Associate Administrator for Insurance and Mitigation has resolved any appeals resulting from this notification.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Michael M. Grimm,

Assistant Administrator for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Kaufman County, Texas and Incorporated Areas Docket No.: FEMA–B–2157	
City of Combine	City Hall, 100 Davis Road, Combine, TX 75159.
City of Crandall	City Hall, 110 South Main Street, Crandall, TX 75114.
City of Dallas	Dallas Water Utilities, Stormwater Operations, 320 East Jefferson Boulevard, Room 312, Dallas, TX 75203.
City of Forney	City Hall, 101 East Main Street, Forney, TX 75126.
City of Mesquite	Engineering Division, 1515 North Galloway Avenue, Mesquite, TX 75149.
City of Rosser	First United Methodist Church, 202 Ennis Street, Rosser, TX 75157.
City of Seagoville	City Hall, 702 North Highway 175, Seagoville, TX 75159.
Unincorporated Areas of Kaufman County	Kaufman County Courthouse, 100 West Mulberry Street, Kaufman, TX 75142.

[FR Doc. 2022–19836 Filed 9–13–22; 8:45 am]
BILLING CODE 9110–12–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–FAC–2022–N048; FX.IA167209TRG00–FF09W12000–223]

Theodore Roosevelt Genius Prize Advisory Council Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of teleconference/web meeting.

SUMMARY: The U.S. Fish and Wildlife Service gives notice of a teleconference/web meeting of the Theodore Roosevelt Genius Prize Advisory Council, in accordance with the Federal Advisory Committee Act.

DATES: *Teleconference/web meeting:* The Council will meet October 4–6, 2022, from 11 a.m. until 4 p.m. on Tuesday, October 4, 2022, and from 12 p.m. until 4 p.m. on Wednesday and Thursday, October 5–6, 2022 (eastern time).

Registration: Registration is required. The deadline for registration is September 29, 2022.

Accessibility: The deadline for accessibility accommodation requests is September 27, 2022. Please see *Accessibility Information,* below.

ADDRESSES: The meeting will be held via teleconference and broadcast over the internet. To register and receive the web address and telephone number for participation, contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) or visit the Council's website at *https://*

www.fws.gov/program/theodore-roosevelt-genius-prize-advisory-council.

FOR FURTHER INFORMATION CONTACT: Stephanie Rickabaugh, Designated Federal Officer, by telephone at (571) 421–6758, or by email at *Stephanie_Rickabaugh@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: The Theodore Roosevelt Genius Prize Advisory Council was established by the John D. Dingell, Jr., Conservation, Management, and Recreation Act, March 12, 2019 (Pub. L. 116–9); the America's Conservation Enhancement Act, October 30, 2020 (Pub. L. 116–188); and the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3719). The Council's purpose is to develop recommendations for the Secretary of the Interior regarding any opportunities for technological innovation that were raised during the prize competition process to assist in addressing the statutes' six areas of concern: preventing wildlife poaching and trafficking, promoting wildlife conservation, managing invasive species, protecting endangered species, promoting nonlethal human-wildlife conflict, and reducing human-predator conflict.

This meeting is open to the public. The meeting agenda will include presentations on winning technologies from the Theodore Roosevelt Genius Prize Competitions; reports from subcommittees about opportunities for technological innovation; and opportunities for public comment. The final agenda and other related meeting information will be posted on the Council's website at *https://www.fws.gov/program/theodore-roosevelt-genius-prize-advisory-council.*

Public Input

If you wish to provide oral public comment or provide a written comment for the Council to consider, contact the Council's Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) no later than Thursday, September 29, 2022.

Depending on the number of people who want to comment and the time available, the amount of time for individual oral comments may be limited. Interested parties should contact the Designated Federal Officer, in writing (see **FOR FURTHER INFORMATION CONTACT**), for placement on the public speaker list for this meeting. Requests to address the Council during the meeting will be accommodated in the order the requests are received. Registered speakers who wish to expand upon their oral statements, or those who had wished to speak but could not be accommodated on the agenda, may submit written statements to the Designated Federal Officer up to 30 days following the meeting.

Accessibility Information

Please make requests in advance for sign language interpreter services, assistive listening devices, or other reasonable accommodations. Please contact the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**) at least 7 business days prior to the meeting to give the U.S. Fish and Wildlife Service sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. appendix 2.

Paul Rauch,

Assistant Director, Wildlife and Sport Fish Restoration, U.S. Fish and Wildlife Service.

[FR Doc. 2022–19822 Filed 9–13–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034496; PPWOCRADN0–PCU00RP14.R50000]

Notice of Intent To Repatriate Cultural Items: Federal Bureau of Investigation, Art Theft Program, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Federal Bureau of Investigation (FBI), in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, has determined that the cultural item listed in this notice meets the definition of a sacred object. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request to the FBI. If no additional claimants come forward, transfer of control of the cultural item to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the FBI at the address in this notice by October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Federal Bureau of Investigation, FBI Headquarters, Attn: Supervisory Special Agent (SSA) Randolph J. Deaton IV, Art Theft Program, 935 Pennsylvania Avenue NW, Washington, DC 20535, telephone (202) 324–5525, email *artifacts@ic.fbi.gov*.

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3005, of the intent to repatriate a cultural item under the control of the Federal Bureau of Investigation, Washington, DC, that meets the definition of a sacred object under 25 U.S.C. 3001.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American cultural items. The National Park Service is not responsible for the determinations in this notice.

History and Description of the Cultural Item

At an unknown date, one cultural item was acquired and transported to the east coast of the United States, where it became part of a private collection of Native American antiquities, art, and cultural heritage. In the spring of 2018, this item was seized by the FBI as part of a criminal investigation. Following multiple consultations with representatives of the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota, this item, a ''bear mask,'' was determined to be culturally affiliated with the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota and identified as a sacred object.

Determinations Made by the Federal Bureau of Investigation

Officials of the Federal Bureau of Investigation have determined that:

• Pursuant to 25 U.S.C. 3001(3)(C), the one cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents.

• Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the sacred object and the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to claim this cultural item should submit a written request with information in support of the claim to the Federal Bureau of Investigation, FBI Headquarters, Attn: Supervisory Special Agent (SSA) Randolph J. Deaton IV, Art Theft Program, 935 Pennsylvania Avenue NW, Washington, DC 20535, telephone (202) 324–5525, email *artifacts@ic.fbi.gov,* by October 14, 2022. After that date, if no additional claimants have come forward, transfer of control of the sacred object to the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota may proceed.

The Federal Bureau of Investigation is responsible for notifying the Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota that this notice has been published.

Dated: September 1, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19828 Filed 9–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034497; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Federal Bureau of Investigation, Art Theft Program, Washington, DC

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Federal Bureau of Investigation has completed an inventory of human remains and associated funerary objects and has determined that there is no cultural affiliation between the human remains and any Indian Tribe. The human remains were removed from unknown locations in the United States.

DATES: Disposition of the human remains in this notice may occur on or after October 14, 2022.

ADDRESSES: Supervisory Special Agent (SSA) Randolph J. Deaton IV, Art Theft Program, 935 Pennsylvania Avenue NW, Washington, DC 20535, telephone (202) 324–5525, email *artifacts@ic.fbi.gov.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Federal Bureau of Investigation. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the Federal Bureau of Investigation.

Description

On unknown dates, human remains representing, at minimum, 138 individuals were removed from unknown locations in South Dakota, New Mexico, Arizona, and Indiana. The human remains were unearthed by Indiana ''collector'' Don Miller and made part of his private collection of Native American antiquities and cultural heritage. In 2018, the human remains were seized as part of an FBI Investigation. No known individuals were identified. No associated funerary objects are present.

Aboriginal Land

The states from which the human remains in this notice were removed are, collectively, the aboriginal lands of one or more Indian Tribes. The following information was used to identify the aboriginal land: a final judgment of the Indian Claims Commission or the United States Court of Claims, a treaty, an Act of Congress, or an Executive Order.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes, the Federal Bureau of Investigation has determined that:

• The human remains described in this notice represent the physical remains of 138 individuals of Native American ancestry.

• No relationship of shared group identity can be reasonably traced between the human remains and any Indian Tribe.

• The human remains described in this notice were removed from the aboriginal land of the Assiniboine and Sioux Tribes of the Fort Peck Indian Reservation, Montana; Cheyenne River Sioux Tribe of the Cheyenne River Reservation, South Dakota; Crow Creek Sioux Tribe of the Crow Creek Reservation, South Dakota; Flandreau Santee Sioux Tribe of South Dakota; Fort Sill Apache Tribe of Oklahoma; Gila River Indian Community of the Gila River Indian Reservation, Arizona; Hopi Tribe of Arizona; Lower Brule Sioux Tribe of the Lower Brule Reservation, South Dakota; Mescalero Apache Tribe of the Mescalero Reservation, New Mexico; Miami Tribe of Oklahoma; Oglala Sioux Tribe (*previously* listed as the Oglala Sioux Tribe of the Pine Ridge Reservation, South Dakota); Pokagon Band of Potawatomi Indians, Michigan and Indiana; Pueblo of Acoma, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Picuris, New Mexico; Rosebud Sioux Tribe of the Rosebud Indian Reservation, South Dakota; Salt River Pima-Maricopa Indian Community of the Salt River Reservation, Arizona; Shawnee Tribe; Sisseton-Wahpeton Oyate of the Lake Traverse Reservation, South Dakota; Spirit Lake Tribe, North Dakota; Standing Rock Sioux Tribe of North & South Dakota; Three Affiliated Tribes of the Fort Berthold Reservation, North Dakota; Turtle Mountain Band of Chippewa Indians of North Dakota; and the Yankton Sioux Tribe of South Dakota.

Requests for Disposition

Written requests for disposition of the human remains in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for disposition may be submitted by:

1. Any one or more of the Indian Tribes identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization, or who shows that the requestor is an aboriginal land Indian Tribe.

Disposition of the human remains described in this notice to a requestor may occur on or after October 14, 2022. If competing requests for disposition are received, the Federal Bureau of Investigation must determine the most appropriate requestor prior to

disposition. Requests for joint disposition of the human remains and associated funerary objects are considered a single request and not competing requests. The Federal Bureau of Investigation is responsible for sending a copy of this notice to the Indian Tribes identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9 and § 10.11.

Dated: September 1, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19829 Filed 9–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NRNHL–DTS#–34516; PPWOCRADI0, PCU00RP14.R50000]

National Register of Historic Places; Notification of Pending Nominations and Related Actions

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The National Park Service is soliciting electronic comments on the significance of properties nominated before September 3, 2022, for listing or related actions in the National Register of Historic Places.

DATES: Comments should be submitted electronically by September 29, 2022.

ADDRESSES: Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

SUPPLEMENTARY INFORMATION: The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before September 3, 2022. Pursuant to Section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Nominations submitted by State or Tribal Historic Preservation Officers:

KEY: State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

DISTRICT OF COLUMBIA

District of Columbia

National Home for Destitute Colored Women and Children, 733 Euclid St. NW, Washington, SG100008262

FLORIDA

Duval County

St. Matthews Methodist Episcopal Church, (African American Architects in Segregated Jacksonville, 1865–1965 MPS), 825 West Monroe St., Jacksonville, MP100008276

Volusia County

Village Improvement Association Hall, 126 East Halifax Ave., Oak Hill, SG100008277

LOUISIANA

Lafayette Parish

Trappey's Cannery, 501 Guidry St., Lafayette, SG100008269

St. Tammany Parish

Folsom Branch Library, 13260 Broadway St., Folsom, SG100008263

Tangipahoa Parish

Hammond Historic District (Boundary Increase II) (Boundary Decrease), Portions of 19 blks. roughly centered on East Thomas St. and NW Railroad Ave., Hammond, BC100008267

MISSISSIPPI

Leflore County

Gritney Neighborhood Historic District, Roughly bounded by Carrollton Ave., Miller Ave., Bowie Ln., East Martin Luther King Jr. Blvd., 100 East Martin Luther King Jr. Blvd., properties fronting the south side of South and McGehee Sts., Y and MVRR Corridor, Greenwood, SG100008266

TEXAS

El Paso County

Kress Building, 211 North Mesa St., El Paso, SG100008275

UTAH

Salt Lake County

Spencer Homestead Site, (Sandy City MPS), 2591 East Dimple Dell Rd., Sandy, MP100008270

Gerrard, John and Jennette, House, 1488 West 4800 South, Taylorsville, SG100008273

WISCONSIN

Dane County

Gonstead Clinic of Chiropractic, 1505 Springdale St., Mount Horeb, SG100008271

Marathon County

Highland Park Historic District, Generally bounded by Hamilton, Franklin, North 10th, and North 14th Sts., Wausau, SG100008274

Additional documentation has been received for the following resources:

LOUISIANA

Tangipahoa Parish

Hammond Historic District (Additional Documentation), Portions of 19 blks. roughly centered on East Thomas St. and NW Railroad Ave., Hammond, AD80001761

UTAH

Sanpete County

Spring City Historic District (Additional Documentation), UT 17, Spring City, AD80003957

Nomination submitted by Federal Preservation Officer:

The State Historic Preservation Officer reviewed the following nomination and responded to the Federal Preservation Officer within 45 days of receipt of the nomination and supports listing the property in the National Register of Historic Places.

TEXAS

Fannin County

Bonham VA Hospital, (United States Third Generation Veterans Hospitals, 1946–1958 MPS), 1201 East 9th St., Bonham, MP100008265

(Authority: Section 60.13 of 36 CFR part 60)

Dated: September 7, 2022.

Sherry A. Frear,

Chief, National Register of Historic Places/National Historic Landmarks Program.

[FR Doc. 2022–19800 Filed 9–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034498; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: University of Missouri, Museum of Anthropology, Columbia, MO

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the University of Missouri, Museum of Anthropology has completed an inventory of human remains and associated funerary objects and has determined that there is a cultural affiliation between the human remains and associated funerary objects and Indian Tribes or Native Hawaiian organizations in this notice. The human remains and associated funerary objects were removed from Tupelo in Lee County, MS.

DATES: Repatriation of the human remains and associated funerary objects in this notice may occur on or after October 14, 2022.

ADDRESSES: Dr. Candace Sall, Director; Museum of Anthropology, University of Missouri, 101 Museum Support Center, Columbia, MO 65211, telephone (573) 882–3764, email *nagpra@missouri.edu.*

SUPPLEMENTARY INFORMATION: This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the University of Missouri, Museum of Anthropology. The National Park Service is not responsible for the determinations in this notice. Additional information on the determinations in this notice, including the results of consultation, can be found in the inventory or related records held by the University of Missouri, Museum of Anthropology.

Description

In 1960 and 1961, human remains representing, at minimum, one individual were removed from the surface of a washed-out burial labeled Site 2, Chickasaw Old Village, near Highway 78 North in Lee County, MS, by William Philyaw. The individual is of unknown age and sex and is from the ''washed out area'' of the site at that time. The human remains and associated funerary objects remained in Philyaw's custody until his son, William Philyaw Jr., donated the collection to the Museum of Anthropology in 2018. No known individual was identified. The 207 associated funerary objects are one iron gun part, one iron fragment, two copper gun parts, two copper fragments, two copper tinklers, two miscellaneous metal fragments, three metal musket balls, one copper ''S'' hook, 26 brass buttons, six gun flints, three glass bottle fragments, seven small blue beads, one large blue bead, 18 small black beads, 16 small white beads, 64 iron fragments, one gun barrel, five copper fragments, one gun flint, eight glass fragments, 13 pottery fragments, three soapstone pipe fragments, six projectile points, nine hafted bifaces, four drills, one hammerstone, and one nutting stone.

Cultural Affiliation

The human remains and associated funerary objects in this notice are connected to one or more identifiable earlier groups, tribes, peoples, or cultures. There is a relationship of shared group identity between the identifiable earlier groups, tribes, peoples, or cultures and one or more Indian Tribes or Native Hawaiian organizations. The following types of information were used to reasonably trace the relationship: archeological information, biological information, and geographical information.

Determinations

Pursuant to NAGPRA and its implementing regulations, and after consultation with the appropriate Indian Tribes and Native Hawaiian organizations, the University of Missouri, Museum of Anthropology has determined that:

- The human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- The 207 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- There is a relationship of shared group identity that can be reasonably traced between the human remains and associated funerary objects described in this notice and The Chickasaw Nation.

Requests for Repatriation

Written requests for repatriation of the human remains and associated funerary objects in this notice must be sent to the Responsible Official identified in **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.
2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or a culturally affiliated Indian Tribe or Native Hawaiian organization.

Repatriation of the human remains and associated funerary objects in this notice to a requestor may occur on or after October 14, 2022. If competing requests for repatriation are received, the University of Missouri, Museum of Anthropology must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains and associated funerary objects are considered a single request and not competing requests. The University of Missouri, Museum of Anthropology is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

Authority: Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.9, § 10.10, and § 10.14.

Dated: September 1, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19830 Filed 9–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034495; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Federal Bureau of Investigation, Art Theft Program, Washington, DC

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Federal Bureau of Investigation (FBI) has completed an inventory of human remains and associated funerary objects in consultation with the appropriate Indian Tribes or Native Hawaiian organizations and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the FBI. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the Indian Tribes or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary

objects should submit a written request with information in support of the request to the FBI at the address in this notice by October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Federal Bureau of Investigation, FBI Headquarters, Attn: Supervisory Special Agent (SSA) Randolph J. Deaton IV, Art Theft Program, 935 Pennsylvania Avenue NW, Washington, DC 20535, telephone (954) 931–3670, email *artifacts@ic.fbi.gov.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C. 3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Federal Bureau of Investigation, Washington, DC. The human remains and associated funerary objects were removed from Mauckport Ferry Mound in Harrison County, IN, and Crib Mound in Spencer County, IN.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by FBI professional staff in consultation with representatives of the Miami Tribe of Oklahoma; Pokagon Band of Potawatomi Indians, Michigan and Indiana; and the Shawnee Tribe (hereafter referred to as ''The Consulted Tribes'').

History and Description of the Remains

At an unknown date believed to be in the mid-1960s, human remains representing, at minimum, 39 individuals were removed from Mauckport Ferry Mound in Harrison County, IN, and Crib Mound in Spencer County, IN. No known individuals were identified. The 110 associated funerary objects are six projectile points, 23 pieces of worked stone, 26 pottery sherds, five shell fragments, four pieces of clay, and 46 faunal remains.

The Mauckport Ferry Mound site is a Late Archaic site dating from 4,000 to 1,000 B.C., and the Crib Mound site is a Middle-to-Late Archaic site. Both sites were heavily looted during the 1950s and 1960s. Following their removal, the human remains were transported to a private residence where they remained part of a larger collection. In April of 2014, these human remains were seized by the FBI as part of a criminal investigation. Based upon both physical evidence obtained through criminal investigation and osteological analysis, and information obtained through consultation, a relationship of shared group identity can be reasonably traced between the Native American human remains and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

Determinations Made by the Federal Bureau of Investigation

Officials of the Federal Bureau of Investigation have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of 39 individuals of Native American/Southwest ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A) the 110 objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and the Pokagon Band of Potawatomi Indians, Michigan and Indiana.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Federal Bureau of Investigation, FBI Headquarters, Attn: Supervisory Special Agent (SSA) Randolph J. Deaton IV, Art Theft Program, 935 Pennsylvania Avenue NW, Washington, DC 20535, telephone (954) 931–3670, email *artifacts@ic.fbi.gov,* by October 14, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to the Pokagon Band of Potawatomi Indians, Michigan and Indiana may proceed.

The Federal Bureau of Investigation is responsible for notifying The Consulted Tribes that this notice has been published.

Dated: September 1, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19827 Filed 9–13–22; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–WASO–NAGPRA–NPS0034494; PPWOCRADN0–PCU00RP14.R50000]

Notice of Inventory Completion: Museum of Cultural and Natural History, Central Michigan University, Mt. Pleasant, MI

AGENCY: National Park Service, Interior.

ACTION: Notice.

SUMMARY: The Museum of Cultural and Natural History at Central Michigan University has completed an inventory of human remains and associated funerary objects, in consultation with the appropriate Indian Tribes or Native Hawaiian organizations, and has determined that there is a cultural affiliation between the human remains and associated funerary objects and present-day Indian Tribes or Native Hawaiian organizations. Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request to the Museum of Cultural and Natural History. If no additional requestors come forward, transfer of control of the human remains and associated funerary objects to the lineal descendants, Indian Tribes, or Native Hawaiian organizations stated in this notice may proceed.

DATES: Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to the Museum of Cultural and Natural History at the address in this notice by October 14, 2022.

FOR FURTHER INFORMATION CONTACT: Dr. Jay C. Martin, Director, Museum of Cultural and Natural History, Central Michigan University, 103 Rowe Hall, Mt. Pleasant, MI 48859, telephone (989) 774–3829, email *marti6jc@cmich.edu.*

SUPPLEMENTARY INFORMATION: Notice is here given in accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), 25 U.S.C.

3003, of the completion of an inventory of human remains and associated funerary objects under the control of the Museum of Cultural and Natural History, Central Michigan University, Mt. Pleasant, MI. The human remains and associated funerary objects were removed from Montezuma County, CO.

This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA, 25 U.S.C. 3003(d)(3). The determinations in this notice are the sole responsibility of the museum, institution, or Federal agency that has control of the Native American human remains and associated funerary objects. The National Park Service is not responsible for the determinations in this notice.

Consultation

A detailed assessment of the human remains was made by the Museum of Cultural and Natural History staff and consultation occurred with representatives of the Hopi Tribe of Arizona; Ohkay Owingeh, New Mexico (*previously* listed as Pueblo of San Juan); Pueblo of Acoma, New Mexico; Pueblo of Cochiti, New Mexico; Pueblo of Isleta, New Mexico; Pueblo of Jemez, New Mexico; Pueblo of Laguna, New Mexico; Pueblo of Nambe, New Mexico; Pueblo of Picuris, New Mexico; Pueblo of Pojoaque, New Mexico; Pueblo of San Felipe, New Mexico; Pueblo of San Ildefonso, New Mexico; Pueblo of Sandia, New Mexico; Pueblo of Santa Ana, New Mexico; Pueblo of Santa Clara, New Mexico; Pueblo of Taos, New Mexico; Pueblo of Tesuque, New Mexico; Pueblo of Zia, New Mexico; Santo Domingo Pueblo (*previously* listed as Kew Pueblo, New Mexico, and as Pueblo of Santo Domingo); Southern Ute Indian Tribe of the Southern Ute Reservation, Colorado; Ute Mountain Ute Tribe (*previously* listed as Ute Mountain Tribe of the Ute Mountain Reservation, Colorado, New Mexico, & Utah); and the Zuni Tribe of the Zuni Reservation, New Mexico (hereafter referred to as ''The Tribes'').

History and Description of the Remains

In 1970, human remains representing, at minimum, one individual were removed from Montezuma County, CO, by Terry Ballard, an amateur archeologist from Overland Park, KS. The site was located on a farm owned by Mr. Ray Stanley in the vicinity of Hovenweep National Monument and approximately 12 miles outside the municipality of Cortez, in Montezuma County, Colorado. Central Michigan University acquired these human remains in 1971, through two separate donations. The human remains belong to a young adult female. No known individual was identified. The five associated funerary objects are one bone awl, three ceramic pieces, and one lot of faunal remains.

A detailed assessment of the human remains was made by Anthropologists Jacqueline T. Eng and Janet Gardner who determined the individual was of Native American descent. Based upon the burial context detailed in the original site report, the site is reasonably believed to be Anasazi and to date from the Basketmaker II (1000 B.C.) to Pueblo III (A.D. 1300) periods. The stylistic attributes of the associated funerary objects from the Stanley Site indicate that they are of Ancestral Puebloan manufacture.

Determinations Made by the Museum of Cultural and Natural History, Central Michigan University

Officials of the Museum of Cultural and Natural History, Central Michigan University have determined that:

- Pursuant to 25 U.S.C. 3001(9), the human remains described in this notice represent the physical remains of one individual of Native American ancestry.
- Pursuant to 25 U.S.C. 3001(3)(A), the five objects described in this notice are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony.
- Pursuant to 25 U.S.C. 3001(2), there is a relationship of shared group identity that can be reasonably traced between the Native American human remains and associated funerary objects and The Tribes.

Additional Requestors and Disposition

Lineal descendants or representatives of any Indian Tribe or Native Hawaiian organization not identified in this notice that wish to request transfer of control of these human remains and associated funerary objects should submit a written request with information in support of the request to Dr. Jay C. Martin, Museum of Cultural and Natural History, Central Michigan University, 103 Rowe Hall, Mt. Pleasant, MI 48859, telephone (989) 774–3829, email *marti6jc@cmich.edu,* by October 14, 2022. After that date, if no additional requestors have come forward, transfer of control of the human remains and associated funerary objects to The Tribes may proceed.

The Museum of Cultural and Natural History, Central Michigan University is responsible for notifying The Tribes that this notice has been published.

Dated: September 1, 2022.

Melanie O'Brien,

Manager, National NAGPRA Program.

[FR Doc. 2022–19826 Filed 9–13–22; 8:45 am]

BILLING CODE 4312–52–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1241]

Certain Electrical Connectors and Cages, Components Thereof, and Products Containing the Same; Notice of a Commission Final Determination Finding a Violation of Section 337; Issuance of a Limited Exclusion Order and Cease and Desist Orders; Termination of the Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined that a violation of the Tariff Act of 1930, as amended, has occurred with respect to U.S. Patent No. 7,371,117 (''the '117 patent''). The Commission has determined that no violation of section 337 has occurred as to U.S. Patent Nos. 9,705,255 (''the '255 patent'') and 10,381,767 (''the '767 patent''). The Commission has issued a limited exclusion order (''LEO'') prohibiting the importation of certain electrical connectors and cages, components thereof, and products containing the same that infringe certain claims of the '117 patent, as well as cease and desist orders (''CDOs'') against the named respondents. This investigation is terminated.

FOR FURTHER INFORMATION CONTACT: Amanda P. Fisherow, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2737. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: On January 26, 2021, the Commission instituted this investigation under

section 337, based on a complaint filed by Amphenol Corp. of Wallingford, Connecticut (''Amphenol,'' or ''Complainant''). 86 FR 7104–05 (Jan. 26, 2021). The complaint alleged a violation of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of electrical connectors and cages, components thereof, and products containing the same by reason of infringement of certain claims of the '117 patent; U.S. Patent No. 8,371,875 (''the '875 patent''); U.S. Patent No. 8,864,521 (''the '521 Patent''); the '255 patent; and the '767 patent. The complaint also alleged the existence of a domestic industry. The notice of investigation named as respondents: Luxshare Precision Industry Co., Ltd. and Dongguan Luxshare Precision Industry Co. Ltd., both of Dongguan City, China; Luxshare Precision Limited (HK) of Fotan, Hong Kong; and Luxshare-ICT Inc. of Milpitas, California (collectively, ''Luxshare,'' or ''Respondents''). *Id.* at 7104. The Commission's Office of Unfair Import Investigations was not named as a party in this investigation. *Id.*

Subsequently, the administrative law judge (''ALJ'') granted Complainant's motion for partial termination of the investigation by withdrawal of the '875 and the '521 patents, and claims 2, 14, 17–19, and 25–27 of the '117 patent; claims 1–3, 5–8, and 18 of the '255 patent; and claims 2–3, 7, 14, 20–22, 30, and 32 of the '767 patent. *See* Order No. 29 (Oct. 13, 2021), *unreviewed by* Comm'n Notice (Nov. 3, 2021). The ALJ also granted in part and denied in part Complainant's motion for summary determination that it has satisfied the importation requirement. *See* Order No. 34 (Oct. 28, 2021), *unreviewed by* Comm'n Notice (Nov. 29, 2021). The ALJ also granted in part Luxshare's motion for summary determination that the importation requirement has not been met for certain products. *See* Order No. 35 (Oct. 28, 2021). On November 29, 2021, the Commission determined to review that determination and it is currently under review. Comm'n Notice (Nov. 29, 2021).

On March 11, 2022, the ALJ issued the final initial determination (''ID''). On March 25, 2022, Complainant petitioned for review of the final ID. On April 4, 2022, Respondents filed a response.

On June 21, 2022, the Commission determined to review the ID in part. 87 FR 38180 (June 17, 2022). Specifically, the Commission determined to review the ID's findings regarding: (1) importation, including any findings impacted by the determination on importation; (2) the Redesigned Products; (3) infringement for claim 9 of the '117 patent; (4) the claim construction of the term ''contact tail adapted for attachment to the printed circuit board that is perpendicular to the . . . printed circuit board'' of the '767 patent; (5) infringement for claims 1, 4–6, 9–13, 15–17, 19, and 23 of the '767 patent; (6) the technical prong of the domestic industry requirement for the '767 patent; (7) obviousness for the '767 patent; and (8) the economic prong of the domestic industry requirement. The Commission determined not to review any other findings, including the ID's findings that Luxshare does not infringe the asserted claims of the '255 patent. The Commission asked for briefing on remedy, bonding, and the public interest, as well as one question related to importation. The parties filed their opening submissions on July 6, 2022, and their reply submissions on July 13, 2022.

Having reviewed the record of the investigation, including the ID and the parties' submissions, the Commission has found a violation of section 337 with respect to asserted claims 1, 9, 24, and 29 of the '117 patent. The Commission (1) finds that at least one product from each of the accused product groups, with the exception of the QSFP 2x1 Press-fit products, has been imported; (2) affirms the ID's finding of infringement of claim 9 of the '117 patent with modified reasoning; (3) for the '767 patent, affirms the ID's construction of ''contact tail adapted for attachment to the [PCB] that is perpendicular to the . . . [PCB]'' with modified reasoning; (4) affirms the ID's determination on infringement for claim 1 of the '767 patent with modified reasoning; (5) affirms the ID's determination on infringement/non-infringement for claims 4–6, 9–13, 15–17, 19, and 23 of the '767 patent; (6) affirms the ID's findings with respect to the technical prong of the domestic industry requirement for the '767 patent; (7) affirms the ID's obviousness findings for the '767 patent; (8) takes no position on the economic prong of the domestic industry requirement under subsection 337(a)(3)(A) (plant and equipment) for all patents; (9) takes no position on the economic prong of the domestic industry requirement for the '767 patent; and (10) affirms the ID's findings on the economic prong of the domestic industry requirement under subsection 337(a)(3)(B) (employment of labor or capital) for the '255 and '117 patents.

In addition, the Commission finds that the public interest factors do not preclude issuance of the requested relief. *See* 19 U.S.C. 1337(d)(1), (f)(1). The Commission therefore has determined that the appropriate remedy in this investigation is: (1) an LEO prohibiting the unlicensed entry of certain electrical connectors and cages, components thereof, and products containing the same that infringe one or more of claims 1, 9, 24, and 29 of the '117 patent; and (2) CDOs against each of the named Luxshare respondents. The Commission has also determined that the bond during the period of Presidential review shall be in the amount of one hundred percent (100%) of the entered value of the infringing products that are subject to the LEO and CDOs. *See* 19 U.S.C. 1337(j).

The Commission's reasoning in support of its determinations is set forth more fully in its opinion that is issued concurrently herewith. The Commission's opinion and orders were delivered to the President and to the United States Trade Representative on the day of their issuance. The investigation is hereby terminated.

The Commission vote for this determination took place on September 8, 2022.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: September 8, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19811 Filed 9–13–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–557 and 731–TA–1312 (Review)]

Stainless Steel Sheet and Strip From China; Scheduling of Expedited Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to the Tariff Act of 1930 (''the Act'') to determine whether revocation of the countervailing and antidumping duty orders on stainless steel sheet and strip from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time.

DATES: June 6, 2022.

FOR FURTHER INFORMATION CONTACT: Stamen Borisson (202–205–3125), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this review may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On June 6, 2022, the Commission determined that the domestic interested party group response to its notice of institution (87 FR 11478, March 1, 2022) of the subject five-year reviews was adequate and that the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)).

For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

Please note the Secretary's Office will accept only electronic filings at this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*). No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Staff report.—A staff report containing information concerning the subject matter of the reviews has been placed in the nonpublic record, and will be made available to persons on the Administrative Protective Order service list for these reviews on September 14, 2022. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions.—As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before September 21, 2022 and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by September 21, 2022. However, should the Department of Commerce (''Commerce'') extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination.—The Commission has determined these reviews are extraordinarily complicated and therefore has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: September 8, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–19816 Filed 9–13–22; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes is available from the Office of the Secretary and at the Commission's website.

[2] The Commission has found the joint response to its notice of institution filed on behalf of Cleveland-Cliffs Inc., North American Stainless, and Outokumpu Stainless USA LLC, three U.S. producers of stainless steel sheet and strip, to be individually adequate. Comments from other interested parties will not be accepted (*see* 19 CFR 207.62(d)(2)).

DEPARTMENT OF JUSTICE

Notice of Lodging of Proposed Consent Decree Under the Clean Water Act

On September 7, 2022, the Department of Justice lodged a proposed consent decree with the United States District Court for the District of New Hampshire, in a lawsuit entitled *United States* v. *State of New Hampshire and New Hampshire Fish and Game Department,* Civil Action No. 1:18–cv–00996–PB.

The United States filed this lawsuit under sections 301(a), 309(b), and 504 of the Clean Water Act (''CWA''), 33 U.S.C. 1311(a), 1319(b), 1364, against the State of New Hampshire and the New Hampshire Fish and Game Department (''NHF&G''), in connection with discharges of pollutants from the Powder Mill State Fish Hatchery, in New Durham, New Hampshire (the ''Hatchery''). The Hatchery is owned by the State and operated by NHF&G. The Complaint asserts two claims for injunctive relief. The first claim alleges that the State and NHF&G violated a National Pollutant Discharge Elimination System permit (Permit No. NH0000710; the ''Permit''), issued by EPA under section 402 of the CWA, 33 U.S.C. 1342, by exceeding its narrative and numeric discharge limits for total phosphorus and pH, in violation of CWA section 309(b), 33 U.S.C. 1319(b). The second claim alleges that such discharges have caused or contributed to contamination, eutrophication, and the growth of toxic cyanobacteria in the Merrymeeting River and its impoundments, known as Marsh, Jones, and Downing Ponds, which poses an imminent and substantial endangerment to human health and welfare, in violation of CWA section 504, 33 U.S.C. 1364.

Under the proposed consent decree, NHF&G must implement measures designed to bring the Hatchery into compliance with the CWA and the Permit by the end of 2025. These measures include constructing and operating new wastewater treatment systems and upgrading other aspects of the Hatchery's facilities and operations, and implementing best management practices related to flow, pH, and phosphorus, such as adding a neutralizing agent, reconfiguring facility

tanks to promote the settling of solids containing phosphorus, and increasing the frequency of removal of these solids. The proposed consent decree also requires NHF&G to perform a phosphorus assessment and remediation options study for the Merrymeeting River and its impoundments.

The United States filed its complaint as plaintiff-intervenor in a civil action initiated in 2018 by the Conservation Law Foundation (''CLF''), under the CWA's citizen-suit provision, 33 U.S.C. 1365, entitled *Conservation Law Foundation* v. *Scott Mason, Executive Director of NHF&G, et al.,* Civil Action No. 1:18–cv–00996–PB. In that action, CLF asserted CWA claims arising from the same or similar circumstances as those that gave rise to the United States' claims. In addition to resolving the United States' claims, the proposed consent decree resolves CLF's claims in this related action.

The publication of this notice opens a period for public comment on the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, and should refer to *United States* v. *State of New Hampshire and New Hampshire Fish and Game Department,* D.J. Ref. No. 90–5–1–1–12466. All comments must be submitted no later than 30 days after the publication date of this notice. Comments may be submitted either by email or by mail:

To submit comments:	*Send them to:*
By e-mail	*pubcomment-ees.enrd@usdoj.gov.*
By mail	Assistant Attorney General, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

During the public comment period, the consent decree may be examined and downloaded at this Justice Department website: *https://www.justice.gov/enrd/consent-decrees.* Paper copies of the consent decree are available upon written request and payment of reproduction costs. Such requests and payments should be addressed to: Consent Decree Library, U.S. DOJ—ENRD, P.O. Box 7611, Washington, DC 20044–7611.

With each such request, please enclose a check or money order for $12.75 (25 cents per page reproduction cost) per paper copy, payable to the United States Treasury.

Henry S. Friedman,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 2022–19865 Filed 9–13–22; 8:45 am]

BILLING CODE P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–21–0018; NARA–2022–064]

Records Schedules; Administrative Correction Notice

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of administrative correction to a records schedule.

SUMMARY: We are making the following administrative corrections to schedule DAA–0566–2018–0006, which provides disposition authority for United States Citizenship and Immigration Services Form 1–824, Application for Action on an Approved Application or Petition. The schedule covers forms and supporting documentation used to request duplicates of immigration forms and notices, and to request notifications of immigration status be sent to various U.S. government entities, such as U.S. consulates. An administrative correction addresses errors or oversights to temporary items in an approved records schedule. We are adding a superseded item citation.

DATES: Submit any comments by October 31, 2022.

ADDRESSES: You can find the records schedule subject to this proposed administrative correction on our website's Records Control Schedule page at *https://www.archives.gov/records-mgmt/rcs/schedules/index.html?dir=/departments/department-of-homeland-security/rg-0566.*

You may submit comments by the following method:

Federal eRulemaking Portal: https://www.regulations.gov. On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice which has a 'comment' button to submit a comment. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov,* you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov* or by phone at 301–837–2902. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Administrative corrections are changes to temporary items on approved records schedules to address errors or oversights when the records were originally scheduled. The notice applies only to the changes described; not to other portions of a schedule. Submitting agencies cannot implement administrative corrections until the comment period ends and NARA approves the changes.

This administrative correction should be read in conjunction with the previously approved records schedule, N1–85–96–01, Department of Justice, Immigration and Naturalization Service, Immigration and Naturalization Service (INS) Service Center Receipt Files. You can find this schedule on the Records Control Schedule at *https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/department-of-justice/rg-0085/n1-085-96-001_sf115.pdf.*

Proposed Change

Administrative correction to include a superseded authority citation that was not correctly identified on schedule DAA–0566–2018–0006, Department of Homeland Security, U.S. Citizenship and Immigration Services, 1–824, Application for Action on an Approved Application or Petition, available on the Records Control Schedule page at *https://www.archives.gov/files/records-mgmt/rcs/schedules/departments/department-of-homeland-security/rg-0566/daa-0566-2018-0006_sf115.pdf.* The schedule item DAA–0566–2018–0006–0001, approved in 2019, was intended to supersede N1–85–96–01, item 1, Approved Applications for Action on an Approved Application or Petition. The supersession did not appear in the Portable Document Format (PDF) version of the schedule because of a technical error. This error created an ambiguous disposition. DAA–0566–2018–0006–0001 will now supersede N1–85–96–01, item 1. The 2019

schedule does not modify the retention period for these records.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–19823 Filed 9–13–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0019; NARA–2022–065]

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice of certain Federal agency requests for records disposition authority (records schedules). We publish notice in the **Federal Register** and on *regulations.gov* for records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on such records schedules.

DATES: We must receive responses on the schedules listed in this notice by October 31, 2022.

ADDRESSES: To view a records schedule in this notice, or submit a comment on one, use the following address: *https://www.regulations.gov/docket/NARA-22-0019/document.* This is a direct link to the schedules posted in the docket for this notice on *regulations.gov.* You may submit comments by the following method:

• *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice, in which we have posted the records schedules open for comment. Each schedule has a 'comment' button so you can comment on that specific schedule. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov,* you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on. You can find the control number for each schedule in parentheses at the end of each schedule's entry in the list at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov* or by phone at 301–837–2902. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION:

Public Comment Procedures

We are publishing notice of records schedules in which agencies propose to dispose of records they no longer need to conduct agency business. We invite public comments on these records schedules, as required by 44 U.S.C. 3303a(a), and list the schedules at the end of this notice by agency and subdivision requesting disposition authority.

In addition, this notice lists the organizational unit(s) accumulating the records or states that the schedule has agency-wide applicability. It also provides the control number assigned to each schedule, which you will need if you submit comments on that schedule. We have uploaded the records schedules and accompanying appraisal memoranda to the *regulations.gov* docket for this notice as ''other'' documents. Each records schedule contains a full description of the records at the file unit level as well as their proposed disposition. The appraisal memorandum for the schedule includes information about the records.

We will post comments, including any personal information and attachments, to the public docket unchanged. Because comments are public, you are responsible for ensuring that you do not include any confidential or other information that you or a third party may not wish to be publicly posted. If you want to submit a comment with confidential information or cannot otherwise use the *regulations.gov* portal, you may contact *request.schedule@nara.gov* for instructions on submitting your comment.

We will consider all comments submitted by the posted deadline and consult as needed with the Federal agency seeking the disposition authority. After considering comments, we may or may not make changes to the proposed records schedule. The schedule is then sent for final approval by the Archivist of the United States. After the schedule is approved, we will post on *regulations.gov* a ''Consolidated Reply'' summarizing the comments, responding to them, and noting any changes we made to the proposed schedule. You may elect at *regulations.gov* to receive updates on the docket, including an alert when we post the Consolidated Reply, whether or not you submit a comment. If you have a question, you can submit it as a comment, and can also submit any concerns or comments you would have to a possible response to the question. We will address these items in consolidated replies along with any other comments submitted on that schedule.

We will post schedules on our website in the Records Control Schedule (RCS) Repository, at *https://www.archives.gov/records-mgmt/rcs,* after the Archivist approves them. The RCS contains all schedules approved since 1973.

Background

Each year, Federal agencies create billions of records. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval. Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. The records schedules authorize agencies to preserve records of continuing value in the National Archives or to destroy, after a specified period, records lacking continuing administrative, legal, research, or other value. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

Agencies may not destroy Federal records without the approval of the Archivist of the United States. The Archivist grants this approval only after thorough consideration of the records' administrative use by the agency of origin, the rights of the Government and of private people directly affected by the Government's activities, and whether or not the records have historical or other value. Public review and comment on these records schedules is part of the Archivist's consideration process.

Schedules Pending

1. Department of the Army, Agency-wide, Integrated Logistics Support Center Packaging System Records (DAA–AU–2021–0003).

2. Department of Defense, Defense Counterintelligence and Security Agency, Office of the Inspector General Records (DAA–0446–2022–0002).

3. Department of Defense, Defense Logistics Agency, Acquisition-Contracting Records (DAA–0361–2020–0003).

4. Department of Defense, Defense Logistics Agency, Logistics Supply Chain Management Records (DAA–0361–2020–0004).

5. Department of Defense, Defense Logistics Agency, Logistics Management and Strategic Materials Storage Records (DAA–0361–2021–0001).

6. Department of Defense, Office of the Secretary of Defense, National Guard Youth Challenge Program Records (DAA–0330–2022–0005).

7. Department of Defense, Office of the Secretary of Defense, Personnel Recovery Records (DAA–0330–2022–0008).

8. Department of Health and Human Services, Office of the Secretary, Correspondence Management Schedule of the Assistant Secretary for Health (DAA–0514–2020–0002).

9. Department of Homeland Security, Bureau of Customs and Border Protection, Trusted Worker Records (DAA–0568–2020–0003).

10. Department of Labor, Wage and Hour Division, Policy, Planning and Reporting Records (DAA–0155–2022–0002).

11. Department of the Navy, Agency-wide, Military Personnel Records (DAA–NU–2021–0001).

12. Department of Transportation, Federal Aviation Administration, Aviation Insurance Program Records (DAA–0237–2021–0017).

13. Department of Transportation, Federal Aviation Administration, National Vital Information System Records (DAA–0237–2022–0005).

14. Department of the Treasury, Internal Revenue Service, Fingerprint Records and Professional Credentials of eFile Providers (DAA–0058–2022–0001).

15. Administrative Office of the United States Courts, United States Court of International Trade, Case Files (DAA–0321–2020–0001).

16. Naming Commission, Agency-wide, Records of the Naming Commission (DAA–0148–2022–0003).

17. National Archives and Records Administration, Government-wide, GRS 6.1—Email and Other Electronic Records Managed Under a Capstone Approach (DAA–GRS–2022–0006).

18. Securities and Exchange Commission, Office of Credit Ratings, Exemptive Relief and No Action Letters (DAA–0266–2022–0002).

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–19825 Filed 9–13–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

[NARA–22–0017; NARA–2022–063]

Records Schedules; Administrative Correction Notice

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of administrative correction to a records schedule.

SUMMARY: We are making the following administrative correction to DAA–0266–2015–0004, Securities and Exchange Commission, to remove the item for records of reorganization proceedings because such records are already covered by other items on the schedule. An administrative correction addresses errors or oversights to temporary items in an approved records schedule.

DATES: Submit any comments by October 31, 2022.

ADDRESSES: You can find the records schedule subject to this proposed administrative correction on our website's Records Control Schedule page at *https://www.archives.gov/records-mgmt/rcs/schedules/index.html?dir=/independent-agencies/rg-0266.*

You may submit comments by the following method: *Federal eRulemaking Portal: https://www.regulations.gov.* On the website, enter either of the numbers cited at the top of this notice into the search field. This will bring you to the docket for this notice which has a 'comment' button to submit a comment. For more information on *regulations.gov* and on submitting comments, see their FAQs at *https://www.regulations.gov/faq.*

If you are unable to comment via *regulations.gov,* you may email us at *request.schedule@nara.gov* for instructions on submitting your comment. You must cite the control number of the schedule you wish to comment on.

FOR FURTHER INFORMATION CONTACT: Kimberly Richardson, Regulatory and External Policy Program Manager, by email at *regulation_comments@nara.gov* or by phone at 301–837–2902. For information about records schedules, contact Records Management Operations by email at *request.schedule@nara.gov.*

SUPPLEMENTARY INFORMATION: Administrative corrections are changes to temporary items on approved records schedules to address errors or oversights when the records were originally scheduled. The notice applies only to the changes described, not to other portions of a schedule. Submitting agencies cannot implement administrative corrections until the comment period ends and NARA approves the changes.

Read the proposed administrative correction in conjunction with the previously approved DAA–0266–2015–0004–0005, Office of General Counsel, Securities and Exchange Commission, Office of the General Counsel Records and NC1–266–77–002–85, Securities and Exchange Commission, Comprehensive Schedule.

Proposed Change

We are making an administrative correction to remove schedule item DAA–0266–2015–0004–0005 (Reorganization Proceedings). We reviewed the administrative record and determined that, when the schedule was created, neither NARA nor the SEC took into consideration changes to the Bankruptcy Code that impacted SEC's role and the records that would be created. As a result, a separate series for Reorganization Proceedings was erroneously added to the schedule, even though such records are already covered by permanent and temporary schedule items 0001–0004. Records of Reorganization Proceedings were previously scheduled under item NC1–266–77–002 item 85 (SEC File Nos. 206–, 207– to 215–, 217–). At that time, the records documented the SEC's substantial role in reorganization proceedings. Since NC1–266–77–0002 was approved, changes to bankruptcy laws substantially reduced the agency's role in reorganization proceedings. Under the current Bankruptcy Code, records subject to SEC review are covered by schedule items DAA–0266–2015–0004–0001, 0002, 0003 or 0004. Item 0005, proposed for removal, creates ambiguous disposition instructions as it overlaps with the other items. Removing the item allows the agency to implement appropriate disposition for records produced under the current law using the remaining schedule items.

Laurence Brewer,

Chief Records Officer for the U.S. Government.

[FR Doc. 2022–19824 Filed 9–13–22; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities, National Foundation on the Arts and the Humanities.

ACTION: Notice of meeting.

SUMMARY: The National Endowment for the Humanities (NEH) will hold fourteen meetings, by videoconference, of the Humanities Panel, a federal advisory committee, during October 2022. The purpose of the meetings is for panel review, discussion, evaluation, and recommendation of applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965.

DATES: See **SUPPLEMENTARY INFORMATION** for meeting dates. The meetings will open at 8:30 a.m. and will adjourn by 5:00 p.m. on the dates specified below.

FOR FURTHER INFORMATION CONTACT: Elizabeth Voyatzis, Committee Management Officer, 400 7th Street SW, Room 4060, Washington, DC 20506; (202) 606–8322; *evoyatzis@neh.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given of the following meetings:

1. Date: October 4, 2022

This video meeting will discuss applications on the topics of Literary and Cultural Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

2. Date: October 14, 2022

This video meeting will discuss applications on the topic of World Studies (Pre-Modern), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

3. Date: October 18, 2022

This video meeting will discuss applications on the topic of U.S. History (Pre-1900), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

4. Date: October 19, 2022

This video meeting will discuss applications on the topic of U.S. History, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

5. Date: October 19, 2022

This video meeting will discuss applications on the topic of U.S. History (African American Studies), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

6. Date: October 20, 2022

This video meeting will discuss applications on the topics of Film and Media Studies, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

7. Date: October 20, 2022

This video meeting will discuss applications on the topic of American Studies, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

8. Date: October 21, 2022

This video meeting will discuss applications on the topic of Historic Sites, for the Public Humanities Projects: Historic Places (Implementation) grant program, submitted to the Division of Public Programs.

9. Date: October 25, 2022

This video meeting will discuss applications on the topic of Place-based History, for the Public Humanities Projects: Exhibitions (Implementation) grant program, submitted to the Division of Public Programs.

10. Date: October 25, 2022

This video meeting will discuss applications on the topic of U.S. History (Regional, State, and Local), for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

11. Date: October 26, 2022

This video meeting will discuss applications on the topic of History, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

12. Date: October 27, 2022

This video meeting will discuss applications on the topic of Podcasts, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

13. Date: October 27, 2022

This video meeting will discuss applications on the topics of Art and Architectural History, for the Humanities Collections and Reference Resources grant program, submitted to the Division of Preservation and Access.

14. Date: October 28, 2022

This video meeting will discuss applications on the topics of Arts and Culture, for the Media Projects: Production Grants program, submitted to the Division of Public Programs.

Because these meetings will include review of personal and/or proprietary financial and commercial information given in confidence to the agency by grant applicants, the meetings will be closed to the public pursuant to sections 552b(c)(4) and 552b(c)(6) of Title 5, U.S.C., as amended. I have made this determination pursuant to the authority granted me by the Chair's Delegation of Authority to Close Advisory Committee Meetings dated April 15, 2016.

Dated: September 8, 2022.

Samuel Roth,

Attorney-Advisor, National Endowment for the Humanities.

[FR Doc. 2022–19797 Filed 9–13–22; 8:45 am]

BILLING CODE 7536–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95709; File No. SR–MRX–2022–13]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Options 7, Section 5

September 8, 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 25, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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

The Exchange proposes to amend MRX's Pricing Schedule at Options 7, Section 5.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/*

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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

MRX proposes to amend its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, to assess membership fees, which are not assessed today, and which have not been assessed since MRX's inception in 2016.[3] The proposed changes are designed to update fees for MRX's services to reflect their current value—rather than their value when it was a new exchange six years ago—based on MRX's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge no fees for certain services such as membership, in order to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.[4] Allowing newly-opened exchanges time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition. The proposed changes to membership fees within Options 7, Section 5; Other Options Fees and Rebates, are described below.

This proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against the other 15 options exchanges without waiving fees for membership. These types of fees are assessed by options exchanges that compete with MRX in the sale of exchange services—indeed, MRX is the only options exchange (out of the 16 current options exchanges) not assessing membership fees today. New exchanges commonly waive membership fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, ''graduate'' to compete against established exchanges and charge fees that reflect the value of their services.[5] If MRX is incorrect in this assessment, that error will be reflected in MRX's ability to compete with other options exchanges.[6]

As noted above, MRX Members are not assessed fees for membership today. Under the proposed fee change, MRX Members will be required to pay a monthly Access Fee, which entitles MRX Members to trade on the Exchange based on their membership type. Specifically, MRX proposes to assess Electronic Access Members[7] an Access Fee of $200 per month, per membership. The Exchange proposes to assess Market Makers[8] Access Fees depending on whether they are a Primary Market Maker (''PMM'') or a Competitive Market Maker (''CMM''). A PMM would be assessed an Access Fee of $200 per month, per membership. A CMM would be assessed an Access Fee of $100 per month, per membership.[9] The proposed fees are identical to access fees on Nasdaq GEMX, LLC (''GEMX'').[10] Of note, a Member would pay each applicable fee. For example, a Competitive Market Maker who does not enter orders would only pay the $100 per month, per membership Access Fee.

In order to receive market making appointments to quote in any options class, CMMs will also be assessed a CMM Trading Right Fee identical to GEMX.[11] CMM trading rights entitle a CMM to enter quotes in options symbols that comprise a certain percentage of industry volume. On a quarterly basis, the Exchange assigns points to each options class equal to its percentage of overall industry volume (not including exclusively traded index options), rounded down to the nearest one hundredth of a percentage with a maximum of 15 points. A new listing is assigned a point value of zero for the remainder of the quarter in which it was listed. CMMs may seek appointments to options classes that total 20 points for the first CMM Right it holds, and 10 points for the second and each subsequent CMM Right it holds.[12] In order to encourage CMMs to quote on the Exchange, MRX launched CMM trading rights without any fees, allowing CMMs to freely quote in all options classes.

The Exchange is now proposing to adopt a monthly CMM Trading Rights Fee. Under the proposed fee structure, CMMs will be assessed a Trading Rights Fee of $850 per month for the first trading right, which will entitle the CMM to quote in 20 percent of industry volume.[13] Each additional CMM Right will cost $500 per month, and will entitle the CMM to quote an additional 10 percent of volume. Similar to GEMX's trading rights fee,[14] a new CMM would pay $850 for the first trading right and all CMMs would

[3] The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR–MRX–2022–04) instituting fees for membership, ports and market data. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. SR–MRX–2022–07 replaced the membership fees set forth in SR–MRX–2022–04. The instant filing replaces SR–MRX–2022–07 which was withdrawn on August 25, 2022.

[4] *See also* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (introduction of membership fees by MEMX).

[5] For example, MIAX Emerald commenced operations as a national securities exchange registered on March 1, 2019. *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange). MIAX Emerald filed to adopt its transaction fees and certain of its non-transaction fees in its filing SR–EMERALD–2019–15. *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule). MIAX Emerald waived its one-time application fee and monthly Trading Permit Fees assessable to EEMs and Market Makers among other fees within SR–EMERALD–2019–15.

[6] Nasdaq recently announced that, beginning in 2022, Nasdaq plans to migrate its North American markets to Amazon Web Services in a phased approach, starting with Nasdaq MRX, a U.S. options market. The proposed fee changes are entirely unrelated to this effort.

[7] The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6).

[8] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[9] In the case where a single Member has multiple MRX memberships, the monthly access fee is charged for each membership. For example, if a single member firm is both an EAM and a CMM, or owns multiple CMM memberships, the firm is subject to the access fee for each of those memberships.

[10] *See* GEMX Options 7, Section 6.A. (Access Fees).

[11] *See* GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

[12] A CMM may request changes to its appointments at any time upon advance notification to the Exchange in a form and manner prescribed by the Exchange. *See* MRX Options 2, Section 3(c)(3).

[13] These trading rights are referred to as CMM Rights. *See* MRX Options 2, Section 3.

[14] *See* GEMX Options 7, Section 6.B.

thereafter pay $500 for each additional trading right. For example, if a CMM desired to quote in all options series listed on MRX, the CMM would need to obtain 9 trading rights at a cost of $4,850. The Exchange is proposing this pricing model because each subsequent CMM Right costs less than the first trading right. All CMMs have the opportunity to purchase additional CMM Rights beyond the initial trading right in order to quote in additional options series. PMMs would not be assessed a Trading Rights Fee.

PMMs have additional obligations on MRX as compared to CMMs. PMMs are required to open options series in which they are assigned each day on MRX. Specifically, PMMs must submit a Valid Width Quote each day to open their assigned options series.[15] PMMs are integral to providing liquidity during MRX's Opening Process.[16] Further, intra-day, PMMs are required to provide two-sided quotations in 90% of cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance.[17] While there can be multiple CMMs in an options series, there is only one PMM assigned per options series. The Exchange desires to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting.

Finally, the Exchange is proposing only to charge the $200 access fee to EAMs, and no trading rights fee, as the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers' use.[18]

MRX believes that its membership fees, which have been in effect since May 2, 2022, are in line with or less than those of other options exchanges. The Exchange believes it is notable that during this time, there have been no comment letters submitted to the Commission arguing that the Exchange's new fees are unreasonable. The membership fees are constrained by competition. For example, since the inception of the membership fees on May 2, 2022, one firm cancelled nine CMM trading rights as well as their membership on MRX.[19] Also, another firm decreased their CMM trading rights from nine to four CMM trading rights.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[20] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[21] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''[22]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.''[23]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' ''[24] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.''[25] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.''[26] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.''[27]

History of MRX Operations

Over the years, MRX has amended its transactional pricing to remain competitive and attract order flow to the Exchange.[28]

[15] *See* Options 3, Section 8(c)(1) and 8(c)(3).

[16] The Exchange notes that most options markets do not require their primary or lead market maker to open their assigned options series.

[17] *See* Options 2, Section 5(e)(2).

[18] The Exchange notes that all MRX Members may submit orders; however, only Market Makers may submit quotes. The Exchange surveils Market Maker quoting to ensure these participants have met their obligations. The regulatory oversight for Market Makers is in addition to the regulatory oversight which is administered for all EAMs.

[19] The Exchange notes that this Member was not active on MRX prior to the cancellation.

[20] *See* 15 U.S.C. 78f(b).

[21] *See* 15 U.S.C. 78f(b)(4) and (5).

[22] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[23] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[24] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[25] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca–2006–21).

[26] *Id.*

[27] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[28] *See e.g.* Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR–ISEMercury–2016–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR–ISEMercury–2016–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR–ISEMercury–2016–06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR–ISEMercury–2016–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR–MRX–2018–01) (Notice of

Continued

In June 2019, MRX commenced offering complex orders.[29] With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities, and other trading functionality that was nearly identical to functionality available on ISE.[30] By way of comparison, ISE, unlike MRX, assessed membership fees in 2019[31] while offering the same suite of functionality as MRX, with a limited exception.[32]

Membership Is Subject to Significant Substitution-Based Competitive Forces

An exchange can show that a product is ''subject to significant substitution-based competitive forces'' by introducing evidence that customers can substitute the product for products offered by other exchanges.

Chart 1 below shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

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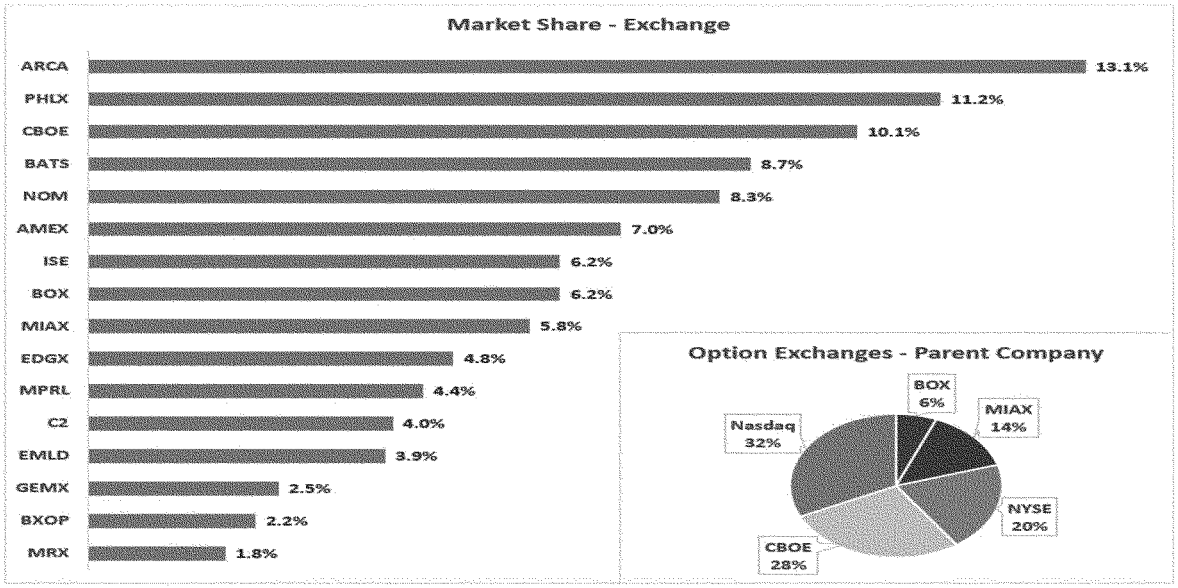
Chart 1: Market Share by Exchange for January 2022



Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR–MRX–2018–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange's Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR–MRX–2018–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR–MRX–2018–27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR–MRX–2019–02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR–MRX–2019–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR–MRX–2020–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR–MRX–2020–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR–MRX–2020–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR–MRX–2020–18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR–MRX–2020–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange's Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR–MRX–2020–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR–MRX–2021–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

[29] *See* Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

[30] One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. ''Nasdaq Precise'' or ''Precise'' is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (*e.g.,* parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (*e.g.,* NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (*e.g.,* kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (*e.g.,* order history and done away trade reports). *See* ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

[31] In 2019, ISE assessed the following Access Fees: $500 per month, per membership to an Electronic Access Member, $5,000 per month, per membership to a Primary Market Maker and $2,500 per month, per membership to a Competitive Market Maker. ISE does not assess Trading Rights Fees to Competitive Market Makers. See Securities Exchange Act Release No. 82446 (January 5, 2018), 83 FR 1446 (January 11, 2018) (SR–ISE–2017–112) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Certain Non-Transaction Fees in the Exchange's Schedule of Fees). Of note, ISE assessed Access Fees prior to 2019 as well.

[32] Unlike ISE, MRX does not offer Precise. *See* note 30, *supra.*

Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and membership. MRX has the smallest number of Members relative to its GEMX, ISE, NOM and Phlx affiliates, with approximately 40 members. This demonstrates that customers can and will choose where to become members, need not become members of all exchanges, and do not need to become Members of MRX and instead may utilize a third party.[33]

The Exchange established these lower (when compared to other options exchanges in the industry) membership fees in order to encourage market participants to become MRX Members and register as MRX Market Makers. As noted above, MRX has grown its market share since inception and seeks to continue to grow its membership base. The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange in addition to its pricing.

As noted herein, MRX filed its membership fees on May 2, 2022 and has not received a comment with respect to the proposed membership fee changes. MRX Members may elect to cancel their membership on MRX. Since the inception of the membership fees on May 2, 2022, one firm cancelled nine CMM trading rights as well as their membership on MRX. Also, another firm decreased their CMM trading rights from nine to four CMM trading rights. Also, no MRX Member is required by rule, regulation, or competitive forces to be a Member on the Exchange.

Fees for Membership

The proposed membership fees described below are in line with or less than those of other markets. Setting a fee above competitors is likely to drive away customers, so the most efficient price-setting strategy is to set prices at the same level as other firms.

The Exchange's proposal to adopt membership fees is reasonable, equitable and not unfairly discriminatory. As a self-regulatory organization, MRX's membership department reviews applicants to ensure that each application complies with the rules specified within MRX General 3 [34] as well as other requirements for membership.[35] Applicants must meet the Exchange's qualification criteria prior to approval. The membership review includes, but is not limited to, the registration and qualification of associated persons, financial health, the validity of the required clearing relationship, and the history of disciplinary matters. Approved Members would be required to comply with MRX's By-Laws and Rules and would be subject to regulation by MRX. The proposed membership fees are identical to membership fees on GEMX,[36] and are in line with or lower than similar fees assessed on other options markets.[37]

MRX's flat rate Access Fee to Electronic Access Members of $200 per month, per membership is reasonable because the Exchange notes that the technical, regulatory, and administrative services associated with an EAM's use of the Exchange are not as comprehensive as those associated with Market Makers.[38] MRX's flat rate Access Fee to Electronic Access Members of $200 per month, per membership is equitable and not unfairly discriminatory as all Members transacting orders on MRX would be subject to this same fee. The CMM Trading Right Fee is identical to GEMX.[39]

The Exchange's proposal to assess Primary Market Makers a slightly higher flat rate Access Fee of $200 per month, per membership as compared to Competitive Market Makers who would be assessed a flat rate Access Fee of $100 per month, per membership is reasonable because Primary Market Makers have higher regulatory obligations and require more technical, regulatory, and administrative services as compared to Competitive Market Makers. For PMMs on MRX, the fees required to access the Exchange are substantially lower than those of competing exchanges. For example, a PMM could quote on the Exchange for only $200 (*i.e.,* the access fee), compared with the minimum $6,000 per month trading permit fee charged by NYSE Arca.

Unlike PMMs, similar to GEMX's trading rights fee,[40] CMMs would be assessed a Trading Right Fee of $850 per month for the first trading right and $500 per month for each additional right. The Exchange believes that it is reasonable to assess CMMs a trading right fee because these Market Makers are not required to quote on MRX. Specifically, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance.[41] While there can be multiple CMMs in an options series, there is only one PMM assigned per options series. With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges. For example, a market maker on MIAX is assessed a $3,000 one-time fee and then a tiered monthly fee from $7,000 for up to 10 classes to $22,000 for over 100 classes.[42] By comparison, under the proposed fee structure, a CMM can be granted access on the Exchange for as little as $950 per month (*i.e.,* a $100 access fee and an $850 trading right), and could quote in all options classes on the Exchange by paying the access fee and obtaining nine CMM trading rights for a total of $4,950 per month. The Exchange notes that its tiered model for CMM trading rights is consistent with the pricing practices of other exchanges, such as NYSE Arca, which charges $6,000 per month for the first market maker trading permit, down to $1,000 per month for the fifth and additional trading permits, with various tiers in-between. Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right.

The Exchange does not believe that it is unfairly discriminatory to assess

[33] Of course, that third party must itself become a Member of MRX, so at least some market participants must become Members of MRX for any trading to take place at all. Nevertheless, because some firms would be able to exercise the option of not becoming Members, excessive membership fees would cause the Exchange to lose members.

[34] MRX General 3, Membership and Access, incorporates by reference Nasdaq General 3.

[35] The Exchange's Membership Department must ensure, among other things, that an applicant is not statutorily disqualified.

[36] *See* GEMX Options 7, Section 6A (Access Fees).

[37] *See* Cboe's Fees Schedule. Cboe assesses permit fees as follows: Market-Maker Electronic Access Permit of $5,000 per month; Electronic Access Permits of $3,000 per month; and Clearing TPH Permit of $2,000 per month. *See also* Miami International Securities Exchange, LLC's (''MIAX'') Fee Schedule. MIAX assesses an Electronic Exchange Member Fee of $1,500 per month.

[38] The Exchange notes that all MRX Members may submit orders; however, only Market Makers may submit quotes. The Exchange surveils Market Maker quoting to ensure these participants have met their obligations. The regulatory oversight for Market Makers is in addition to the regulatory oversight which is administered for all EAMs.

[39] *See* GEMX Options 7, Section 6.B. (CMM Trading Rights Fees).

[40] *See* GEMX Options 7, Section 6.B.

[41] *See* Options 2, Section 5(e)(2).

[42] *See* Miami International Securities Exchange, LLC Fee Schedule at 20 and 21: *https://www.miaxoptions.com/sites/default/files/fee_schedule-files/MIAX_Options_Fee_Schedule_03012022.pdf.*

different fees for EAMS, PMMs, and CMMs. While PMMs would pay lower membership fees as compared to CMMs, PMMs have additional obligations on MRX as compared to CMMs. PMMs are required to open options series in which they are assigned each day on MRX. Specifically, PMMs must submit a Valid Width Quote each day to open their assigned options series.[43] PMMs are integral to providing liquidity during MRX's Opening Process.[44] Further, intra-day, PMMs are required to provide two-sided quotations in 90% of cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance.[45] While there can be multiple CMMs in an options series, there is only one PMM assigned per options series. The Exchange desires to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting.

Further, with respect to the higher fees for Market Makers generally, MRX notes that Market Makers: (1) consume the most bandwidth and resources of the network; (2) transact a majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff. Other non-Market Maker market participants take up significantly less Exchange resources as discussed further below. Further, the Exchange notes that Market Makers account for greater than 99% of message traffic over the network, while other non-Market Maker market participants account for less than 1% of message traffic over the network. Most Members do not have a business need for the high performance network solutions generally required by Market Makers. The Exchange's high performance network solutions and supporting infrastructure (including employee support), provides unparalleled system throughput and the capacity to handle approximately 3 million quote messages per second. On an average day, MRX handles over 6.10 billion total messages. Of those 6.10 billion daily messages, Market Makers generate 6.08 billion of those messages, while other non-Market Maker market participants generate approximately 20 million messages. Additionally, in order to achieve consistent, premium network performance, MRX must build out and maintain a network that has the capacity to handle the message rate requirements beyond those 6.08 billion daily messages. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for storage and network transport capabilities. Given this difference in network utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers are assessed different Access Fees as compared to EAMs.

MRX notes that while Market Makers continue to account for a vast majority of resources placed on MRX and its System (as discussed herein), Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. MRX recognizes the value that Market Makers bring to the Exchange. For certain transactions, MRX also assesses a lower fee for Market Makers compared to other non-Priority Customer market participants to attract liquidity to the Exchange.[46] Finally, the Exchange notes that PMMs are entitled to certain enhanced allocations as a result of providing liquidity on MRX.[47] The proposed membership fees are meant to strike a balance between resources consumed by Market Makers on MRX and continuing to incentivize Market Makers to access and make a market on MRX.

Additionally, the Exchange believes that the proposed change will better align MRX's membership fees with rates charged by competing options exchanges. Further, the Exchange believes that the proposal is reasonably designed to continue to compete with other options exchanges by incentivizing market participants to register as Market Makers on MRX in a manner than enables MRX to improve its overall competitiveness and strengthen market quality for all market participants.

Similar to recent proposal by BOX Exchange LLC (''BOX''),[48] the Exchange notes that there is no regulatory requirement that market makers connect and access any one options exchange. Moreover, a Market Maker membership is not a requirement to participate on the Exchange and participation on an exchange is completely voluntary. BOX noted in its rule change that it reviewed membership details at three options exchanges and found that there are 62 market making firms across these three exchanges.[49] Further, BOX found that 42 of the 62 market making firms access only one of the three exchanges.[50] Additionally, BOX identified numerous market makers that are members of other options exchanges, but not BOX.[51] Not only is there not an actual regulatory requirement to connect to every options exchange, the Exchange believes there is also no ''de facto'' or practical requirement as well, as further evidenced by the market maker membership analysis by BOX of three options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, MRX must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

As noted above, one firm cancelled nine CMM trading rights as well as their membership on MRX.[52] Also, another firm decreased their CMM trading rights from nine to four CMM trading rights. The Exchange believes the Commission has a sufficient basis to determine that MRX was subject to significant competitive forces in setting the terms of its proposed fees. Moreover, the Commission has found that, if an exchange meets the burden of demonstrating it was subject to significant competitive forces in setting its fees, the Commission ''will find that its fee rule is consistent with the Act unless 'there is a substantial countervailing basis to find that the terms' of the rule violate the Act or the rules thereunder.'' [53] The Exchange is not aware of, nor has the Commission articulated, a substantial countervailing basis for finding the proposal violates the Act or the rules thereunder.

Membership fees are charged by all options exchanges except MRX. In 2022,

[43] *See* Options 3, Section 8(c)(1) and 8(c)(3).

[44] The Exchange notes that most options markets do not require their primary or lead market maker to open their assigned options series.

[45] *See* Options 2, Section 5(e)(2).

[46] *See* MRX's Pricing Schedule at Options 7.

[47] *See* Options 3, Section 10.

[48] *See* Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). BOX amended its fees on January 3, 2022 to adopt an electronic market maker trading permit fee.

[49] *Id.*

[50] *Id.*

[51] *Id.* For example, BOX identified 47 market makers that are members of Cboe Exchange Inc. (an exchange that only lists options), but not the Exchange (which also lists only options).

[52] The Exchange notes that this Member was not active on MRX prior to the cancellation.

[53] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74781 (December 9, 2008) (''2008 ArcaBook Approval Order'') (approving proposed rule change to establish fees for a depth-of-book market data product).

similar to MRX, MEMX LLC (''MEMX'') commenced assessing a monthly membership fee.[54] MEMX reasoned in that rule change that there is value in becoming a member of the exchange.[55] MEMX stated that it believed that its proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange.'' [56] Moreover, ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.'' [57] In this respect, MEMX is correct; a monthly membership fee is reasonable, equitably allocated and not unfairly discriminatory. Market participants may choose to become a member of one or more options exchanges based on the market participant's business model. A very small number of market participants choose to become a member of all sixteen options exchanges. It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market.

MRX makes the same arguments herein as were proposed by MEMX in similarly adopting membership fees. The Exchange notes that MRX's ability to assess membership fees similar to MEMX and all other options markets permits it to compete with other options markets on an equal playing field. MRX is the only options market that does not have membership fees. Most firms that actively trade on options markets are not currently Members of MRX. Using options markets that Nasdaq operates as points of comparison, less than a third of the firms that are members of at least one of the options markets that Nasdaq operates are also Members of MRX (approximately 29%). The Exchange notes that no firm is a Member of MRX only. Few, if any, firms have become Members at MRX, notwithstanding the fact that MRX membership is currently free, because MRX currently has less liquidity than other options markets. As explained above, MRX has the smallest market share of the 16 options exchanges, representing only approximately 1.8% of the market, and, for certain market participants, the current levels of liquidity may be insufficient to justify the costs associated with becoming a Member and connecting to the Exchange, notwithstanding the fact that membership is free.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. Becoming a member of an exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is made at the beginning of the relationship, and is no less subject to competition than trading fees.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at MRX.[58] If MRX is not at the NBBO, MRX will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the order was executed at a superior price.[59]

In lieu of joining an exchange, a third-party may be utilized to execute an order on an exchange. For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[60] or request sponsored access [61] through a member of an exchange in order to submit a trade directly to an options exchange.[62] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange. Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues, a market participant may determine one model is more cost efficient as compared to the alternatives.

After 6 years, MRX proposes to commence assessing membership fees, just as all other options exchanges.[63] The introduction of these fees will not impede a Member's access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

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.

The Exchange believes its proposal remains competitive with other options markets, and will offer market participants with another choice of venue to transact options. The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

The Exchange notes that other options markets have adopted membership fees. MEMX recently reasoned that it should be permitted to adopt membership fees because MEMX's proposed membership fees would be lower than the cost of

[54] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). The Monthly Membership Fee is assessed to each active Member at the close of business on the first day of each month.

[55] *Id.*

[56] *Id.*

[57] *Id.*

[58] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), available at *https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[59] MRX Members may elect to not route their orders by marking an order as ''do-not-route.'' In this case, the order would not be routed. *See* Options 3, Section 7(m).

[60] Service bureaus provide access to market participants to submit and execute orders on an exchange. On MRX, a Service Bureau may be a Member. Some MRX Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only MRX Members may submit orders or quotes through ports.

[61] Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[62] This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

[63] Today, MRX is the only options exchange that does not assess membership fees.

membership on other exchanges, and therefore,

> . . . may stimulate intramarket competition by attracting additional firms to become Members on the Exchange or at least should not deter interested participants from joining the Exchange. In addition, membership fees are subject to competition from other exchanges. Accordingly, if the changes proposed herein are unattractive to market participants, it is likely the Exchange will see a decline in membership as a result. The proposed fee change will not impact intermarket competition because it will apply to all Members equally. The Exchange operates in a highly competitive market in which market participants can determine whether or not to join the Exchange based on the value received compared to the cost of joining and maintaining membership on the Exchange.'' [64]

Likewise, MRX's ability to assess membership fees, similar to MEMX and all other options markets, would permit it to compete with other options markets on an equal playing field. MRX is the only options market that does not have membership fees.

The proposed membership fees are identical to membership fees assessed by GEMX.[65] The proposed fees are designed to reflect the benefits of the technical, regulatory, and administrative services provided to a Member by the Exchange, and the fees remain competitive with similar fees offered on other options exchanges. The Exchange does not believe that assessing different fees for EAMs, PMMs, and CMMs, creates an undue burden on competition.

With respect to the CMM Trading Rights Fee, the proposed fees compare favorably with those of other options exchanges.[66] Like other options exchanges, the Exchange is proposing a tiered pricing model because it may encourage CMM firms to purchase additional trading rights and quote more issues because subsequent trading rights are priced lower than the initial trading right. The Exchange notes that it is not proposing trading right fees for PMMs. As compared to CMMs, PMMs have additional obligations on MRX. PMMs are required to open options series in which they are assigned each day on MRX. Specifically, PMMs must submit a Valid Width Quote each day to open their assigned options series.[67] PMMs are integral to providing liquidity during MRX's Opening Process.[68] Further, intra-day, PMMs are required to provide two-sided quotations in 90% of cumulative number of seconds, or such higher percentage as the Exchange may announce in advance. In contrast, a CMM is not required to enter quotations in the options classes to which it is appointed; however, if a CMM initiates quoting in an options class, the CMM is required to provide two-sided quotations in 60% of the cumulative number of seconds, or such higher percentage as the Exchange may announce in advance.[69] While there can be multiple CMMs in an options series, there is only one PMM assigned per options series. The Exchange desires to encourage Members to act as PMMs, which will benefit the market through, for example, more robust quoting.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[70] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–MRX–2022–13 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–2022–13. 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–2022–13 and should be submitted on or before October 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[71]

J. Matthew DeLesDernier,

Deputy Secretary.

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[64] *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19).

[65] *See* GEMX Options 7, Section 6.A. (Access Fees) and Section 6.B. (CMM Trading Rights Fees).

[66] *See* NYSE Arca Fees and Charges, General Options and Trading Permit (OTP) Fees (comparing CMM Trading Rights Fees to the Arca Market Maker fees).

[67] *See* Options 3, Section 8(c)(1) and 8(c)(3).

[68] The Exchange notes that most options markets do not require their primary or lead market maker to open their assigned options series.

[69] *See* Options 2, Section 5(e)(2).

[70] 15 U.S.C. 78s(b)(3)(A)(ii).

[71] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95704; File No. SR–MRX–2022–10]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Designation of a Longer Period for Commission Action on a Proposed Rule Change Relating to Complex Orders in Connection With a Technology Migration

September 8, 2022.

On July 18, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to trading functionality for Complex Orders in connection with a technology migration. The proposed rule change was published for comment in the **Federal Register** on July 29, 2022.[3] The Commission has received no comments regarding the proposal.

Section 19(b)(2) of the Act [4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding, or as to which the self-regulatory organization consents, the Commission will either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is September 12, 2022. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, pursuant to Section 19(b)(2) of the Act,[5] the Commission designates October 27, 2022, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–MRX–2022–10).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19812 Filed 9–13–22; 8:45 am]

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95363 (July 25, 2022), 87 FR 45814.

[4] 15 U.S.C. 78s(b)(2).

[5] *Id.*

[6] 17 CFR 200.30–3(a)(31).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95708; File No. SR–MRX–2022–14]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX's Pricing Schedule at Options 7, Section 7

September 8, 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 25, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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

The Exchange proposes to amend MRX's Pricing Schedule at Options 7, Section 7.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

MRX proposes to amend its Pricing Schedule at Options 7, Section 7, to assess market data fees, which are not assessed today, and which have not been assessed since MRX's inception in 2016.[3] The proposed changes are designed to update data fees to reflect their current value—rather than their value when it was a new exchange six years ago—based on increased market share. Newly-opened exchanges often charge no fees for market data to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.[4] Allowing newly-opened exchanges time to build and sustain market share before charging for their market data encourages market entry and promotes competition.

This Proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against other 15 options exchanges without waiving market data fees. Such fees are assessed by options exchanges that compete with MRX—indeed, MRX is the only options exchange (out of the 16 current options exchanges) not to assess them today.

As explained in further detail below, MRX today is in the same position as NYSE National in 2020, when it sought approval for the ''NYSE National Integrated Feed.'' [5] The Commission approved the NYSE National Integrated Feed based on a finding that it ''was subject to significant substitution-based competitive forces'' based on ''NYSE

[3] The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR–MRX–2022–04) instituting fees for membership, ports and market data. *See* Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR–MRX–2022–04). On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership (SR–MRX–2022–07), market data (SR–MRX–2022–08) and ports (SR–MRX–2022–09). On August 25, 2022, the Exchange withdrew the market data filing (SR–MRX–2022–08) and replaced it with the instant filing.

[4] *See, e.g.,* Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), also available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf.* (initiating market data fees for the NYSE National exchange after initially setting such fees at zero).

[5] NYSE National stated that the proposed integrated feed included depth-of-book order data, last sale data, security status updates, and stock summary messages. *See* Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), also available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf.*

National's consistently low percentage of market share, the relatively small number of subscribers to the NYSE National Integrated Feed, and the sizeable portion of subscribers that terminated their subscriptions following the proposal of the fees.'' [6]

The three factors cited in the Commission's approval order for NYSE National are present in MRX today. First, MRX has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today. Second, only a small number of firms purchase market data from MRX relative to its affiliated options exchanges. Third, a sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase the Exchange's market data feeds.

Disapproval of the Proposal—given that the three factors cited in the Commission's approval order for NYSE National two years ago are present in MRX today—would result in differential treatment of similarly-situated exchanges. Under such circumstances, disapproval of the Proposal should be rejected as arbitrary and capricious.

Disapproval would also place a substantial burden on competition. MRX would be uniquely disadvantaged as the only options exchange unable to charge for its market data. If the Commission were to disapprove this Proposal, that action, and not market forces, would determine whether MRX is successful in its competition with other options exchanges.

New exchanges commonly waive data fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, ''graduate'' to compete against established exchanges and charge fees that reflect the value of their services. If MRX is incorrect in its assessment, that error will be reflected in MRX's ability to compete with other options exchanges.[7]

The Exchange proposes to amend fees for the following market data feeds within Options 7, Section 7: (1) Nasdaq MRX Depth of Market Data; [8] (2) Nasdaq MRX Order Feed; [9] (3) Nasdaq MRX Top Quote Feed; [10] (4) Nasdaq MRX Trades Feed; [11] and (5) Nasdaq MRX Spread Feed.[12] Currently, no fees are being assessed for these feeds.

In addition to the proposed fees for each data feed, the Exchange is introducing an Internal Distributor Fee [13] of $1,500 per month for the Nasdaq MRX Depth of Market Feed, Order Feed, and Top Quote Feed, an Internal Distributor Fee of $750 per month for the Trades Feed, and an Internal Distributor Fee of $1,000 per month for the Spread Feed. If a Member subscribes to both the Trades Feed and the Spread Feed, both Internal Distributor Fees would be assessed.

The Exchange also proposes to assess an External Distributor Fee of $2,000 per month for the Nasdaq MRX Depth of Market Feed, Order Feed, and Top Quote Feed, an External Distributor Fee of $1,000 per month for the Trades Feed, and an External Distributor Fee of $1,500 per month for the Spread Feed.

MRX will also assess Professional [14] and Non-Professional [15] subscriber fees. The Professional Subscriber will be $25 per month, and the Non-Professional Subscriber will be $1 per month. These subscriber fees (both Professional and Non-Professional) cover the usage of all five MRX data products identified above and would not be assessed separately for each product.[16]

MRX also proposes a Non-Display Enterprise License for $7,500 per month. This license would lower costs for internal professional subscribers and lower administrative costs overall by permitting the distribution of all MRX proprietary direct data feed products to an unlimited number of internal non-display Subscribers without incurring additional fees for each internal Subscriber, or requiring the customer to count internal subscribers. [17] The Non-

[6] *See id.*

[7] Nasdaq recently announced that, beginning in 2022, Nasdaq plans to migrate its North American markets to Amazon Web Services in a phased approach, starting with Nasdaq MRX, a U.S. options market. The proposed fee changes are entirely unrelated to this effort.

[8] Nasdaq MRX Depth of Market Data Feed (''Depth of Market Feed'') provides aggregate quotes and orders at the top five price levels on MRX, and provides subscribers with a consolidated view of tradable prices beyond the BBO, showing additional liquidity and enhancing transparency for MRX traded options. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. In addition, subscribers are provided with total aggregate quantity, Public Customer aggregate quantity, Priority Customer aggregate quantity, price, and side (*i.e.,* bid/ask). This information is provided for each of the top five price levels on the Depth Feed. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(1).

[9] Nasdaq MRX Order Feed (''Order Feed'') provides information on new orders resting on the book (*e.g.* price, quantity and market participant capacity). In addition, the feed also announces all auctions. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(2).

[10] Nasdaq MRX Top Quote Feed (''Top Quote Feed'') calculates and disseminates MRX's best bid and offer position, with aggregated size (including total size in aggregate, for Professional Order size in the aggregate and Priority Customer Order size in the aggregate), based on displayable order and quote interest in the System. The feed also provides last trade information along with opening price, daily trading volume, high and low prices for the day. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. The feed also provides order imbalances on opening/reopening. *See* Options 3, Section 23(a)(3).

[11] Nasdaq MRX Trades Feed (''Trades Feed'') displays last trade information along with opening price, daily trading volume, high and low prices for the day. The data provided for each option series includes the symbols (series and underlying security), put or call indicator, expiration date, the strike price of the series, and whether the option series is available for trading on MRX and identifies if the series is available for closing transactions only. *See* Options 3, Section 23(a)(4).

[12] Nasdaq MRX Spread Feed (''Spread Feed'') is a feed that consists of: (1) options orders for all Complex Orders (*i.e.,* spreads, buy-writes, delta neutral strategies, etc.); (2) data aggregated at the top five price levels (BBO) on both the bid and offer side of the market; (3) last trades information. The Spread Feed provides updates, including prices, side, size and capacity, for every Complex Order placed on the MRX Complex Order Book. The Spread Feed shows: (1) aggregate bid/ask quote size; (2) aggregate bid/ask quote size for Professional Customer Orders; and (3) aggregate bid/ask quote size for Priority Customer Orders for MRX traded options. The feed also provides Complex Order auction notifications. *See* Options 3, Section 23(a)(5).

[13] A ''distributor'' of Nasdaq MRX data is any entity that receives a feed or data file of data directly from Nasdaq MRX or indirectly through another entity and then distributes it either internally (within that entity) or externally (outside that entity). All distributors shall execute a Nasdaq Global Data Agreement.

[14] A Professional Subscriber is any Subscriber that is not a Non-Professional Subscriber.

[15] A Non-Professional Subscriber is a natural person who is neither: (i) registered or qualified in any capacity with the Commission, the Commodities Futures Trading Commission, any state securities agency, any securities exchange or association, or any commodities or futures contract market or association; (ii) engaged as an ''investment adviser'' as that term is defined in Section 201(11) of the Investment Advisors Act of 1940 (whether or not registered or qualified under that Act); nor (iii) employed by a bank or other organization exempt from registration under federal or state securities laws to perform functions that would require registration or qualification if such functions were performed for an organization not so exempt.

[16] For example, if a firm has one Professional (Non-Professional) Subscriber accessing Top of Market, Order, and Depth of Market Feed the firm would only report the Subscriber once and pay $25 ($1 for Non-Professional).

[17] The Non-Display Enterprise License of $7,500 per month is optional. A firm that does not have

Display Enterprise License is in addition to any other associated distributor fees for MRX proprietary direct data feed products.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[18] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[19] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the pricing schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [20]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [21]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.'' [22] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [23] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [24] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [25]

History of MRX Operations

Over the years, MRX has amended its transactional pricing to attract order flow to the Exchange.[26] In June 2019, MRX commenced offering complex orders.[27] With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction capabilities and other trading functionality that was nearly identical to functionality available on ISE.[28] The added

a sufficient number of subscribers to benefit from purchase of the license need not do so.

[18] *See* 15 U.S.C. 78f(b).

[19] *See* 15 U.S.C. 78f(b)(4) and (5).

[20] *See NetCoalition,* 615 F.3d at 539 (DC Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[21] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[22] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[23] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca-2006–21).

[24] *Id.*

[25] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[26] *See e.g.* Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR–ISEMercury-2016–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR–ISEMercury-2016–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR–ISEMercury-2016–06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR–ISEMercury-2016–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR–MRX–2018–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR–MRX–2018–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange's Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR–MRX–2018–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR–MRX–2018–27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR–MRX–2019–02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR–MRX–2019–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR–MRX–2020–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR–MRX–2020–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR–MRX–2020–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR–MRX–2020–18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR–MRX–2020–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange's Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR–MRX–2020–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR–MRX–2021–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

[27] *See* Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

[28] One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. ''Nasdaq Precise'' or ''Precise'' is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (*e.g.,* parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (*e.g.,* NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (*e.g.,* kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (*e.g.,* order history

Continued

functionality attracted order flow, which has enhanced the value of its market data and is the basis for these proposed fee changes.

Market Data Products are Subject to Significant Substitution-Based Competitive Forces

An Exchange can show that a product is ''subject to significant substitution-based competitive forces'' by introducing evidence that customers can substitute that product with products offered by other exchanges.

NYSE National was able to prove exactly this when it sought approval for the ''NYSE National Integrated Feed'' [29] in 2020. NYSE National at the time of its filing was in a similar position to MRX today—the exchange had an approximately 1.9% market share of executed volume of equity trades.[30] The Commission approved the proposal to establish fees for NYSE National based on a finding that the exchange ''was subject to significant substitution-based competitive forces.'' Citing *NetCoalition I,*[31] the Commission stated that ''whether a market is competitive notwithstanding potential alternatives depends on factors such as the number of buyers who consider other products interchangeable and at what prices.'' [32] Noting that ''many market participants . . . do not subscribe to . . . the NYSE National Integrated Feed, even when the feed is offered without charge,'' the Commission concluded that ''NYSE National's consistently low percentage of market share, the relatively small number of subscribers to the NYSE National Integrated Feed, and the sizeable portion of subscribers that terminated their subscriptions following the proposal of the fees,'' demonstrated that the exchange ''was subject to significant substitution-based competitive forces'' in setting fees such that the proposed rule change was consistent with the Act.[33]

MRX today is in essentially the same position as NYSE National in 2020, and all three of the factors cited in the Commission's approval order for NYSE National are present in MRX today. First, MRX has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today. Second, only a small number of firms purchase market data from MRX relative to its affiliated options exchanges. Third, a sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase the Exchange's market data feeds.

As of May 2, 2022, the date that MRX initially proposed these market data fees, MRX reported that two customers had terminated their market data subscriptions.[34] As of today, a total of five firms have cancelled, amounting to approximately 15 percent of the 34 customers that had been taking MRX feeds in the first quarter of 2022.[35]

Commission Staff have requested additional information pertaining to: (i) the types of feeds available to these customers prior to termination, (ii) the characteristics of the customers that terminated their feeds, and (iii) whether such customers traded on the Exchange.

With respect to the types of data feeds accessed, two of the five customers had access to all five feeds: Nasdaq MRX Depth of Market Data, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed, and Nasdaq MRX Spread Feed. The three remaining customers had access to only two feeds: the Order Feed and the Top Quote Feed. All five customers cancelled all feeds available to them.

With respect to the types of customers cancelling feeds, three of the five were either data vendors or technology suppliers. Data vendors purchase exchange data and redistribute it to downstream customers, while technology suppliers incorporate exchange data into software solutions, which are sold to downstream customers. The remaining two firms engage in options trading, either on their own behalf or that of a customer.

With respect to trading, the three data vendors/technology suppliers do not trade on their own behalf or on the behalf of any downstream customs, although their customers may do so. The Exchange understands that these three firms cancelled due to insufficient demand from their downstream customers for MRX data. The two remaining firms, which do engage in options trading, have not traded on MRX, but are active traders on other Nasdaq options exchanges.[36]

Detailed information supporting the first step in the analysis of substitution-based competitive forces—low market share—is set forth in Chart 1, which shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

and done away trade reports). *See* ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

[29] *See* Securities Exchange Act Release No 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), also available at *https://www.nyse.com/publicdocs/nyse/markets/nyse-national/rule-filings/filings/2020/SR-NYSENat-2020-05.pdf.*

[30] *See id.*

[31] *See NetCoalition* v. *SEC,* 615 F.3d 525, 535 (DC 2010) (''*NetCoalition I*'')

[32] *See* NYSE National Approval Order (citing *NetCoalition I*)

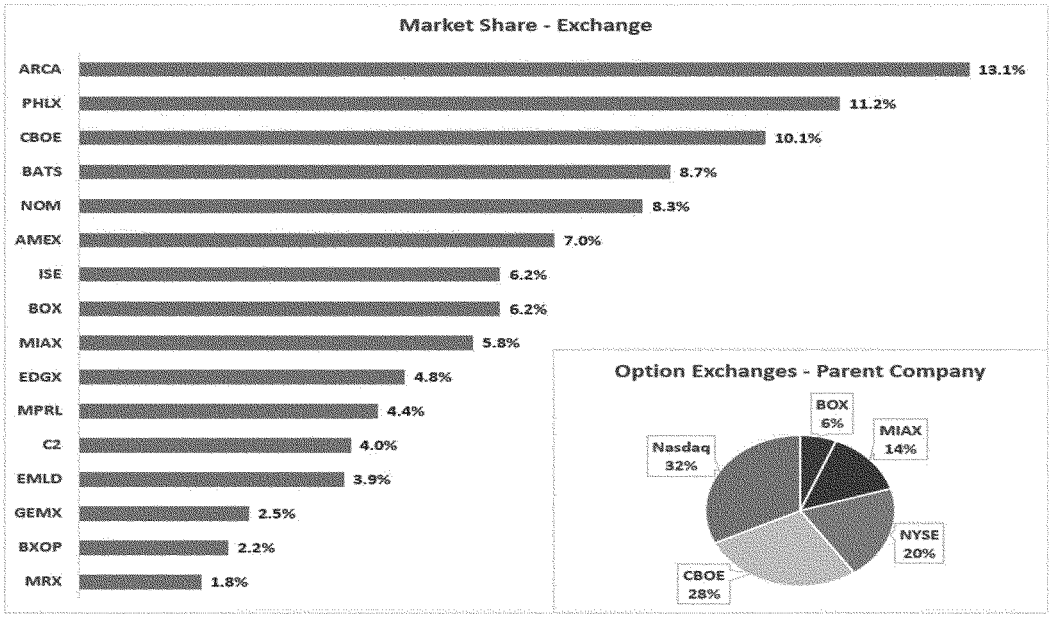
[33] *See id.*

[34] *See* Securities Exchange Act Release No. 94901 (May 12, 2022), 87 FR 30305 (May 18, 2022) (SR–MRX–2022–04).

[35] These terminations were limited to market data; none of these customers were members of MRX and therefore purchased neither memberships nor ports from the Exchange.

[36] NYSE National did not provide similarly detailed information regarding the characteristics of cancelling customers. Nevertheless, the Exchange believes that the characteristics of such customers are similar for both NYSE National and MRX, and the same competitive forces apply to all exchanges.

Chart 1: Market Share by Exchange for January 2022



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of market data.

The second step in this analysis—demonstrating that only a small number of firms purchase market data relative to affiliated options exchanges—is shown in Chart 2, which compares the number of firms with access to market data from MRX to the number of firms purchasing market data from the four MRX-affiliated options exchanges, GEMX, ISE, The Nasdaq Stock Market LLC (''NOM'') and Nasdaq PHLX, LLC (''Phlx'').

Chart 2: Number of Firms with Access to Market Data and Purchasing Trading Services from Options Venues (March 2022)

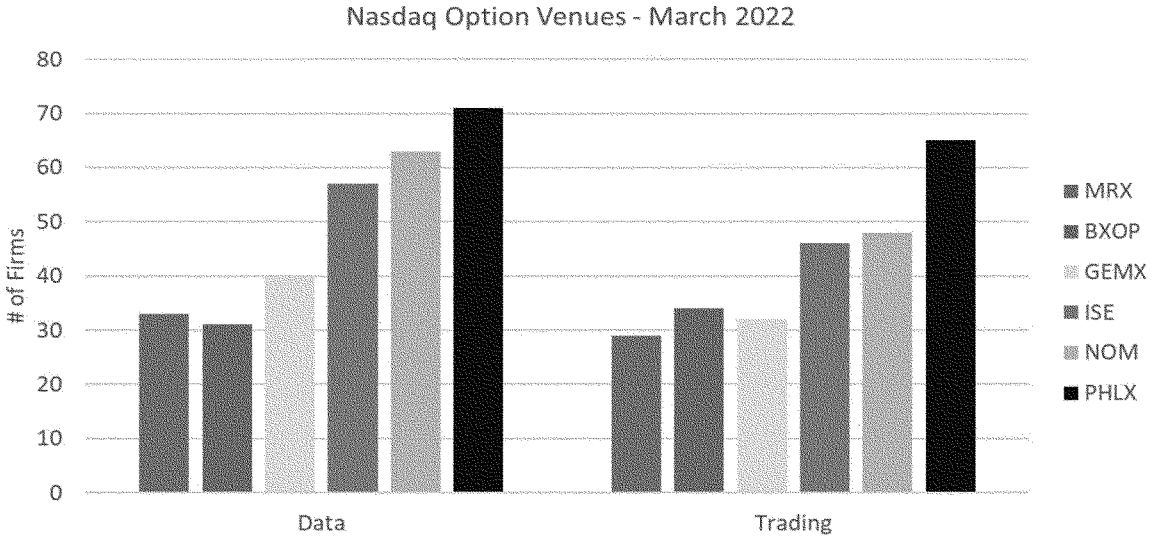


Chart 2 shows that 34 firms subscribed to at least one market data product from MRX in the first quarter of 2022. This is the second lowest number of firms purchasing market data from the Nasdaq-affiliated options exchanges.

The third step in this analysis—showing that a sizable number of customers terminated subscriptions following the proposal of the fees—is confirmed by the five customer cancellations. As explained above, all five customers terminated all feeds available to them. Although not all

customers took all of the MRX feeds, each one of these feeds was cancelled by at least one customer, demonstrating that customers can and do exercise choice with respect to each feed. These cancellations reduced the number of firms with access to at least one MRX market data feed from 34 to 29, an approximately 15 percent reduction in usage, demonstrating that firms can and do exercise choice in determining whether to purchase market data from the Exchange.

MRX lists no proprietary options products that are entirely unique to MRX. Firms can substitute MRX market data with feeds from exchanges that provide a high degree of functionality, including complex orders. Full market data options are available, for example, from Cboe,[37] MIAX,[38] and NYSE Arca Options.[39] Because MRX does not list options on products that are exclusively available on MRX, consumers can substitute MRX data with data from any exchange that lists such multiply-listed options, or through OPRA. Moreover, all broker-dealers involved in order routing must take consolidated data from OPRA, and proprietary data feeds cannot be used to meet that particular requirement. As such, all proprietary data feeds are optional.

This analysis must be viewed in the context of a field with relatively low barriers to entry. MRX, like many new entrants to the field, offered market data for free to establish itself and gain market share. As new entrants enter the field, MRX can also expect competition from these new entrants. Those new entrants, like MRX, are likely to set market data fees to zero, increasing marketplace competition.

The Proposal is not unfairly discriminatory. The five market data feeds at issue here—the Depth of Market Feed, Order Feed, Top Quote Feed, Trades Feed, and Spreads Feed—are used by a variety of market participants for a variety of purposes. Users include regulators, market makers, competing exchanges, media, retail, academics, portfolio managers. Market data feeds will be available to members of all of these groups on a non-discriminatory basis.

With respect to the proposed Non-Display Enterprise License, enterprise licenses in general have been widely recognized as an effective and not unfairly discriminatory method of distributing market data. Enterprise licenses are widely employed by options exchanges, and the proposal here is typical of such licenses.

After 6 years, MRX proposes to commence assessing market data fees, just as all other options exchanges do now.[40] The introduction of these fees will not impede access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

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. For all of the reasons set forth above, the Exchange is subject to ''significant substitution-based competitive forces'': (i) it has a consistently low percentage of market share, starting at approximately 0.2 percent when it opened as an Exchange and ending in approximately 1.8 percent today; (ii) only a small number of firms purchase market data from MRX relative to its affiliated options exchanges; and (iii) a sizeable portion of subscribers—approximately 15 percent—have terminated their subscriptions following the implementation of the proposed fees, demonstrating that customers can and do exercise choice in deciding whether to purchase market data.

Nothing in the Proposal burdens inter-market competition (the competition among self-regulatory organizations) because approval of the Proposal does not impose any burden on the ability of other options exchanges to compete. Each of the remaining 15 options exchanges currently sells its market data, and is capable of modifying its fees in response to the proposed changes by MRX. Moreover, allowing MRX, or any new market entrant, to waive fees for a period of time to allow it to become established encourages market entry and thereby ultimately promotes competition.

Nothing in the Proposal burdens intra-market competition (the competition among consumers of exchange data) because each customer will be able to decide whether or not to purchase the Exchange's market data, as demonstrated by the fact that a significant number of the Exchange's customers have already elected to terminate their access to such feeds.

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited. If the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share.[41]

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[42] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

[37] *See* Cboe DataShop, available at *https://datashop.cboe.com/.*

[38] *See* MIAX Options Market Data & Offerings, available at *https://www.miaxoptions.com/market-data-offerings.*

[39] *See* NYSE Options Markets, available at *https://www.nyse.com/options.*

[40] Today, MRX is the only options exchange that does not assess market data fees.

[41] The Exchange notified market participants of the new fees on December 20, 2021. *See* Data News #2021–11 (December 20, 2021, available at *http://www.nasdaqtrader.com/TraderNews.aspx?id=dn2021-11.* As such, market participants have had ample notice of the proposed fee changes and will be able to adjust their purchases of exchange services accordingly.

[42] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2022–14 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–MRX–2022–14. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–MRX–2022–14 and should be submitted on or before October 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[43]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19814 Filed 9–13–22; 8:45 am]

BILLING CODE 8011–01–P

[43] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–506, OMB Control No. 3235–0564]

Proposed Collection; Comment Request; Extension: Rule 17a–6

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the ''Commission'') is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget (''OMB'') for extension and approval.

Section 17(a) of the Investment Company Act of 1940 (the ''Act'') generally prohibits affiliated persons of a registered investment company (''fund'') from borrowing money or other property from, or selling or buying securities or other property to or from, the fund or any company that the fund controls. Rule 17a–6 (17 CFR 270.17a–6) permits a fund, or a company controlled by the fund, and a ''portfolio affiliate'' of the fund (a company that is an affiliated person of the fund because the fund controls the company, or holds five percent or more of the company's outstanding voting securities) to engage in principal transactions that would otherwise be prohibited under section 17(a) of the Act under certain conditions. A fund may not rely on the exemption in the rule to enter into a principal transaction with a portfolio affiliate if certain prohibited participants (*e.g.,* directors, officers, employees, or investment advisers of the fund) have a financial interest in a party to the transaction. Rule 17a–6 specifies certain interests that are not ''financial interests,'' including any interest that the fund's board of directors (including a majority of the directors who are not interested persons of the fund) finds to be not material. A board making this finding is required to record the basis for the finding in its meeting minutes. This recordkeeping requirement is a collection of information under the Paperwork Reduction Act of 1995 (''PRA'').

The rule is designed to permit transactions between funds and their portfolio affiliates in circumstances in which it is unlikely that the affiliate would be in a position to take advantage of the fund. In determining whether a financial interest is ''material,'' the board of the fund should consider whether the nature and extent of the interest in the transaction is sufficiently small that a reasonable person would not believe that the interest affected the determination of whether to enter into the transaction or arrangement or the terms of the transaction or arrangement. The information collection requirements in rule 17a–6 are intended to ensure that Commission staff can review, in the course of its compliance and examination functions, the basis for a board of director's finding that the financial interest of an otherwise prohibited participant in a party to a transaction with a portfolio affiliate is not material.

Based on public filings made with the Commission, we estimate that annually 335 funds and their series (collectively, ''funds'') may rely on rule 17a–6 to engage in otherwise prohibited transactions under section 17(a) of the 1940 Act. This estimate is based on publicly available Form N–CEN filings. Solely for the purposes of this PRA extension, we assume that each of these funds has engaged in one transaction per reporting period that resulted in a paperwork burden pursuant to rule 17a–6. We estimate that compliance with the recordkeeping requirement for rule 17a–6 will impose a burden of .2 hours (12 minutes) for each transaction for which there is a paperwork burden. Therefore, we estimate 67 burden hours to be associated with rule 17a–6 recordkeeping requirements annually, with an associated internal cost of $5,762.

The estimate of burden hours and burden costs is made solely for the purposes of the PRA. The estimate is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. Complying with this collection of information requirement is necessary to obtain the benefit of relying on rule 17a–6. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of

information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by November 14, 2022.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information under the PRA unless it displays a currently valid OMB control number.

Please direct your written comments to: David Bottom, Acting Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549 or send an email to: *PRA_Mailbox@sec.gov.*

Dated: September 8, 2022.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19804 Filed 9–13–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95710; File No. SR–MRX–2022–12]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX's Pricing Schedule at Options 7, Section 6

September 8, 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 25, 2022, Nasdaq MRX, LLC (''MRX'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''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

The Exchange proposes to amend MRX's Pricing Schedule at Options 7, Section 6.

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.

[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

MRX proposes to amend its Pricing Schedule at Options 7, Section 6, Ports and Other Services, to assess port fees, which are not assessed today, and which have not been assessed since MRX's inception in 2016.[3] The proposed changes are designed to update fees for MRX's services to reflect their current value—rather than their value when it was established six years ago—based on MRX's ability to deliver value to its customers through technology, liquidity and functionality. Newly-opened exchanges often charge no fees for certain services, such as ports, in order to attract order flow to an exchange, and later amend their fees to reflect the true value of those services.[4] Allowing newly-opened exchanges time to build and sustain market share before charging non-transactional fees encourages market entry and promotes competition. The proposed port fees within Options 7, Section 6, Ports and Other Services, are described below.

This proposal reflects MRX's assessment that it has gained sufficient market share to compete effectively against the other 15 options exchanges without waiving fees for ports. These types of fees are assessed by options exchanges that compete with MRX in the sale of exchange services. New exchanges commonly waive connectivity fees to attract market participants, facilitating their entry into the market and, once there is sufficient depth and breadth of liquidity, ''graduate'' to compete against established exchanges and charge fees that reflect the value of their services.[5] If MRX is incorrect in this assessment, that error will be reflected in MRX's ability to compete with other options exchanges.[6]

The Exchange proposes to amend fees for the following ports within Options 7, Section 6: (1) FIX,[7] (2) SQF;[8] (3) SQF

[3] The Exchange initially filed the proposed pricing changes on May 2, 2022 (SR–MRX–2022–04) instituting fees for membership, ports and market data. On June 29, 2022, the Exchange withdrew that filing, and submitted separate filings for membership, ports and market data. SR–MRX–2022–06 replaced the port fees set forth in SR–MRX–2022–04. Thereafter, SR–MRX–2022–06 was withdrawn on July 1, 2022 and replaced with SR–MRX–2022–09. The instant filing replaces SR–MRX–2022–09 which was withdrawn on August 25, 2022.

[4] *See, e.g.,* Securities Exchange Act Release No 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt the Initial Fee Schedule and Other Fees for MEMX LLC).

[5] For example, MIAX Emerald commenced operations as a national securities exchange registered on March 1, 2019. *See* Securities Exchange Act Release No. 84891 (December 20, 2018), 83 FR 67421 (December 28, 2018) (File No. 10–233) (order approving application of MIAX Emerald, LLC for registration as a national securities exchange). MIAX Emerald filed to adopt its transaction fees and certain of its non-transaction fees in its filing SR–EMERALD–2019–15. *See* Securities Exchange Act Release No. 85393 (March 21, 2019), 84 FR 11599 (March 27, 2019) (SR–EMERALD–2019–15) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Establish the MIAX Emerald Fee Schedule). MIAX Emerald waived its one-time application fee and monthly Trading Permit Fees assessable to EEMs and Market Makers among other fees within SR–EMERALD–2019–15.

[6] Nasdaq recently announced that, beginning in 2022, Nasdaq plans to migrate its North American markets to Amazon Web Services in a phased approach, starting with Nasdaq MRX, a U.S. options market. The proposed fee changes are entirely unrelated to this effort.

[7] ''Financial Information eXchange'' or ''FIX'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders and auction orders to the Exchange. Features include the following: (1) execution messages; (2) order messages; (3) risk protection triggers and cancel notifications; and (4) post trade allocation messages. *See* Supplementary Material .03(a) to Options 3, Section 7.

[8] ''Specialized Quote Feed'' or ''SQF'' is an interface that allows Market Makers to connect, send, and receive messages related to quotes, Immediate-or-Cancel Orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) quote messages; (6) Immediate-or-Cancel Order messages; (7) risk protection triggers and purge notifications; (8) opening imbalance messages; (9) auction notifications; and (10) auction responses. The SQF Purge Interface only receives and notifies of purge requests from the Market Maker. Market Makers may only enter interest into SQF in their assigned options series. *See* Supplementary Material .03(c) to Options 3, Section 7.

Purge;[9] (4) OTTO;[10] (5) CTI;[11] (6) FIX DROP;[12] and Disaster Recovery Ports.[13] Currently, no fees are being assessed for these ports.

The Exchange proposes to assess no fee for the first FIX Port obtained by an Electronic Access Member[14] or the first SQF Port obtained by a Market Maker.[15] The Exchange proposes to assess a FIX Port Fee of $650 per port, per month, per account number[16] for each subsequent port beyond the first port. The Exchange proposes to assess an SQF Port Fee of $1,250 per port, per month for each subsequent port beyond the first port.[17] The Exchange proposes to assess an SQF Purge Port Fee of $1,250 per port, per month. The Exchange proposes to assess an OTTO Port Fee of $650 per port, per month, per account number. The Exchange proposes to assess a CTI Port Fee and a FIX Drop Port Fee of $650 per port, per month.

The Exchange proposes to assess no fee for the first FIX Disaster Recovery Port obtained by an Electronic Access Member[18] or the first SQF Disaster Recovery Port obtained by a Market Maker.[19] The Exchange proposes to assess each additional FIX Disaster Recovery Port and each additional SQF Disaster Recovery Port a fee of $50 per port, per month, per account number. Additionally, the Exchange proposes to assess a Disaster Recovery Fee for SQF Purge and OTTO Ports of $50 per port, per month, per account number. Finally, the Exchange proposes to assess a Disaster Recovery Fee for CTI Ports and FIX DROP Ports of $50 per port, per month.

The OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports[20] are available to all Electronic Access Members, and will be subject to a monthly cap of $7,500.

The SQF Port and the SQF Purge Port are available to all Market Makers, and will be subject to a monthly cap of $17,500.[21]

The Exchange is not amending the TradeInfo MRX Interface[22] or the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed, or Nasdaq MRX Spread Feed Ports; all of these aforementioned ports will continue to be assessed no fees. Additionally, as is the case today, the Disaster Recovery Ports for TradeInfo and the Nasdaq MRX Depth of Market, Nasdaq MRX Order Feed, Nasdaq MRX Top Quote Feed, Nasdaq MRX Trades Feed and Nasdaq MRX Spread Feed Ports will not be assessed a fee.

Order and Quote Entry Protocols

Only one order protocol is required for an MRX Member to submit orders into MRX. The Exchange will provide each Electronic Access Member the first FIX Port at no cost to submit orders into MRX. Only one account number is necessary to transact an options business on MRX and account numbers are available to Members at no cost. Only one quote protocol is required for an MRX Market Maker to submit quotes into MRX. The Exchange will provide each Market Maker the first SQF Port at no cost to submit quotes into MRX. A quoting protocol, such as SQF, is only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1.

Only MRX Members may utilize ports on MRX. Any market participant that sends orders to a Member would not need to utilize a port. The Member can send all orders, proprietary and agency,

[9] SQF Purge is a specific port for the SQF interface that only receives and notifies of purge requests from the Market Maker. Dedicated SQF Purge Ports enable Market Makers to seamlessly manage their ability to remove their quotes in a swift manner.

[10] ''Ouch to Trade Options'' or ''OTTO'' is an interface that allows Members and their Sponsored Customers to connect, send, and receive messages related to orders, auction orders, and auction responses to the Exchange. Features include the following: (1) options symbol directory messages (*e.g.,* underlying and complex instruments); (2) system event messages (*e.g.,* start of trading hours messages and start of opening); (3) trading action messages (*e.g.,* halts and resumes); (4) execution messages; (5) order messages; (6) risk protection triggers and cancel notifications; (7) auction notifications; (8) auction responses; and (9) post trade allocation messages. *See* Supplementary Material .03(b) to Options 3, Section 7.

[11] Clearing Trade Interface (''CTI'') is a real-time cleared trade update message that is sent to a Member after an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) The Clearing Member Trade Agreement (''CMTA'') or The Options Clearing Corporation (''OCC'') number; (ii) badge or mnemonic; (iii) account number; (iv) information which identifies the transaction type (*e.g.* auction type) for billing purposes; and (v) market participant capacity. *See* Options 3, Section 23(b)(1).

[12] FIX DROP is a real-time order and execution update message that is sent to a Member after an order been received/modified or an execution has occurred and contains trade details specific to that Member. The information includes, among other things, the following: (i) executions; (ii) cancellations; (iii) modifications to an existing order; and (iv) busts or post-trade corrections. *See* Options 3, Section 23(b)(3).

[13] Disaster Recovery ports provide connectivity to the Exchange's disaster recovery data center, to be utilized in the event the Exchange should failover during a trading day.

[14] The first FIX Port would be provided to each Electronic Access Member. The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6). Also, the first SQF Port would be provided to each Market Maker. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[15] The first SQF Port would be provided to each Market Maker. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[16] An ''account number'' shall mean a number assigned to a Member. Members may have more than one account number. *See* Options 1, Section 1(a)(1). Account numbers are free on MRX.

[17] SQF's Port Fees are assessed a higher dollar fee as compared to FIX and OTTO ports ($1,250 vs. $650) because the Exchange has to maintain options assignments within SQF and manage quoting traffic. Market Makers may utilize SQF Ports in their assigned options series. Market Maker badges are assigned to specific SQF ports to manage the option series in which a Market Maker may quote. Additionally, because of quoting obligations provided for within Options 2, Section 5, Market Makers are required to provide liquidity in their assigned options series which generates quote traffic. The Exchange notes because of the higher fee, SQF ports are billed per port, per month while FIX and OTTO ports are billed per port, per month, per account number. Members may have more than one account number.

[18] The first FIX Port would be provided to each Electronic Access Member. The term ''Electronic Access Member'' or ''EAM'' means a Member that is approved to exercise trading privileges associated with EAM Rights. *See* General 1, Section 1(a)(6). Also, the first SQF Port would be provided to each Market Maker. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[19] The first SQF Port would be provided to each Market Maker. The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21). The term ''Competitive Market Maker'' means a Member that is approved to exercise trading privileges associated with CMM Rights. *See* Options 1, Section 1(a)(12). The term ''Primary Market Maker'' means a Member that is approved to exercise trading privileges associated with PMM Rights. *See* Options 1, Section 1(a)(35).

[20] This includes FIX, SQF, SQF Purge, OTTO, CTI and FIX Drop Disaster Recovery Ports.

[21] Only Market Makers may quote on MRX. The Exchange is proposing non-substantive technical amendments to add commas within the ''Production'' column of the proposed rule text to separate terms.

[22] TradeInfo is a user interface that permits a Member to: (i) search all orders submitted in a particular security or all orders of a particular type, regardless of their status (open, canceled, executed, etc.); (ii) view orders and executions; and (iii) download orders and executions for recordkeeping purposes. TradeInfo users may also cancel open orders at the order, port or firm mnemonic level through TradeInfo. *See* Options 3, Section 23(b)(2).

through one port to MRX. Members may elect to obtain multiple account numbers to organize their business, however only one account number and one port for orders and one port for quotes is necessary for a Member to trade on MRX.

MRX also offers an OTTO protocol. Unlike FIX, which offers routing capability, OTTO does not permit routing. Depending on a Member's business model, Members may elect to purchase an OTTO Port in addition to the first FIX Port offered at no cost. Members may prefer one protocol as compared to another protocol, for example, the ability to route may cause a Member to utilize FIX and a Member that desires to execute an order locally may utilize OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Members depending on their trading behavior. MRX Members utilizing the first FIX Port offered at no cost do not need to purchase an OTTO Port. However, Members may elect to utilize both order entry protocols, depending on how they organize their business. Because the Exchange is providing the first FIX Port at no cost, the use of an OTTO Port is optional. OTTO provides MRX Members with an additional choice as to the type of protocol that they may use to submit orders to the Exchange. Today, Nasdaq Phlx LLC (''Phlx'') and Nasdaq BX, Inc. (''BX'') offer only a FIX Port to submit orders on those options markets.[23]

Further, while only one protocol is necessary to submit orders into MRX, Members may choose to purchase a greater number of order entry ports, depending on that Member's business model.[24] To the extent that Electronic Access Members chose to utilize more than one FIX Port, the Electronic Access Member would be assessed $650 per port, per month, per account number for each subsequent optional port beyond the first port. To the extent that Market Makers chose to utilize more than one SQF Port, the Market Maker would be assessed $1,250 per port, per month for each subsequent optional port beyond the first port. Additionally, to the extent a Member expended more than $7,500 for FIX Ports or more than $17,500 for SQF Ports, the Exchange would not charge an MRX Member for additional FIX or SQF Ports, respectively, beyond the cap.

Other Protocols

The Exchange's proposal to offer an SQF Purge Port for $1,250 per port, per month is optional. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge its quotes from the order book. The SQF Purge Port is optional as Market Makers have various ways of purging their quotes from the order book. First of all, a Market Maker may cancel quotes through SQF in their assigned option series.[25] Second, a Member may cancel any bids or offers in any series of options by requesting MRX Market Operations staff to effect such cancellation as per the instructions of the Member.[26] Third, in the event of a loss of communication with the Exchange, MRX offers the ability to cancel all of a Member's open quotes via a cancel-on-disconnect control.[27] Fourth, MRX offers Market Makers the ability, with respect to quotes, to establish pre-determined levels of risk exposure which would be utilized to automatically remove quotes in all series of an options class.[28] Accordingly, the Exchange believes that the SQF Purge Port provides an efficient option to other available services which allow a Market Maker to cancel quotes.

CTI Ports and FIX DROP Ports are optional as Members have multiple ways of receiving information concerning open orders and executed transactions. First, FIX and OTTO protocols provide Members with real-time order execution messages similar to the Clearing Trade Interface and FIX DROP. Second, TradeInfo provides Members with the ability to query open orders and order executions real-time, at no cost, similar to the Clearing Trade Interface and FIX DROP. Third, Members receive free daily reports listing open orders and trade executions from the Exchange. While not real-time, the Open Orders Report and Trade Detail Report provide Members with information similar to the Clearing Trade Interface and FIX DROP.

Disaster Recovery

With respect to Disaster Recovery Ports, the Exchange proposes to assess no fee for the first FIX Disaster Recovery Port obtained by an Electronic Access Member or the first SQF Disaster Recovery Port obtained by a Market Maker. The Exchange proposes to assess no fees for these ports to provide Members with continuous access to MRX in the event of a failover at no cost. Electronic Access Members only require one FIX Disaster Recovery Port to submit orders in the event of a failover. Market Makers only require one SQF Disaster Recovery Port to submit quotes in the event of a failover. Electronic Access Members may elect to purchase additional optional FIX Disaster Recovery Ports for $50 per port, per month, per account number. Market Makers may elect to purchase additional optional SQF Disaster Recovery Ports for $50 per port, per month, per account number. The additional FIX and SQF Disaster Recovery Ports are not necessary to connect to the Exchange in the event of a failover because the Exchange has provided Members with a FIX Disaster Recovery Port and an SQF Disaster Recovery Port at no cost.

Further, the Exchange's proposal to offer Disaster Recovery Ports for SQF Purge Ports and OTTO Ports for $50 per port, per month, per account number and Disaster Recovery Ports for CTI Ports and FIX DROP Ports for $50 per port, per month is optional. As noted herein, today, there are other alternatives for these ports. The purchase of an SQF Purge Port, OTTO Port, CTI Port, and FIX DROP Port in production are optional and, therefore, so is the purchase of Disaster Recovery Ports for these ports. The proposed Disaster Recovery Port fees are intended to encourage Members to be efficient when purchasing Disaster Recovery Ports. Similar to all other ports, Disaster Recovery Ports need to be maintained by the Exchange.[29]

Finally, in the event that an MRX Member elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Member would be

[23] *See* Phlx and BX Options 3, Section 7 for a list of protocols.

[24] For example, a Member may desire to utilize multiple FIX or OTTO Ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[25] SQF Purge Ports, similar to SQF Ports, allow Market Makers to mass cancel quotes.

[26] See Options 3, Section 19, Mass Cancellation of Trading Interest.

[27] *See* MRX Options 3, Section 18, Detection of Loss. This risk protection is free.

[28] *See* MRX Options 3, Section 15(a)(3)(B). Thresholds may be set by Members based on percentage, volume, delta or vega. This risk protection is free.

[29] The Exchange maintains ports in a number of ways to ensure that ports are properly connected to the Exchange at all times. This includes offering testing, ensuring all ports are up-to-date with the latest code releases, as well as ensuring that all ports meet the Exchange's information security specifications.

assessed no additional port fees in a given month. As noted above, the SQF Port and the SQF Purge Port are subject to a monthly cap of $17,500 and the OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of $7,500.

As noted herein, these different protocols are not all necessary to conduct business on MRX; a Member may choose among protocols based on their business workflow. The proposed port fees are similar to fees assessed today by GEMX.[30] The Exchange's proposal to offer the first FIX and SQF Port at no cost as well as the first FIX and SQF Disaster Recovery Ports at no cost would allow MRX Members to submit orders and quotes into MRX at no cost.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[31] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[32] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility, and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The proposed changes to the Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for order flow, which constrains its pricing determinations. The fact that the market for order flow is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .'' [33]

The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention to determine prices, products, and services in the securities markets. In Regulation NMS, while adopting a series of steps to improve the current market model, the Commission highlighted the importance of market forces in determining prices and SRO revenues, and also recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [34]

Congress directed the Commission to ''rely on 'competition, whenever possible, in meeting its regulatory responsibilities for overseeing the SROs and the national market system.' '' [35] As a result, the Commission has historically relied on competitive forces to determine whether a fee proposal is equitable, fair, reasonable, and not unreasonably or unfairly discriminatory. ''If competitive forces are operative, the self-interest of the exchanges themselves will work powerfully to constrain unreasonable or unfair behavior.'' [36] Accordingly, ''the existence of significant competition provides a substantial basis for finding that the terms of an exchange's fee proposal are equitable, fair, reasonable, and not unreasonably or unfairly discriminatory.'' [37] In its 2019 guidance on fee proposals, Commission staff indicated that they would look at factors beyond the competitive environment, such as cost, only if a ''proposal lacks persuasive evidence that the proposed fee is constrained by significant competitive forces.'' [38]

History of MRX Operations

Over the years, MRX has amended its transactional pricing to remain competitive and attract order flow to the Exchange.[39]

In June 2019, MRX commenced offering complex orders.[40] With the addition of complex order functionality, MRX offered Members certain order types, an opening process, auction

[30] *See* GEMX Options 7, Section 6.C. (Ports and Other Services).

[31] *See* 15 U.S.C. 78f(b).

[32] *See* 15 U.S.C. 78f(b)(4) and (5).

[33] *See NetCoalition,* 615 F.3d at 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca-2006–21)).

[34] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[35] *See NetCoalition,* 615 F.3d at 534–35; *see also* H.R. Rep. No. 94–229 at 92 (1975) (''[I]t is the intent of the conferees that the national market system evolve through the interplay of competitive forces as unnecessary regulatory restrictions are removed.'').

[36] *See* Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74,770 (December 9, 2008) (SR–NYSEArca-2006–21).

[37] *Id.*

[38] *See* U.S. Securities and Exchange Commission, ''Staff Guidance on SRO Rule filings Relating to Fees'' (May 21, 2019), available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

[39] *See e.g.* Securities Exchange Act Release Nos. 77292 (March 4, 2016), 81 FR 12770 (March 10, 2016) (SR–ISEMercury-2016–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Establish the Schedule of Fees); 77409 (March 21, 2016), 81 FR 16240 (March 25, 2016) (SR–ISEMercury-2016–05) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 81 FR 16238 (March 21, 2016), 81 FR 16238 (March 25, 2016) (SR–ISEMercury-2016–06) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 77841 (May 16, 2016), 81 FR 31986 (SR–ISEMercury-2016–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees); 82537 (January 19, 2018), 83 FR 3784 (January 26, 2018) (SR–MRX–2018–01) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Schedule of Fees To Introduce a New Pricing Model); 82990 (April 4, 2018), 83 FR 15434 (April 10, 2018) (SR–MRX–2018–10) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Chapter IV of the Exchange's Schedule of Fees); 28677 (June 14, 2018), 83 FR 28677 (June 20, 2018) (SR–MRX–2018–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Increase Certain Route-Out Fees Set Forth in Section II.A of the Schedule of Fees); 84113 (September 13, 2018), 83 FR 47386 (September 19, 2018) (SR–MRX–2018–27) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Relocate the Exchange's Schedule of Fees); 85143 (February 14, 2019), 84 FR 5508 (February 21, 2019) (SR–MRX–2019–02) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Pricing Schedule at Options 7, Section 3); 85313 (March 14, 2019), 84 FR 10357 (March 20, 2019) (SR–MRX–2019–05) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to PIM Fees and Rebates); 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Adopt Complex Order Pricing); 88022 (January 23, 2020), 85 FR 5263 (January 29, 2020) (SR–MRX–2020–02) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend MRX Pricing Schedule); 89046 (June 11, 2020), 85 FR 36633 (June 17, 2020) (SR–MRX–2020–11) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7); 89320 (July 15, 2020), 85 FR 44135 (July 21, 2020) (SR–MRX–2020–14) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7, Section 5, Other Options Fees and Rebates, in Connection With the Pricing for Orders Entered Into the Exchanges Price Improvement Mechanism); 90503 (November 24, 2020), 85 FR 77317 (December 1, 2020) (SR–MRX–2020–18) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Pricing Schedule at Options 7 for Orders Entered Into the Exchange's Price Improvement Mechanism); 90434 (November 16, 2020), 85 FR 74473 (November 20, 2020) (SR–MRX–2020–19) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To the Exchange's Pricing Schedule at Options 7 To Amend Taker Fees for Regular Orders); 90455 (November 18, 2020), 85 FR 75064 (November 24, 2020) (SR–MRX–2020–21) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Pricing Schedule); and 91687 (April 27, 2021), 86 FR 23478 (May 3, 2021) (SR–MRX–2021–04) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Exchange's Pricing Schedule at Options 7). Note that ISE Mercury is an earlier name for MRX.

[40] *See* Securities Exchange Act Release No. 86326 (July 8, 2019), 84 FR 33300 (July 12, 2019) (SR–MRX–2019–14) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change to Adopt Complex Order Pricing).

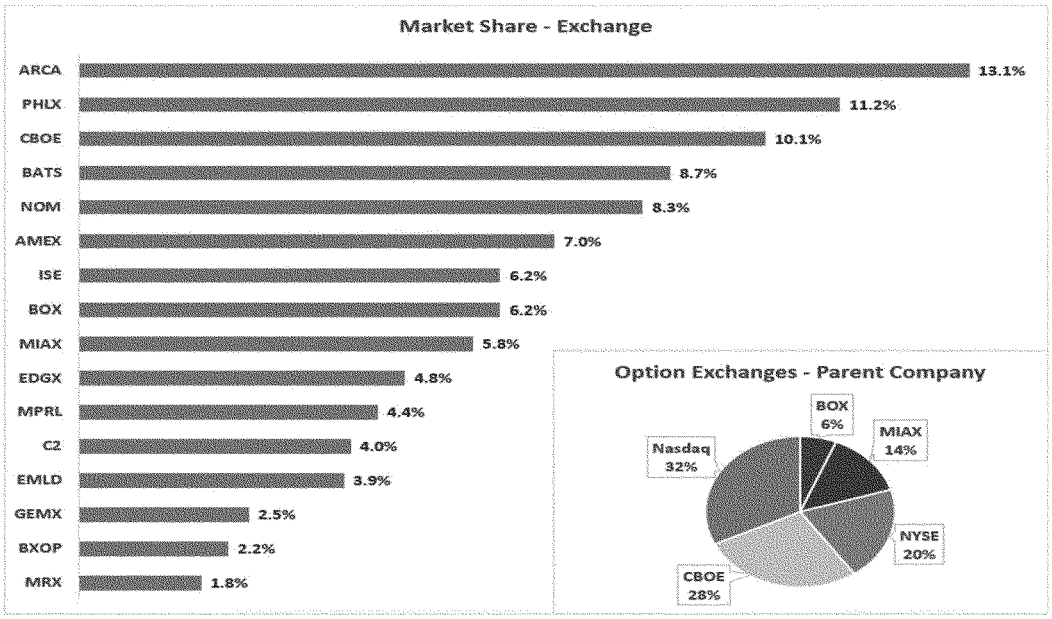
capabilities and other trading functionality that was nearly identical to functionality available on ISE.[41] By way of comparison, ISE assessed fees for ports[42] in 2019 while offering the same suite of functionality as MRX, with a limited exception.[43]

Ports Are Subject to Significant Substitution-Based Competitive Forces

An exchange can show that a product is ''subject to significant substitution-based competitive forces'' by introducing evidence that customers can substitute the product for products offered by other exchanges.

Chart 1 below shows the January 2022 market share for multiply-listed options by exchange. Of the 16 operating options exchanges, none currently has more than a 13.1% market share, and MRX has the smallest market share at 1.8%. Customers widely distribute their transactions across exchanges according to their business needs and the ability of each exchange to meet those needs through technology, liquidity and functionality. Average market share for the 16 options exchanges is 6.26 percent, with the median at 5.8, and a range between 1.8 and 13.1 percent.

Chart 1: Market Share by Exchange for January 2022



Market share is the percentage of volume on a particular exchange relative to the total volume across all exchanges, and indicates the amount of order flow directed to that exchange. High levels of market share enhance the value of trading and ports.

As described in detail below, only one order protocol is required to submit orders to MRX. Quoting protocols are only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1, and only one quoting protocol is necessary to quote on MRX. Members may choose a greater number of order or quote entry ports, beyond the first FIX Port and the first SQF Port which are proposed to be offered at no cost, depending on that Member's particular business model.[44] However, Members do not need more than one order entry port (and account number) and one quote port to submit interest to MRX.

The experience of MRX's affiliates shows that the number of ports that members choose to purchase varies widely. For example, a review of the Phlx exchange in April 2022 shows that, among its member organizations that purchase ports, approximately 26 percent purchased 1 SQF or FIX port, another 26 percent purchased between 2 and 5 ports, 21 percent purchased between 6 and 10 ports, and 28 percent purchased more than 11 ports. This means that any MRX Member may enter all of their interest (orders or quotes) with only one order and one quote port and remain competitive.[45]

[41] One distinction is that ISE offered its Members access to Nasdaq Precise in 2019 and since that time. MRX has never offered Precise. ''Nasdaq Precise'' or ''Precise'' is a front-end interface that allows EAMs and their Sponsored Customers to send orders to the Exchange and perform other related functions. Features include the following: (1) order and execution management: enter, modify, and cancel orders on the Exchange, and manage executions (*e.g.,* parent/child orders, inactive orders, and post-trade allocations); (2) market data: access to real-time market data (*e.g.,* NBBO and Exchange BBO); (3) risk management: set customizable risk parameters (*e.g.,* kill switch); and (4) book keeping and reporting: comprehensive audit trail of orders and trades (*e.g.,* order history and done away trade reports). *See* ISE Supplementary Material .03(d) of Options 3, Section 7. Precise is also available on GEMX.

[42] Since 2019, ISE has assessed the following port fees: a FIX Port Fee of $300 per port, per month, per mnemonic, an SQF Port Fee and SQF Purge Port Fee of $1,100 per port, per month, an OTTO Port Fee of $400 per port, per month, per mnemonic with a monthly cap of $4,000, a CTI Port Fee and FIX DROP Port Fee of $500 per port, per month, per mnemonic. *See* Securities Exchange Act Release No. 82568 (January 23, 2018), 83 FR 4086 (January 29, 2018) (SR–ISE–2018–07) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Assess Fees for OTTO Port, CTI Port, FIX Port, FIX Drop Port and Disaster Recovery Port Connectivity). Of note, ISE assessed port fees prior to 2019 as well.

[43] *See* note 41, *supra.*

[44] For example, a Member may desire to utilize multiple FIX ports for accounting purposes, to measure performance, for regulatory reasons or other determinations that are specific to that Member.

[45] As noted above, one port would be required to submit orders and one port would be required to submit quotes.

By way of comparison, the number of ports that MRX Members purchased in April 2022 also varied widely.

Chart 2: Number of SQF and FIX Ports Subscribed to by MRX Members in April 2022

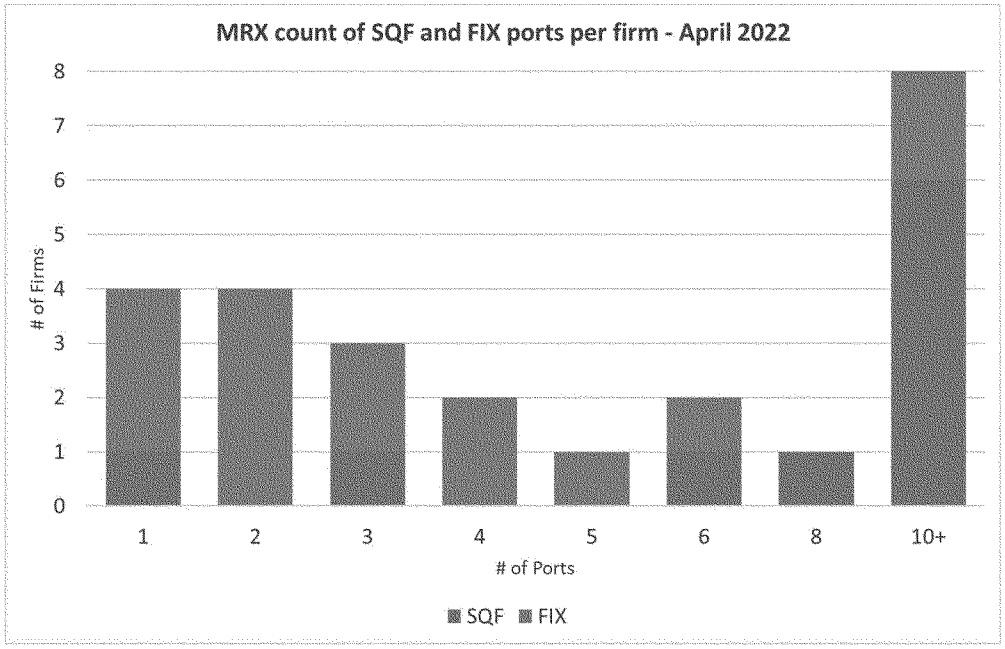


Chart 2 indicates the number of FIX and SQF Ports, respectively, that MRX Members were subscribed to in April 2022. Chart 2 shows that 1 MRX Member only subscribed to 1 SQF Port and 3 MRX Members subscribed to 1 FIX Port.

Further, approximately 23 percent of MRX Members purchased 1 SQF, FIX or OTTO Port,[46] another 43 percent purchased between 2 and 5 ports, 13 percent purchased between 6 and 10 ports, and 20 percent purchased more than 11 ports. MRX Members, similar to Phlx member organizations, have the option of reducing their port purchases without purchasing a substitute product.

All of these statistics must be viewed in the context of a field with relatively low barriers to entry. MRX, like many new entrants to the field, offered ports for free to establish itself and gain market share. As new entrants enter the field, MRX can also expect competition from these new entrants. Those new entrants, like MRX, are likely to set port, or other fees to zero, increasing marketplace competition.

The Exchange notes that one MRX Member cancelled 1 SQF Port and 1 OTTO Port to avoid being assessed an SQF Port fee as of May 2, 2022.[47] As of July 1, 2022, the Exchange did not assess MRX Members for their first SQF Port. MRX port fees are subject to significant substitution-based competitive forces due to its consistently low percentage of market share, the relatively small number of purchasers for each product, and the purchasers that either cancelled or are reviewing their subscriptions. Implementation of the proposed fees is therefore consistent with the Act.

Fees for Ports

The proposed port fees described below are in line with those of other markets. Setting a fee above competitors is likely to drive away customers, so the most efficient price-setting strategy is to set prices at the same level as other firms.

As noted above, market participants may choose to become a member of one or more options exchanges based on the market participant's business model. The Exchange believes that there are many factors that may cause a market participant to decide to become a member of a particular exchange dependent upon their business model. A very small number of market participants choose to become a member of all sixteen options exchanges. It is not a requirement for market participants to become members of all options exchanges, in fact, certain market participants conduct an options business as a member of only one options market.[48] Most firms that

[46] Phlx only offers FIX and SQF ports while MRX offers FIX, OTTO and SQF ports for order and quote entry.

[47] MRX originally filed to assess a fee for all FIX Ports.

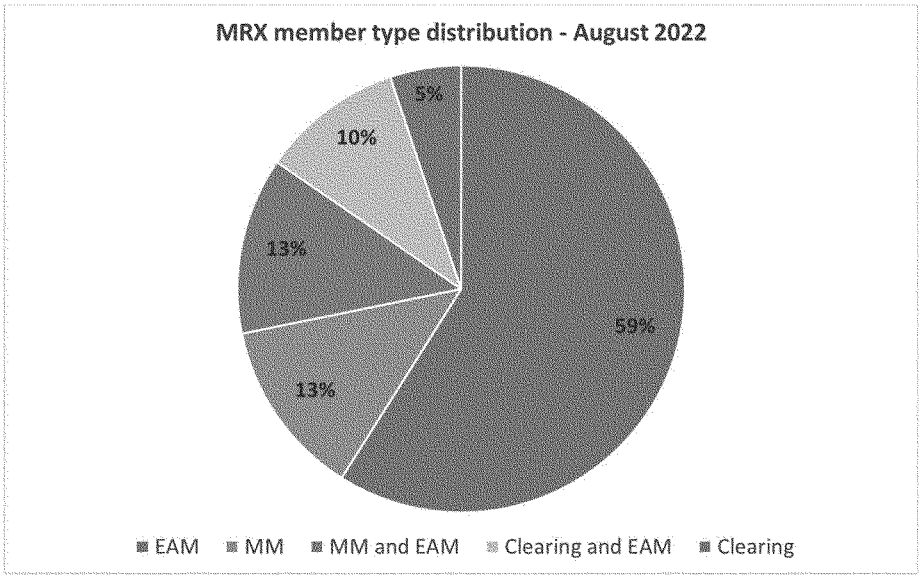
[48] BOX Exchange LLC (''BOX'') amended its fees on January 3, 2022 to adopt an electronic market maker trading permit fee. *See* Securities and Exchange Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Fee Schedule on the BOX Options Market LLC Facility To Adopt Electronic Market Maker Trading Permit Fees). In the BOX–2022–17 rule change, BOX stated that, ''. . . it is not aware of any reason why Market Makers could not simply drop their access to an exchange (or not initially access an exchange) if an exchange were to establish prices for its non-transaction fees that, in the determination of such Market Maker, did not make business or economic sense for such Market Maker to access such exchange. The Exchange again notes that no market makers are required by rule, regulation, or competitive forces to be a Market Maker on the Exchange.'' Further, in 2022, MEMX LLC (''MEMX'') established a monthly membership fee. *See* Securities Exchange Act Release No. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19). The Monthly Membership

Continued

actively trade on options markets are not currently Members of MRX and do not purchase port services at MRX. Ports are only available to MRX Members or service bureaus, and only an MRX Member may utilize a port.[49]

Using options markets that Nasdaq operates as points of comparison, less than a third of the firms that are members of at least one of the options markets that Nasdaq operates are also Members of MRX (approximately 29%). MRX, like other options markets, has a mix of market participants as Members. Chart 3 below displays the percentage of Electronic Access Members, Market Makers and Clearing Firms on MRX.[50]

Chart 3: Composition of MRX Membership as of August 2022



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The percentages in Chart 3 represent percentages of the total number of MRX Members. Some Members have dual representations (*e.g.,* a Market Maker and Electronic Access Member) as reflected in Chart 2.

The Exchange notes that no firm is a Member of MRX only. Few, if any, firms have purchased port services at MRX, notwithstanding the fact that ports are currently free, because MRX currently has less liquidity than other options markets. As explained above, MRX has the smallest market share of the 16 options exchanges, representing only approximately 1.8% of the market, and, for certain market participants, the current levels of liquidity may be insufficient to justify the costs associated with becoming a Member and connecting to the Exchange, notwithstanding the fact that ports are currently free.

The decision to become a member of an exchange, particularly for registered market makers, is complex, and not solely based on the non-transactional costs assessed by an exchange. As noted herein, specific factors include, but are not limited to: (i) an exchange's available liquidity in options series; (ii) trading functionality offered on a particular market; (iii) product offerings; (iv) customer service on an exchange; and (v) transactional pricing. Becoming a member of the exchange does not ''lock'' a potential member into a market or diminish the overall competition for exchange services. The decision to become a member of an exchange is made at the beginning of the relationship, and is no less subject to competition than trading fees or ports.

In lieu of becoming a member at each options exchange, a market participant may join one exchange and elect to have their orders routed in the event that a better price is available on an away market. Nothing in the Order Protection Rule requires a firm to become a Member at MRX.[51] If MRX is not at the NBBO, MRX will route an order to any away market that is at the NBBO to prevent a trade-through and also ensure that the order was executed at a superior price.[52]

Fee is assessed to each active Member at the close of business on the first day of each month. MEMX reasoned in MEMX–2022–19 that that there is value in becoming a member of the exchange. MEMX stated that it believed that its proposed membership fee ''is not unfairly discriminatory because no broker-dealer is required to become a member of the Exchange.'' Moreover, ''neither the trade-through requirements under Regulation NMS nor broker-dealers' best execution obligations require a broker-dealer to become a member of every exchange.'' The Exchange notes that neither BOX–2022–17 or MEMX–2022–19 were suspended.

[49] Service bureaus may obtain ports on behalf of Members. The Exchange would only assign a badge and/or mnemonic to a Member to be utilized to submit quotes and/or orders to the Exchange.

[50] Of note, Nasdaq Execution Services, LLC (''NES''), a Nasdaq affiliate, is a Member of MRX. NES is a broker-dealer and the Routing Facility of the Exchange. NES routes orders in options listed and open for trading on the System to away markets either directly or through one or more third-party unaffiliated routing broker-dealers pursuant to Exchange Rules on behalf of the Exchange. NES is subject to regulation as a facility of the Exchange, including the requirement to file proposed rule changes under Section 19 of the Securities Exchange Act of 1934, as amended.

[51] *See* Options Order Protection and Locked/Crossed Market Plan (August 14, 2009), available at *https://www.theocc.com/getmedia/7fc629d9-4e54-4b99-9f11-c0e4db1a2266/options_order_protection_plan.pdf.*

[52] MRX Members may elect to not route their orders by marking an order as ''do-not-route.'' In this case, the order would not be routed. *See* Options 3, Section 7(m).

With respect to the submission of orders, Members may also choose not to purchase any port at all from the Exchange, and instead rely on the port of a third party to submit an order.[53] For example, a third-party broker-dealer Member of MRX may be utilized by a retail investor to submit orders into an Exchange. An institutional investor may utilize a broker-dealer, a service bureau,[54] or request sponsored access [55] through a member of an exchange in order to submit a trade directly to an options exchange.[56] A market participant may either pay the costs associated with becoming a member of an exchange or, in the alternative, a market participant may elect to pay commissions to a broker-dealer, pay fees to a service bureau to submit trades, or pay a member to sponsor the market participant in order to submit trades directly to an exchange. Market participants may elect any of the above models and weigh the varying costs when determining how to submit trades to an exchange. Depending on the number of orders to be submitted, technology, ability to control submission of orders, and projected revenues, a market participant may determine one model is more cost efficient as compared to the alternatives.

Only if a market participant elects to become a Member of MRX will the market participant need to utilize a port to submit orders and/or quotes into MRX. Once an applicant is approved for membership on MRX and becomes a Member, the Exchange assigns the Member a badge [57] and/or mnemonic [58] to submit quotes and/or orders to the Exchange through the applicable port. An MRX Member may have one or more accounts numbers and may assign badges or mnemonics to those account numbers.[59] Membership approval grants a Member a right to exercise trading privileges on MRX, which includes the submission of orders and/or quotes into the Exchange through a secure port by utilizing the badge and/or mnemonic assigned to a specific Member by the Exchange. The Exchange utilizes ports as a secure method for Members to submit orders and/or quotes into the Exchange's match engine and for the Exchange to send messages related to those orders and/or quotes to its Members.

MRX is obligated to regulate its Members and secure access to its environment. In order to properly regulate its Members and secure the trading environment, MRX takes measures to ensure access is monitored and maintained with various controls. Ports are a method utilized by the Exchange to grant Members secure access to communicate with the Exchange and exercise trading rights. When a market participant elects to be a Member of MRX, and is approved for membership by MRX, the Member is granted trading rights to enter orders and/or quotes into MRX through secure ports.

As noted herein, there is no legal or regulatory requirement that a market participant become a Member of MRX, or, if it is a Member, to purchase port services beyond the one quoting protocol or one order entry protocol necessary to quote or submit orders on MRX. The Exchange proposes to offer the first FIX and SQF Port at no cost in addition to the first FIX Disaster Recovery Port and the first SQF Disaster Recovery Port at no cost.[60] As noted above, Members may freely choose to rely on one or many ports, depending on their business model.

The Exchange's proposal to amend port fees is reasonable, equitable and not unfairly discriminatory as MRX is providing MRX Electronic Access Members the first FIX Port to submit orders and MRX Market Makers the first SQF Port to submit quotes to MRX, at no cost, in addition to providing the first FIX Disaster Recovery Port and the first SQF Disaster Recovery Port at no cost; all other ports offered by MRX are optional and not necessary to trade options on the Exchange.

The proposed fees reflect the ongoing services provided to maintain and support the ports. In order to submit orders into MRX, only one order protocol is required, and MRX is providing Electronic Access Members the first FIX Port at no cost. Quoting protocols are only required to the extent an MRX Member has been appointed as a Market Maker in an options series pursuant to Options 2, Section 1. Similarly, only one quoting protocol is necessary to quote on MRX and MRX is providing Market Makers the first SQF Port at no cost. As noted above, only Members may utilize ports. A Member can send all orders, proprietary and agency, through one port to MRX and all quotes through one port. Therefore, for the foregoing reasons, it is reasonable to assess no fee for the first FIX Port obtained by an Electronic Access Member or the first SQF Port obtained by a Market Maker. Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Port to Electronic Access Members as all Electronic Access Members would be entitled to the first FIX Port at no cost. Also, it is equitable and not unfairly discriminatory to assess no fee for the first SQF Port to Market Makers as all Market Makers would be entitled to the first SQF Port at no cost. With this proposal, MRX Members may organize their business in such a way as to submit orders and/or quotes continuously to MRX at no cost.

The Exchange's proposal to assess Members $650 per port, per month, per account number for FIX Ports beyond the first port and $1,250 per port, per month for SQF Ports beyond the first port is reasonable because these ports are optional and Members only require one FIX Port to submit orders to MRX and one SQF Port to submit quotes to MRX. Members electing to subscribe to more than one FIX or SQF Port are choosing the additional ports to accommodate their business model. Additionally, to the extent a Member expended more than $7,500 for FIX Ports or more than $17,500 for SQF Ports, the Exchange would not charge an MRX Member for additional FIX or SQF Ports beyond the cap. The fees for the proposed additional FIX and SQF Ports are equitable and not unfairly discriminatory because any Member may elect to subscribe to additional ports. Electronic Access Members would be subject to the same fees for FIX Ports and Market Makers would be subject to the same fees for SQF Ports. Unlike other market participants, Market Makers are required to provide continuous two-sided quotes on a daily

[53] Market Makers on MRX are required to obtain one SQF port to submit quotes into MRX.

[54] Service bureaus provide access to market participants to submit and execute orders on an exchange. On MRX, a Service Bureau may be a Member. Some MRX Members utilize a Service Bureau for connectivity and that Service Bureau may not be a Member. Some market participants utilize a Service Bureau who is a Member to submit orders. As noted herein only MRX Members may submit orders or quotes through ports.

[55] Sponsored Access is an arrangement whereby a member permits its customers to enter orders into an exchange's system that bypass the member's trading system and are routed directly to the Exchange, including routing through a service bureau or other third-party technology provider.

[56] This may include utilizing a Floor Broker and submitting the trade to one of the five options trading floors.

[57] A ''badge'' shall mean an account number, which may contain letters and/or numbers, assigned to Market Makers. A Market Maker account may be associated with multiple badges. *See* MRX Options 1, Section 1(a)(5).

[58] A ''mnemonic'' shall mean an acronym comprised of letters and/or numbers assigned to Electronic Access Members. An Electronic Access Member account may be associated with multiple mnemonics. *See* MRX Options 1, Section 1(a)(23).

[59] The Exchange provides account numbers, badges and mnemonics at no cost.

[60] Only Members and service bureaus may request ports on MRX, and only Members may utilize ports on MRX through their assigned badge or mnemonic. *See* Options 1, Section 1(a)(5) and (23).

basis,[61] and are subject to various obligations associated with providing liquidity.[62] Also, as noted herein, account numbers are available on MRX at no cost.

The Exchange's proposal to assess $650 per port, per month, per account number for an OTTO Port is reasonable because OTTO is optional. The Exchange is offering the first FIX Port at no cost to submit orders to MRX. In addition to the FIX Port, all Members may elect to purchase OTTO to submit orders to MRX. Unlike FIX, which offers routing capability, OTTO does not permit routing. Depending on a Member's business model, Members may elect to purchase an OTTO Port in addition to the FIX Port, which is being provided at no cost. Members may prefer one protocol as compared to another protocol. For example, the ability to route may cause a Member to utilize FIX and a Member that desires to execute an order locally may utilize OTTO. Also, the OTTO Port offers lower latency as compared to the FIX Port, which may be attractive to Members depending on their trading behavior. MRX Members utilizing the FIX Port, which is offered at no cost, do not need to utilize OTTO. Members may elect to utilize both order entry protocols, depending on how they organize their business. OTTO provides MRX Members with an additional choice as to the type of protocol that they may use to submit orders to the Exchange. Today, Phlx and BX offer only a FIX Port to submit orders on those options markets.[63] The proposed OTTO fee is equitable and not unfairly discriminatory because any Member may elect to purchase an optional OTTO Port and would be subject to the same fee.

The Exchange's proposal to offer an SQF Purge Port for $1,250 per port, per month is reasonable because this port is optional. The SQF Purge Port is designed to assist Market Makers in the management of, and risk control over, their quotes. Market Makers may utilize a purge port to reduce uncertainty and to manage risk by purging all quotes in their assigned options series. Of note, Market Makers may only enter interest into SQF in their assigned options series. Additionally, the SQF Purge Port may be utilized by a Market Maker in the event that the Member has a system issue and determines to purge from the order book. The SQF Purge Port is optional as Market Makers have various ways of purging their quotes from the order book. First of all, a Market Maker may cancel quotes through SQF in their assigned options series in the same manner as they may cancel quotes with an SQF Purge Port.[64] Second, a Member may cancel any bids or offers in any series of options by requesting MRX Market Operations staff to effect such cancellation as per the instructions of the Member.[65] Third, in the event of a loss of communication with the Exchange, MRX offers the ability to cancel all of a Member's open quotes via a cancel-on-disconnect control.[66] Fourth, MRX offers Market Makers the ability, with respect to simple orders, to establish pre-determined levels of risk exposure which would be utilized to automatically remove quotes in all series of an options class.[67] Accordingly, the Exchange believes that the SQF Purge Port provides an efficient alternative to other available services which allow a Market Maker to cancel quotes. The proposed SQF Purge Port is equitable and not unfairly discriminatory because any Member may elect to purchase an optional SQF Purge Port and would be subject to the same fee.

The Exchange's proposal to assess $650 per port, per month for CTI Ports and FIX DROP Ports is reasonable because these ports are optional because Members have various ways of receiving information concerning open orders and executed transactions. First, FIX and OTTO provide Members with real-time order executions similar to the Clearing Trade Interface and FIX DROP. Second, TradeInfo provides Members with the ability to query open orders and order executions real-time, at no cost, similar to the Clearing Trade Interface and FIX DROP. Third, Members receive free daily reports listing open orders and trade executions from the Exchange. While not real-time, the Open Orders Report and Trade Detail Report provide Members with information similar to the Clearing Trade Interface and FIX DROP. The proposed CTI and FIX DROP Ports are equitable and not unfairly discriminatory because any Member may elect to purchase an optional CTI Port or FIX DROP Port and would be subject to the same fee.

The Exchange's proposal to assess no fee for the first FIX Disaster Recovery Port or the first SQF Disaster Recovery Port is reasonable because it will provide Members with continuous access to MRX in the event of a failover, at no cost. Further it is equitable and not unfairly discriminatory to assess no fee for the first FIX Disaster Recovery Port to Electronic Access Members as all Electronic Access Members would be entitled to the first FIX Disaster Recovery Port at no cost. Also, it is equitable and not unfairly discriminatory to assess no fee for the first SQF Disaster Recovery Port to Market Makers as all Market Makers would be entitled to the first SQF Disaster Recovery Port at no cost.

The Exchange's proposal to assess Members $50 per port, per month, per account number for optional FIX Disaster Recovery Ports beyond the first port offered at no cost and $50 per port, per month, per account number for optional SQF Disaster Recovery Ports beyond the first port offered at no cost is reasonable because these ports are optional and Members only require one FIX Disaster Recovery Port to submit orders to MRX in the event of a failover and one SQF Disaster Recovery Port to submit quotes to MRX in the event of a failover. Additionally, to the extent a Member expended more than $7,500 for Disaster Recovery Ports, the Exchange would not charge an MRX Member for additional Disaster Recovery Ports beyond the cap. The fees for the proposed additional FIX and SQF Disaster Recovery Ports are equitable and not unfairly discriminatory because any Member may elect additional ports and would be subject to the same fees.

The Exchange's proposal to offer Disaster Recovery Ports for SQF Purge Ports, and OTTO Ports at $50 per port, per month, per account number and CTI Ports, and FIX DROP Ports for $50 per port, per month is reasonable because these ports are optional. As noted herein, there are other alternatives for all of these ports today, the purchase of an SQF Purge Port, OTTO Port, CTI Port, and FIX DROP Port in production is optional and, therefore, so is the purchase of Disaster Recovery Ports for these ports. The proposed Disaster Recovery Port fees are intended to encourage Members to be efficient when purchasing Disaster Recovery Ports. The proposed Disaster Recovery Ports are equitable and not unfairly discriminatory because any Member may elect to purchase an optional Disaster Recovery Port and would be subject to the same fee, depending on the port.

[61] *See* MRX Options 2, Section 5.

[62] *See* MRX Options 2, Section 4.

[63] *See* Phlx and BX Options 3, Section 7 for a list of protocols.

[64] SQF Purge Ports, similar to SQF Ports, allow Market Makers to mass cancel quotes.

[65] See Options 3, Section 19, Mass Cancellation of Trading Interest.

[66] *See* MRX Options 3, Section 18, Detection of Loss. This risk protection is free.

[67] *See* MRX Options 3, Section 15(a)(3)(B). Thresholds may be set by Members based on percentage, volume, delta or vega. This risk protection is free.

Finally, in the event that an MRX Member elects to subscribe to multiple ports, the Exchange offers a monthly cap beyond which a Member would be assessed no additional fees for month. As noted above, the SQF Port and the SQF Purge Port are subject to a monthly cap of $17,500 and the OTTO Port, CTI Port, FIX Port, FIX Drop Port and all Disaster Recovery Ports are subject to a monthly cap of $7,500. These caps are reasonable because they allow Members to limit their fees beyond a certain level if they elect to purchase multiple ports in a given month. The caps are also equitable and not unfairly discriminatory because any Member will be subject to the cap, provided they exceeded the appropriate dollar amount in a given month.

The proposed port fees are similar to the fees assessed by GEMX.[68]

After 6 years, MRX proposes to commence assessing port fees, just as all other options exchanges while offerings its Members the ability to submit orders and quotes to the Exchange at no cost. The introduction of these fees will not impede a Member's access to MRX, but rather will allow MRX to continue to compete and grow its marketplace so that it may continue to offer a robust trading architecture, a quality opening process, an array of simple and complex order types and auctions, and competitive transaction pricing. If MRX is incorrect in its assessment of the value of its services, that assessment will be reflected in MRX's ability to compete with other options exchanges.

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.

The Exchange believes its proposal to offer the first FIX and SQF Ports for free, as well as the first Disaster Recovery version of these ports, positions MRX as a competitive market among other options exchanges, all of which assess fees for the first order and/or quote protocols. MRX's offering would permit Electronic Access Members and Market Makers the ability to submit orders and quote to MRX at no cost. The remainder of the port offerings are optional. The Exchange believes that the optional port offerings permit MRX to remain competitive with other options markets in its offerings.

The Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited.

By way of example, today, with the exception of Precise, ISE has identical functionality to MRX. Market participants may elect to become members of ISE instead of MRX if those market participants believe that the order flow on ISE provides more value than the order flow on MRX. ISE has more market share (6.2%) as compared to MRX (1.8%). A market participant may evaluate the fees assessed by ISE, its market share, and proprietary products, among other things, and determine to become a member of ISE instead of MRX if it determines the proposed fees to be unreasonable.

The proposed port fees are similar to port fees assessed by GEMX[69] for similar connectivity. As a consequence, competition will not be burdened by the proposed fees. Only one order protocol is required to submit orders to MRX, and the Exchange proposes to offer the first FIX Port and the first FIX Disaster Recovery Port to Electronic Access Members at no cost. This would provide Members with the ability to continuously submit orders to MRX, even in the event of a failover. Likewise, only one quoting protocol is required to submit quotes to MRX, and the Exchange proposes to offer the first SQF Port and the first SQF Disaster Recovery Port to Market Makers at no cost. This would provide Market Makers with the ability to continuously submit quotes to MRX, even in the event of a failover.

Only one account number is necessary per Member and account numbers are free.

As noted above, the remainder of the proposed port fees are for optional ports (additional FIX and SQF Ports, additional FIX and SQF Disaster Recovery Ports, SQF Purge Port, OTTO Port, CTI Port, FIX DROP Port and Disaster Recovery Ports for SQF Purge Ports, OTTO Ports, CTI Ports, and FIX DROP Ports). These different protocols are not all necessary to conduct business on MRX. Members choose among the protocols based on their business workflow. The proposed fees do not impose an undue burden on competition because the Exchange would uniformly assess the port fees to all Members and would uniformly apply monthly caps. Market participants may also connect to third parties instead of directly to the Exchange.

With respect to the higher fees assessed for SQF Ports and SQF Purge Ports, the Exchange notes that only Market Makers may utilize these ports. Market Makers are required to provide continuous two-sided quotes on a daily basis,[70] and are subject to various obligations associated with providing liquidity.[71] As a result of these quoting obligations, the SQF Port and SQF Purge Port are designed to handle higher throughput to permit Market Makers to bundle orders to meet their obligations. The technology to permit Market Makers to submit a greater number of quotes, in addition to the various risk protections[72] afforded to these market participants when quoting, accounts for the higher SQF Port and SQF Purge Port fees. Greater liquidity benefits all market participants by providing more trading opportunities and attracting greater participation by Market Makers. Also, an increase in the activity of Market Makers in turn facilitates tighter spreads.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act.[73] At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (i) necessary or appropriate in the public interest; (ii) for the protection of investors; or (iii) otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule should be approved or disapproved.

[68] *See* GEMX Options 7, Section 6.C. (Ports and Other Services).

[69] *See* GEMX Options 7, Section 6.C. (Ports and Other Services).

[70] *See* MRX Options 2, Section 5.

[71] *See* MRX Options 2, Section 4.

[72] *See* MRX Options 3, Section 15(a)(3). Market Makers are offered risk protections to permit them to manage their risk more effectively.

[73] 15 U.S.C. 78s(b)(3)(A)(ii).

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–2022–12 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–2022–12. 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 a.m. and 3 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–2022–12 and should be submitted on or before October 5, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[74]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19817 Filed 9–13–22; 8:45 am]

BILLING CODE 8011–01–P

[74] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34699; File No. 812–15368]

Ares Capital Corporation, et al.

September 8, 2022.

AGENCY: Securities and Exchange Commission (''Commission'' or ''SEC'').

ACTION: Notice.

Notice of application for an order (''Order'') under sections 17(d) and 57(i) of the Investment Company Act of 1940 (the ''Act'') and rule 17d–1 under the Act to permit certain joint transactions otherwise prohibited by sections 17(d) and 57(a)(4) of the Act and rule 17d–1 under the Act.

Summary of Application: Applicants request an order to amend a previous order granted by the Commission that permits certain business development companies (''BDCs'') and closed-end management investment companies to co-invest in portfolio companies with each other and with certain affiliated investment entities.

Applicants: ACE III Master Fund, L.P., ACIP Investment Management LLC, ACIP Parallel Fund A, L.P., ACIP Apex Co-Investment, L.P., ACOF Investment Management LLC, ACOF IV ATD Co-Invest, L.P., ACOF Operating Manager II, L.P., ACOF Operating Manager III, LLC, ACOF Operating Manager IV, LLC, ACOF Operating Manager, L.P., ADREX Advisor LLC, AEIF Kleen Investor, LLC, AEIF Linden Blocker II LLC, AEPEP II N Strategic Investments, L.P., AEPEP III N Strategic Co-Invest, L.P., AF Energy Feeder, L.P., AF V APR Co-Invest, L.P., AIREX Advisor LLC, Ambition Holdings, L.P., American Capital Equity I, LLC, American Capital Equity II, LP, Apollo Poland Real Estate Co-Investment, L.P., Apollo Real Estate Investment Fund V, L.P., Apollo Real Estate Management V L.P., Apollo Real Estate Parallel Fund V–A, L.P., Apollo Real Estate Parallel Fund V–B, L.P., Apollo Real Estate Parallel Fund V–C, L.P., APSecurities Manager LP, AREA EAGLE Co-Invest Management LLC, AREA EAGLE Co-Invest Partnership, L.P., AREA European Property Enhancement Management, LLC, AREA European Property Enhancement Program, L.P., AREA UK Co-Invest Real Estate Management L.P., AREA–C, L.P., AREA–CAELUS Co-Invest Management, L.P., AREA–CAELUS Co-Invest, L.P., AREG AC Makena Holdings LLC, AREG CC II Manager L.P., AREG CIP 601 W. 29 AIV LP, AREG CIP 601 W. 29 Co-Invest Member LLC, AREG CIP DAQ AIV LP, AREG CIP IE Portfolio AIV LP, AREG CIP Needham AIV LP, AREG CIP One South Halsted AIV LP, AREG CIP Portland Industrial AIV LP, AREG CIP RW50 AIV LP, AREG CIP Wellington Bay AIV LP, AREG CV Boston Hotel Co-Investor LLC, AREG ELI Co-Invest Vehicle, L.P., AREG Iberian Residential Co-Invest Vehicle SCSp, AREG Kennedy Co-Invest S.C.A., AREG Klondike Manager, L.P., AREG LPKC Partners, L.P., AREG Makena Management L.P., AREG Star and Garter Co-Invest Partnership, L.P., AREG–T European Portfolio, L.P., AREG–T Manager III, L.P., AREG-Talisman Fred Supp Partners, L.P., Ares Alternative Credit Management LLC, Ares Apex Pooling, LLC, Ares Asia Management Ltd, Ares ASIP VII Management, L.P., Ares Asset-Backed Loan Fund LP, Ares Cactus Operating Manager, L.P., Ares Capital Corporation, Ares Capital Europe IV (E) Levered, Ares Capital Europe IV (E) Unlevered, Ares Capital Europe IV (G) Levered, Ares Capital Europe IV (G) Unlevered, Ares Capital Europe V (E) Levered, Ares Capital Europe V (E) Unlevered, Ares Capital Europe V (G) Levered, Ares Capital Europe V (G) Unlevered, Ares Capital Europe, L.P., Ares Capital Management LLC, Ares Capital Management II LLC, Ares Capital Management III LLC, Ares Centre Street Management, L.P., Ares Centre Street Partnership, L.P., Ares CIP (V) Management LLC, ARES CIP US Real Estate Opportunity Partners A, L.P., ARES CIP US Real Estate Opportunity Partners B, L.P, Ares Climate Infrastructure Partners, L.P., Ares CLO Funding I, L.P., Ares CLO Funding III LP, Ares CLO Management LLC, Ares CLO Management XXVII, L.P., Ares CLO Management II, LLC, Ares CLO Management IIIR/IVR, L.P., Ares CLO Management VIR, L.P., Ares CLO Management VR, L.P., Ares CLO Management X, L.P., Ares CLO Management XI, L.P., Ares CLO Management XX, L.P., Ares CLO Management XXI, L.P., Ares CLO Management XXIX, L.P., Ares CLO Warehouse 2021–6 Ltd., Ares CLO Warehouse 2021–8 Ltd., Ares Commercial Finance LP, Ares Commercial Finance Management, LP, Ares Commercial Real Estate Corporation, Ares Commercial Real

Estate Management LLC, Ares Corporate Opportunities Fund Asia, L.P., Ares Corporate Opportunities Fund II, L.P., Ares Corporate Opportunities Fund III, L.P., Ares Corporate Opportunities Fund IV, L.P., Ares Corporate Opportunities Fund V, L.P., Ares Corporate Opportunities Fund VI Parallel (Foreign), L.P., Ares Corporate Opportunities Fund VI Parallel (TE), L.P., Ares Corporate Opportunities Fund VI, L.P., Ares Corporate Opportunities Fund, L.P., Ares Credit Hedge Fund LP, Ares Credit Investment Partnership I (V) L.P., Ares Credit Investment Partnership II (A), L.P., Ares Credit Strategies Feeder III UK, L.P., Ares Credit Strategies Fund I, L.P., Ares Credit Strategies Fund III, L.P., Ares Credit Strategies Insurance Dedicated Fund—Series of SALI Multi Series Fund LP, Ares CSF III Investment Management, LLC, Ares CSF IV Management LLC, Ares CSF Operating Manager I, LLC, Ares Customized Credit Fund L.P., Ares Direct Finance I LP, Ares Direct Investments (AC) LP, Ares Direct Lending Opportunities LLC, Ares Direct Lending Opportunities Offshore LLC, Ares Direct Lending Opportunities Parallel LLC, Ares Diversified Credit Strategies Fund (S), L.P., Ares Diversified Credit Strategies Fund II (IM), L.P., Ares Diversified Real Estate Exchange LLC, Ares EHP Co-Invest Holdings, L.P., Ares EIF Management, LLC, Ares Energy Investors Fund V, L.P., Ares Energy Opportunities Fund A, L.P., Ares Energy Opportunities Fund B, L.P., Ares Energy Opportunities Fund, L.P., Ares Enhanced Credit Opportunities Investment Management II, LLC, Ares Enhanced Credit Opportunities Master Fund II, LTD., Ares Enhanced Loan Investment Strategy Advisor IV, L.P., Ares Enhanced Loan Investment Strategy II, LTD., Ares Enhanced Loan Investment Strategy III, LTD., Ares Enhanced Loan Investment Strategy IR, LTD., Ares Enhanced Loan Management II, L.P., Ares Enhanced Loan Management III, L.P., Ares Enhanced Loan Management IR, L.P., Ares EPIC Co-Invest II, L.P., Ares EPIC Co-Invest, L.P., Ares European CLO II B.V., Ares European CLO IX Designated Activity Company, Ares European CLO VI Designated Activity Company, Ares European CLO VII Designated Activity Company, Ares European CLO VIII Designated Activity Company, Ares European CLO X Designated Activity Company, Ares European CLO XI Designated Activity Company, Ares European CLO XII Designated Activity Company, Ares European CLO XIII Designated Activity Company, Ares European CLO XIV Designated Activity Company, Ares European CLO XV Designated Activity Company, Ares European CLO XVI Designated Activity Company, Ares European Credit Investments I (C), L.P., Ares European Credit Investments II (G), L.P., Ares European Credit Investments III (K), L.P., Ares European Credit Investments IV (A), L.P., Ares European Credit Investments V (X), L.P., Ares European Credit Investments VI (N), L.P., Ares European Credit Investments VII (CP), L.P., Ares European Credit Investments IX (AF), L.P., Ares European Credit Strategies Fund II (B), L.P., Ares European Credit Strategies Fund III (A), L.P., Ares European Credit Strategies Fund IV (M), L.P., Ares European Credit Strategies Fund IX (C), L.P., Ares European Credit Strategies Fund V (G) L.P., Ares European Credit Strategies Fund VI (B), LP, Ares European Credit Strategies Fund VII (Palo Verde), L.P., Ares European Credit Strategies Fund X (T), L.P., Ares European Credit Strategies Fund XI (S), L.P., Ares European Credit Strategies Fund XII (Z), SCSp RAIF—Sub-Fund 1, Ares European Credit Strategies Fund XII (Z), SCSp RAIF—Sub-Fund 2, Ares European Loan Funding II, Ares European Loan Funding S.L.P., Ares European Loan Management LLP, Ares European Property Enhancement Parallel Partners III SCSp, Ares European Property Enhancement Partners II, L.P., Ares European Property Enhancement Partners III SCSp, Ares European Real Estate Fund I (EU), L.P., Ares European Real Estate Fund I (IF), L.P., Ares European Real Estate Fund II (EURO), L.P., Ares European Real Estate Fund II, L.P., Ares European Real Estate Fund III (EURO), L.P., Ares European Real Estate Fund III, L.P., Ares European Real Estate Fund IV (EURO), L.P., Ares European Real Estate Fund IV, L.P., Ares European Real Estate Fund V (Dollar) SCSp, Ares European Real Estate Fund V SCSp, Ares European Real Estate Fund VI SCSp, Ares European Real Estate Management I, L.P., Ares European Real Estate Management II, L.P., Ares European Real Estate Management III, L.P., Ares Global Credit Fund S.C.A., SICAV–RAIF—Ares European Loan Fund (G), Ares Global Credit Fund S.C.A., SICAV–RAIF—Ares U.S. Loan Fund (G), Ares Global High Grade CLO Debt Fund, L.P., Ares Global Multi-Asset Credit Master Fund, L.P., Ares Ground Lease Partners, L.P., Ares HICOF Operating Manager, L.P., Ares High Income Credit Opportunities Fund II (Master) LP, Ares High Income Credit Opportunities Fund, L.P., Ares High Yield Strategies Fund IV Management, L.P., Ares ICOF II Management, LLC, Ares ICOF II Master Fund, L.P., Ares ICOF III Fund (CAYMAN) LP, Ares ICOF III Fund (Delaware) LP, Ares ICOF III Management LP, Ares IDF Management LLC, Ares IIIR/IVR CLO LTD., Ares Income Opportunity Fund, L.P., Ares Industrial Real Estate Exchange LLC, Ares Industrial Real Estate Fund GP LLC, Ares Industrial Real Estate Fund LP, Ares Industrial Real Estate Fund Manager LLC, Ares Industrial Real Estate Income Trust Inc., Ares Industrial Real Estate Income Trust Inc.—Build-To-Core Industrial Partnership I LP, Ares Industrial Real Estate Income Trust Inc.-Build-To-Core Industrial Partnership II LP, Ares Industrial Real Estate Income Trust Inc.- Build-To-Core Industrial Partnership III LLC, Ares Institutional Credit Fund L.P., Ares Institutional High Yield Master Fund LP, Ares Institutional Loan Fund, L.P., Ares Institutional Structured Credit Management, L.P., Ares Jasper Fund, L.P., Ares L CLO Ltd., Ares LI CLO Ltd., Ares LII CLO Ltd., Ares LIII CLO Ltd., Ares LIV CLO Ltd., Ares LIX CLO Ltd., Ares Loan Funding I, Ltd., Ares Loan Trust 2011, Ares Loan Trust 2016, Ares LV CLO Ltd. (fka Ares CLO Warehouse 2018–6), Ares LVI CLO Ltd., Ares LVII CLO Ltd., Ares LVIII CLO Ltd., Ares LX CLO Ltd., Ares LXI CLO Ltd., Ares LXII CLO Ltd., Ares Management Limited, Ares Management LLC, Ares Management Luxembourg S.a.r.l., Ares Management UK Limited, Ares Master Employee Co-Invest Program 2015, L.P., Ares Master Employee Co-Invest Program 2019 Offshore, L.P., Ares Master Employee Co-Invest Program 2019 Onshore, L.P., Ares Mezzanine Management LLC, Ares Mezzanine Partners, L.P., Ares Midway Partners, L.P., Ares Minerva Co-Invest, L.P., Ares MSCF V (H) Management LLC, Ares Multi-Asset Credit Strategies Fund LP, Ares Multi-Credit Fund LLC, Ares Multi-Strategy Credit Fund V (H), L.P., Ares ND Credit Strategies Fund LLC, Ares PA Opportunities Fund, L.P., Ares Pan-European Logistics Partnership, L.P., Ares Pathfinder Core Fund (Offshore), L.P., Ares Pathfinder Core Fund, L.P., Ares Pathfinder Fund (Offshore), L.P., Ares Pathfinder Fund, L.P., Ares PBN Finance Co. LLC, Ares PE Extended Value Fund LP, Ares PG Co-Invest L.P., Ares Private Account Management I, L.P., Ares Private Credit Solutions (Cayman), L.P., Ares Private Credit Solutions (Offshore) II, L.P., Ares Private Credit Solutions II, L.P., Ares Private Credit Solutions, L.P., Ares Private Debt Strategies Fund II, L.P., Ares Private Markets Fund, Ares Private Opportunities (CP), L.P., Ares Private Opportunities (NYC), L.P., Ares Private

Opportunities 2020 (C), LP, Ares Real Estate Enhanced Income Fund, L.P., Ares Real Estate Management Holdings, LLC, Ares Real Estate Income Trust Inc., Ares Real Estate Secured Income Fund, L.P., Ares RF Co-Invest (H), L.P., Ares RF Co-Invest, L.P., Ares RLG Co-Invest Holdings, L.P., Ares SCM Co-Invest III, L.P., Ares Secured Income Master Fund LP, Ares Senior Direct Lending Master Fund Designated Activity Company, Ares Senior Direct Lending Master Fund II Designated Activity Company, Ares Senior Direct Lending Parallel Fund (L) II, L.P., Ares Senior Direct Lending Parallel Fund (L), L.P., Ares Senior Direct Lending Parallel Fund (U) B, L.P., Ares Senior Direct Lending Parallel Fund (U) II, L.P., Ares Senior Direct Lending Parallel Fund (U), L.P., Ares Senior Loan Trust, Ares Senior Loan Trust Management L.P., Ares SDL II Capital Management LLC, Ares SFERS Credit Strategies Fund LLC, Ares Special Opportunities Fund (Offshore), L.P., Ares Special Opportunities Fund, L.P., Ares Special Opportunities Fund II (Jersey A) L.P., Ares Special Opportunities Fund II (Jersey) L.P., Ares Special Opportunities Fund II (Offshore), L.P., Ares Special Opportunities Fund II, L.P., Ares Special Situations Fund III, L.P., Ares Special Situations Fund IV, L.P., Ares Sports, Media and Entertainment Finance (Offshore), L.P., Ares Sports, Media and Entertainment Finance, L.P., Ares SSG Capital Management (Australia) PTY LTD, Ares SSG Capital Management (Hong Kong) Limited, Ares SSG Capital Management Limited, Ares SSG Capital Management (Mauritius) LTD., Ares SSG Capital Management (Singapore) PTE. LTD., Ares SSG Capital Management (Thailand) Limited, Ares SSG Capital Partners VI, L.P., Ares SSG Excelsior Co-Investment, L.P., Ares SSG Direct Lending, L.P., Ares SSG Secured Lending Opportunities III, L.P., Ares Strategic Income Fund, Ares Strategic Investment Partners IV, Ares Strategic Real Estate Program-HHC, LLC, Ares UK Credit Strategies, L.P., Ares U.S. CLO Management III LLC—Series A, Ares US Real Estate Development and Redevelopment Fund II, LP, Ares US Real Estate Fund IX, L.P., Ares US Real Estate Fund VII 892, L.P., Ares US Real Estate Fund VII, L.P., Ares US Real Estate Fund VIII, L.P., Ares US Real Estate Fund X, L.P., Ares US Real Estate Fund X–A, L.P., Ares US Real Estate Fund X–B, L.P., Ares US Real Estate Opportunity Fund III, L.P., Ares US Real Estate Opportunity Fund, L.P., Ares US Real Estate Opportunity Management, L.P., Ares US Real Estate Opportunity Parallel Fund III–A, L.P., Ares US Real Estate Opportunity Parallel Fund III–B, L.P., Ares US Real Estate Parallel Fund IX, L.P., Ares US Real Estate Parallel II Fund IX, L.P., Ares US Real Estate VII Management, LLC, Ares US Real Estate VIII Management, LLC, Ares VAL Co-Invest Holdings I, L.P., Ares VAL Co-Invest Holdings II, L.P., Ares VIR CLO LTD., Ares VR CLO, LTD., Ares X CLO LTD., Ares XI CLO LTD., Ares XL CLO Ltd, Ares XLI CLO Ltd, Ares XLII CLO Ltd., Ares XLIII CLO Ltd., Ares XLIV CLO Ltd., Ares XLIX CLO Ltd, Ares XLV CLO Ltd., Ares XLVI CLO LTD, Ares XLVII CLO LTD, Ares XLVIII CLO Ltd., Ares XX CLO LTD, Ares XXI CLO LTD., Ares XXIX CLO LTD, Ares XXVII CLO LTD, Ares XXVIIIR CLO Ltd., Ares XXXIIR CLO Ltd., Ares XXXIR CLO Ltd., ARES XXXIV CLO LTD., Ares XXXIX CLO Ltd., Ares XXXVII CLO, LTD, Ares XXXVIII CLO, LTD, ASIP Operating Manager IV, LLC, ASOF Delaware Feeder, L.P., ASOF Direct Investments (A), L.P., ASOF Investment Management LLC, Ares Insurance Partners, L.P., Ares Insurance Solutions LLC, Aspida Holdings Ltd., Aspida Life Re Ltd., Aspida Holdings LLC, Aspida Re (Bermuda) Ltd., Aspida Re Services Ltd., Aspida Risk Advisors, LLC, Aspida Financial Services, LLC, Aspida Life Insurance Company, ASSF Operating Manager III, LLC, ASSF Operating Manager IV, L.P., BCG BTC III Managing Member LLC, Cal Ares Real Estate Debt Partners, LLC, Chengdu Ares Yuanjing Equity Investment Fund L.P., Chengdu Ares Yuankang Investment Management Co Ltd, Chimney Tops Loan Fund, LLC, CION Ares Diversified Credit Fund, CION Ares Management, LLC, COLTS 2005–1 LTD., COLTS 2005–2 LTD., Columbus Opportunity Fund, L.P., Crestline Denali Capital LLC, Crestline Denali CLO XIV, Ltd., Crestline Denali CLO XV, Ltd., Crestline Denali CLO XVI, Ltd., Crestline Denali CLO XVII, Ltd., Denali Capital CLO X, Ltd., Denali Capital CLO XI, Ltd., Denali Capital CLO XII, Ltd., EIF Calypso II Blocker, LLC, EIF Channelview Blocker, LLC, EIF Oregon, LLC, EIF United States Power Fund IV, L.P., Emporia Preferred Funding III, LTD., Goldman Sachs Multi-Manager Non-Core Fixed Income Fund, Hush Lux S.a.r.l., Industrial Property Advisors Sub II LLC, Industrial Property Advisors Sub III LLC, Ivy Hill Asset Management, L.P., Ivy Hill Investment Holdings, LLC, Ivy Hill Middle Market Credit Fund IV, LTD., Ivy Hill Middle Market Credit Fund IX, LTD, Ivy Hill Middle Market Credit Fund V, LTD., Ivy Hill Middle Market Credit Fund VII, LTD., Ivy Hill Middle Market Credit Fund VIII, LTD., Ivy Hill Middle Market Credit Fund X, LTD, Ivy Hill Middle Market Credit Fund XII, LTD, Ivy Hill Middle Market Credit Fund XIV, Ltd, Ivy Hill Middle Market Credit Fund XV, Ltd., Ivy Hill Middle Market Credit Fund XVI, Ltd., Ivy Hill Middle Market Credit Fund XVII, Ltd., Ivy Hill Middle Market Credit Fund XIX, Ltd., Ivy Hill Middle Market Credit Fund XVIII, Ltd., Ivy Hill Revolver Funding LP, Klondike LLC, Landmark—NYC Fund I, L.P., Landmark Co-Investment Partners IX, L.P., Landmark Equity Advisors LLC, Landmark Equity Partners XIII, L.P., Landmark Equity Partners XIII–A, L.P., Landmark Equity Partners XIV, L.P., Landmark Equity Partners XV, L.P., Landmark Equity Partners XVI Co-Investment Fund, L.P., Landmark Equity Partners XVI, L.P., Landmark Equity Partners XVII Co-Investment Fund, L.P., Landmark Equity Partners XVII, L.P, Landmark Equity Partners XVII–B, L.P., Landmark Growth Capital Partners, L.P., Landmark Hudson Partners I, L.P., Landmark IAM Growth Capital, L.P., Landmark IAM Real Estate Partnership V, L.P., Landmark Infrastructure Partners II, L.P., Landmark Pacific Partners II, L.P., Landmark Pacific Partners, L.P.—Series A, Landmark Pacific Partners, L.P.—Series B, Landmark Pacific Partners, L.P.—Series C, Landmark Partners LLC, Landmark Partners 1907 Fund I, L.P., Landmark Partners 1907 Fund II, L.P., Landmark Partners 1907 Fund III, L.P., Landmark Partners Insurance Fund Series Interests of the SALI Multi-Series Fund, L.P., Landmark Private Opportunities (FG) 2021, L.P., Landmark Realty Advisors LLC, Landmark Real Estate Partners IX Co-Investment Fund, L.P., Landmark Real Estate Partners IX, L.P., Landmark Real Estate Partners V, L.P., Landmark Real Estate Partners VI Offshore, L.P., Landmark Real Estate Partners VI, L.P., Landmark Real Estate Partners VII Offshore, L.P., Landmark Real Estate Partners VII OPERS Co-Investment, L.P., Landmark Real Estate Partners VII, L.P., Landmark Real Estate Partners VIII Co-Investment Fund, L.P., Landmark Real Estate Partners VIII, L.P., Landmark Real Estate Partners VIII–A, L.P., Landmark Real Estate Partners VIII-Campbell Co-Investment, L.P., Landmark Real Estate Partners IX-Campbell Co-Investment, L.P., Landmark Real Estate Partners VII–IP Co-Investment, L.P., Landmark Real Estate Partners VI–OPERS Co-Investment, L.P., Landmark Sing Co-Investment Fund I, L.P., Landmark Tig Co-Investment Fund I, L.P., Landmark TX ERS Co-Investment Fund I, L.P., Landmark TX ERS Co-Investment Fund II, L.P., Legacy SCM Aggregator, LLC,

LWFB Co-Investment Fund I, L.P., MC European Real Estate Debt Parent LP, MC Investments Parent L.P, NCL III—Outside Opportunities B, NCL Investments II—Outside Opportunities Series A, NCL Investments II—Outside Opportunities Series B, NCL Investments II—PE Series, NCL Investments II—RA Series, NCL Investments II—RE Series, NCL Investments III PE Series, NCL Investments III RA Series, NCL Investments III RE Series, NCL Investments III, L.P. Outside Opportunities Series A, NCL Investments, L.P.—PE Series, NCL Investments, L.P.—RA Series, NCL Investments, L.P.—RE Series, Passero 18, L.P., Private Debt Strategies Fund III, L.P., Private Debt Strategies Fund IV, L.P., Private Debt Strategies Fund V, L.P., Renaissance Floating Rate Income Fund, SEI Global Master Fund PLC, SEI Institutional Investments Trust—High Yield Bond Fund, SEI Institutional Investments Trust—Opportunistic Income Fund, SEI Institutional Managed Trust—High Yield Bond Fund, SEI Investments Canada Company—U.S. High Yield Bond Fund, Shanghai SSG Investment Management Company Limited, Spring Bridge Partners (Longshore), LP, Spring Bridge Partners (PES) Fund, LP, Spring Bridge Partners, L.P., SSG Capital Partners I Side Pocket, L.P., SSG Capital Partners II, L.P., SSG Capital Partners III, LP, SSG Capital Partners IV SIDECAR, L.P., SSG Capital Partners IV, L.P., SSG Capital Partners V SIDECAR, L.P., SSG Capital Partners V, L.P., SSG Secured Lending Opportunities I–A, L.P., SSG Secured Lending Opportunities II, L.P., Touchstone Credit Opportunities Fund, Towers Watson Focused High Yield Master Fund, United States Power Fund II, L.P., United States Power Fund III, L.P., USPF II Institutional Fund, L.P., Wafra Venture Master Fund I, and VEF Group Management, LLC.

Filing Dates: The application was filed on July 15, 2022, and amended on September 1, 2022.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the Commission orders a hearing. Interested persons may request a hearing on any application by emailing the SEC's Secretary at *Secretarys-Office@sec.gov* and serving the Applicants with a copy of the request by email, if an email address is listed for the relevant Applicant below, or personally or by mail, if a physical address is listed for the relevant Applicant below. Hearing requests should be received by the Commission by 5:30 p.m. on, September 29, 2022, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Pursuant to rule 0–5 under the Act, hearing requests should state the nature of the writer's interest, any facts bearing upon the desirability of a hearing on the matter, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by emailing the Commission's Secretary at *Secretarys-Office@sec.gov*.

ADDRESSES: The Commission: *Secretarys-Office@sec.gov*. Applicants: R. Kipp deVeer, Chief Executive Officer, and Joshua M. Bloomstein, General Counsel, Ares Capital Corporation, 245 Park Avenue, 44th Floor, New York, NY 10167; Naseem Sagati Aghili, General Counsel, Ares Management Corporation, 2000 Avenue of the Stars, 12th Floor, Los Angeles, CA 90067; and Nicole M. Runyan, Kirkland & Ellis LLP, at *nicole.runyan@kirkland.com*.

FOR FURTHER INFORMATION CONTACT: Kieran G. Brown, Senior Counsel, or Terri Jordan, Branch Chief, at (202) 551–6825 (Division of Investment Management, Chief Counsel's Office).

SUPPLEMENTARY INFORMATION: For Applicants' representations, legal analysis, and conditions, please refer to Applicants' first amended and restated application, dated September 1, 2022, which may be obtained via the Commission's website by searching for the file number at the top of this document, or for an Applicant using the Company name search field, on the SEC's EDGAR system. The SEC's EDGAR system may be searched at, *http://www.sec.gov/edgar/searchedgar/legacy/companysearch.html*. You may also call the SEC's Public Reference Room at (202) 551–8090.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19818 Filed 9–13–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95707; File No. SR–CBOE–2022–036]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Amend Cboe Rule 5.6 and Cboe Rule 5.33 To Allow Delta-Adjusted at Close Orders To Be Submitted in FLEX Equity Options

September 8, 2022.

I. Introduction

On July 8, 2022, Cboe Exchange, Inc. (''Cboe'' or ''Exchange'') 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 allow the Delta-Adjusted at Close (''DAC'') Order Instruction to be submitted in FLEX equity options on the Exchange. The proposed rule change was published for comment in the **Federal Register** on July 27, 2022.[3] The Commission has received no comment letters on the proposal. This order approves the proposed rule change.

II. Description of the Proposed Rule Change

The Exchange proposes to amend Cboe Rule 5.6 (for simple DAC orders) and Cboe Rule 5.33 (for complex DAC orders) to allow DAC orders to be submitted in any FLEX option, including equity options, except that a simple DAC order submitted in a single stock equity option may not be submitted until 45 minutes prior to the market close and may not be submitted on its expiration day.[4]

A DAC order is an order for which the System [5] delta-adjusts its execution price after the market close.[6] Currently,

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95344 (July 21, 2022), 87 FR 45138 (''Notice'').

[4] The Exchange notes that references to equity options and equity securities within this proposed rule change refers to options on securities that are not exchange-traded products (''ETPs'') and equity securities that are not ETPs (*i.e.,* single stock securities), respectively. Under this proposal, DAC orders will continue to be available only for FLEX options. For a more detailed description of the proposed rule change, *see* Notice. *Id.*

[5] The term ''System'' means the Exchange's hybrid trading platform that integrates electronic and open outcry trading of option contracts on the Exchange, and includes any connectivity to the foregoing trading platform that is administered by or on behalf of the Exchange, such as a communications hub. *See* Cboe Rule 1.1.

[6] *See* Cboe Rule 5.6(c) and Cboe Rule 5.33(b)(5). *See also* Securities Exchange Act Release No. 90319

Continued

the DAC order instruction is available for simple[7] and complex[8] FLEX orders in options on ETPs and indexes for execution in a FLEX electronic auction or open outcry auction on the Exchange's trading floor pursuant to Rule 5.72.[9] A DAC order allows Users to incorporate into their options pricing the closing price or value of the underlying on the transaction date based on how much that price or value changed during the trading day. After the close of trading and upon receipt of the official closing price or value for the underlying ETP or index from the primary listing exchange or index provider, as applicable, the System adjusts the original execution price of the order based on a pre-determined delta value applied to the change in the underlying reference price between the time of execution and the market close.[10]

The Exchange states that DAC orders are designed to allow investors to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk. The Exchange states that significant numbers of market participants interact in the equity markets near the market close, which may substantially impact the price of an underlying equity security at the market close. For example, the Exchange understands that market makers and other liquidity providers seek to balance their books before the market close and contribute to increased price discovery surrounding the market close. The Exchange also understands it is common for other market participants to seek to offset intraday positions and mitigate exposure risks based on their predictions of the closing underlying prices. The Exchange notes that this substantial activity near the market close may create wider spreads and increased price volatility, which may attract further trading activity from those participants seeking arbitrage opportunities and further drive prices. The significant liquidity and price/value movements in securities, including equity securities, that can occur near the market close may cause option closing and settlement prices to deviate significantly from option execution prices earlier that trading day. As such, the Exchange wishes to provide its investors with the same opportunities to incorporate any upside market moves that may occur following execution of the order up to the market close while limiting downside risk in their equity options trading as currently provided for their ETP and index options trading by making DAC orders available in equity options.

The Exchange states that DAC orders are intended to benefit investors that participate in defined-outcome strategies,[11] which, at the time the DAC order was adopted, existed only for indexes and ETPs. Particularly, DAC orders allow such funds to employ certain FLEX options strategies that enable their investors to mitigate risk at the market close while also participating in beneficial market moves at the close.[12] The Exchange states that it has recently been made aware that defined-outcome investment strategies are being created to provide exposure to individual equity securities and as a result has received growing customer demand to make DAC orders available in equity options. The Exchange understands that, like defined-outcome strategies for ETPs and indexes, such funds for single stock equity securities would seek to use multi-leg strategy orders when seeding their funds,[13] and, like for any defined-outcome strategy, the goal of the strategies used by defined-outcome funds for single stock securities would be to price the execution of multi-leg strategy orders at the close of the underlying. Also, the Exchange understands that funds for multiple single stock equity securities would seek to use single-leg (*i.e.,* simple) orders to create a strategy when seeding their funds.[14] However, there is operational execution risk in attempting to fill an order near the close to capture the underlying closing price. A DAC complex order currently allows the User to execute a strategy order in connection with a fund for an ETP or an index prior to the close and have its price adjusted at the close. The proposed rule change would allow a User to execute strategy orders in connection with seeding a fund for an equity security in the same manner.[15] Like DAC complex orders for strategy orders in ETP and index options currently, DAC orders in equity options, either simple or complex depending on the structure of the fund, would allow the strategy order or orders to be executed at a time before the close, eliminating the execution risk, while realizing the objective of pricing based on the exact underlying close for those strategies that require pricing at the close or a defined amount of market exposure through the close. The Exchange states that the proposed rule change would allow Users to participate in the same benefits—eliminating execution risk while realizing objective pricing—for their strategies in equity options as they currently may for their strategies in ETP and index options.

Consistent with the foregoing rationale, the Exchange proposes to make the DAC order instruction available for orders submitted in any FLEX option, including equity options. In particular, the proposed rule change amends the definition of a DAC order (simple and complex)[10] to allow for DAC orders to be submitted in equity options by removing the restriction that a DAC order may only be submitted in options on ETPs and indexes.[16] In addition, the amended definition of a simple DAC order under Cboe Rule 5.6(c) provides that a DAC order in a single stock equity option may not be submitted (1) until 45 minutes prior to the market close and (2) on its expiration day.

The Exchange proposes to limit the use of the DAC orders in equity options until 45 minutes prior to the market close and on its expiration day to

(November 3, 2020), 85 FR 71361 (November 9, 2020) (SR–CBOE–2020–014) (''DAC Approval Order'').

[7] *See* Cboe Rule 5.6(c).

[8] The DAC order instruction would apply to each leg of a complex order. *See* Cboe Rule 5.33(b)(5).

[9] In addition, pursuant to the definition of a DAC order under Cboe Rule 5.6(c) and Cboe Rule 5.33(b)(5), a DAC order submitted for execution in open outcry may only have a Time-in-Force of Day. A User may not designate a DAC order as All Sessions.

[10] *See* Notice, *supra* note 3, at 45138, for a more detailed description of a DAC order.

[11] Including defined-outcome ETFs, other managed funds, unit investment trusts, index funds, structured annuities, and other such funds or instruments that are indexed managed funds.

[12] *See* DAC Approval Order, *supra* note 6.

[13] The Exchange understands that, like defined-outcome ETFs for ETPs and indexes, issuers of defined-outcome ETFs for equity securities would not buy stocks directly, but instead, use options contracts to deliver the price gain or loss of the underlying over the course of a year, up to a preset cap.

[14] The Exchange notes that funds for multiple single stock equity securities would seek to use simple orders across multiple single stock equity options when seeding their funds as multi-leg, multi-class strategies in single stock options are not available for trading on the Exchange.

[15] The Exchange states that because multi-leg strategies themselves may have delta offsets, the User is hedged, meaning that the User may realize a negative movement versus the initial execution on some legs, which is offset by a positive move in other legs. The Exchange notes that the strategies may or may not define an exact delta offset (''delta neutrality'' occurs where the strategy defines an exact delta offset). Given the delta neutral nature of an order with exact offset, a User is indifferent to any movement in the underlying from the time of execution to the close. Whether a User defines an exact delta offset, a User anticipates a given amount of market exposure, either partial or none, depending on the strategy and combinations of buy/sell, call/put and quantity. *See* Notice, *supra* note 3, at 45139 n.10.

[16] The amended definition of a simple DAC order under Cboe Rule 5.6(c) also provides that a DAC order may only be submitted for execution in a FLEX electronic auction or open outcry auction on the Exchange's trading floor pursuant to Cboe Rule 5.72.

mitigate manipulation concerns. Specifically, the Exchanges notes that single stock equity securities tend to be less liquid and experience greater price sensitivity and larger market moves than indexes or ETPs and increased trading volume generally makes it more difficult to manipulate the price of a security. The Exchange notes that on expiration day in particular, underlying equity securities may experience more price sensitivity and may be more susceptible to manipulation than on non-expiration days.[17] Similarly, the Exchanges proposes that simple DAC orders in single stock options be required to be submitted no earlier than 45 minutes before the market close in order to reduce the amount of time that the underlying price could potentially move in order to mitigate the risk upon price adjustment at close to holders of DAC options.[18]

Under this proposal, the current rules regarding the entry, execution and processing of DAC orders submitted in ETP and index options would apply to DAC orders submitted in equity options.[19] In addition, unadjusted and adjusted DAC trade information for DAC orders in equity options would be sent to the transacting parties, Options Clearing Corporation (''OCC'') and Options Price Reporting Agency (''OPRA'') in the same manner as such trade information for DAC orders in ETP and index options is sent today.

Finally, Cboe represents that it has analyzed its capacity and that it believes that OPRA and it have the necessary systems capacity to handle any additional order traffic, and the associated restatements, that may result from the submission of DAC orders in equity options and represents that it continues to have an adequate surveillance program in place to monitor orders with DAC pricing, including such orders in equity options. The Exchange also represents that it has not observed any impact on pricing or price discovery at or near the market close as a result of DAC orders submitted in ETP and index options and does not believe that making DAC orders available in equity options will have any impact on pricing or price discovery at or near the market close.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder applicable to a national securities exchange.[20] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Exchange Act,[21] which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.

The Exchange proposes to expand the DAC order instruction, currently available for FLEX options on ETPs and indexes, to any FLEX option, including equity options. As with existing DAC orders for ETPs and indexes, DAC orders on single stock equity options will be available for use with both simple and complex orders in electronic or open outcry auctions. In addition, simple DAC orders submitted in a single stock equity option may not be submitted until 45 minutes prior to the market close and may not be submitted on its expiration day. In all other material respects, DAC orders in single equity options will operate the same way as DAC orders on ETPs and indexes. The Exchange states that the same rules regarding the entry, execution and processing of DAC orders submitted in ETP and index options will apply to DAC orders submitted in equity options.[22] The Exchange states that the DAC order instruction will allow market participants to incorporate into the pricing of their FLEX options the closing price of the underlying on the transaction date, based on the amount in which the price or value of the underlying changes intraday.[23] The Exchange also states that the DAC order will be useful to investors that engage in defined-outcome strategies and that certain defined-outcome strategies are being created to provide exposure to individual equity securities.[24]

The Commission believes that the proposed rule change is reasonably designed to allow market participants to more effectively incorporate the closing price of the underlying into the execution price of the FLEX equity option, which should facilitate the ability of market participants to execute certain investment strategies. Specifically, as the Exchange notes, the DAC order instruction would allow FLEX equity option orders to be executed at a time before the close, eliminating execution risk near the market close and thereby realizing the objective of pricing based on the exact underlying closing prices.

The Commission notes that all DAC orders, including DAC orders in single stock equity options, will be entered and processed pursuant to the existing FLEX rules like any other order that is submitted into a FLEX electronic or open outcry auction.[25] The Commission believes that certain market participants already use the DAC order instruction for options on ETPs and indexes to achieve certain investment strategies, and that market participants should have familiarity with the use of the DAC order instruction on single stock equity options for similar purposes.

Additionally, the Commission believes that the proposed restrictions in connection with the submission of simple DAC orders in equity options are designed to prevent fraudulent and manipulative acts and practices and protect investors by mitigating the potential risk associated with expiration day price swings, which may potentially

[17] Options holders on expiration day, whether their positions were taken via a DAC execution, are subject to the risk of price swings in the underlying prior to the final close; however, options holders of positions taken via a DAC execution may potentially be more susceptible to such risk given the price adjustment at the close. For example, if a market participant executes a DAC order to buy calls on expiration day and a large price swing follows, in that, the underlying price is pushed significantly higher before the close, the DAC option holder would be forced to pay a much higher premium upon adjustment, and ultimately expiration. Therefore, in order to mitigate the potential risk associated with expiration day price swings, which may potentially expose DAC order users the gamma effect of options as they become more sensitive to underlying price changes as they approach expiration, particularly in options overlying less liquid securities, the proposed rule change restricts trading (regardless of opening or closing) in simple DAC orders in single stock options on expiration day. *See* Notice, *supra* note 3, at 45139.

[18] The Exchange notes that the same potential incentive to ''push'' the price of the underlying on expiration day in connection with the exercise price of an option is greatly diminished for multi-leg orders given that parties to multi-leg transactions are focused on the spread or ratio between the transaction prices for each of the legs (*i.e.,* the net price of the entire complex trade). *See id.*

[19] *See* Cboe Rule 5.6(c) (definition of simple DAC order), Cboe Rule 5.33(b)(5) (definition of complex DAC order), and Rule 5.34(c)(11) (DAC order reasonability check). The Exchange notes too that all DAC orders, currently and as proposed, are entered, priced, prioritized, allocated and execute as any other FLEX Order would when submitted into any FLEX electronic or open outcry auction and, like any FLEX Order, a FLEX DAC order may only be submitted into FLEX Options series eligible for trading pursuant to the FLEX Rules.

[20] 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).

[21] 15 U.S.C. 78f(b)(5).

[22] *See* Notice, *supra* note 3, at 45139–45140.

[23] *See id.* at 45140.

[24] *See id.*

[25] *See* Cboe Rule 5.72(d).

expose DAC order users to the gamma effect of options as they become more sensitive to underlying price changes as such options approach expiration, and reducing the amount of time during which the underlying price could potentially move. As described in the Notice,[26] single stock securities may experience greater price sensitivity and may experience larger price swings than compared to indexes and ETPs, and DAC options holders particularly may potentially be subject to a greater risk of paying much higher premiums given the price adjustment at close. The Commission believes the proposed restrictions are designed to minimize any potential incentive to attempt to manipulate the equities that may underlie a DAC order, particularly those securities that may experience relatively lower volume, and are designed to mitigate potential risk to holders of DAC options on single stock securities.

Finally, the Commission notes that the Exchange represents that: (1) it believes the Exchange and OPRA have the necessary systems capacity to handle any additional order traffic, and the associated restatements, that may result from the submission of DAC orders in equity options; (2) it continues to have an adequate surveillance program in place to monitor orders with DAC pricing, including such orders in equity options; (3) it intends to further enhance its surveillances to, among other things, monitor for certain changes in delta and stock price between an original order and the final terms of execution and to generally monitor activity in the underlying potentially related to DAC trades; (4) it has not observed any impact on pricing or price discovery at or near the market close as a result of DAC orders submitted in ETP and index options and does not believe that making DAC orders available in equity options will have any impact on pricing or price discovery at or near the market close; and (5) it has not identified an impact on pricing or price discovery at or near the close as a result of exercise prices for FLEX Equity Options series formatted as a percentage of the closing value of the underlying security, which is similar to a DAC order instruction and currently permitted on the Exchange.

Accordingly, for the foregoing reasons, the Commission believes that this proposed rule change is consistent with the Exchange Act.

[26] *See* Notice, *supra* note 3, at 45139.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[27] that the proposed rule change (SR–CBOE–2022–036) be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[28]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–19813 Filed 9–13–22; 8:45 am]

BILLING CODE 8011–01–P

[27] 15 U.S.C. 78s(b)(2).

[28] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17612 and #17613; Minnesota Disaster Number MN–00099]

Administrative Declaration of a Disaster for the State of Minnesota

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of Minnesota dated 09/07/2022.

Incident: Flooding.

Incident Period: 04/22/2022 through 06/15/2022.

DATES: Issued on 09/07/2022.

Physical Loan Application Deadline Date: 11/07/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/07/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: Notice is hereby given that as a result of the Administrator's disaster declaration, applications for disaster loans may be filed at the address listed above or other locally announced locations.

The following areas have been determined to be adversely affected by the disaster:

Primary Counties: Koochiching.

Contiguous Counties: Minnesota: Beltrami, Itasca, Lake of the Woods, Saint Louis.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	2.875
Homeowners without Credit Available Elsewhere	1.438
Businesses with Credit Available Elsewhere	5.880
Businesses without Credit Available Elsewhere	2.940
Non-Profit Organizations with Credit Available Elsewhere	1.875
Non-Profit Organizations without Credit Available Elsewhere	1.875
For Economic Injury:	
Businesses & Small Agricultural Cooperatives without Credit Available Elsewhere	2.940
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17612 6 and for economic injury is 17613 0.

The State which received an EIDL Declaration # is Minnesota.

(Catalog of Federal Domestic Assistance Number 59008.)

Isabella Guzman,

Administrator.

[FR Doc. 2022–19843 Filed 9–13–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17567 and #17568; CALIFORNIA Disaster Number CA–00361]

Administrative Declaration Amendment of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of disaster for the State of CALIFORNIA dated 08/09/2022.

Incident: Oak Fire.

Incident Period: 07/22/2022 through 08/16/2022.

DATES: Issued on 09/07/2022.

Physical Loan Application Deadline Date: 10/10/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 05/09/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration,

409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration for the State of California, dated 08/09/2022 is hereby amended to establish the incident period for this disaster as beginning 07/22/2022 and continuing through 08/16/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008)

Isabella Guzman,

Administrator.

[FR Doc. 2022–19840 Filed 9–13–22; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17581 and #17582; CALIFORNIA Disaster Number CA–00362]

Administrative Declaration of a Disaster for the State of California

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 1.

SUMMARY: This is an amendment of the Administrative declaration of disaster for the State of California dated 08/19/2022.

Incident: McKinney Fire.

Incident Period: 07/29/2022 through 08/22/2022.

DATES: Issued on 09/07/2022.

Physical Loan Application Deadline Date: 10/18/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 05/19/2023.

ADDRESSES: Submit completed loan applications to: U.S. Small Business Administration, Processing and Disbursement Center, 14925 Kingsport Road, Fort Worth, TX 76155.

FOR FURTHER INFORMATION CONTACT: A. Escobar, Office of Disaster Assistance, U.S. Small Business Administration, 409 3rd Street SW, Suite 6050, Washington, DC 20416, (202) 205–6734.

SUPPLEMENTARY INFORMATION: The notice of the Administrator's disaster declaration for the State of California, dated 08/09/2022 is hereby amended to establish the incident period for this disaster as beginning 07/29/2022 and continuing through 08/22/2022.

All other information in the original declaration remains unchanged.

(Catalog of Federal Domestic Assistance Number 59008.)

Isabella Guzman,

Administrator.

[FR Doc. 2022–19844 Filed 9–13–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 11852]

Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: "Botticelli and Renaissance Florence: Masterworks from the Uffizi" Exhibition

SUMMARY: Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to an agreement with their foreign owner or custodian for temporary display in the exhibition ''Botticelli and Renaissance Florence: Masterworks from the Uffizi'' at the Minneapolis Institute of Art, Minneapolis, Minnesota, 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. 2022–19805 Filed 9–13–22; 8:45 am]

BILLING CODE 4710–05–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36639]

Wheeling & Lake Erie Railway Company—Sublease Renewal Exemption—Pittsburgh & West Virginia Railroad

Wheeling & Lake Erie Railway Company (W&LE) has filed a verified notice of exemption under 49 CFR 1180.2(d)(4) to renew its sublease of approximately 120 miles of rail line of the Pittsburgh & West Virginia Railroad (PWV), principally extending between Pittsburgh Junction, Ohio, and Connellsville, Pa., with short branch lines extending to Clairton and Mifflin Junction, Pa. (the Lines). W&LE states that the Lines have been leased by Norfolk Southern Railway Company (NSR) and its predecessors in interest since 1962. According to the verified notice, W&LE has subleased and provided all rail operations on the Lines since 1990. W&LE states that it has renewed the sublease for an additional period of ninety-nine (99) years, from October 16, 2062, to October 16, 2161.[1]

According to the verified notice W&LE seeks to renew its current lease and sublease arrangements for the Lines to provide stability and certainty for W&LE's operation and to accommodate long-term planning and investment for those lines.

As a condition to the use of this exemption, any employees affected by this transaction will be protected by the conditions imposed in *Mendocino Coast Ry.—Lease & Operate,* 354 I.C.C. 732 (1978), modified, 360 I.C.C. 653 (1980).

The transaction may be consummated on or after September 28, 2022, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than September 22, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36639, must be filed with the Surface Transportation Board via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on W&LE's representative: Thomas J. Litwiler, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

[1] According to W&LE, the current agreement provides for the right to extend the sublease for an additional 99-year term with a written notice. Exhibit 2 of the verified notice provides copies of W&LE's written notice to NSR extending the 1990 sublease, dated May 24, 2022, and NSR's notice to PWV extending the 1962 lease, dated August 9, 2022. The verified notice states that no other modifications have been made to the underlying agreements.

According to W&LE, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: September 8, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Aretha Laws-Byrum.

Clearance Clerk.

[FR Doc. 2022–19821 Filed 9–13–22; 8:45 am]

BILLING CODE 4915–01–P

SUSQUEHANNA RIVER BASIN COMMISSION

Projects Approved for Consumptive Uses of Water

AGENCY: Susquehanna River Basin Commission.

ACTION: Notice.

SUMMARY: This notice lists Approvals by Rule for projects by the Susquehanna River Basin Commission during the period set forth in **DATES**.

DATES: August 1–31, 2022.

ADDRESSES: Susquehanna River Basin Commission, 4423 North Front Street, Harrisburg, PA 17110–1788.

FOR FURTHER INFORMATION CONTACT: Jason E. Oyler, General Counsel and Secretary to the Commission, telephone: (717) 238–0423, ext. 1312; fax: (717) 238–2436; email: *joyler@srbc.net.* Regular mail inquiries may be sent to the above address.

SUPPLEMENTARY INFORMATION: This notice lists the projects, described below, receiving approval for the consumptive use of water pursuant to the Commission's approval by rule process set forth in 18 CFR 806.22(e) and 18 CFR 806.22(f) for the time period specified above:

Water Source Approval—Issued Under 18 CFR 806.22(e)

1. LSC Communications US, LLC ; Pad ID: Lancaster West Plant; ABR–202208003; City of Lancaster, Lancaster County, Pa.; Consumptive Use of Up to 0.099 mgd; Approval Date: August 26, 2022.

Water Source Approval—Issued Under 18 CFR 806.22(f)

1. Chesapeake Appalachia, L.L.C.; Pad ID: Champluvier; ABR–201007105.R2; Tuscarora Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 22, 2022.

2. Chesapeake Appalachia, L.L.C.; Pad ID: Dewees; ABR–201007063.R2; Rome Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 22, 2022.

3. Chesapeake Appalachia, L.L.C.; Pad ID: Kenyon; ABR–20100557.R2; Overton Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 22, 2022.

4. Chesapeake Appalachia, L.L.C.; Pad ID: Lopatofsky NEW; ABR–201007100.R2; Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 22, 2022.

5. Chesapeake Appalachia, L.L.C.; Pad ID: Ruth; ABR–201507008.R1; Meshoppen Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 22, 2022.

6. Coterra Energy Inc.; Pad ID: DeckerT P1; ABR–201504005.R1; Harford Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 22, 2022.

7. Coterra Energy Inc.; Pad ID: Dobrosielski P1; ABR–201107051.R2; Auburn Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 22, 2022.

8. Coterra Energy Inc.; Pad ID: Rayias P1; ABR–20100432.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 22, 2022.

9. Coterra Energy Inc.; Pad ID: ReillyJ P1; ABR–201207017.R2; Gibson Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 22, 2022.

10. Inflection Energy (PA) LLC; Pad ID: Converse Well Site; ABR–201707001.R1; Mill Creek Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2022.

11. Repsol Oil & Gas USA, LLC; Pad ID: Clegg 722; ABR–201007119.R2; McNett Township, Lycoming County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 22, 2022.

12. Repsol Oil & Gas USA, LLC; Pad ID: CRANK (03 067) O; ABR–20100430.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 22, 2022.

13. Repsol Oil & Gas USA, LLC; Pad ID: FEUSNER (03 045) J; ABR–201007095.R2; Columbia Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 22, 2022.

14. Repsol Oil & Gas USA, LLC; Pad ID: KIRKOWSKI (01 066) J; ABR–201007091.R2; Canton Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 22, 2022.

15. Repsol Oil & Gas USA, LLC; Pad ID: MCMURRAY (01 031) C; ABR–201007054.R2; Canton Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 22, 2022.

16. Seneca Resources Company, LLC; Pad ID: Baldwin 881; ABR–201007068.R2; Farmington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2022.

17. Seneca Resources Company, LLC; Pad ID: Cleveland 616; ABR–201007089.R2; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2022.

18. Seneca Resources Company, LLC; Pad ID: Lehmann Pad K; ABR–201007115.R2; Covington Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2022.

19. Seneca Resources Company, LLC; Pad ID: Reese 289; ABR–201007057.R2; Charleston Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2022.

20. Seneca Resources Company, LLC; Pad ID: Seeley 524; ABR–201007122.R2; Rutland Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2022.

21. Seneca Resources Company, LLC; Pad ID: Wolfe 1114; ABR–201007098.R2; Nelson Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 22, 2022.

22. BKV Operating, LLC; Pad ID: Ruark East 1 1H; ABR–201008001.R2; Washington Township, Wyoming County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 26, 2022.

23. Chesapeake Appalachia, L.L.C.; Pad ID: Boy Scouts Drilling Pad; ABR–201207023.R2; Elkland Township, Sullivan County, Pa.; Consumptive Use of Up to 2.0000 mgd; Approval Date: August 26, 2022.

24. Chesapeake Appalachia, L.L.C.; Pad ID: EDF NEW; ABR–201007125.R2; Mehoopany Township, Wyoming County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 26, 2022.

25. Chesapeake Appalachia, L.L.C.; Pad ID: Petty; ABR–201007126.R2; Leroy Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 26, 2022.

26. EQT ARO LLC; Pad ID: COP Tr 285 Pad F; ABR–201008007.R2; Chapman Township, Clinton County,

Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 26, 2022.

27. EQT ARO LLC; Pad ID: COP Tr 356 Pad A; ABR–201007073.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 26, 2022.

28. EQT ARO LLC; Pad ID: COP Tr 356 Pad I; ABR–201007114.R2; Cummings Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 26, 2022.

29. Chesapeake Appalachia, L.L.C.; Pad ID: Felter–NEW; ABR–201008026.R2; Wyalusing Township, Bradford County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 30, 2022.

30. Chesapeake Appalachia, L.L.C.; Pad ID: Joanclark; ABR–201008025.R2; Fox Township, Sullivan County, Pa.; Consumptive Use of Up to 7.5000 mgd; Approval Date: August 30, 2022.

31. Coterra Energy Inc.; Pad ID: BusikJ P1; ABR–201206001.R2; Dimock Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 30, 2022.

32. Coterra Energy Inc.; Pad ID: ForwoodE P1; ABR–201506002.R1; Lenox Township, Susquehanna County, Pa.; Consumptive Use of Up to 5.0000 mgd; Approval Date: August 30, 2022.

33. EQT ARO LLC; Pad ID: Charles J. McNamee Pad B; ABR–201008016.R2; Cascade Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 30, 2022.

34. EQT ARO LLC; Pad ID: Elbow Pad C; ABR–201008017.R2; Cogan House Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 30, 2022.

35. EQT ARO LLC; Pad ID: Jack L. Hipple Pad A; ABR–201008021.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 30, 2022.

36. Repsol Oil & Gas USA, LLC; Pad ID: ALDERSON (05 009) V; ABR–201008022.R2; Pike Township, Bradford County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 30, 2022.

37. Repsol Oil & Gas USA, LLC; Pad ID: McNett 708; ABR–201008003.R2; Liberty Township, Tioga County, Pa.; Consumptive Use of Up to 6.0000 mgd; Approval Date: August 30, 2022.

38. Seneca Resources Company, LLC; Pad ID: Miller 394; ABR–201008005.R2; Delmar Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 30, 2022.

39. EQT ARO LLC; Pad ID: Don J. Davis Pad A; ABR–201008028.R2; Gamble Township, Lycoming County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 31, 2022.

40. Seneca Resources Company, LLC; Pad ID: DCNR Tract 595 Pad I; ABR–201008043.R2; Bloss Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 31, 2022.

41. Seneca Resources Company, LLC; Pad ID: Hazelton 424; ABR–20100626.R2; Shippen Township, Tioga County, Pa.; Consumptive Use of Up to 4.0000 mgd; Approval Date: August 31, 2022.

Authority: Public Law 91–575, 84 Stat. 1509 *et seq.,* 18 CFR parts 806 and 808.

Dated: September 9, 2022.

Jason E. Oyler,

General Counsel and Secretary to the Commission,

[FR Doc. 2022–19852 Filed 9–13–22; 8:45 am]

BILLING CODE 7040–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–0063; Summary Notice No.—2022–38]

Petition for Exemption; Summary of Petition Received; Osprey Agridrone Solutions, LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 4, 2022.

ADDRESSES: Send comments identified by docket number FAA–2022–0063 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Sean O'Tormey at 202–267–4044, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 8, 2022.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–0063.

Petitioner: Osprey Agridrone Solutions, LLC.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i), 91.7(a), 91.119(c), 91.121, 91.151(b), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), 91.417(b), 137.19(c), 137.19(d), 137.19(e)(2)(ii), 137.19(e)(2)(iii), 137.19(e)(2)(v), 137.31, 137.33, 137.41(c), and 137.42.

Description of Relief Sought: Petitioner seeks to operate unmanned aircraft systems (UAS), weighing over 55 pounds closer than 500 feet from vessels, vehicles, and structures to provide commercial agricultural-related services in the United States without the use of a visual observer.

[FR Doc. 2022–19838 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Release of Land Affecting Federal Grant Assurance Obligations at Paso Robles Municipal Airport, Paso Robles, San Luis Obispo County, California

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of request to release airport land.

SUMMARY: The Federal Aviation Administration (FAA) is considering a proposal and invites public comment to change a portion of the airport from aeronautical use to non-aeronautical use at Paso Robles Municipal Airport (PRB), San Luis Obispo County, California. The proposal consists of one parcel containing 22.07 acres of airport land located southwest corner of the airport facility North of Airport Road and West of Satellite Drive.

DATES: Comments must be received on or before October 14, 2022.

ADDRESSES: Comments on the request may be mailed or delivered to the FAA at the following address: Ms. Laurie J. Suttmeier, Manager, San Francisco Airports District Office, Federal Aviation Administration, 1000 Marina Boulevard, Suite 220, Brisbane, California, 94005–1835. In addition, one copy of the comment submitted to the FAA must be mailed or delivered to Mr. Mark Scandalis, Airport Manager, Paso Robles Municipal Airport, 4912 Wing Way, Paso Robles, California 93446.

SUPPLEMENTARY INFORMATION: The land was originally acquired from the federal government as surplus land, via quitclaim deed issued by the War Assets Administration on August 5, 1948. Subsequently, the County of San Luis Obispo transferred Paso Robles Municipal Airport to the City of Paso Robles which accepted the airport via Resolution on December 28, 1972. The land will be leased for non-aeronautical revenue generation. Such use of the land represents a compatible land use that will not interfere with the airport or its operation, thereby protecting the interests of civil aviation. The airport will be compensated for the fair market value of the use of the land.

In accordance with the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21), Public Law 106–181 (Apr. 5, 2000; 114 Stat. 75), this notice must be published in the **Federal Register** 30 days before the DOT Secretary may waive any condition imposed on a federally obligated airport by surplus property conveyance deeds or grant agreements.

Issued in El Segundo, California, on September 9, 2022.

Brian Q. Armstrong,

Manager, Safety and Standards Branch, Airports Division, Western-Pacific Region.

[FR Doc. 2022–19874 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No.: FAA–2022–1133; Summary Notice No.–2022–39]

Petition for Exemption; Summary of Petition Received; Harris Aerial, LLC

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

ACTION: Notice.

SUMMARY: This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

DATES: Comments on this petition must identify the petition docket number and must be received on or before October 4, 2022.

ADDRESSES: Send comments identified by docket number FAA–2022–1133 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Privacy: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy.*

Docket: Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC, on September 8, 2022.

Brandon Roberts,

Executive Director, Office of Rulemaking.

Petition for Exemption

Docket No.: FAA–2022–1133.

Petitioner: Harris Aerial, LLC.

Section(s) of 14 CFR Affected: §§ 61.3(a)(1)(i), 91.7(a), 91.119(c), 91.121, 91.151(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), and 91.417(b).

Description of Relief Sought: Harris Aerial, LLC (Harris Aerial) seeks relief to the extent necessary to operate their HARRIS AERIAL CARRIER H6 HL unmanned aircraft system (UAS), weighing over 55 pounds (lbs.) but no more than 209 lbs., for commercial operations and product demonstration.

[FR Doc. 2022–19837 Filed 9–13–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Membership in the National Parks Overflights Advisory Group

AGENCY: Federal Aviation Administration, (FAA), DOT.

ACTION: Solicitation of applications.

SUMMARY: By **Federal Register** notice on August 8, 2022 the Federal Aviation Administration (FAA) and the National Park Service (NPS) invited interested persons to apply to fill one existing and one upcoming vacancy on the National Parks Overflights Advisory Group (NPOAG). This notice informs the

public of the selection made for the one upcoming vacancy representing environmental concerns. No selection was made for the existing opening representing Native American tribal concerns so this notice also invites persons interested in that opening to apply.

DATES: Persons interested in applying for the NPOAG opening representing Native American concerns will need to apply by October 31, 2022.

FOR FURTHER INFORMATION CONTACT: Keith Lusk, Special Programs Staff, Federal Aviation Administration, Western-Pacific Region Headquarters, 777 S Aviation Boulevard, Suite 150, El Segundo, CA 90245, telephone: (424) 405–7017, email: *Keith.Lusk@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The National Parks Air Tour Management Act of 2000 (the Act) was enacted on April 5, 2000, as Public Law 106–181, and subsequently amended in the FAA Modernization and Reform Act of 2012. The Act required the establishment of the advisory group within one year after its enactment. The NPOAG was established in March 2001. The advisory group is comprised of a balanced group of representatives of general aviation, commercial air tour operations, environmental concerns, and Native American tribes. The Administrator of the FAA and the Director of NPS (or their designees) serve as ex officio members of the group. Representatives of the Administrator and Director serve alternating 1-year terms as chairman of the advisory group.

In accordance with the Act, the advisory group provides ''advice, information, and recommendations to the Administrator and the Director—

(1) On the implementation of this title [the Act] and the amendments made by this title;

(2) On commonly accepted quiet aircraft technology for use in commercial air tour operations over a national park or tribal lands, which will receive preferential treatment in a given air tour management plan;

(3) On other measures that might be taken to accommodate the interests of visitors to national parks; and

(4) At the request of the Administrator and the Director, safety, environmental, and other issues related to commercial air tour operations over a national park or tribal lands.''

Membership

The current NPOAG is made up of one member representing general aviation, three members representing the commercial air tour industry, four members representing environmental concerns, and two members representing Native American interests. Current members of the NPOAG are as follows:

Murray Huling representing general aviation; John Becker, James Viola, and Eric Lincoln representing commercial air tour operators; Dick Hingson, Les Blomberg, Robert Randall, and John Eastman representing environmental interests; and Carl Slater represents Native American tribes with one current opening.

Selection

Robert Randall, a member of the National Parks Conservation Association, has been selected for another 3 year term to represent environmental concerns. NPOAG members' 3-year terms commence on the publication date of this **Federal Register** notice. No selection was made for the additional opening to represent Native American concerns. The FAA and NPS invite persons interested in applying for this remaining opening on the NPOAG to contact Mr. Keith Lusk (contact information is written above in **FOR FURTHER INFORMATION CONTACT**). Requests to serve on the NPOAG must be made to Mr. Lusk in writing and postmarked or emailed on or before October 31, 2022. The request should indicate whether or not you are a member of, or have an affiliation with, a federally recognized Native American tribe. The request should also state what expertise you would bring to the NPOAG as related to issues and concerns with aircraft flights over national parks and/or tribal lands. The term of service for NPOAG members is 3 years. Current members may re-apply for another term.

On August 13, 2014, the Office of Management and Budget issued revised guidance regarding the prohibition against appointing or not reappointing federally registered lobbyists to serve on advisory committees (79 FR 47482).

Therefore, before appointing an applicant to serve on the NPOAG, the FAA and NPS will require the prospective candidate to certify that they are not a federally registered lobbyist.

Issued in El Segundo, CA, on September 8, 2022.

Keith Lusk,

Program Manager, Special Programs Staff, Western-Pacific Region.

[FR Doc. 2022–19820 Filed 9–13–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket No. DOT–OST–2022–0029]

Privacy Act of 1974; Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA); DOT/FMCSA 010—Drug and Alcohol Clearinghouse (Clearinghouse)

AGENCY: Federal Motor Carrier Safety Administration, Department of Transportation

ACTION: Notice of a modified system of records notice.

SUMMARY: In accordance with the Privacy Act of 1974, the Department of Transportation (DOT), Federal Motor Carrier Safety Administration (FMCSA) proposes to modify and reissue an existing system of records notice titled ''DOT/FMCSA 010, Drug and Alcohol Clearinghouse (Clearinghouse)''. This system of records allows FMCSA to collect and maintain records on commercial motor vehicle (CMV) drivers subject to the commercial driver's license (CDL) and commercial learner's permit (CLP) regulations who have received verified positive DOT drug or alcohol test results, refuse such testing, or otherwise violate FMCSA's drug and alcohol use prohibitions. The Clearinghouse also collects and maintains records on the completion of substance abuse programs as part of the return-to-duty process, as well as forms evidencing drivers' consent to the release of information. In addition, the Clearinghouse collects and maintains records of queries of the system conducted by employers, or service agents acting on their behalf, and State Driver Licensing Agencies (SDLAs). The information in this system is used to enhance compliance with drug and alcohol use and testing regulations by identifying drivers who have committed drug and alcohol violations that render them ineligible to operate a CMV.

DATES: Written comments should be submitted on or before October 14, 2022. The Department may publish an amended SORN in light of any comments received. This new system will be effective October 14, 2022.

ADDRESSES: You may submit comments, identified by docket number 2022–0029 by one of the following methods:

- *Federal e-Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Transportation Docket Management, Room W12–140, 1200 New Jersey Ave. SE, Washington, DC 20590.

• *Hand Delivery or Courier:* West Building Ground Floor, Room W12–140, 1200 New Jersey Ave. SE, between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

• *Instructions:* You must include the agency name and docket number 2022–0029. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. In order to facilitate comment tracking and response, we encourage commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please contact the agency for alternate submission instructions.

Privacy Act: Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on January 17, 2008, (73 FR 3316–3317).

Docket: For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* or to the street address listed above. Follow the online instructions for accessing the docket.

FOR FURTHER INFORMATION CONTACT: For system-related questions please contact Bryan Price, Chief, Drug and Alcohol Programs Division, Office of Safety Programs, Federal Motor Carrier Safety Administration, Email: *clearinghouse@dot.gov,* Tel. (202) 366–0928. For privacy questions, please contact Karyn Gorman, Acting Departmental Chief Privacy Officer, Department of Transportation, S–83, Washington, DC 20590, Email: *privacy@dot.gov,* Tel. (202) 366–3140.

SUPPLEMENTARY INFORMATION:

Notice Updates

This Notice includes both substantive changes and non-substantive changes to the previously published Notice.[1] The substantive changes have been made to the authority, contesting record procedures, and routine uses. The non-substantive changes have been made to background, system manager, purposes, categories of individuals, categories of records, record source categories, policies and practices for retrieval of records sections, as well as revisions to align with the requirements of the Office of Management and Budget (OMB) Circular No. A–108 and ensure consistency with other Notices issued by the Department of Transportation.

This modified system will be included in the DOT inventory of record systems.

I. Background

In accordance with the Privacy Act of 1974, FMCSA is modifying and reissuing a system of records titled ''DOT/FMCSA 010—Drug and Alcohol Clearinghouse (Clearinghouse).'' This system collects information related to violations of the Agency's drug and alcohol testing program regulations committed by CMV operators subject to the CDL and CLP regulations set forth in 49 CFR part 383. FMCSA published the initial system of records notice for the Clearinghouse on October 22, 2019 (84 FR 56521). The records are collected and maintained for the purposes of:

• informing current and prospective employers of CMV drivers whether the driver is prohibited from operating a CMV due to drug and alcohol program violations;

• informing SDLAs and Motor Carrier Safety Assistance Program (MCSAP) enforcement officers whether the driver is prohibited from operating a CMV due to drug and alcohol program violations;

• providing drug and alcohol program violation information, upon request from the National Transportation Safety Board (NTSB), about a driver involved in a crash under investigation by the NTSB.

The Clearinghouse is a tool FMCSA, employers, prospective employers, and SDLAs use to identify drivers who are prohibited from operating a CMV, based on DOT drug and alcohol program violations, and ensure that such drivers receive the required substance abuse evaluation and treatment before operating a CMV on public roads. The requirements and procedures for use of the Clearinghouse by employers, drivers and specified service agents are set forth in 49 CFR part 382, subpart G.

Employers or their designated service agents (Consortia/Third-Party Administrators (C/TPA)) are required to query the Clearinghouse using the CDL number of the driver to search for any drug and alcohol program violations before hiring a prospective driver, and at least annually for all currently employed drivers. Queries of the Clearinghouse fall into one of two categories: limited or full. Both limited and full queries require a driver's consent before any information can be released about that driver. A limited query of the Clearinghouse will inform the employer or C/TPA whether any violation-related information about the driver exists; however, a limited query does not result in the release of any detailed violation information. To view detailed violation information contained in the Clearinghouse, the employer or C/TPA must perform a full query. Once a driver's specific consent is obtained, a full query returns the following information about the driver:

- Driver details
- Information about the driver's employer who ordered the test or reported a violation to the Clearinghouse
- Test details, including the type of test, violation details, and test result
- Information about who entered the test result
- Return-to-duty (RTD) activity information

When an employer queries the driver as a pre-employment check, a full query must be conducted. In accordance with 49 CFR 382.701(c), if additional information is entered on the driver within 30 days of the pre-employment query, the Clearinghouse sends an electronic notification to the employer or C/TPA indicating additional information has been added to a previously queried record. The employer must log in to the Clearinghouse and obtain specific consent from the driver before the details of this newly reported information are disclosed. An annual query may be conducted as either a limited query or a full query.

A limited query requires a driver's general consent, which may be effective for an indefinite period (*e.g.,* the duration of employment) and for an unlimited number of queries. Once the employer obtains general consent, the employer will submit the query and receive a notification from the Clearinghouse indicating whether the Clearinghouse contains drug or alcohol violation-related information on the queried driver. If the limited query indicates that the Clearinghouse contains information on the driver, the employer or C/TPA must conduct a full query.

When conducting a full query, the employer or C/TPA must obtain specific consent from the driver by logging into the Clearinghouse and requesting that the driver provide consent to release full query results. To grant or decline specific consent, the driver must register in the Clearinghouse to establish an account. If the driver provides consent, the employer will receive notification of

[1] 84 FR 56521 (Oct. 22, 2019).

the consent via email. The employer logs into their account to view the detailed information for the queried driver.

In accordance with the Clearinghouse regulations if an employer is unable to obtain either general consent from a driver for a limited query, or specific consent for a full query, the employer must remove the driver from performing safety-sensitive functions, including operating a CMV, as described below.

On October 7, 2021, FMCSA published a final rule entitled ''Controlled Substances and Alcohol Testing: State Driver's Licensing Agency Non-Issuance/Downgrade of Commercial's Driver's License'' (86 FR 55718) (2021 final rule). The rule requires SDLAs, prior to completing a commercial licensing transaction, to access and use driver-specific information from the Clearinghouse to determine whether, pursuant to 49 CFR 382.501(a), a driver is prohibited from operating a CMV due to drug and alcohol program violations. The requirements and procedures for SDLAs' use of the Clearinghouse are set forth in 49 CFR part 383. If the applicant is prohibited from operating, the SDLA must not complete the licensing transaction, resulting in non-issuance of the CLP or CDL. The rule also requires that SDLAs downgrade the CLP or CDL of any driver prohibited from operating a CMV and revises how reports of actual knowledge of drug or alcohol use, based on the issuance of a citation for DUI in CMV, will be maintained in the system. Under then-current regulations, drivers could request the removal of an employer's report of actual knowledge of use, based on a traffic citation for driving a CMV under the influence of controlled substances or alcohol, if the citation did not result in the driver's conviction. The 2021 final rule amended 49 CFR 382.717 so that drivers can no longer request removal of the citation but may add documentary evidence of non-conviction to their Clearinghouse record.

The following substantive changes have been made to this Notice:

1. *Authority:* This Notice updates the authorities to add sections 31305(a), 31308, and 31311 of title 49, United States Code, on which FMCSA relies to implement requirements pertaining to the SDLAs' use of the Clearinghouse, and to add the regulatory authorities authorizing access to and uses of the Clearinghouse as set forth in 49 CFR part 382, subpart G, and 49 CFR part 383.

2. *Contesting Record Procedures:* This Notice updates contesting record procedures to conform with the following regulatory change to 49 CFR 382.717: Drivers may no longer request removal of an actual knowledge violation based on the issuance of a citation for DUI in a CMV when the citation does not result in a conviction, but they can request that documentary evidence of non-conviction be added to their Clearinghouse record.

3. *Routine Uses:* This Notice updates routine uses to add four system-specific routine uses, as described below.

In this Notice, FMCSA adds four new system-specific routine uses to support enforcement of drug and alcohol use and testing regulations and to implement regulatory requirements pertaining to States (SDLAs).

The first new routine use allows SDLAs to receive notification from FMCSA of a CMV driver's operating status (*i.e.,* prohibited or not prohibited). This routine use enables the SDLA to initiate a downgrade of the CLP or CDL of any driver prohibited from operating a CMV due to drug and alcohol program violations, as required by 49 CFR 383.73(q). It will also enable the SDLA to restore the commercial driving privilege to the driver's license following the driver's completion of the return-to-duty process or to correct an error, as required by 49 CFR 383.73(q)(2) and (3), respectively.

The second new routine use allows notification to employers when new information has been added to the Clearinghouse record of a CMV driver about whom the employer has either queried the Clearinghouse, or reported information to the Clearinghouse, in the past 12 months (*i.e.,* since the preemployment query or last annual query). This routine use alerts employers that new information about a driver they may employ was reported to Clearinghouse by another employer or prospective employer. If the driver is still employed, the employer must log in to the Clearinghouse and obtain specific consent from the driver before the details of this newly reported information will be disclosed.

The third new routine use allows employers, confirmed by FMCSA to currently employ CMV drivers prohibited under 49 CFR 382.501(a) from operating a CMV due to drug and alcohol program violations reported to the Clearinghouse by another employer or prospective employer, to be notified of the driver's prohibited operating status. The employer must log in to the Clearinghouse and obtain specific consent from the driver before details of this newly reported violation will be disclosed. However, upon receiving notification that the driver is prohibited from operating a CMV, the employer must not allow the driver to perform safety-sensitive functions, in accordance with 49 CFR 382.501(b).

The fourth new routine use allows employers who are notified by FMCSA of a driver's disqualification under 49 CFR 391.41(b)(12) for prohibited controlled substances use to receive details of the positive test result violation from the Clearinghouse. Under this routine use, FMCSA will provide the required employer notification of the driver's disqualification under 49 CFR 391.41(b)(12) for CDL or CLP holders who continue to operate a CMV in violation of 49 CFR 382.501(a).

The new routine uses are compatible with the purpose for which the information was collected, directly furthering the goals of 49 U.S.C. 31306a, to improve roadway safety and enhance compliance with drug and alcohol use and testing regulations.

The following non-substantive changes have been made to the background, system manager, purposes, categories of individuals covered by the system, categories of records in the system, record source categories, and policies and practices for retrieval, to improve the readability and transparency of this Notice:

1. Background: This Notice updates background to add information about FMCSA's recent amendments to 49 CFR parts 382 and 383. This Notice also updates the background to eliminate redundancies in the description of the limited and full query processes as set forth in the previous Notice and to conform the description of CMV drivers subject to FMCSA's drug and alcohol use and testing regulations to existing regulatory text in 49 CFR 382.103(a). These updates are made to improve clarity and do not reflect any change in either the Clearinghouse query processes or the population of CMV drivers about whom information is maintained in the System.

2. System Manager: This Notice updates the system manager to include contact information for FMCSA's Drug and Alcohol Programs Division, Office of Safety Programs and to delete contact information for the Compliance Division, Office of Enforcement and Compliance. This change reflects a reorganization within FMCSA and is compatible with the purpose of this system of records.

3. Purposes: This Notice updates the purposes to add specific references to FMCSA's MCSAP partners and to SDLAs to improve the clarity of the description. In addition, this Notice updates the purposes to conform the description of CMV drivers subject to FMCSA's drug and alcohol use and

testing regulations to existing regulatory text in 49 CFR 382.103(a). The previous Notice described the CMV drivers as ''CLP and CDL holders''; this Notice changes that reference to ''CMV drivers who are subject to the CDL and CLP requirements of 49 CFR part 383.'' FMCSA makes this update to improve clarity; it does not reflect any change in the population of CMV drivers about whom information is maintained in this System.

4. Categories of Individuals: This Notice updates categories of individuals to conform the description of CMV drivers subject to FMCSA's drug and alcohol use and testing regulations to existing regulatory text in 49 CFR 382.103(a). The previous Notice described the CMV drivers as ''CLP and CDL holders''; this Notice changes that reference to ''CMV drivers who are subject to the CDL and CLP requirements of 49 CFR part 383.'' FMCSA makes this update to improve clarity; it does not reflect any change in the population of CMV drivers about whom information is maintained in this System.

5. Categories of Records: This Notice updates categories of records to conform the description of CMV drivers subject to FMCSA's drug and alcohol use and testing regulations with existing regulatory text in 49 CFR 382.103(a). The previous Notice described the CMV drivers as ''CLP and CDL holders''; this Notice changes that reference to ''CMV drivers who are subject to the CDL and CLP requirements of 49 CFR part 383.'' FMCSA makes this update to improve clarity; it does not reflect any change in the population of CMV drivers about whom information is maintained in this System.

6. Record Source Categories: This Notice updates record source categories to conform the description of CMV drivers subject to FMCSA's drug and alcohol use and testing regulations with existing regulatory text in 49 CFR 382.103(a). The previous Notice described the CMV drivers as ''CLP and CDL holders''; this Notice changes that reference to ''CMV drivers who are subject to the CDL and CLP requirements of 49 CFR part 383.'' FMCSA makes this update to improve clarity; it does not reflect any change in the population of CMV drivers about whom information is maintained in this system.

7. Policies and Practices for Retrieval: To improve clarity, this Notice updates policies and practices to replace ''CDL holder'' with ''CMV driver'' and to specify that State issuance pertains to CDLs and CLPs.

II. Privacy Act

The Privacy Act governs the means by which the Federal Government agencies collect, maintain, use, and disseminate individuals' records. The Privacy Act applies to information that is maintained in a ''system of records.'' A ''system of records'' is a group of any records under the control of an agency from which information is retrieved by the name of an individual or by some identifying number, symbol, or other identifying particular assigned to the individual. The Privacy Act extends rights and protections to individuals who are U.S. citizens and lawful permanent residents. Additionally, the Judicial Redress Act (JRA) provides a covered person with a statutory right to make requests for access and amendment to covered records, as defined by the JRA, along with judicial review for denials of such requests. In addition, the JRA prohibits disclosures of covered records, except as otherwise permitted by the Privacy Act. In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this system of records to the Office of Management and Budget and to Congress.

Below is the description of the Clearinghouse System of Records. In accordance with 5 U.S.C. 552a(r), DOT has provided a report of this modified system of records to the OMB and to Congress.

SYSTEM NAME AND NUMBER:

DOT/FMCSA 010– Commercial Driver's License Drug and Alcohol Clearinghouse (Clearinghouse).

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Records are maintained in a FedRAMP-certified third-party cloud environment. The contracts are maintained by DOT at 1200 New Jersey Avenue SE, Washington, DC 20590.

SYSTEM MANAGER(S):

Chief, Drug and Alcohol Programs Division, Office of Safety Programs, FMCSA, U.S. DOT, 1200 New Jersey Avenue SE, Washington, DC 20590; *clearinghouse@dot.gov.*

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 31305(a), 31306, 31306a(a)(1), 31308, and 31311; CFR part 382 subpart G; and 49 CFR part 383.

PURPOSE(S) OF THE SYSTEM:

The purpose of the Clearinghouse is to: (1) improve compliance with the DOT's controlled substances and alcohol testing program applicable to CMV drivers who are subject to the CDL and CLP requirements of 49 CFR part 383; and (2) enhance the safety of U.S. roadways by reducing crashes and injuries involving drivers violating alcohol or controlled substances regulations (49 U.S.C. 31306a(a)(2)). FMCSA and its MCSAP partners, motor carrier employers, and State Driver Licensing Agencies use information in the Clearinghouse records to identify drivers who are prohibited from operating a CMV and must receive the required evaluation and treatment before resuming safety-sensitive functions. Safety-sensitive functions are defined in 49 CFR 382.107 as the time from when a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions include driving a CMV on public roads.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Categories of individuals within this system include: CMV drivers subject to the CDL and CLP requirements of 49 CFR part 383, Medical Review Officers (MRO), Substance Abuse Professionals (SAP), employers, and Consortia/Third-Party Administrators (C/TPA).

CATEGORIES OF RECORDS IN THE SYSTEM:

Categories of records in the system include:

The following information about CMV drivers is subject to the CDL and CLP requirements of 49 CFR part 383:

- Name.
- Contact Information including physical address, phone number(s) and email address.
- Date of birth.
- Current and previous CLP or CDL license number, state of issuance, and expiration date.
- Drug or alcohol test results and violation information including employer name, address, and USDOT#, as applicable.
- CMV driving eligibility status.
- Driver Substance Abuse Professional (SAP) selection including SAP name, address and phone number, as applicable.
- Actual Knowledge Report Information, including violation details, documentation to support the allegation and certificate of service to the employee, as applicable.
- Failure to appear and refusal to test detail information, including documentation regarding notification of test requirement, documentation of termination or resignation and certificate of service to the employee, as applicable.

• Return to duty (RTD) eligibility date and negative test result. A negative RTD test result allows the driver to resume operation of a CMV and other safety-sensitive functions.

• Follow-up testing plan completion information.

• Query information including who requested the query and when the query was conducted.

• Query consent information including the driver's approval or refusal.

Information about MROs and SAPs as specified in 49 CFR 382.711(c) to include:

• Contact information including name, email address, phone number(s), office location addresses and applicable qualifications as per 49 CFR part 40.

Information about employers, designated agents and C/TPAs as specified in § 382.711(b) and § 382.711(d) to include:

• Contact information including name, email address, phone number(s), office location addresses.

• USDOT #, as applicable.

RECORD SOURCE CATEGORIES:

Records are obtained from MROs for CMV drivers subject to the CDL and CLP requirements of 49 CFR part 383 who have confirmed positive tests or test refusals. Motor carrier employers will report actual knowledge of use, alcohol confirmation test results, or test refusals. Records regarding completion of required RTD processes are obtained from SAPs and employers. Records are obtained from employers who request full query consent of drivers and the approval or rejection of the consent from the drivers. Registration information records are obtained from CMV drivers subject to the CDL and CLP requirements of 49 CFR part 383, MROs, SAPs, employers, and their designated agents when an authorized user registers for the Clearinghouse and creates a new account or when updating previous account information.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, all or a portion of the records or information contained in this system may be disclosed outside DOT as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

System Specific Routine Uses

1. To Motor Carrier Safety Assistance Program (MCSAP) partner agencies, for use during investigations, roadside inspections and safety audits of motor carriers. This routine use enables the MCSAP agencies to enforce the current prohibition against operating a CMV, or performing other safety-sensitive functions, due to drug and alcohol program violations.

2. To State Driver's Licensing Agencies for the purpose of verifying a driver's qualification to operate a CMV prior to completing any licensing transactions, including issuance, renewal, transfer, or upgrade of any a CLP or CDL (as mandated by 49 U.S.C. 31311(a)(24) and 31306a(h)(2)).

3. To the NTSB, upon request, when a driver is involved in a crash under investigation by the NTSB (as mandated by 49 U.S.C. 31306a(i)).

4. To State Driver Licensing Agencies, for the purpose of initiating a downgrade of the CLP or CDL of any driver prohibited from operating a CMV due to drug and alcohol program violations or reinstating the CLP or CDL when the driver is no longer prohibited from operating, as required by 49 CFR 383.73(q).

5. To employers who have either queried the Clearinghouse, or reported information to the Clearinghouse, about a CMV driver in the past 12 months, when new information about the driver has been added to the Clearinghouse by another employer. This routine use enables employers to comply with the current prohibition against allowing a driver to operate a CMV, or perform other safety-sensitive functions, due to drug and alcohol program violations.

6. To employers who currently employ a CMV driver prohibited from operating a CMV due to a drug and alcohol program violation reported to the Clearinghouse by another employer. This routine use enables current employers to comply with the prohibition against allowing a driver to operate a CMV, or perform other safety-sensitive functions, due to drug and alcohol program violations.

7. To employers notified by FMCSA that a CDL or CLP holder is disqualified under 49 CFR 391.41(b)(12) for prohibited controlled substances use. Under this routine use, FMCSA will provide the required employer notification of the driver's disqualification under 49 CFR 391.41(b)(12) for CDL or CLP holders who continue to operate a CMV in violation of 49 CFR 382.501(a).

Department General Routine Uses

8. In the event that a system of records maintained by DOT to carry out its functions indicates a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program pursuant thereto, the relevant records in the system of records may be referred, as a routine use, to the appropriate agency, whether Federal, State, local or foreign, charged with the responsibility of investigating or prosecuting such violation or charged with enforcing or implementing the statute, or rule, regulation, or order issued pursuant thereto.

9a. Routine Use for Disclosure for Use in Litigation. It shall be a routine use of the records in this system of records to disclose them to the Department of Justice or other Federal agency conducting litigation when—(a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof, in his/her official capacity, or (c) Any employee of DOT or any agency thereof, in his/her individual capacity where the Department of Justice has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that litigation is likely to affect the United States, is a party to litigation or has an interest in such litigation, and the use of such records by the Department of Justice or other Federal agency conducting the litigation is deemed by DOT to be relevant and necessary in the litigation, provided, however, that in each case, DOT determines that disclosure of the records in the litigation is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

9b. Routine Use for Agency Disclosure in Other Proceedings. It shall be a routine use of records in this system to disclose them in proceedings before any court or adjudicative or administrative body before which DOT or any agency thereof, appears, when— (a) DOT, or any agency thereof, or (b) Any employee of DOT or any agency thereof in his/her official capacity, or (c) Any employee of DOT or any agency thereof in his/her individual capacity where DOT has agreed to represent the employee, or (d) The United States or any agency thereof, where DOT determines that the proceeding is likely to affect the United States, is a party to the proceeding or has an interest in such proceeding, and DOT determines that use of such records is relevant and necessary in the proceeding, provided, however, that in each case, DOT determines that disclosure of the records in the proceeding is a use of the information contained in the records that is compatible with the purpose for which the records were collected.

10. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry

from the Congressional office made at the request of that individual. In such cases, however, the Congressional office does not have greater rights to records than the individual. Thus, the disclosure may be withheld from delivery to the individual where the file contains investigative or actual information or other materials which are being used, or are expected to be used, to support prosecution or fines against the individual for violations of a statute, or of regulations of the Department based on statutory authority. No such limitations apply to records requested for Congressional oversight or legislative purposes; release is authorized under 49 CFR 10.35(9).

11. One or more records from a system of records may be disclosed routinely to the National Archives and Records Administration (NARA) in records management inspections being conducted under the authority of 44 U.S.C. 2904 and 2906.

12. DOT may make available to another agency or instrumentality of any government jurisdiction, including State and local governments, listings of names from any system of records in DOT for use in law enforcement activities, either civil or criminal, or to expose fraudulent claims, regardless of the stated purpose for the collection of the information in the system of records. These enforcement activities are generally referred to as matching programs because two lists of names are checked for match using automated assistance. This routine use is advisory in nature and does not offer unrestricted access to systems of records for such law enforcement and related antifraud activities. Each request will be considered on the basis of its purpose, merits, cost effectiveness and alternatives using Instructions on reporting computer matching programs to the Office of Management and Budget, OMB, Congress, and the public, published by the Director, OMB, dated September 20, 1989.

13. DOT may disclose records from the system, as a routine use to appropriate agencies, entities, and persons when (1) DOT suspects or has confirmed that there has been a breach of the system of records, (2) DOT has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, DOT (including its information systems, programs, and operations), the Federal Government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with DOT's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

14. DOT may disclose records from this system, as a routine use, to the Office of Government Information Services for the purpose of (a) resolving disputes between FOIA requesters and Federal agencies and (b) reviewing agencies' policies, procedures, and compliance in order to recommend policy changes to Congress and the President.

15. DOT may disclose records from the system, as a routine use, to contractors and their agents, experts, consultants, and others performing or working on a contract, service, cooperative agreement, or other assignment for DOT, when necessary to accomplish an agency function related to this system of records.

16. DOT may disclose records from this system, as a routine use, to an agency, organization, or individual for the purpose of performing audit or oversight operations related to this system of records, but only such records as are necessary and relevant to the audit or oversight activity. This routine use does not apply to intra-agency sharing authorized under Section (b)(1) of the Privacy Act.

17. A record from this system of records may be disclosed, as a routine use, to a Federal, State, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to a DOT decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

18. A record from this system of records may be disclosed, as a routine use, to a Federal agency, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

19. DOT may disclose records from the system, as a routine use to another Federal agency or Federal entity, when DOT determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the Federal Government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records in this system are stored electronically on a contractor-maintained cloud storage service.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records may be retrieved by the following data elements: CMV driver's name, date of birth, license number, and State of issuance of the CLP or CDL.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

Records will be retained and disposed of in accordance with the records control schedule titled, ''Commercial Driver's License Drug and Alcohol Clearinghouse'' approved by the NARA on July 23, 2019. The record schedule requires retention for 5 years if the violation is resolved and RTD is completed; after 5 years the records will be transferred to a separate location for archiving for 6 years and then the records will be destroyed. For records that have not had the RTD process successfully completed, they will remain active in the Clearinghouse for 70 years.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Records in this system are safeguarded in accordance with applicable rules and policies, including all applicable DOT automated systems security and access policies. Appropriate controls have been imposed to minimize the risk of compromising the information that is being stored and ensuring confidentiality of communications using tools such as encryption, authentication of sending parties, and compartmentalizing databases; and employing auditing software. Clearinghouse data is encrypted at rest and in transit. In addition, the connection between the database and the server is encrypted. Access to records in this system is limited to those individuals who have a need to know the information for the performance of their official duties and who have appropriate clearances or permissions. All personnel with access to data are screened through background investigations commensurate with the level of access required to perform their duties.

RECORD ACCESS PROCEDURES:

Individuals seeking notification of and access to any record contained in this system of records, or seeking to contest its content, may submit a request to the System Manager in writing to the address provided, or to the email provided, under ''System Manager and Address.'' Individuals may also search the public docket at *www.regulations.gov* by their name.

When seeking records about yourself from this system of records or any other Departmental system of records your request must conform with the Privacy Act regulations set forth in 49 CFR part 10. You must sign your request, and your signature must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization. While no specific form is required, you should provide the following:

- An explanation of why you believe the Department would have information on you;
- Identify which component(s) of the Department you believe may have the information about you;
- Specify when you believe the records would have been created;
- Provide any other information that will help the FOIA staff determine which DOT component agency may have responsive records; and

If your request is seeking records pertaining to another living individual, you must include a statement from that individual certifying his/her agreement for you to access his/her records. Without this bulleted information, the component(s) may not be able to conduct an effective search, and your request may be denied due to lack of specificity or lack of compliance with applicable regulations.

CONTESTING RECORD PROCEDURES:

Individuals seeking to contest the content of any record pertaining to him or her in the system may contact the System Manager following the Privacy Act procedures in 49 CFR part 10, subpart E, Correction of Records.

Drivers may request corrections of administrative errors in their Clearinghouse record using procedures set forth in 49 CFR 382.717. Under these procedures, request for correction are limited to incorrectly reported information, not the accuracy of test results or refusals. Drivers may also request that the following information be removed from their Clearinghouse record: an employer's report of actual knowledge of use, if the employer's report does not comply with applicable documentation and notice requirements; or an employer's report of a failure to appear test refusal, if the employer's report does not comply with applicable documentation and notice requirements. Drivers may submit their request for correction or removal under 49 CFR 382.717 electronically through the Clearinghouse or in writing to FMCSA.

Requests for correction under the Privacy Act must conform with regulations set forth in 49 CFR part 10. Your request must either be notarized or submitted under 28 U.S.C. 1746, a law that permits statements to be made under penalty of perjury as a substitute for notarization.

NOTIFICATION PROCEDURES:

Individuals seeking to contest the content of any record pertaining to him or her in the system may contact the System Manager following the procedures described in ''Record Access Procedures'' above.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

A full notice of this system of records, DOT/FMCSA 010—Drug and Alcohol Clearinghouse, was published in the **Federal Register** on October 22, 2019 (84 FR 56521)

Issued in Washington, DC.

Karyn Gorman,

Acting Departmental Chief Privacy Officer.

[FR Doc. 2022–19779 Filed 9–13–22; 8:45 am]

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Part II

Federal Communications Commission

47 CFR Part 1

Assessment and Collection of Regulatory Fees for Fiscal Year 2022, Report and Order; Final Rule

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[MD Docket No. 22–223; MD Docket No. 22–301; FCC 22–68; FR ID 103797]

Assessment and Collection of Regulatory Fees for Fiscal Year 2022, Report and Order

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission revises its Schedule of Regulatory Fees to recover $381,950,000 that Congress has required the Commission to collect for its fiscal year (FY) 2022. Sections 9 and 9A of the Communications Act of 1934, as amended (Act or Communications Act), provides for the annual assessment and collection of regulatory fees by the Commission.

DATES: Effective September 14, 2022. To avoid penalties and interest, regulatory fees should be paid by the due date of September 28, 2022.

FOR FURTHER INFORMATION CONTACT: Roland Helvajian, Office of Managing Director at (202) 418–0444.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, FCC 22–68, MD Docket No. 22–223 and MD Docket No. 22–301, adopted on September 1, 2022 and released on September 2, 2022. The full text of this document is available for public inspection by downloading the text from the Commission's website at *http://transition.fcc.gov/Daily_Releases/Daily_Business/2017/db0906/FCC-17-111A1.pdf.*

I. Administrative Matters

A. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, the Commission has prepared a Final Regulatory Flexibility Analysis (FRFA) relating to this Report and Order. The FRFA is located at the end of this document.

B. Final Paperwork Reduction Act of 1995 Analysis

2. This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. In addition, therefore, it does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4).

C. Congressional Review Act

2. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that these rules are non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Report and Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

II. Report and Order

3. Each year, the Commission must adopt a schedule of regulatory fees to be collected by the end of September. FY 2022, the Commission is required to collect $381,950,000 in regulatory fees, pursuant to sections 9 and 9A of the Communications Act, and the Commission's FY 2022 Appropriations Act. In this Report and Order, the we adopt the regulatory fee schedule, as set forth in Tables 4 and 5 for FY 2022, to collect $381,950,000 in regulatory fees as required by Congress.

A. Allocating Full-Time Equivalents (FTE or FTEs)

4. We will continue to apportion regulatory fees across fee categories based on the number of non-auction direct FTEs in each core bureau (*i.e.,* the Wireline Competition Bureau, the Wireless Telecommunications Bureau, the Media Bureau, and the International Bureau) and taking into account factors that are ''reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' We expect that the work of the non-auctions FTEs in the four core bureaus with oversight and regulation of Commission licensees and regulatees will remain focused on the industry segment regulated by each of those bureaus. For this reason, the Commission closely follows the statutory mandate to start with FTE counts and then potentially adjust fees to reflect other factors related to the benefits provided to the payor of the fee by the Commission's activities. As the Commission stated in the *FY 2019 Report and Order,* given the Act's requirement that fees must reflect FTE time before adjusting fees to take into account other factors, we continue to find FTE counts by far the most administrable starting point for regulatory fee allocations.

5. NAB and the Joint Broadcasters question our methodology and argue that the Commission assigns a disproportionate share of the costs of the 343 indirect FTEs to the Media Bureau without any analysis performed as to what portion of those indirect FTEs actually work on Media Bureau issues. Specifically, the Joint Broadcasters argue that Media Bureau regulatees' regulatory fees are inflated in order to cover costs for staff time not spent on broadcast-related issues. The Joint Broadcasters contend that the proportional allocation methodology, whereby regulatory fees are allocated based on the number of direct FTEs in the core bureaus, leads to fundamentally unfair results and that broadcasters subsidize the costs of the Commission's indirect bureaus and offices.

6. These commenters fail to recognize the fundamental task assigned to the Commission. The Commission must recover the full S&E appropriation through an offsetting collection. The S&E appropriation does not solely fund staff time spent directly regulating regulatory fee payors. The S&E appropriation funds *all* non-auctions-related costs, such as salaries and expenses of all non-auctions funded staff; indirect costs, such as overhead functions; statutorily required tasks that do not directly equate with oversight and regulation of a particular regulatee but instead benefit the Commission and the industry as a whole; support costs, such as rent, utilities, and equipment; and the costs incurred in regulating entities that are statutorily exempt from paying regulatory fees (*i.e.,* governmental and nonprofit entities, amateur radio operators, and noncommercial radio and television stations), entities with total annual assessed fees below the de minimis threshold, and entities whose regulatory fees are waived. For that reason, we do not examine whether all indirect FTEs work on Media Bureau issues or on any other core bureau issues. Instead, we recognize that the indirect FTEs' work may not directly address oversight and regulation of just one particular regulatory fee category and may instead cover many different regulatory fee categories or issues not pertaining to any regulated industries. The statute requires the full collection of an amount equal to the annual S&E appropriation and requires that the mechanism used to apportion the collection is based on FTE burden. Thus, all Commission non-auctions FTEs must be accounted for in our regulatory fee assessments because, pursuant to section 9 of the Act, regulatory fees must reflect the ''full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the

payor of the fee by the Commission's activities.'' In order to allocate regulatory fees based on all the non-auctions FTEs in the Commission's bureaus and offices, the Commission bases this calculation on the number of FTEs within the Commission's core bureaus, *i.e.,* those bureaus that conduct oversight and regulation of issues that benefit the fee payors.

7. The State Broadcasters Associations contend that it is likely that throughout the Commission there are identifiable groups of indirect FTEs working in non-core bureaus and offices, or collaboratively across bureaus and offices, whose work in oversight and regulation can be identifiably shown to only benefit some but not all regulatory fee payors. Accordingly, the State Broadcasters Associations argue that such indirect FTEs, whether handling Universal Service Fund or broadband internet access service issues, should be excluded from the indirect FTEs proportionally allocated to media services categories. Thus, the State Broadcasters Associations propose creating a third regulatory fee category, which they label as ''Intersectional FTE.'' They propose that this third regulatory category cover FTEs in the non-core bureaus and those in core bureaus who work on similar issues regulated by various bureaus but benefit a discrete group of regulatees. The State Broadcasters Associations argue that the work of indirect FTEs working on long-standing priorities of the Commission, such as Universal Service Fund program issues and broadband internet access service, unfairly burdens regulatory fee payors who do not benefit from these programs yet are required to pay regulatory fees that cover a proportion of such indirect FTEs. Essentially, the State Broadcasters Associations are of the opinion that there are some indirect FTEs who do not work on broadcast issues, and therefore broadcasters should not be assessed regulatory fees that include such indirect FTEs, *i.e.,* their regulatory fees should be reduced.

8. Additionally, the Satellite Coalition claims that regulatory fees are especially burdensome for the satellite industry, as some satellite companies pay millions of dollars per year solely to cover indirect FTE costs. The Satellite Coalition contends that by undertaking a reassessment of whether FTEs currently classified as indirect can be assigned directly to one or more categories of fee payors, the Commission can greatly improve the fee structure's fairness. Similarly, NAB contends that our regulatory fee methodology and allocation of indirect FTEs results in a system that is arbitrary and capricious, inequitable, and unlawful.

9. Again, we note that the regulatory fees must cover the entire appropriation, including those FTEs who may work on issues for which we do not have regulatory fee categories. We therefore continue to find that, consistent with section 9 of the Act, regulatory fees are not based on a precise allocation of specific employees with certain work assignments each year and instead are based on a higher-level approach. As the Commission has explained previously, indirect FTE time covers a wide range of issues; the variety of issues handled by the indirect FTEs in non-core bureaus may also include services that are not specifically correlated with one core bureau, let alone one specific category of regulatees. Indirect FTE work also includes matters that are not specific to any regulatory fee category, and many Commission attorneys, engineers, analysts, and other staff work on a variety of issues during a single fiscal year. For example, indirect FTEs that devote time to broadband internet access services or Universal Service Fund issues may also work on a variety of other issues during the fiscal year. Thus, we affirm the longstanding holding that the non-auctions work of certain bureaus and offices within the Commission are properly designated as indirect. Even if we could calculate indirect FTE time assignments at a granular level with accuracy, using any particular window of time less than the full year would not be accurate for the entire fiscal year. Moreover, we note that basing regulatory fees on specific assignments, instead of overall FTE time, would result in significant unplanned shifts in regulatory fees as assignments change over time.

10. Further, much of the work that could be assigned to a single category of regulatees is likely to be interspersed with the work that FTEs do on behalf of many entities that do not pay regulatory fees, *e.g.,* governmental entities, non-profit organizations, and regulatees that have an exemption. Indirect FTE time covers matters that are not specifically related to a regulated service, but instead support the Commission generally. Additionally, indirect FTE time is devoted to issues that are not specifically limited to one type of regulated industry. Finally, we note that regulatory fees are a zero-sum situation, so any decrease to the fees paid by one category of regulatees, such as broadcasters, necessitates an increase in fees for others. For this reason, there must be a very strong rationale for changing the manner of proportionally allocating indirect FTEs to certain fee categories based on direct FTEs because any such changes will impact the fees of other regulatory fee categories. We disagree with the commenters' contention that our methodology is arbitrary and capricious, inequitable, and unlawful. Instead, we conclude that our methodology is consistent with the requirements of section 9 of the Act that ''fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission.''

11. Additionally, we find that even if the State Broadcasters Associations' proposal were consistent with section 9 of the Act, it would not be administrable given the resources it would take to calculate and the resulting constantly shifting nature of the regulatory fee burdens. The State Broadcasters Associations' proposal would require resources of both staff and presumably information technology devoted to this proposed new system. Additionally, it would require a close monitoring and analysis of all the work of all indirect FTEs in the Commission over the course of the entire year. As NCTA states, ''the idea that the Commission should undertake an analysis of hundreds of employees' daily undertakings, monitoring them and changing their indirect allocation to different fee categories as the employees receive new assignments and work on different issues throughout the day is nonsensical.'' Thus, we do not believe that added granularity would change the overall result, or improve our regulatory fee methodology, but would simply consume more staff resources and increase the indirect FTE time devoted to regulatory fee administration. Even if we could conduct such a monitoring accurately, it would still be unable to account for the vast majority of indirect FTE time that cannot be allocated specifically to regulatory fee categories. This proposal would result in attributing some indirect FTE time to various regulatory fee categories in a manner that would fluctuate constantly, depending on the work done in bureaus and offices during the year, and others that could not be so attributed at all. We are not adopting a regulatory fee methodology that would result in dramatic swings in fees from one year to the next; instead we take a higher level approach for consistency as well as administrability. Our approach is most accurate when we look at the work of a larger group such as a division, office, or bureau, consistent with the language of section 9 of the Act that ''fees reflect the full-time equivalent number of employees within the bureaus and offices of the Commission.''

12. NAB argues that the Media Bureau regulatees have a high regulatory fee burden because, unlike other core bureaus, the Commission has not reclassified any Media Bureau FTEs as indirect. This is inaccurate. In FY 2019, we had such reclassifications from core bureaus, including the Media Bureau. The Commission reassigned staff from other bureaus and offices to the new Office of Economics and Analytics, effective December 11, 2018. This resulted in the reassignment of 95 FTEs (of which 64 were not auctions-funded) as indirect FTEs because all FTEs in the Office of Economics and Analytics are indirect. The Commission also reassigned Equal Employment Opportunity enforcement staff from the Media Bureau to the Enforcement Bureau, effective March 15, 2019, resulting in a reduction of seven direct FTEs in the Media Bureau. These reassignments resulted in a reduction in direct FTEs in the Wireline Competition Bureau (from 123 FTEs to 100.8 FTEs), Wireless Telecommunications Bureau (from 89 FTEs to 80.5 FTEs), and Media Bureau (from 131 FTEs to 115.1 FTEs).

13. NAB also argues that the Commission should ensure that broadcasters bear no responsibility for the 84 direct FTEs in the Media Bureau that the Commission has stated to Congress are working to promote a 100% broadband policy, and that these 84 Media Bureau FTEs should be reclassified as indirect. The statement to Congress to which NAB refers is the description of the Commission's Strategic Goals and the distribution of FTEs for each Strategic Goal. The goal NAB refers to is the Commission's Strategic Goal to ''Pursue a ''100 Percent'' Broadband Policy.'' The other goals are to Promote Diversity, Equity, Inclusion, and Accessibility; Empower Consumers; Enhance Public Safety and National Security; Advance America's Global Competitiveness; and Foster Operational Excellence. The Commission, like every other federal agency, adopts strategic goals as part of its long term planning process pursuant to federal financial management requirements. The financial reporting statutes also require agencies to identify the resources that support such strategic goals. The strategic goals are not aligned with a particular regulatory fee category and the exercise is guided by a wholly distinct statutory scheme. In addition, such strategic goals are intended to align with higher level priority goals of the overall federal government. As such, a notation that staff support a specific strategic goal is not a sound rationale for reassigning staff from direct to indirect or vice versa. We therefore reject NAB's contention that planning documents guided by a wholly different statutory scheme form the basis to reassign most or all of the Media Bureau FTEs as indirect.

14. Thus, we decline, at this time, to change the methodology by which we allocate FTEs. Currently, there are 943 indirect FTEs. The indirect FTEs are the FTEs in the Enforcement Bureau (187), Consumer and Governmental Affairs Bureau (111), Public Safety and Homeland Security Bureau (98), Chairwoman's and Commissioners' offices (22), Office of the Managing Director (136), Office of General Counsel (70), Office of the Inspector General (47), Office of Communications Business Opportunities (10), Office of Engineering and Technology (66), Office of Legislative Affairs (8), Office of Workplace Diversity (4), Office of Media Relations (12), Office of Economics and Analytics (78), and Office of Administrative Law Judges (4), along with some FTEs in the Wireline Competition Bureau (38) and the International Bureau (52) that the Commission has previously classified as indirect for regulatory fee purposes.

15. The number of direct FTEs are determined within each core bureau and a percentage of the total amount to be collected in regulatory fees for a given fiscal year is calculated. There are 329 direct FTEs: $32.70 million (8.56% of the total FTE allocation, 28 direct FTEs) in fees from International Bureau regulatees; $81.74 million (21.40% of the total FTE allocation, 70 direct FTEs) in fees from Wireless Telecommunications Bureau regulatees; $129.62 million (33.94% of the total FTE allocation, 111 direct FTEs) from Wireline Competition Bureau regulatees; and $137.89 million (36.10% of the total FTE allocation, 120 direct FTEs) from Media Bureau regulatees. The regulatory fees we adopt here are based on the established methodology, applied to the allocated FTEs, and based on the Commission's appropriation amount of $381,950,000.

B. Space Station and Submarine Cable Regulatory Fees

1. Non-Geostationary Orbit System (NGSO) Regulatory Fees

16. We adopt fee rates for NGSO space stations for FY 2022 and decline to create additional regulatory fee categories for FY 2022. In the Report and Order attached to the *FY 2022 NPRM,* we adopted a methodology for calculating the regulatory fee for small satellites and small spacecraft (together, small satellites) based on 1/20th (5%) of the average of the non-small satellite NGSO space station regulatory fee rates from the current fiscal year on a per license basis. In the *FY 2022 NPRM,* we sought comment on the proposed regulatory fee rates for the subcategories of NGSO—small satellite, NGSO—less complex space stations, and NGSO—other space stations for FY 2022, and addressed regulatory fee proposals in the record regarding spacecraft performing on-orbit servicing (OOS) and rendezvous and proximity operations (RPO). We also tentatively concluded that the addition of a new regulatory fee category for OOS and RPO operations would be premature, but sought further comment on whether and how to assess fees for these types of spacecraft, and other types of satellites servicing other satellites, which operate near to the geostationary orbit (GSO) arc.

17. *NGSO Fee Allocation.* We maintain the 20/80 allocation between ''less complex'' and ''other'' NGSO space station fees, respectively, within the NGSO fee category. In 2020, the Commission adjusted the allocation of FTEs among GSO and NGSO space station and earth station operators. The Commission noted the disparity in the number of units between GSO space stations (98) and NGSO systems (seven), and observed that many satellites can be operated under a single NGSO license while counting as a single unit for regulatory fee purposes, but only one satellite can be operated per GSO space station license. To ensure that regulatory fees more closely reflected the FTE oversight and regulation for each space station category, the Commission allocated 80% of space station regulatory fees to GSOs and 20% of the space station regulatory fees to NGSOs. In 2021, the Commission adopted two new fee subcategories: ''less complex'' NGSO systems and all other NGSO systems identified as ''other'' NGSO systems, both under the broader category of ''Space Stations (Non-Geostationary Orbit).'' ''Less complex'' NGSO systems are defined as NGSO satellite systems planning to communicate with 20 or fewer U.S. authorized earth stations that are primarily used for Earth Exploration Satellite Service (EESS) and/or Automatic Identification System (AIS). ''Less complex'' NGSO fees and ''other'' NGSO fees were split within the broader NGSO fee category on a 20/80 basis.

18. In the Report and Order attached to the *FY 2022 NPRM,* the Commission adopted a fee methodology for the ''small satellites'' and decided that, as the ''small satellite'' fee is calculated, considering that ''small satellites'' are NGSO space stations, the fees generated

from this ''small satellite'' fee category will be deducted from the fee amount to be collected from the total NGSO space stations fees, and the remainder of the NGSO space stations fees will continue to be allocated on a 20/80 basis between ''less complex'' and ''other'' NSGO space stations respectively.

19. The Satellite Coalition first claims that the ''Commission no longer can assume that EESS systems are less complex because they communicate with fewer than 20 U.S. earth stations.'' The Satellite Coalition contends that distinguishing ''less complex'' and ''other'' NGSOs based on the number of earth stations is no longer accurate because two of the best-known EESS systems, Spire Global and Planet Labs, already communicate with more than 20 FCC-licensed antennas. The Satellite Coalition also observes that EESS systems are developing substitutes for dedicated, proprietary earth station networks, with some EESS systems relaying data via satellite systems that have established ground infrastructure, others associating with ''ground station-as-a-service'' organizations, and others downlinking data directly to user terminals, including more ubiquitous mobile terminals. The Satellite Coalition contends that the Commission should require licensees of EESS systems to report the total number of FCC-licensed antennas with which their systems communicate.

20. The EESS Coalition disagrees with the Satellite Coalition and argues that in the year since the Commission's 2021 decision there are ''no new arguments or developments'' that warrant the alterations to the NGSO fee categories sought by the Satellite Coalition. The EESS Coalition further argues that considerations regarding the number of earth stations as a proxy for the complexity of a system have not altered. The EESS Coalition contends that, under our rules, an ''earth station'' could not be defined as a single antenna. The EESS Coalition further disagrees that the fee allocation needs to be altered as EESS systems may begin to require more earth stations to meet demand because the Commission previously clarified that systems planning to communicate with greater than 20 earth stations would not meet the definition of ''less complex.'' Likewise, the EESS Coalition contends that the fact that EESS systems have been improving their technology is not a reason to change the fee allocation when the Satellite Coalition provides no explanation of how or why the introduction of new use cases that are not directly regulated by the Commission, or the use of third-party ground stations, support the conclusion that there are additional burdens on the Commission's responsibilities.

21. As an initial matter, we emphasize that we previously concluded that 20 or fewer planned earth stations is an accurate proxy to determine whether a primarily AIS and/or EESS system is ''less complex'' and that EESS systems are less burdensome to regulate than other types of services, such as NGSO FSS systems, when those EESS systems plan to communicate with 20 or fewer earth stations. We will address the Satellite Coalition's comments to the extent that it raises new arguments.

22. We find that distinguishing ''less complex'' EESS systems based on whether those systems plan to communicate with 20 or fewer earth stations is still an accurate proxy. The Satellite Coalition argues that the Commission meant to define earth stations as antennas. Notwithstanding the assertions of the Satellite Coalition, a single call sign, not an antenna, equates to a single earth station license. The Commission's definition of ''earth station,'' which incorporates the Commission's definition of ''station,'' demonstrates that an antenna is merely part of an ''earth station.'' A ''station'' includes ''[o]ne or more transmitters or receivers or a combination of transmitters and receivers, including the accessory equipment, necessary at one location for carrying on a radiocommunication service[.]'' While an antenna may be an important piece of equipment in transmitting or receiving signals, additional accessories are needed to successfully carry out a radiocommunication, which, together with one or more antennas, constitute a ''station.'' Moreover, it is not apparent how the number of antennas at a particular earth station location supports a conclusion that there are additional burdens on the Commission's responsibilities for regulatory fee purposes.

23. In addition, we disagree that we should change the 20/80 allocation now because EESS systems are developing substitutes for dedicated, proprietary earth station networks. While in the future this may result in our reconsideration of planned 20 earth stations as the dividing line between a ''less complex'' and ''other'' system, for FY 2022, we agree with the EESS Coalition that we do not have evidence that ''less complex'' systems' new technology has made those NGSO systems more burdensome to regulate. Based on our current experience, the 20/80 split continues to be accurate and closely reflect the percentage of the FTE time spent to regulate less complex NGSO space stations and ''other'' NGSO space stations.

24. Finally, we remind all operators that the fee payors have an obligation to pay the correct fee amount corresponding to their actual fee category. If a non-small satellite NGSO system is listed as ''less complex'' but actually communicates with more than 20 earth stations, such fee payor has an obligation to correct that listing mistake to be billed the fee amount that correspond to ''other'' NGSO space station fee category. In the *FY 2022 NPRM,* we listed systems in various categories and gave the fee payors a chance to verify and correct any mistakes in our space stations list. Based on the information we received, we believe all operational ''less complex'' space stations are now listed in the appropriate category. We note that the public record in the International Bureau Filing System (IBFS) contains the call signs of FCC-licensed earth stations with which ''less complex'' systems presently communicate, with the particular NGSO system listed as a point of communication. Since we also include earth stations that have been authorized by other U.S. federal government agencies when determining the total number of earth stations with which a ''less complex'' system communicates, and such information is not typically in IBFS, if needed, we may consider other options to verify the information, including an annual reporting requirement regarding the number of earth stations for future fiscal years, to aid in the administrability of and increase transparency in our maintenance of the list of ''less complex'' space station systems.

25. Second, the Satellite Coalition also argues that the characteristics that the Commission previously noted that make EESS systems distinct from other NGSO systems, such as those NGSO systems providing fixed-satellite service (FSS), are breaking down. The Satellite Coalition asserts that EESS systems now are developing a global presence and have significant spectrum needs and use multiple bands, while the significance of processing rounds has been diminished. The Satellite Coalition contends that the Commission should not be assessing radically different regulatory fees for NGSO systems that are becoming functionally indistinct and competing for the same or similar customers.

26. The EESS Coalition counters that many of the developments to EESS systems to which the Satellite Coalition cites took place prior to the FY 2021 regulatory fee proceeding during which

the 20/80 allocation was adopted. The EESS Coalition further posits that the distinctions between the two regulatory fee categories remain consistent with those analyzed in the *FY 2021 Report and Order.* For example, processing rounds have not become less intensive. Similarly, EESS systems have not increased their global presence with activities to the extent that the Commission would be required to expend significant staff resources for representation at international forums and multilateral coordination. We conclude that the 20/80 allocation among ''less complex'' and ''other'' NGSOs remains fair and our definition of ''less complex'' does not need to be modified. At this time, we are not persuaded that EESS systems communicating with 20 or fewer earth stations have increased in complexity as to justify a change in our definition or the 20/80 allocation. As the EESS Coalition points out, the work involving the processing rounds remains at around the same level, ''less complex'' systems' global presence has not increased the FTEs' work at a level that justifies a change, and in some cases the use of spectrum despite increased use of bandwidth of ''less complex'' systems remains the same. Although the Satellite Coalition argues that some ''less complex'' EESS operators do not meet the criteria of ''less complex'' because their systems communicate with greater than 20 planned FCC-licensed antennas, the criteria we identified in the Report and Order attached to the *FY 2021 NPRM* remain valid. If EESS operators communicate with more than 20 earth stations, they would no longer be considered ''less complex.'' Given that we determine the complexity of the NGSO system based on the system design provided at the NGSO space station application stage, and that none of our already designated ''less complex'' systems actually communicate with greater than 20 earth stations, we find that the Satellite Coalition's examples of ''less complex'' systems that we have already designated as ''less complex'' do not establish a sufficient basis upon which to change the 20/80 allocation at this time. While we acknowledge that the technology associated with ''less complex'' EESS system is changing, and this in some instances involves changes including increases in bandwidth, number of earth stations, amount of time in which spectrum is used, or other such changes, the changes identified appear at this time to be expected incremental changes consistent with the general characteristics identified for less complex systems. Accordingly, we find that the 20/80 allocation still fairly represents Commission resources spent and benefits received by operators.

27. Third, the Satellite Coalition argues that adoption of a fee category for small satellites should result in a re-evaluation of the regulatory fees between ''less complex'' systems and ''other'' NGSO systems. The Satellite Coalition argues that, because Commission resources devoted to the regulation and oversight of ''small satellites'' is minimal, ''small satellites'' are the least complex NGSO systems among the types of constellations that formerly were included in the ''less complex'' NGSO fee category, and now that ''small satellites'' have their own fee category, only systems that demand relatively more Commission oversight remain in the ''less complex'' fee category for FY 2022 and going forward. The EESS Coalition disagrees because the Commission previously ''note[d] that while there may be overlap in the types of services being provided in some instances, there are also important differences between small satellites and 'less complex' and 'other' NGSO space station systems.''

28. We decline to reconsider the ''less complex'' fee allocation due to the adoption of a small satellite fee category. A new regulatory fee category was created for small satellites in 2019. The 20/80 fee allocation among ''less complex'' NGSO systems and ''other'' NGSO systems was not proposed until 2021. As a result, parties had notice that small satellites would be assessed fees separately when we accepted comments regarding the 20/80 NGSO fee allocation. Even when we adopted the 20/80 NGSO fee allocation, we left open the question as to how we would integrate the small satellite fee category into the overall space stations fee category rather than guaranteeing that the fee would be integrated into the ''less complex'' NGSO fee category. We also did not yet have any operational small satellites that were assessed fees in FY 2021, so small satellite licenses were not factored into the ''less complex'' allocation. As such, we see no need to reconsider the 20/80 allocation following integration of the small satellite fee category into the overall NGSO space station fee category at this time.

29. *Small Satellite Regulatory Fees.* We decline to broaden the definition of ''small satellites'' for regulatory fee purposes. In the *Small Satellite Report and Order,* the Commission adopted a new, optional licensing process for small satellites and spacecraft, a type of NGSO space station. In that proceeding, the Commission also adopted a small satellite regulatory fee category for licensed and operational space stations authorized under the process adopted in that proceeding. The Commission found that these actions would enable such applicants to choose a streamlined licensing procedure resulting in an easier application process, a lower application fee and a shorter timeline for review than exists for non-small satellite applicants. Satellites licensed through the streamlined process have characteristics that distinguish them from traditional NGSO satellite space stations, such as having a lower mass, shorter duration missions, more limited spectrum needs, and detailed certifications that must be submitted by the applicant.

30. We are assessing regulatory fees for small satellites for the first time in FY 2022 because there were five licenses for operational space stations in this small satellite regulatory fee category as of the start of the fiscal year on October 1, 2021. We are using the methodology adopted in the Report and Order attached to the *FY 2022 NPRM* to calculate the regulatory fee for small satellites. The fee is based on 1/20th (5%) of the average of the non-small satellite NGSO space station regulatory fee rates from the current fiscal year on a per license basis. This accommodates fluctuations in the number of NGSO space stations fee payors and results in an appropriately low regulatory fee for small satellites. In addition, this averaging methodology provides a middle ground and an opportunity to gain more experience in regulating small satellites, while also recognizing that small satellites are part of a separate fee category and not within either the ''less complex'' or ''other'' NGSO space stations fee categories. Our small satellite methodology also takes into account our expectation that FTEs will spend approximately twenty times more time on regulating one non-small NGSO space station system compared to the time spent for regulating one small satellite license.

31. OSK requests that we broaden the definition of ''small satellites'' for the purposes of regulatory fee assessment to include all systems that meet the criteria enumerated in the *Small Satellite Report and Order,* regardless of whether they seek license processing under the small satellite processing rules of section 25.122. OSK contends that the substantial difference in regulatory fee treatment between ''small satellites'' and NGSO—''less complex'' (almost $130,000 per year) has significant ramifications for small satellite operators, such as OSK, who elect not

to utilize the Commission's new regulatory scheme for small satellites. According to OSK, if we assess regulatory fees based on the actual characteristics of the system, rather than the licensing treatment sought, we can increase efficiency and ensure equitable treatment for similarly situated systems. By not assessing regulatory fees based on the actual characteristics of the system, OSK contends that small satellite operators will be forced to contort their constellations to fit under the section 25.122 framework in order to avoid unreasonable fee burdens, thereby removing all optionality the Commission sought to provide through the streamlined licensing regime.

32. SIA responds that OSK's proposal should be rejected because it would require the Commission to individually determine whether every satellite system that applies for Commission authorization meets the criteria enumerated in the *Small Satellite Report and Order,* regardless of whether they seek license processing under section 25.122, which would significantly add to the administrative burden of the Commission. SIA adds that, rather than changing the definition of a fee category, applicants with individual licensing issues should make use of the existing processes available for regulatees who are concerned about their fees by petitioning for waiver, deferral, or fee determinations.

33. We decline to broaden the definition of ''small satellites'' for the purposes of regulatory fee assessment and conclude that only space stations licensed pursuant to the streamlined small satellite licensing process under sections 25.122 and 25.123 of our rules are eligible to be assessed the small satellite regulatory fee. As we noted in the *FY 2022 NPRM,* the streamlined small satellite rules are designed to lower the regulatory burden and reduce staff resources required for licensing, but the rules also restrict the benefits received by these licensees. For example, license terms are limited to six years, including deorbit time, and only 10 satellites are permitted on a single license. In the *Small Satellite Report and Order,* the Commission made clear that the licensing process for small satellites is ''optional.'' The Commission further adopted a new category in the regulatory fee schedule that is separate from the existing fee categories for satellites licensed pursuant the streamlined process and stated that the small satellite fee subcategory would apply to licensed and operational satellite systems ''authorized under the new process adopted in this proceeding.'' Therefore, licensees that could be eligible to receive authorization pursuant to the streamlined small satellite licensing process but choose not to seek authorization pursuant to the streamlined small satellite licensing process have sufficient awareness that the regulatory fee category associated with licenses obtained through small satellite licensing process is separate. Such licensees must pay the regulatory fees associated with non-small satellites, which in turn reflect a higher regulatory oversight cost and significantly greater benefits for the fee payors.

34. *FY 2022 NGSO Space Stations Regulatory Fee Rates.* We adopt the below regulatory fee rates for NGSO space stations, as follows for FY 2022:

TABLE 1—NON-GEOSTATIONARY SPACE STATION FY 2022 FEE RATES

NGSO—small satellite FY 2022 fee (per license)	NGSO—other space station FY 2022 fee (per system)	NGSO—less complex space station FY 2022 fee (per system)
$12,215	$340,005	$141,670

2. Spacecraft Performing On-Orbit Servicing and Rendezvous and Proximity Operations

35. Due to the nature of the OOS and RPO, or more generally in-space servicing industries, we will continue to evaluate each such spacecraft on a case-by-case basis until we gain more experience in understanding how such spacecraft fit into our regulatory structure. In the *FY 2022 NPRM,* we sought comment on adopting regulatory fee categories for spacecraft performing OOS and RPO. We noted that there have been a limited number of such operations and except for GSO servicing missions. We previously stated that we expect that most OOS and RPO operations will be NGSO. We tentatively concluded that it is too early to identify exactly where operations, such as those in low-Earth orbit (LEO), might fit into the regulatory fee structure in the future.

36. SIA supports our earlier conclusion that it is premature to adopt new fee categories for OOS and RPO, as there is currently too much variation in the industry, and such operations continue to require a case-by-case review. SIA also notes that even Astroscale, which supports a fee for RPO operations, acknowledges that such operations are part of a ''nascent infrastructure.''

37. Other commenters favor the creation of a new fee category and propose how we may define the services that may be contained in this new category. Spaceflight argues that OOS missions are a new industry sector involving relatively low-cost systems and a high regulatory fee could limit the commercial applications for such systems. Spaceflight states that OOS might support NGSO or GSO satellites and should be their own category. Spaceflight observes that until recently the fact that these missions have been authorized under Special Temporary Authority (STA) has made Commission regulatory fees a non-issue, but now that the Commission is requiring some of these missions to be licensed under part 25, the issue of the appropriate regulatory fees must be decided. Spaceflight also recommends that the Commission define ''OOS Missions'' as spacecraft whose primary function is to provide OOS, including concepts of operations such as deployment via orbital transfer vehicle (OTV), hosting, or RPO. Turion adds that the proposed OOS regulatory fee category should include space situational awareness (SSA) and space domain awareness (SDA) and, in the absence of an OOS regulatory fee category, SSA and SDA should fall under a new regulatory fee category, separate from the standard NGSO fee category. Astroscale requests that, rather than using the terms OOS and RPO when discussing the creation of a new fee category, we use the term ''in-space servicing'' to correlate the language with the In-Space Servicing, Assembly, and Manufacturing (ISAM) National Strategy. Astroscale suggests ''in-space servicing'' be defined as activities in space ''by a servicer spacecraft or servicing agent on a client space object which require rendezvous and/or proximity operations.'' Astroscale also contends that the Commission must not continue to regulate in-space servicing systems on a mission-by-mission basis and notes that three distinct ISAM operators have multiple granted or pending full part 25 licenses and 15 STAs have been granted to support commercial ISAM activities since 2016. Astroscale adds that a fee category for in-space servicing is needed to solve existing ambiguity and because ISAM operations challenge the current fee structure established by orbital regime since an in-space servicing spacecraft can change between NGSO and GSO operations over their servicing lifetime.

38. Two commenters support an interim regulatory fee at the same amount as the small satellite fee. Spaceflight and Turion observe that many of the factors used in determining the small satellite regulatory fee, such as interference protection, limited duration, smaller investment, less

adjudication, multiple licenses or market grants, and limited number of missions overall, are also present in missions involving their own spacecraft, as well other OOS spacecraft. Spaceflight and Turion propose that an interim regulatory fee should apply per OOS mission license, *i.e.,* 1/20th (5%) of the average of the non-small satellite NGSO and non-OOS regulatory fee rates from the current fiscal year. Turion argues that, if the Commission should label OOS spacecraft as standard NGSOs, despite their meeting the small satellite criteria and not operating as conventional satellites, then they should receive similar regulatory fee treatment to small satellite missions. SIA responds that an interim regulatory fee schedule is unnecessary, as the assessment of how OOS services fit into the current regime at the licensing stage is sufficient for the time being.

39. We are unable to adopt a new regulatory fee for in-space servicing operations for FY 2022 now, as we are required to notify Congress at least 90 days prior to creating such a change to the regulatory fee schedule. Moreover, even absent the notice requirement, we find that the record is not sufficient to support such action at this time. As such, we defer this issue to a future fiscal so that we can more effectively address this issue once the regulatory framework under which space stations performing in-space servicing operations, including OOS, RPO, SSA, and SDA operations, and the scope of those operations, is better understood. As SIA, Spaceflight, and Astroscale acknowledge, in-space servicing is a relatively new industry. Missions, which can include satellite refueling, inspecting and repairing in-orbit spacecraft, capturing and removing debris, and transforming materials through manufacturing while in space, have the potential to benefit all space stations, the sustainability of the outer space environment and the space-based services. We note that these systems are still nascent. For FY 2022, only two in-space servicing spacecraft were operating pursuant to full part 25 licenses, which is a marginal number in comparison to the total number of systems operating pursuant to full part 25 licenses that we are regulating during this fiscal year. We need more experience with these operations and in understanding the FTE time required to support them. At this time, we do not have the experience or the robust record needed to establish definitions and methodologies for a new fee category for these operations that would fairly recover any costs that might be associated with such services. For the same reasons, we decline to adopt an interim fee, including one equivalent to the fee assessed for systems authorized under the streamlined small satellite licensing process. As we gain more experience in oversight and regulation of this industry, we will better understand how to recover any regulatory costs and benefits that might be associated with these operations. We also expect to gain more insight into this industry through the record associated with our Notice of Inquiry regarding commercial and other non-governmental ISAM activities.

3. Submarine Cable Regulatory Fees

40. We reject the Submarine Cable Coalition's request to revise the Commission's regulatory fee methodology for submarine cable operators, which is based upon the lit capacity of the fiber-optic submarine cable. We find that the Submarine Cable Coalition provides no persuasive argument that the Commission's assessment of these regulatory fees based on capacity is contrary to the Communications Act and is not reasonably related to the benefits provided. In the 2009 *Submarine Cable Order,* based on a consensus proposal made by a large number of submarine cable operators (Consensus Proposal), the Commission adopted a new methodology for assessing International Bearer Circuit (IBC) fees. Instead of assessing IBC fees based on 64 kbps circuits for all types of IBCs, the Commission began assessing regulatory fees for submarine cable operators on a per cable landing license basis, with higher fees for larger capacity submarine cable systems and lower fees for smaller capacity submarine cable systems. The Commission adopted a five-tier structure for assessing fees on submarine cables systems based on lit capacity. The Commission explained that it will define operational submarine cable systems as either ''large'' or ''small'' submarine cable systems based on the capacity of each system and the ''small'' systems will be further subdivided into additional subcategories. The Commission concluded that this methodology served the public interest and was competitively neutral because it included both common carrier and non-common carrier submarine cable operators. The Commission also explained that the methodology would be easier to administer and for submarine cable operators to comply with. The Commission further stated that a lower fee for licensees of smaller cable systems would mitigate concerns that a flat fee may create a barrier to entry for new entrants. In the *FY 2020 Report and Order,* the Commission found that lit capacity was an appropriate measure by which to assess IBC fees for submarine cables. Subsequently, in the *FY 2021 Report and Order,* the Commission adopted the same tiers for assessing fees on submarine cable operators for FY 2021 as in FY 2020, which are based on the lit capacity of the fiber-optic submarine cable.

41. The Submarine Cable Coalition reiterates in this proceeding the arguments rejected by the Commission in the FY 2020 and FY 2021 proceedings. The Submarine Cable Coalition contends that the ''regulatory fee structure based upon cable system capacity is contrary to the mandate of the Communications Act, is overly burdensome, and is disconnected from the Commission's responsibilities for regulatory oversight of the submarine cable industry.'' The Submarine Cable Coalition argues that our methodology ''fails to take into consideration that the size of a system is not tied to the number of customers, nor the amount of revenue that it will generate.'' According to the Submarine Cable Coalition, ''[t]he location of the system, the existence of competing systems, market demands, whether the system is operated on a private basis, and various [other] system specific factors [make] the assessment of the claimed 'benefits' by the Commission a highly nuanced and fact-specific endeavor.'' The Submarine Cable Coalition further contends that ''the Commission must continue to lower the burden on the submarine cable operators'' and ''[t]his continued large increase on the top end of the scale remains unjustified as the amount of regulatory work that is undertaken by the Commission regarding submarine cable regulatees is fixed—the procedures do not vary by the potential traffic the cable is able to carry, nor has that level of regulatory work increased by any significant metric in the preceding period.'' Lumen, on the other hand, states that ''capacity is a reasonable way to distinguish those submarine cable providers who benefit more from the Commission's activities from those who benefit less.'' Lumen agrees that the fees for IBCs as a group, which includes submarine cable systems, should be reduced, but supports the Commission's longstanding practice of assessing fees based on capacity.

42. We disagree with the Submarine Cable Coalition's contention that the Commission's regulatory fee methodology is contrary to the

Communications Act and that the Commission has not developed regulatory fees that are reasonably related to the benefits provided. The Commission has long held that capacity is a reasonable basis to assess regulatory costs among the submarine cable regulatees that benefit from the Commission's work. As the Commission has previously stated, the fee assessment on submarine cables covers the costs for regulatory activity concerning submarine cables as well as the services provided over the submarine cables. We find it reasonable to continue to assess higher regulatory fees on licensees with larger facilities that benefit more from the Commission's work and thus should pay a larger proportion of the Commission's costs. We agree with Lumen's assessment that the Commission's use of capacity to set fees for submarine cables satisfies the requirement of the statute. As Lumen further states, the statute ''requires only that the Commission set fees 'tak[ing] into account factors that are *reasonably* related to the benefits provided to the payor of the fee by the Commission's activities' '' and does not require ''perfect alignment between fees and benefits.'' We find there are no significant reasons in the record or changes in the marketplace to modify our regulatory fee framework for submarine cable systems.

43. Since FY 2009, when the Commission adopted the new methodology for assessing submarine cable fees, the level of lit capacity for submarine cable systems has increased and the Commission has expanded the different tiers to take into account this change and accommodate for this rapid growth in capacity. However, the basic methodology for calculating submarine cable fees based on capacity has not changed. Submarine cable fees are still calculated on the basis of ''1'' unit, ''.5'' units, ''.25'' units and so forth. Furthermore, we note that the regulatory fees for FY 2022 have been reduced from those assessed in FY 2021; the assessment per unit is now $137,715 compared to $151,910 in FY 2021. As discussed above, lit capacity remains a reasonable basis to apportion regulatory costs among the submarine cable regulatees that benefit from the Commission's work, and our fee methodology with respect to submarine cables continues to reasonably reflect the FTE costs for our regulatory activity concerning submarine cables as well as the services provided over the submarine cables. Accordingly, for FY 2022, we adopt the regulatory fees below for submarine cable systems.

TABLE 2—FY 2022 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (lit capacity as of December 31, 2021)	Fee ratio	FY 2022 regulatory fees
Less than 50 Gbps	.0625 Units	$8,610
50 Gbps or greater, but less than 250 Gbps	.125 Units	17,215
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	34,430
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	68,860
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	137,715
6,500 Gbps or greater	2.0 Units	275,430

C. Broadcaster Regulatory Fees for FY 2022

44. *FY 2021 Broadband DATA Act.* We decline to modify our methodology to continue to exempt broadcasters' from the costs associated with the Commission's broadband work. As part of our FY 2021 appropriation, Congress directed the Commission to assess and collect $374 million in regulatory fees, of which $33 million was specifically earmarked to be made available for implementing the Broadband DATA Act. Among other things, the Broadband DATA Act required the Commission to collect standardized, granular data on the availability and quality of both fixed and mobile broadband internet access services, to create a common dataset of all locations where fixed broadband internet access service can be installed (the Fabric), and to create publicly available coverage maps. As part of its collection of information, the Broadband DATA Act required the Commission to include uniform standards for the reporting of broadband internet access service data from ''each provider of terrestrial fixed, fixed wireless, or satellite broadband internet access service.'' The statute defines ''broadband internet access service'' to mean ''the same meaning given the term in section 8.1(b) of title 47, Code of Federal Regulations, or any successor regulation.'' That Commission rule, in turn, defines ''broadband internet access service'' as ''a mass-market retail service by wire or radio that provides the capability to transmit data to and receive data from all or substantially all internet endpoints, including any capabilities that are incidental to and enable the operation of the communications service, but excluding dial-up internet access service'' and this term ''also encompasses any service that the Commission finds to be providing a functional equivalent of the service.'' Congress recognized that specific Commission resources would be utilized in carrying out the requirements of the Broadband DATA Act. The Committee Report provides that ''[t]he Committee provides significant funding for upfront costs associated with implementation of the Broadband DATA Act. The Committee anticipates funding related to the Broadband DATA Act will decline considerably in future years and expects the FCC to repurpose a significant amount of staff currently working on economic, wireline, and wireless issues to focus on broadband mapping.''

45. In the *FY 2021 Report and Order,* we adjusted the Commission's approach to assessing regulatory fees for broadcasters to account for the unusual circumstances accompanying the Broadband DATA Act earmark. In this limited instance, given the one-time nature and magnitude of the earmark, the statutory text, the legislative history, and the record in this proceeding, we excluded one group of regulatees—broadcasters or ''Media Services'' licensees—from part of their share of indirect costs. We concluded that, although we modified our methodology with respect to the $33 million earmark, this one-time modification was consistent with the Commission's longstanding goals of implementing a fair, sustainable, and administrable regulatory fee regime. The Commission therefore reduced broadcasters' regulatory fees by approximately 8.88% for FY 2021 and adopted a lower fee factor for full-service television broadcasters for FY 2021. In doing so, all other fee payors within the core bureaus, including cable, DBS, and IPTV providers regulated by the Media Bureau, had to absorb these indirect

costs to ensure that the Commission collected the full annual appropriation.

46. NAB argues that the Commission should continue to exempt broadcasters from paying for the Commission's ongoing broadband data mapping work. In FY 2022, however, Congress *did not* provide an earmark for a particular purpose, and the accompanying direction regarding use of staff resources. Thus, the reason for the methodology change in FY 2021 is not present for FY 2022. We therefore decline to make this modification to our methodology for FY 2022. ''Media Services'' licensees will be assessed regulatory fees based on the current allocation FTE percentage calculated for FY 2022. NAB also mischaracterizes the Commission's modification in methodology in FY 2021 as a determination that broadcasters do not benefit from broadband related activities. Instead, the Commission recognized that the earmark was limited to a unique mapping task and Congress gave the Commission direction regarding the staff resources it anticipated would be used to carry out the discrete task, which did not include Media FTEs. The Commission did not make a finding that any group of regulatees do not benefit from broadband-related activities.

47. Commenters argue that broadcasters' regulatory fees have increased by approximately 13% from FY 2021 to FY 2022 with no explanation for such an increase by the Commission. This proposed increase of 12%–13% between FY 2021 and FY 2022 regulatory fee rates was due to the reduction in regulatory fee rates for broadcasters (AM, FM, TV, LPTV) due to the Broadband DATA Act earmark in FY 2021. As discussed below, however, these figures are no longer accurate due to a correction to our allocation of direct FTEs that were previously reassigned as indirect in 2017. That said, as we explained above, because the amount the Commission must collect in an offsetting collection changes each year, regulatory fees will typically change each year as a mathematical consequence of the change in amount to be collected in the current year, FTE allocations in the core bureaus, and projected unit estimates. Thus, any regulatory fee increases may not necessarily correlate to the Commission's overall increase in its appropriation for a fiscal year.

48. The NJBA contends that we should consider an across-the-board reduction of all fees for broadcasters given the ''emerging technologies and the eloquent simplicity of regulating [the broadcast] industry, along with broadcasters' longstanding special place in the fabric of American society.'' Specifically, the NJBA states that the broadcast industry has largely been governed by the market and enjoys a prolific and symbiotic relationship with the public and, unlike the other technologies competing for Commission resources, broadcasters do not charge their audiences ever-increasing user charges, subscription rates and fees for the services they provide. Commenters add that broadcasters have been particularly hard hit by the COVID–19 pandemic, with severe reductions in advertisement revenues. Similarly, NAB explains that broadcasters do not have a subscriber base to whom they can pass on costs and they are required to provide a free service to the public and are dependent on advertising revenues to cover their costs.

49. We recognize that many entities, including broadcasters, sustained economic losses during the COVID–19 pandemic. We also recognize the broadcasters do not have a subscriber base to whom they can pass through regulatory fees. However, we emphasize that we must collect the full FY 2022 appropriation and cannot exempt regulatees from regulatory fees unless they are expressly exempted under the statute. As CTIA observes, pursuant to section 9 of the Act, regulatory fees are based on the level of Commission staffing or staff activity undertaken by the relevant core bureaus; neither Commission policy objectives nor regulatee success in the marketplace are relevant factors in calculating regulatory fees and fulfilling the statutory charge of section 9 of the Act. Thus, we cannot reduce FY 2022 fees across-the-board for one category of fee payor; we cannot re-apportion the fees among categories based on, for example, relative ability to pay, and we cannot exempt regulatees based on their financial circumstances. As we indicated above, regulatory fees are a zero-sum situation. If the Commission freezes one set of regulatees' fees, it will need to increase another set of regulatees' fees to make up for any resulting shortfall, and in doing so, the Commission would be failing to base regulatory fees on FTEs as statutorily required. We therefore decline to make such changes, requested by NAB and others, based on policy considerations inconsistent with section 9 of the Act.

50. *UHF/VHF Stations.* We decline to adjust the Commission's treatment of VHF stations for purposes of assessing regulatory fees. NJBA observes that, while the Commission in 2014 determined that VHF TV stations had become ''less desirable'' than UHF stations, the proposed regulatory fee structure provides no acknowledgement of this nor any discount to VHF stations. NJBA contends that many UHF stations are paying less than VHF stations and that UHF stations can offer a variety of services that traditional VHF stations cannot offer (especially low band VHF stations). Therefore, NJBA states that it is more logical that with the ability to offer a wider array of services and thereby obtain greater revenues, UHF stations should be assessed greater regulatory fees commensurate with these additional avenues of revenue attainment that VHF stations that cannot secure.

51. The Commission previously discussed the treatment of VHF stations. Specifically, the Commission observed that, in the *FY 2020 NPRM,* it declined to categorically lower regulatory fees for VHF stations to account for signal limitations. The Commission concluded that there is nothing inherent in VHF transmission that creates signal deficiencies but that environmental noise issues can affect reception in certain areas and situations. As such, the Commission recognized that the Media Bureau had granted waivers to allow VHF stations that demonstrate signal disruptions to exceed the maximum power level specified for channels 2–6 in 73.622(f)(6) and for channels 7–13 in 73.622(f)(7)—and that it would not penalize such stations by assessing them at their higher power levels needed to overcome such interference but instead at the power levels authorized by our rules. As the Commission determined at that time, such an approach more narrowly targets the issue that NJBA complains about by ensuring that VHF broadcasters that actually experience increased interference can get the relief they need to reach consumers without sweeping other broadcasters into the mix.

52. *Methodology for Full Service TV Regulatory Fees.* We will continue to use the population-based methodology for full-service television broadcasters as proposed for FY 2022. In FY 2020, the Commission completed the transition to a population-based full-power broadcast television regulatory fee, finding it to be more equitable. As we stated in the *FY 2022 NPRM,* we do not reopen that decision relating to these regulatory fees being based on population at this time. In the *FY 2022 NPRM,* we sought comment on the use of population-based fees for full-power broadcast television stations based on the station's terrain-limited contour. We now adopt a factor of .84 of one cent ($.008430) per population served for FY 2022 full-power broadcast television

station fees. The population data for each licensee and the population-based fee (population multiplied by the factor of $.008430) for each full-power broadcast television station, including each satellite station, is listed in Table 9. For those VHF stations whose power had to be increased to obtain a clearer signal, the Commission will continue to use a population count based on that station's lower VHF power level rather than at the increased power level.

53. NJBA disagrees with this methodology and contends that a population-based fee approach to assign regulatory fees is incongruent with how a station should be assessed fees in correlation to the revenue it achieves from its Nielsen DMA revenue share. NJBA argues that the DMA approach is a more accurate approach to assessing fees correlating with how stations derive revenue. NJBA's argument is that its members had relatively low revenues compared to major network stations in New York City. Essentially, NJBA appears to seek a waiver for its members of a portion of the regulatory fee based on its individual financial circumstances, *i.e.,* advertising revenue, and we decline to grant this blanket request. Under our rules, parties can seek a waiver, reduction, or deferment on a case-by-case basis of the fee, interest charge, or penalty ''in any specific instance for good cause shown, where such action would promote the public interest.''

54. NJBA also notes that the term Noise Limited Contour (NLSC) implies that it is the contour within which a perfect picture would appear at each television receiver. NJBA contends that this approach does not consider the effects on a signal that may result from the distance it may travel; the effects of terrain; building blockages which often occur in major city settings; and interference levels from co-channel and adjacent channel signals. NJBA's argument is that certain stations experience a high degree of interference from environmental noise and signal blockage from tall buildings near its transmitter. We recognize that in various parts of the country, broadcasters may face such interference or signal blockage issues; however, as we discussed in the *FY 2020 Report and Order,* adjudicating the circumstances of every station in the context of a cross-industrywide rulemaking would be administratively impractical, and the Commission's rule already provides a more appropriate venue for relief. We recognize that the population-based methodology increases fees for some licensees and reduces fees for others, but in the end the population-based metric better conforms with the actual service authorized here—broadcasting television to the American people. NJBA members can seek a waiver, reduction, or deferment on a case-by-case basis of the fee, interest charge, or penalty ''in any specific instance for good cause shown, where such action would promote the public interest.''

D. De Minimis Threshold

55. We decline to increase the de minimis threshold amount above $1,000. Section 9(e)(2) of the Act permits the Commission to exempt a party from paying regulatory fees if ''in the judgment of the Commission, the cost of collecting a regulatory fee established under this section from a party would exceed the amount collected from such party.'' A regulatee's de minimis status is not a permanent exemption from regulatory fees. Rather, each regulatee will need to reevaluate annually to determine whether its total liability for annual regulatory fees falls at or below the de minimis threshold given any changes that the Commission may make in its regulatory fees each fiscal year. As we explained in the *FY 2022 NPRM,* the Commission's process for collecting delinquent regulatory fee debt involves a number of steps, including data compilation, preparation, and validation; invoicing; debt transfer for third party collection; responding to debtor questions and disputes; and processing payments. The Commission periodically calculates its collection costs for purposes of determining the de minimis threshold by estimating the number of FTE hours spent on each collection task times the value of FTE time expended on the task, to arrive at the estimated total cost of each task. The totals for each task are then added together to determine the total estimated cost of collection. The total estimated cost of collection divided by the estimated number of delinquent regulatory fee debts for that fiscal year yields the average cost of collecting an unpaid regulatory fee.

56. For FY 2019, the last year the Commission reviewed the de minimis threshold, the Commission concluded that its average cost of collection did not exceed $1,000 and, therefore, the $1,000 de minimis threshold was still appropriate. In the *FY 2022 NPRM,* we sought comment on NAB's proposal to increase the annual $1,000 de minimis threshold. We asked commenters advocating for a higher de minimis threshold to discuss how we should calculate our collection costs and the steps in the Commission's regulatory fee process that should be included in the calculation. For example, we asked whether the calculation should begin when the Commission collects data on a payor's regulatory fee status, prior to the regulatory fee due date, rather than when the regulatory fee becomes delinquent, as is our current practice, and whether the calculation should include the Commission's cost of processing waiver and installment payment requests.

57. NAB, SIA, and the State Broadcasters Associations support a review of the $1,000 de minimis threshold. SIA suggests that, in light of inflation and other economic changes since 2019 when the Commission last addressed the de minimis threshold, the Commission's cost of collecting regulatory fees may have increased. NAB and the State Broadcasters Associations support expanding the Commission's calculation of its regulatory fee collection costs to include the cost of collecting payor fee data, costs incurred prior to the regulatory fee due date and the cost of processing and resolving waiver and installment payment requests. Specifically, NAB, SIA, and Richards each suggest that an appropriate factor in setting the de minimis threshold is to provide a higher threshold of relief to smaller broadcasters. To that end, NAB proposes that the de minimis threshold be increased to $1,200 to ensure that radio broadcasters that were below the de minimis threshold last year, but facing higher FY 2022 regulatory fees, will still be exempt in FY 2022. Richards suggests increasing the de minimis threshold to $3,000 in order to exempt most AM and FM stations serving populations under 500,000, which are the stations Richards believes will be hardest hit by the increase in FY 2022 regulatory fees.

58. We acknowledge that the de minimis threshold has the collateral effect of providing financial relief to some regulatees. However, it does not follow from the wording of section 9(e)(2) of the Act that providing relief for financially strapped regulatees is a factor that can be considered in setting this threshold. Moreover, raising the threshold on such a basis would result in exempting classes or categories of fee payors in a manner contrary to the limited waiver provisions for regulatory fees. Nothing in the text of the statute supports using policy factors outside of the cost of collection in establishing the de minimis threshold. Thus, in response to commenters' request for a review of the de minimis threshold, we calculated the average cost of collecting FY 2021 regulatory fees and included the cost of collecting payor fee data and the cost of

processing waiver and installment plan requests, as both NAB and the State Broadcasters Associations suggest. Even including the additional costs (without determining whether they are appropriately included in this calculation), the Commission's average cost of collection has not increased above the $1,000 de minimis threshold. Thus, we conclude that the cost of collecting regulatory fees, including the costs of collecting payor fee data and processing waiver and installment requests, does not justify an increase to the existing $1,000 de minimis threshold.

59. Both NAB and the State Broadcasters Associations suggest that the Commission define the ''cost of collection'' to encompass all annual costs of administering the regulatory fee program. While we agree with NAB that section 9(e)(2) of the Act does not provide a definition of costs of collection, we do not agree that the cost of collecting a regulatory fee should be expanded to include all of the Commission's costs of administering the regulatory fee program each year. We believe that a common sense interpretation of the language of section 9(e)(2) of the Act includes only those costs incurred by the Commission once the Commission has established that the annual fees are owed, which occurs when the Commission's regulatory fee Report and Order is released. In making this determination, we rely in part on the Debt Collection Improvement Act of 1996, as amended, 31 U.S.C. 3701 *et seq.* (DCIA), which governs the federal administrative debt collection process for most federal agencies, including the Commission. Under the DCIA, collection of debt begins after an agency has determined that the debt is due. Thus, we would here include costs once the regulatory fee becomes a debt, which occurs when the annual regulatory fee report and order is released. We therefore hold that the Commission's cost of collection for the purpose of establishing a de minimis threshold under section 9(e)(2) of the Act means collection costs incurred by the Commission after the Commission's regulatory fee Report and Order is released, including the costs the Commission incurs collecting payor fee data and processing waiver and installment plan requests.

E. Reclassification of FTEs

60. *Universal Service Fund Activities.* We decline, at this time, to reclassify certain indirect FTEs as direct FTEs for regulatory fee purposes. Nevertheless, we correct the manner in which we apportion the 38 previously reallocated core bureau FTEs in order to advance the overall implementation of our proportional methodology. In 2017, the Commission allocated as indirect, for regulatory fee purposes, 38 FTEs in the Wireline Competition Bureau who work on non-high cost programs of the Universal Service Fund. The Commission determined that changes in the Universal Service Fund regulatory landscape required it to reexamine whether the FTEs working on universal service issues as Wireline Competition Bureau direct FTEs should be reallocated as indirect. The FTE count was based on an analysis by the Office of Managing Director and Wireline Competition Bureau staff of the number of FTE hours dedicated to working on each of the Universal Service Fund programs. In the *FY 2022 NPRM,* we sought comment generally on whether prior reclassifications of FTEs from direct to indirect produce a more accurate regulatory fee assessment.

61. Initially, Universal Service Fund programs were focused on wireline services; however, as the Commission observed, by 2017, wireless carriers and broadband providers were also involved in the E-Rate, Lifeline, and Rural Healthcare programs. In addition, the E-Rate, Lifeline, and Rural Healthcare programs tie funding eligibility to the beneficiary, *i.e.,* a school, a library, a low-income individual or family, or a rural health care provider, and not to Commission regulatees. The Commission observed that wireless carriers serve a substantial, if not majority, of Lifeline subscribers. Also, satellite operators, Wi-Fi network installers, and fiber builders can all receive funding through the E-Rate and Rural Health Care universal service programs. Similarly, Multichannel Video Programming Distributors (MVPDs) that also provide supported services, receive universal service funding because they provide telecommunications and broadband internet access services that are eligible for support in those programs. The Commission further noted that contributions to the Universal Service Fund are required from service providers using any technology that has end-user interstate telecommunications. Moreover, applicants in these programs are not regulatees, they are schools and libraries and health care providers; the bulk of the Commission's oversight and regulation of these programs (*i.e.,* the Commission's FTE costs) are not generated by regulatees. The Commission therefore concluded that ITSPs were no longer the sole or even majority contributors or beneficiaries of these three programs. For these reasons, the Commission concluded that reallocating these Wireline Competition Bureau FTEs as indirect FTEs would also be more consistent with how FTEs working on Universal Service Fund issues were treated elsewhere in the Commission.

62. NAB contends that this reclassification of 38 FTEs is a wholesale abandonment of the statutory requirement that fees be adjusted to reflect benefits received by the payor by the Commission's activities. According to NAB, broadcasters have been unfairly forced to pay for a portion of the 38 FTEs in the Wireline Competition Bureau that the Commission determined were working on Universal Service Fund programs. NAB claims that, at a minimum, the Commission must ensure that broadcasters bear no responsibility for the 38 FTEs working on non-high cost USF programs in the Wireline Competition Bureau. NAB further argues that over the last five years broadcasters have likely paid more than $25 million in regulatory fees to support the activities of FTEs that, according to NAB, the Commission agrees do not benefit or regulate broadcasters.

63. We disagree that this example of 38 indirect FTEs who work on non-high cost Universal Service Fund issues was an improper assignment of FTEs under section 9 of the Act. Indirect FTEs work on issues that may include more than one regulated service or work on matters that are not related to services regulated by the Commission. All costs that are not directly related to regulation and oversight by the core bureaus must also be recovered by regulatory fees. This includes salaries and expenses, overhead functions, statutorily required tasks that do not directly equate with oversight and regulation of a particular regulatee but instead benefit the Commission and the industry as a whole, support costs such as rent, utilities, and equipment, and the costs incurred in regulating entities that are statutorily exempt from paying regulatory fees (*i.e.,* governmental and nonprofit entities, amateur radio operators, and noncommercial radio and television stations), entities with total annual assessed fees below the de minimis threshold, and entities whose regulatory fees are waived. Indirect FTEs in the Commission devote their time to a large variety of issues, some of which may not directly affect every Commission regulatee, including broadcasters.

64. With that said, while we continue to find that the Commission was supported in its decision in 2017 to reassign the 38 FTEs in the Wireline

Competition Bureau who work on non-high cost programs of the Universal Service Fund as indirect, we agree with broadcast commenters that the method for calculating the fees associated with these indirect FTEs should be corrected given the record in this proceeding, as well as the Commission's prior findings. The Commission has previously acknowledged, in 2016, that broadcasters receive no oversight, regulation, or other benefits of the nature we typically consider relevant for our regulatory fee analysis when looking at the activity of these indirect Universal Service Fund FTEs. Indeed, when the Commission reassigned these 38 non-high-cost Universal Service Fund FTEs in 2017, it dismissed the burden on broadcasters based on the general difficulty in precisely allocating *every* FTE without revisiting its 2016 acknowledgment. In short, despite these acknowledgments that broadcasters did not benefit from Universal Service Fund activities, the Commission failed to take appropriate measures to ensure that the proportional fee allocation methodology was not adversely impacted by the reassignment of the 38 non-high-cost FTEs. We remedy that today. While we adhere to the principle that our analysis here does not require scientific precision and need only be reasonable, in this instance, the record, the Commission's own prior findings, and our own review clearly substantiate the view that broadcasters do not benefit from these Universal Service Fund-related activities. Furthermore, we have prior experience implementing this type of change given our decision last year to exclude broadcasters from paying regulatory fees associated with the implementation of the Broadband DATA Act. We also note that Commission decisions to reallocate direct FTEs to indirect FTEs without also moving the FTEs into a non-core bureau or office are rare and are only warranted when unique circumstances support refinement of the Commission's general methodology for calculating regulatory fees. As such, we are not routinely faced with circumstances in which updates to our general methodology should be considered. While we acknowledge that other commenters in this proceeding have raised arguments about the Commission's allocation of indirect FTEs more generally, we find that the record currently before us is not sufficiently developed to support affording similar relief to other regulatory fee payors based upon indirect FTE areas of work at this time. However, we believe that these issues would benefit from additional comment, as set forth in the accompanying Notice of Inquiry.

65. Therefore, we will exclude ''Media Services'' licensees from recovery of the funds associated with the 38 indirect FTEs who work on non-high cost Universal Service Fund issues. We find that this correction to the manner in which we apportion the 38 previously reallocated core bureau FTEs is supported given the nature of this FTE reassignment; the weight of the record with respect to this issue; and the unusual position of broadcasters vis-à-vis other Commission regulatees in this instance. Furthermore, once implemented, this correction is easily repeatable each year, so long as the FTE reassignment remains warranted. In excluding ''Media Services'' licensees from the recovery of the funds associated with the 38 indirect FTEs who work on non-high cost Universal Service Fund issues, we recognize that all other fee payors within the core bureaus, including cable, DBS and IPTV providers regulated by the Media Bureau, will need to absorb these indirect costs because we are required by Congress to collection the full annual appropriation.

66. *Office of Economics and Analytics.* In FY 2019, the Commission reassigned staff from other bureaus and offices to establish the Office of Economics and Analytics (OEA), effective December 11, 2018. This resulted in the reassignment of 95 FTEs (of which 64 were not auctions-funded) as indirect FTEs. SIA contends that in any given year the rulemaking proceedings reviewed by OEA are not distributed across bureaus proportionally based on the number of direct FTEs and thus, the benefits from the work of OEA do not necessarily accrue proportionally to all payors. We note that all Commission-level drafts from core and non-core bureaus are reviewed by OEA, and OEA is also responsible for other economic-related activities that benefit the Commission. This function, assisting all bureaus and offices in the Commission with economic analysis, is appropriately considered indirect. CTIA observes that SIA's suggestion, that the Commission allocate OEA FTEs among certain core bureaus based on the type of rulemakings and other matters during a given year, would not proffer accurate FTE time allocations, and it would fail to reflect the wide variety of issues OEA reviews from non-core bureaus.

67. SIA also contends that a large portion of the FTE time in OEA involves auctions and is therefore outside the scope of International Bureau payors and International Bureau regulatees should not be responsible for this portion of indirect FTEs. As we have previously stated, all auctions expenses are separately funded and are not part of the Commission's annual S&E appropriation supported by regulatory fees. Pursuant to statute, the Commission recovers the costs of developing, implementing, and maintaining its section 309(j) spectrum auctions program as an offsetting collection against auction proceeds and subject to an annual cap which is articulated in the annual S&E appropriation. Thus, time devoted to developing and implementing auctions is tracked separately from other non-auctions work performed by FTEs, and is offset by the auction proceeds that the Commission is permitted to retain pursuant to section 309(j)(8) of the Act and the Commission's annual appropriation statute. For this reason, auctions FTEs are not included in the calculation of regulatory fees, and the Commission's methodology excludes all auctions-related FTEs and their overhead from the regulatory fee calculations. To the extent that FTE time within core bureaus is spent on auctions issues and on non-auctions issues, only the non-auctions portion is reflected in the core bureau's FTE count. Thus, only direct non-auctions FTE time is used in the calculation of the regulatory fee rate and consequently impact the overall regulatory fee calculations.

68. Further, SIA suggests that the Commission allocate the indirect FTEs in OEA's Auction Division to regulatory fee payors who benefit from auctions; and classify OEA's Associate Chief, Wireline, and Associate Chief, Media as direct FTEs allocated to Media and Wireline, respectively, and then divide the Associate Chief, Wireless and Spectrum indirect FTEs among the remaining core licensing bureaus. We reject this proposal. As an initial matter, we note that an FTE is a full-time equivalent, not an employee, and is based on the hours of work devoted to the regulation and oversight of the fee categories and not a particular job title. Further, the FTE time working on auctions issues is not included in our regulatory fee calculations and is funded separately. The OEA FTEs numbers attributed to non-auctions work derive from FTE levels in the Data Division, Economic Analysis Division, and Industry Analysis Division, as well as in OEA's Front Office. Staff in OEA review all Commission-level items, from all the Commission's bureaus and offices, including the International

Bureau, as well as providing economic analysis to the Commission and drafting white papers. The FTEs in OEA provide economic and data analysis to the entire Commission and are appropriately allocated as indirect FTEs.

F. Commenters' Proposals for New Regulatory Fee Categories

69. In the Notice of Proposed Rulemaking attached to the *FY 2021 Report and Order,* the Commission sought comment on adopting new regulatory fee categories and on ways to improve our regulatory fee process regarding any and all categories of service. The Commission asked commenters supporting such new fees how to define any new fee category and how to calculate and assess such fees on an annual basis. In the *FY 2022 NPRM,* we sought additional comment on these issues. Commenters supporting new regulatory fee categories advocate such fees for holders of experimental licenses; broadband internet access service; holders of equipment authorizations; database administrators that charge fees to enable unlicensed operations; and entities using spectrum on an unlicensed basis, including large technology companies. As we discuss below, we reject these proposals to create these new regulatory fee categories. Given the record developed in response to the Notice of Proposed Rulemaking attached to the *FY 2021 Report and Order* and in response to the *FY 2022 NPRM,* we find that there is an insufficient basis for adding these new regulatory fee categories at this time.

1. Holders of Experimental Licenses

70. The Satellite Coalition and SIA propose that the Commission adopt a regulatory fee category for holders of experimental licenses and state that this would involve the same process used for other licensed entities: the Commission would calculate the number of FTEs engaged in experimental licensing activities to determine the percentage of the total regulatory fee revenue requirement associated with experimental licensees (including direct and indirect costs) and then divide that amount among experimental license holders. CTIA disagrees and observes that the FTEs in the Office of Engineering and Technology (OET) that work on experimental licenses are appropriately classified as indirect because their duties affect multiple core bureaus and their regulatees, including satellite regulatees authorized by the International Bureau. We are not convinced that an experimental license is the same as other Commission licenses and that it should be subject to a regulatory fee.

71. OET typically grants over 2,000 experimental licenses each year, including Special Temporary Authority (STA). Many commercial services and technologies deployed today were first tested under the experimental licensing program. Where such technologies result in new licensing frameworks or services, the resultant services usually are subject to regulatory fees. The experimental radio service permits broad experimentation, including assessing equipment intended to operate in existing Commission services, proof of concept testing and evaluation of new radio technologies, equipment designs, radio wave propagation characteristics, and service concepts related to the use of the radio spectrum. Thus, many experimental licenses are filed by universities, research and development companies, technology manufacturers, and medical institutions which often are non-profit entities.

72. The Commission issues a variety of experimental licenses that range in duration from a few days to six months for STAs, generally two years for conventional experimental licenses, five years for experimental program licenses, and 10 years for experimental licenses in spectrum bands above 95 GHz. There is no renewal process for STAs. Further, applicants seeking extension of conventional experimental licenses must include sufficient justification for continued experimentation; otherwise, such applicants are referred to the appropriate service bureau to seek a service license. If service rules for the applicable spectrum are needed, applicants may petition the Commission for rulemaking to modify allocations or service rules in such a way as to permit the tested technology to obtain a license to operate. Experimental licenses (except for above 95 GHz licenses) are not permitted to be used to offer commercial service. However, market trials are permitted under certain circumstances to allow applicants to evaluate product performance and customer acceptability prior to the production stage. Further, experimental licenses are issued on a limited, non-harmful interference basis for operation within a band in which (typically) regulatory fee payors enjoy primary or secondary use. Additionally, experimental licenses do not provide the holder with any vested spectrum use rights and the Commission can require licensees to discontinue experimental operations at any time without undertaking any further administrative process, such as an adjudication.

73. OET's experimental authorization processes thus are distinct from authorization processes applicable to other types of licenses and the regulated entities holding them, and essentially fall under OET's functions of evaluating evolving technology for interference potential, facilitating the introduction of nascent technologies, and maintaining the U.S. Table of Frequency Allocations. As such, in reviewing those applications, OET ensures that experimental uses will not interfere with the primary and secondary users in the relevant bands, who, unlike experimental license holders, do have spectrum rights associated with a license in an authorized service. Where the core bureaus regulate the regulatory fee payors, they also provide the benefit of protecting such primary and secondary uses of the spectrum. Thus, while Commission resources are expended on processing experimental applications, these licenses are approved for a proposed experiment or range of experiments, and not for an actual operational service under established service rules providing some level of interference protection. Experimental licensing is often an important option for academic researchers on restricted budgets who are developing new technological solutions. Therefore, imposing regulatory fees on these licensees potentially could stifle a Commission function and policy objective of promoting new, efficient technology by precluding some academic researchers or small start-up technology developers from developing and testing new technologies and systems. Moreover, experimental authorizations present challenges in determining a fair, administrable, and sustainable regulatory fee system. As a starting point, many experimental license applicants are exempt from regulatory fees under the statute. Additionally, given the transient nature of such authorizations, determining what operational period is sufficient to merit assessment of regulatory fees would require significant analysis. Given the varying types of experimental authorizations, and the limited authority granted, it is likely we would have to consider multiple regulatory fee categories and multiple ways of allocating proportional fees to such categories. Commenters have not provided any analysis of the experimental authorizations in the record to allow us to make such determinations here. Moreover, in addition to the exempt status of many applicants, it is likely we would find

that many experimental authorizations, if subject to regulatory fees, do not result in any collection because the payor's total assessment falls under the de minimis threshold. Thus, we find that the record here is not sufficient for the Commission to establish a fair and administrable system for assessing regulatory fees for such experimental licenses.

74. Further, as we stated previously, OET provides engineering and technical expertise to the Commission as a whole and supports each of the agency's four core bureaus. FTEs within OET are appropriately classified as indirect because the FTE time devoted to OET work affects multiple core bureaus within the Commission and its regulatees. Because the experimental license typically is not used for a commercial service, and OET oversight helps to ensure that experimental licensees do not interfere with other (non-experimental) licensees, ''it is consistent with the principles of section 9 of the Communications Act for other (non-experimental) licensees to pay the costs of OET's work on experimental licenses. OET's FTE work on experimental licenses already is captured under the Commission's current regulatory fee framework. Moreover, we find that the Satellite Coalition's and SIA's proposals for such a new fee category could discourage communications industry innovation, and thus undermine the rationale for the Experimental Radio Service. We therefore decline to adopt a new regulatory fee category for holders of experimental licenses.

2. Broadband Internet Access Service

75. We also decline to create a new regulatory fee category for broadband internet access services at this time. There is no specific bureau or office in the Commission with oversight of all broadband services, because these oversight activities are spread out among all core bureaus, and broadband issues are a part of a variety of Commission initiatives and proceedings. NAB and Satellite Coalition argue that the Commission should expand the base of regulatory fee categories to include a broadband internet access service fee category to which the Commission should allocate all broadband-related costs.

76. Specifically, NAB contends that the Commission should revise its methodology to reallocate broadband costs among only those fee payors that benefit from the Commission's broadband activities. NAB argues that requiring broadcasters to pay for these costs is unfair since broadcasters do not benefit from the Commission's broadband activities. NAB suggests that the Commission modify its existing information collection systems to obtain the data necessary to assess regulatory fees on either a subscription or revenue basis. NAB contends that broadband internet access service providers began submitting data, including subscription counts, in the annual Broadband Data Collection and that the Commission could use this information to assess fees on a per-subscriber basis. NAB further proposes that we place this regulatory fee category within the Wireline Competition Bureau and reallocate FTEs that work primarily on broadband related issues in the other core and noncore bureaus and offices of the Commission to this fee category, to the extent necessary.

77. In the *FY 2021 Report and Order,* in addressing the assessment of regulatory fees to cover the costs of implementation of the Broadband DATA Act as part of the Commission's FY 2021 appropriation, we specifically stated that we do not have sufficient information to form the basis of designating a new broadband regulatory fee category. We indicated the information that we do not presently possess but that would be important in designating a new regulatory fee category and determining the unit measure within a fee category would include the amount of broadband internet access services offered by entities that also provide services subject to existing regulatory fees and by entities that provide broadband internet access services that are not currently subject to regulatory fees. Commenters still have not provided us with this information or identified Commission regulatory efforts involving FTEs specific to this industry segment to support a separate regulatory fee category for this service.

78. Further, we are unconvinced that a broadband internet access service regulatory fee category is necessary or that such a category appropriately belongs in the Wireline Competition Bureau. Broadband internet access services are offered through various technical means and by widely differing entities and to distinct user groups, *e.g.,* wireless service providers, wireline service providers (including VoIP), cable operators, and satellite operators, to consumers and businesses, on both a retail and a wholesale basis. This service is not only offered by different types of providers, but is also delivered to end users in different ways. Commenters have not shown that a particular group of FTEs within the Commission is providing oversight and regulation for broadband internet access services and that other parties (besides these broadband internet access service providers) are responsible for all of the regulatory fees associated with those FTEs. It appears that the contrary is true: broadband internet access services are involved in many Commission initiatives and proceedings and such services are offered by service providers regulated by all the core bureaus and already responsible for regulatory fees. Therefore, to include this proposed regulatory fee category under the Wireline Competition Bureau, as suggested by NAB, would increase the Wireline Competition Bureau's regulatory fee contribution based on time spent not only by staff in the Wireline Competition Bureau on broadband matters, but by staff in the other offices and bureaus within the Commission.

79. The Satellite Coalition, in arguing that the Commission adopt a broadband internet access service regulatory fee category, contends that the Commission has already calculated that 550 FTEs across a wide variety of offices and bureaus work on the Commission's broadband policy as part of its Strategic Goal to bring affordable, high-speed broadband to 100% of the country. We do not agree with Satellite Coalition's contention that the 2022 Strategic Goals apply to assessing regulatory fees. The Commission's Strategic Goals do not pertain to any specific regulatory fee category, but rather are developed and used as part of planning exercises mandated by a wholly unrelated statutory scheme. As we indicated above, such strategic goals are intended to align with higher level priority goals of the overall federal government. Thus, staff support of a specific strategic goal is not a sound rationale for adopting a new regulatory fee category.

80. Additionally, NAB argues that broadening the base of regulatory fee payors to include broadband internet access service providers would ensure a more fair and sustainable regulatory fee system. However, NAB's proposal does not establish a sufficient basis for the creation of such a category and that a broadband internet access services regulatory fee category, if adopted, would be fair, administrable, or sustainable for the reasons elaborated above. As NCTA notes, the Commission has taken historic actions to discount broadband internet access service for those who cannot afford it and now would not be the time to unravel that work by adopting a new set of regulatory fees that would increase the cost-burden of these services. We also are not persuaded that such a new

regulatory fee category, if adopted, would reduce broadcasters' regulatory fees. Given the various uncertainties, we find it unlikely that adding a new fee category for broadband internet access service would make a significant difference in the broadcasters' regulatory fees. The total amount we collect from each core bureau is based on the number of non-auctions FTEs in each bureau, and adding a new broadband internet access fee category or categories would not change the number of Media Bureau FTEs working on broadcast issues. Moreover, as indicated above, broadband internet access services are a part of many Commission initiatives and proceedings and such services are offered by service providers regulated by all the core bureaus (and these providers already pay regulatory fees on their regulated services). For these reasons, particularly due to the lack of information in the record to support the need for adoption of such a new regulatory fee category, we are not creating a new fee category for broadband internet access services at this time. Specifically, we find that section 9 of the Act does not require creation of this category and commenters have not shown, on the basis of the record in this proceeding, that such a category would satisfy the factors that the Commission has relied on when it has found a basis to create a new regulatory fee category.

3. Holders of Equipment Authorizations

81. We decline to adopt the Satellite Coalition's proposal that the Commission adopt a regulatory fee category for holders of equipment authorizations. Satellite Coalition argues that the costs associated with equipment authorizations can be assessed on equipment manufacturers that benefit from Commission staff who implement policies designed to ensure compliance with relevant regulatory standards. We find, however, that OET FTE time on equipment authorizations is appropriately classified as indirect because such work affects multiple core bureaus and their regulatees, including satellite regulatees authorized by the International Bureau. OET provides engineering and technical expertise to the Commission as a whole and supports each of the four core bureaus. Notably, part of OET's role is to participate in matters ''not within the jurisdiction of any single bureau'' or ''affecting more than one bureau,'' similar to other offices with indirect FTEs such as the Office of General Counsel and the Office of Economics and Analytics. Some of OET's duties and responsibilities that affect multiple core bureaus and their regulatees include maintaining the U.S. Table of Frequency Allocations; managing the Experimental Licensing and Equipment Authorization programs; regulating the operation of devices; and conducting engineering and technical studies. The matters handled by OET benefit the Commission's work as a whole as well as all service sectors to which the Commission's core bureaus devote FTE resources.

82. The equipment authorization program is one of the principal ways the Commission ensures that radio frequency devices operate effectively without causing harmful interference and otherwise comply with the Commission's rules. The Commission's equipment authorization program promotes efficient use of the radio spectrum and addresses various responsibilities associated with certain treaties and international regulations, while ensuring that radio frequency (RF) devices in the United States comply with the Commission's technical requirements before they can be marketed in or imported to the United States. As a general matter, for an RF device to be marketed or operated in the United States, it must have been authorized for use by the Commission, although a limited number of categories of RF equipment are exempt from this requirement. The Commission's equipment authorization program provides for two pathways: certification and supplier's declaration of conformity (SDoC). Applicants for equipment certification are required to file their applications, which must include certain specified information, with an FCC-recognized Telecommunications Certification Body (TCB). The Commission, through its Office of Engineering and Technology (OET), oversees the certification process, and provides guidance to applicants, TCBs, and test labs with regard to required testing and other information associated with certification procedures and processes, including guidance provided via correspondence or found in pre-approval guidance or OET's knowledge database system (KDB). The SDoC procedures, which are available for specific equipment generally considered to have reduced potential to cause RF interference, provide for equipment to be authorized based on the responsible party's self-declaration that the equipment complies with the pertinent Commission requirements. Because the SDoC process is based on self-declaration, there is no direct oversight of that process by OET staff. As we noted in the *FY 2021 Report and Order,* OET FTE resources for equipment authorizations are typically limited to overseeing the equipment authorization program.

83. Because there are multiple categories of equipment authorization procedures, including exemption and self-authorization, the implementation of regulatory fees assessed to holders of equipment authorizations presents challenges in determining a fair, administrable, and sustainable fee system.. Additionally, equipment authorization generally applies to the functionality of a particular device, not the production of each unit (*i.e.,* an entity needs to complete the equipment authorization process only once for a device regardless of how many units of such devices are produced). Thus, unlike licenses, equipment authorizations are obtained once and are not subject to validity for a defined time period. Further, the equipment authorization procedures that are applicable to RF devices permitted to be imported or marketed into the U.S. do not require the Commission to collect information from or communicate directly with the manufacturer of every device. Commenters have not provided sufficient analysis in the record to allow us to determine a fair, administrable, and sustainable regulatory fee system for the holders of equipment authorization. For these reasons, we find that the OET FTEs are appropriately categorized as indirect and we reject the proposal to adopt a new fee category for holders of equipment authorizations.

4. Operators of Databases of Spectrum Used on an Unlicensed Basis

84. We also decline to adopt the Satellite Coalition's proposal that the Commission adopt a new regulatory fee category for database operators that charge fees to enable unlicensed use of certain frequency bands. The Satellite Coalition asserts that these operators benefit from Commission rulemakings that enable them to administer unlicensed use of spectrum, and thus, that they should contribute their share to the Commission's budget. It argues that pursuant to the RAY BAUM'S Act we are no longer limited to looking at FTEs in core bureaus when determining regulatory fees. The Wi-Fi Alliance disagrees and contends that the proposal to impose fees on operators of databases would impede use of 6 GHz spectrum, which in many cases will require access to an automated frequency coordination operator and its database.

85. As we have previously discussed, pursuant to section 9 of the Act,

regulatory fees are to be derived by determining ''the full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' Specifically, section 9 of the Act directs the Commission to consider ''factors that are *reasonably related* to the benefits provided to the payor of the fee by the Commission's activities.'' The Commission's FTE activities for these database operators includes the establishment of database rules and ensuring that database administrators have the technical expertise to develop and operate the relevant databases. After a database is set up, Commission involvement with the operator is generally sporadic. The function of the databases is to prevent harmful interference from occurring to incumbent licensed operations by unlicensed use of certain frequency bands thereby enabling the more efficient use of radio spectrum. The services provided by operators of databases are essentially available to any user of the relevant frequency bands on an unlicensed basis. We note that users of those databases pay operators to access the databases, and are required to use such databases to prevent harmful interference to other users. The Commission often recognizes multiple database administrators. In those cases, users can patronize any database administrator and there is no guarantee how much, if any, coordination a particular database administrator will undertake and, thus, no guarantee that a database administrator will even receive benefits from its relationship with the Commission.

86. Moreover, the suggestion that we create a regulatory fee category for only these database administrators ignores the fact that, under the Commission's rules, there are a variety of database administrators and spectrum coordinators (*e.g.,* television white space devices, 6 GHz devices, and fixed, personal/portable, and mobile devices). Thus, focusing only on database administrators enabling the use of spectrum on an unlicensed basis would result in indirectly assessed regulatory fees on certain users of spectrum on an unlicensed basis. As explained below, we decline to create a regulatory fee category for users of spectrum on an unlicensed basis, either directly or indirectly.

87. Further, the Commission's FTE activities related to operators of databases of spectrum on an unlicensed basis benefit a wide variety of industry segments, both licensed and unlicensed, and is consistent with the treatment of these FTEs, which work primarily in the Office of Engineering and Technology, as indirect. Thus, we do not find that there are sufficient benefits (*i.e.,* FTE work in oversight or regulation) provided each fiscal year to these database operators by the Commission's activities of such a magnitude that it warrants creation of a regulatory fee category for database operators at this time. We acknowledge that in establishing the regime that allows for such database operators to support Commission licensees, FTE time is devoted to adopting a regulatory regime that allows for the database operators to perform a such functions. This is, however, generally a one-time effort and it would arbitrary to assess fees year after year based on such one-time efforts. We therefore decline to adopt a new regulatory fee category for operators of these databases.

5. Users of Spectrum on an Unlicensed Basis

88. We decline to adopt NAB's proposal to adopt a new regulatory fee category for users of spectrum on an unlicensed basis, including large technology companies. Commenters generally oppose NAB's proposal. The Wi-Fi Alliance states that there is no basis for creating a new fee category to include, directly or indirectly, users of spectrum on an unlicensed basis, and doing so would not be fair, administrable, or sustainable. Other commenters also oppose the proposal to adopt a regulatory fee category for the use of spectrum on an unlicensed basis. NCTA observes that no commenter has even clarified who they think falls into the fee category, let alone presented any type of proposal or detailed explanation of how the Commission might assess such fees.

89. NAB has not provided a sufficient basis, consistent with section 9 of the Act, for the adoption of a new regulatory fee category for users of spectrum on an unlicensed basis. The Commission has adopted new fee categories based in part on the benefits to the payor, *i.e.,* FTE work in oversight and regulation, on several occasions. In those instances, the Commission determined that significant FTE resources of a core bureau were being spent on oversight and regulatory activities with respect to a specific service necessitating a new regulatory fee category. Those circumstances are not present here. As noted above, FTEs in OET, which is responsible for oversight and regulation of spectrum used on an unlicensed basis, have historically been classified as ''indirect'' FTEs because OET's work benefits the Commission and the industry as a whole and is not specifically focused on the regulatees and licensees of a core bureau. Even when we consider only FTE time working on oversight and regulation of spectrum used on an unlicensed basis and devices capable of operating wholly or in part on such spectrum, the treatment of such costs as indirect is appropriate. Many devices, including those operating wholly or in part on an unlicensed basis, are exempt from equipment authorization requirements. Moreover, devices that are not exempt are tested by third party labs and, if certification is required, certified by Telecommunications Certification Bodies. As such, OET's oversight requires only a portion of FTE resources, thus supporting our continued treatment of such costs as part of overall OET indirect costs, as opposed to segregable direct costs, and the Commission's current regulatory framework does not include an easy way to distinguish devices that operate on an unlicensed (as opposed to licensed) basis.

90. In interpreting and applying section 9 of the Act, the Commission has developed a framework to ensure that the resulting fee category fee schedules are fair, administrable, and sustainable. Thus, in evaluating new regulatory fee categories, we consider if assertion of our authority would be fair, administrable, and sustainable while examining any ''benefit'' provided to the payor by the Commission's FTE activities in oversight and regulation. On the basis of the record developed here, we find that NAB's proposal for a new fee category for users of spectrum on an unlicensed basis does not satisfy these factors.

91. The Commission has explained that a regulatory fee category is unfair if it combines either uses or users that are too different from one another. The Commission bases regulatory fee categories on services or facilities used. Use of spectrum on an unlicensed basis is nearly ubiquitous in modern-day society, and confers widespread benefits. Because of the large variety of uses of spectrum on an unlicensed basis, including for non-communications purposes, there is no specific user, service, or facility using this spectrum that could form the basis for a regulatory fee category of similar services. Entities use spectrum on an unlicensed basis in a variety of ways, including healthcare, security systems, thermostats, alarm systems, baby monitors, fitness trackers, home appliances, garage door openers,

cordless phones, in-vehicle rear seat passenger detection systems, wireless power transfer, law enforcement radars, microwave ovens, Wi-Fi networks, Bluetooth speakers, Internet of Things (IoT) industrial networks, and other consumer devices. Chip makers, component makers, device makers, device users, internet providers, content providers, mobile network operators, vendors, enterprise users, and consumers all use spectrum on an unlicensed basis in various ways and such users include individuals, state and local governments, corporations, non-profit organizations, schools, libraries, and other groups. The variety of users and spectrum bands used on an unlicensed basis creates a broad group of potential payors. Moreover, the Commission itself does not distinguish between these numerous and expanding uses of spectrum on an unlicensed basis in its regulations. Thus, grouping all users of spectrum on an unlicensed basis together, including devices such as baby monitors, garage door openers, field disturbance sensors, medical imaging systems, cordless phones, Wi-Fi networks, Bluetooth speakers, Internet of Things (IoT) industrial networks, and consumer devices would not result in a fair or rational way to assess regulatory fees.

92. Second, we find that such a fee for users of spectrum on an unlicensed basis would be virtually impossible to define or administer, based on the record developed in this proceeding. To adopt a fee on the use of spectrum on an unlicensed basis would be imposing a fee on billions of devices related to a wide variety of applications and industries, a base which continually grows and evolves over time. As commenters observe, because of the large variety of uses of spectrum on an unlicensed basis, it is difficult to determine who would be responsible for paying such regulatory fees as the Commission has no way of identifying the owner and user of the unlicensed devices using this spectrum, and there is no specific service with which to form a regulatory fee category of similar services. We find that the variety of uses of spectrum on an unlicensed basis creates such a broad group of potential payors as to render it virtually meaningless to attempt to identify them because it would be hard to find a consumer or a business that does not use spectrum on an unlicensed basis nearly every day. As the Wi-Fi Alliance observes, imposing new regulatory fees on users of spectrum on an unlicensed basis could affect an unreasonably wide range of entities and individuals, including consumers.

93. With such a large group of users of spectrum on an unlicensed basis, adopting a new regulatory fee category for these users would be the equivalent of asking every industry and consumer to pay this fee, resulting in a regulatory fee scheme far more extensive than our current regulatory fee system and would reach all households and businesses. Such a fee would be logistically infeasible to collect, at least on the basis of this record.

94. NAB argues that users of spectrum on an unlicensed basis place a significant ongoing burden on Commission resources in furtherance of their businesses because the Commission will be involved in amending and monitoring the spectrum use process, responding to requests from the innovation economy to use spectrum in new ways and for new technologies, and enforcing its rules, not only to prevent interference to licensed users, but to ensure the end user can actually use the devices and products. We are not convinced that the mere fact that FTE time involved in oversight and regulation of such spectrum use is a sufficient reason to adopt a new regulatory fee category. As discussed above, there is no particular service, industry, or other discrete group of potential regulatory fee payors for the use of spectrum on an unlicensed basis, because essentially all consumers and manufacturers have devices that use spectrum on an unlicensed basis. Moreover, the Commission previously has observed that regulatees rely on consistency of treatment in regulatory fees from year to year and thus the Commission has hesitated to make changes which would result in rapid shifts in regulatory fees. We therefore find that, in this instance, creating such categories does not serve the Commission's goal of having an administrable framework.

95. Additionally, a regulatory fee category related to use of spectrum on an unlicensed basis, assessed on devices, if adopted, would not be sustainable for the same reasons elaborated above. Ever-changing technology results in increased use of spectrum on an unlicensed basis over time and the Commission would have to continually re-assess this regulatory fee category to ensure that it is being implemented in a fair and equitable manner among all regulatory fee payors. With respect to the logistics of imposing an annual regulatory fee on users of devices capable of using spectrum on an unlicensed basis, it is unclear whether and how device manufacturers or distributors would be responsible for paying such a fee. The Commission establishes rules for and administers the equipment authorization program to ensure that RF devices used in the United States operate effectively without causing harmful interference and otherwise comply with the Commission's rules. However, under the current equipment authorization regime, the Commission does not collect information from or communicate with all device manufacturers because, many devices only require SDoC s or are exempt from authorization because they pose a limited potential of causing harmful interference. Further, the Commission has no reasonable means by which to comprehensively identify each and every individual user of RF devices on an unlicensed basis. Thus, it would be nearly impossible for the Commission to annually assess and collect the regulatory fees each year in a fair and sustainable manner consistent with section 9 of the Communications Act.

96. Finally, NAB contends that the Commission cannot continue to place the burden of paying for use of spectrum on an unlicensed basis on broadcasters who are forced to compete with some of the world's largest technology companies unencumbered by regulatory fee burdens in the name of administrative simplicity. Some ''Big Tech'' companies are a subset of the users of spectrum on an unlicensed basis. Thus, our above reasons for declining to adopt a regulatory fee category for users of spectrum on an unlicensed basis apply equally to any such ''Big Tech'' companies on the sole basis of being users of spectrum on an unlicensed basis, as proposed by commenters.

97. Further, we decline to create a new regulatory fee category for the use of spectrum on an unlicensed basis premised on competitive considerations in the advertising industry. We have described above the record evidence demonstrating the broad and varied universe of users of spectrum on an unlicensed basis. There is no evidence in the record of any discernable and practicable overlap between the universe of users of spectrum on an unlicensed basis and the advertising industry, and commenters do not explain how the Commission separately regulates or expends FTE resources on those that might be competing with broadcasters for advertising revenues. Thus, competition for advertising revenues is not a sufficient basis for creating a new regulatory fee category under section 9 of the Act. Accordingly, as we discussed above, we find that a

new regulatory fee category for users of spectrum on an unlicensed basis, on the basis of the instant record, is not statutorily required and would be inconsistent with section 9 of the Act and the Commission's precedent thereunder, and we decline to adopt such regulatory fee categories at this time. We recognize the value in encouraging the development and innovation of technologies and decline to take such unprecedented action without a sufficient basis for making this change to the regulatory fee schedule.

G. Advancing Diversity, Equity, Inclusion, and Accessibility

98. In the *FY 2022 NPRM,* we sought comment on how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility, as well the scope of the Commission's relevant legal authority. NCTA raises some concerns that establishing new regulatory fee categories for users of spectrum on an unlicensed basis or on broadband internet access services could interfere with the Commission's efforts to advance diversity, equity, inclusivity, and accessibility. NCTA also asserts that establishing these new regulatory fee categories will frustrate the Commission's efforts to encourage the creation of innovative technologies and foster diversity in ownership of communications facilities and services. While we recognize the concerns raised by NCTA, we emphasize that such diversity and equity considerations do not impact our methodology for establishing regulatory fee rates. Such considerations do not allow the Commission to shift fees from one party of fee payors to another nor to raise fees for any purpose other than as an offsetting collection in the amount of our annual S&E appropriation, consistent with the requirements of section 9 of the Act. Moreover, because we decline to adopt these new regulatory fee categories proposed by commenters in this item, for reasons previously discussed in prior sections, we need not address the concerns raised by NTCA in this proceeding.

H. Flexibility for Regulatory Payors Due to COVID–19 Pandemic

99. In 2020 and 2021, we provided relief to regulatees experiencing financial hardship caused or exacerbated by the COVID–19 pandemic. In light of the ongoing pandemic and the likely continuing economic effect on certain Commission regulatees, we find good cause exists to provide again the following temporary relief measures for FY 2022. We anticipate that many regulatees will avail themselves of these measures, as they did in FY 2020 and FY 2021, and that implementing the measures will provide needed relief to those regulatees. First, we waive the requirement under section 1.1166 of the Commission's rules that regulatees seeking waiver (or reduction) and deferral of their regulatory fees on financial grounds related to the pandemic file separate pleadings for each form of relief sought. Instead, regulatees may combine their requests for relief in a single pleading. Second, we waive the paper filing requirement under section 1.1166 and instruct regulatees to instead file their requests electronically, to *regfeerelief@fcc.gov.* Third, parties seeking to pay their regulatory fees over time may submit their installment payment requests to *regfeerelief@fcc.gov,* and combine their installment payment requests with requests for waiver, reduction and deferral, in a single pleading. Fourth, OMD will continue to exercise its delegated authority to partially waive section 1.1910 of the Commission's rules (*i.e.,* the red-light rule) to allow regulatees on red light and experiencing financial hardship to nonetheless request waiver, reduction, deferral, and/or installment payment of their FY 2022 regulatory fees. In doing so, we maintain the requirement that such regulatees resolve all delinquent debt they owe to the Commission in advance of the Commission's decision on their relief requests. Fifth, OMD will continue to use its existing authority to reduce the interest rate normally charged on installment payment of regulatory fee debt owed to the Commission to a nominal rate and forgo the down payment normally required to grant installment payment requests. Finally, we partially waive the requirement that fee payors submit all documentation supporting a request for waiver, deferral or reduction of regulatory fees at the same time the underlying request is submitted. This allows fee payors to provide supplemental documents if requested by OMD as necessary to render decisions on regulatees' requests for relief. We direct the Managing Director to release one or more public notices describing in more detail the relief we have described herein.

100. We remind regulatees that we cannot relax the standard for granting a waiver or deferral of fees, penalties, or other charges for late payment of regulatory fees under section 9A of the Act. Under the statute, the Commission may only waive a regulatory fee, penalty, or interest charge if it finds there is good cause for the waiver and that the waiver is in the public interest. The Commission has only granted financial hardship waivers when the requesting party has shown it ''lacks sufficient funds to pay the regulatory fees and to maintain its service to the public.'' Other statutory limitations include that the Commission must act on waiver requests individually, and cannot extend the deadline we set for payment of fees beyond September 30.

III. Procedural Matters

101. Included below are procedural items as well as our current payment and collection methods.

102. *Credit Card Transaction Levels.* In accordance with *Treasury Financial Manual,* Volume I, Part 5, Chapter 7000, Section 7055.20—*Transaction Maximums,* the highest amount that can be charged on a credit card for transactions with federal agencies is $24,999.99. Transactions greater than $24,999.99 will be rejected. This limit applies to single payments or bundled payments of more than one bill. Multiple transactions to a single agency in one day may be aggregated and treated as a single transaction subject to the $24,999.99 limit. Customers who wish to pay an amount greater than $24,999.99 should consider available electronic alternatives such as Visa or MasterCard debit cards, ACH debits from a bank account, and wire transfers. Each of these payment options is available after filing regulatory fee information in the CORES system. Further details will be provided regarding payment methods and procedures at the time of FY 2022 regulatory fee collection in Fact Sheets, *https://www.fcc.gov/regfees.*

103. *Payment Methods.* During the fee season for collecting regulatory fees, regulatees can pay their fees by credit card through *Pay.gov,* ACH, debit card, or by wire transfer. Additional payment instructions are posted on the Commission's website at *http://transition.fcc.gov/fees/regfees.html.* The receiving bank for all wire payments is the U.S. Treasury, New York, NY (TREAS NYC). Any other form of payment (*e.g.,* checks, cashier's checks, or money orders) will be rejected. For payments by wire, an FCC Form 159–E should still be transmitted via fax so that the Commission can associate the wire payment with the correct regulatory fee information. The fax should be sent to the Commission at (202) 418–2843 at least one hour before initiating the wire transfer (but on the same business day) so as not to delay crediting their account. Regulatees

should discuss arrangements (including bank closing schedules) with their bankers several days before they plan to make the wire transfer to allow sufficient time for the transfer to be initiated and completed before the deadline. Complete instructions for making wire payments are posted at *http://transition.fcc.gov/fees/wiretran.html.*

104. *De Minimis Regulatory Fees, Section 9(e)(2) Exemption.* Under the de minimis rule, and pursuant to our analysis under section 9(e)(2) of the Act, a regulatee is exempt from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is $1,000 or less for the fiscal year. The de minimis threshold applies only to filers of annual regulatory fees, not regulatory fees paid through multi-year filings, and it is not a permanent exemption. Each regulatee will need to reevaluate the total annual fee liability each fiscal year to determine whether it meets the de minimis exemption.

105. *Standard Fee Calculations and Payment Dates.* The Commission will accept fee payments made in advance of the window for the payment of regulatory fees. The responsibility for payment of fees by service category is as follows:

- *Media Services:* Regulatory fees must be paid for initial construction permits that were granted on or before October 1, 2021 for AM/FM radio stations and VHF/UHF broadcast television stations. Regulatory fees must be paid for all broadcast facility licenses granted on or before October 1, 2021.
- *Wireline (Common Carrier) Services:* Regulatory fees must be paid for authorizations that were granted on or before October 1, 2021. In instances where a permit or license is transferred or assigned after October 1, 2021, responsibility for payment rests with the holder of the permit or license as of the fee due date. Audio bridging service providers are included in this category. For Responsible Organizations (RespOrgs) that manage Toll Free Numbers (TFN), regulatory fees should be paid on all working, assigned, and reserved toll free numbers as well as toll free numbers in any other status as defined in section 52.103 of the Commission's rules. The unit count should be based on toll free numbers managed by RespOrgs on or about December 31, 2021.
- *Wireless Services:* CMRS cellular, mobile, and messaging services (fees based on number of subscribers or telephone number count): Regulatory fees must be paid for authorizations that were granted on or before October 1, 2021. The number of subscribers, units, or telephone numbers on December 31, 2021 will be used as the basis from which to calculate the fee payment. In instances where a permit or license is transferred or assigned after October 1, 2021, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *Wireless Services, Multi-year fees:* The first seven regulatory fee categories in our Schedule of Regulatory Fees pay ''small multi-year wireless regulatory fees.'' Entities pay these regulatory fees in advance for the entire amount period covered by the ten-year terms of their initial licenses, and pay regulatory fees again only when the license is renewed, or a new license is obtained. We include these fee categories in our rulemaking to publicize our estimates of the number of ''small multi-year wireless'' licenses that will be renewed or newly obtained in FY 2022.
- *Multichannel Video Programming Distributor Services (cable television operators, CARS licensees, DBS, and IPTV):* Regulatory fees must be paid for the number of basic cable television subscribers as of December 31, 2021. Regulatory fees also must be paid for CARS licenses that were granted on or before October 1, 2021. In instances where a permit or license is transferred or assigned after October 1, 2021, responsibility for payment rests with the holder of the permit or license as of the fee due date. For providers of DBS service and IPTV-based MVPDs, regulatory fees should be paid based on a subscriber count on or about December 31, 2021. In instances where a permit or license is transferred or assigned after October 1, 2021, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services (Earth Stations and Space Stations):* Regulatory fees must be paid for (1) earth stations, (2) geostationary orbit space stations and non-geostationary orbit satellite systems, and 3) small satellite space stations that were licensed and operational on or before October 1, 2021. In instances where a permit or license is transferred or assigned after October 1, 2021, responsibility for payment rests with the holder of the permit or license as of the fee due date.
- *International Services* (*Submarine Cable Systems, Terrestrial and Satellite Services*): Regulatory fees for submarine cable systems are to be paid on a per cable landing license basis based on lit circuit capacity as of December 31, 2021. Regulatory fees for terrestrial and satellite IBCs are to be paid based on active (used or leased) international bearer circuits as of December 31, 2021 in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier. When calculating the number of such active circuits, entities must include circuits used by themselves or their affiliates. For these purposes, ''active circuits'' include backup and redundant circuits as of December 31, 2021. Whether circuits are used specifically for voice or data is not relevant for purposes of determining that they are active circuits. In instances where a permit or license is transferred or assigned after October 1, 2021, responsibility for payment rests with the holder of the permit or license as of the fee due date.

106. *Commercial Mobile Radio Service (CMRS) and Mobile Services Assessments.* The Commission compiled data from the Numbering Resource Utilization Forecast (NRUF) report that is based on ''assigned'' telephone number (subscriber) counts that have been adjusted for porting to net Type 0 ports (''in'' and ''out''). We have included non-geographic numbers in the calculation of the number of subscribers for each CMRS provider in Table 4 and the CMRS regulatory fee rate. CMRS provider regulatory fees are calculated and should be paid based on the inclusion of non-geographic numbers. CMRS providers can adjust the total number of subscribers, if needed. This information of telephone numbers (subscriber count) will be posted on the Commission's electronic filing and payment system (Fee Filer).

107. A carrier wishing to revise its telephone number (subscriber) count can do so by accessing Fee Filer and follow the prompts to revise their telephone number counts. Any revisions to the telephone number counts should be accompanied by an explanation or supporting documentation. The Commission will then review the revised count and supporting documentation and either approve or disapprove the submission in Fee Filer. If the submission is disapproved, the Commission will contact the provider to afford the provider an opportunity to discuss its revised subscriber count and/or provide additional supporting documentation. If we receive no response from the provider, or we do not reverse our initial disapproval of the provider's revised count submission, the fee payment must be based on the number of subscribers listed initially in Fee Filer. Once the timeframe for revision has passed, the telephone number counts are final and are the basis upon which CMRS regulatory fees are to be paid. Providers can view their

final telephone counts online in Fee Filer. A final CMRS assessment letter will not be mailed out.

108. Because some carriers do not file the NRUF report, they may not see their telephone number counts in Fee Filer. In these instances, the carriers should compute their fee payment using the standard methodology that is currently in place for CMRS Wireless services (*i.e.,* compute their telephone number counts as of December 31, 2020), and submit their fee payment accordingly. Whether a carrier reviews its telephone number counts in Fee Filer or not, the Commission reserves the right to audit the number of telephone numbers for which regulatory fees are paid. In the event that the Commission determines that the number of telephone numbers that are paid is inaccurate, the Commission will bill the carrier for the difference between what was paid and what should have been paid.

109. *Effective Date.* Providing a 30-day period after **Federal Register** publication before this Report and Order becomes effective as normally required by 5 U.S.C. 553(d) will not allow sufficient time to collect the FY 2022 fees before FY 2022 ends on September 30, 2022. For this reason, pursuant to 5 U.S.C. 553(d)(3), we find there is good cause to waive the requirements of section 553(d), and this Report and Order will become effective upon publication in the **Federal Register**. Because payments of the regulatory fees will not actually be due until late September, persons affected by the Report and Order will still have a reasonable period in which to make their payments and thereby comply with the rules established herein.

IV. List of Tables

TABLE 3—LIST OF COMMENTERS

Name of commenter	Abbreviated name	Date filed
Alabama Broadcasters Association, Alaska Broadcasters Association, Arizona Broadcasters Association, Arkansas Broadcasters Association, California Broadcasters Association, Colorado Broadcasters Association, Connecticut Broadcasters Association, Florida Association of Broadcasters, Georgia Association of Broadcasters, Hawaii Association of Broadcasters, Idaho State Broadcasters Association, Illinois Broadcasters Association, Indiana Broadcasters Association, Iowa Broadcasters Association, Kansas Association of Broadcasters, Kentucky Broadcasters Association, Louisiana Association of Broadcasters, Maine Association of Broadcasters, MD/DC/DE Broadcasters Association, Massachusetts Broadcasters Association, Michigan Association of Broadcasters, Minnesota Broadcasters Association, Mississippi Association of Broadcasters, Missouri Broadcasters Association, Montana Broadcasters Association, Nebraska Broadcasters Association, Nevada Broadcasters Association, New Hampshire Association of Broadcasters, New Jersey Broadcasters Association, New Mexico Broadcasters Association, The New York State Broadcasters Association, Inc., North Carolina Association of Broadcasters, North Dakota Broadcasters Association, Ohio Association of Broadcasters, Oklahoma Association of Broadcasters, Oregon Association of Broadcasters, Pennsylvania Association of Broadcasters, Radio Broadcasters Association of Puerto Rico, Rhode Island Broadcasters Association, South Carolina Broadcasters Association, South Dakota Broadcasters Association, Tennessee Association of Broadcasters, Texas Association of Broadcasters, Utah Broadcasters Association, Vermont Association of Broadcasters, Virginia Association of Broadcasters, Washington State Association of Broadcasters, West Virginia Broadcasters Association, Wisconsin Broadcasters Association, and Wyoming Association of Broadcasters.	State Broadcasters Associations.	7/5/22
Cable & Wireless Networks; GlobeNet Cabos Submarinos Americas, Inc.; GU Holdings, Inc. (wholly-owned subsidiary of Google LLC); Hawaiki Submarine Cable USA LLC; SETAR; Tata Communications (Americas), Inc.	Submarine Cable Coalition.	7/5/22
Computer & Communications Industry Association (CCIA); Digital Media Association (DiMA), INCOMPAS, and Internet Association.	INCOMPAS, CCIA, and DiMA.	7/5/22
K. M. Richards	Richards	6/6/22
National Association of Broadcasters	NAB	7/5/22
New Jersey Broadcasters Association	NJBA	7/5/22
Orbital Sidekick, Inc	OSK	7/5/22
O3b Limited; SES Americom, Inc.; Telesat Canada; and WorldVu Satellites Limited d/b/a OneWeb	Satellite Coalition	7/5/22
Satellite Industry Association	SIA	7/5/22
Spaceflight, Inc	Spaceflight	7/5/22
Reply Comments		
AGM California, Inc.; AGM Nevada, LLC; Alabama Media, LLC; Brayden Madison Broadcasting, L.L.C.; Coxswain Media, LLC; Davis Broadcasting Inc. of Columbus; Equity Communications, LP; Florida Keys Media, LLC; Galaxy Syracuse Licensee LLC; Galaxy Utica Licensee LLC; Golden Isles Broadcasting; Gulf South Radio, Inc.; Heh Communications, LLC; Holladay Broadcasting of Louisiana, LLC; Inland Empire Broadcasting Corp.; Jam Communications, Inc.; Kensington Digital Media, L.L.C.; Kensington Digial Media Of Indiana, L.L.C.; KLAX Licensing, Inc.; KLOS Radio Holdings, LLC; KPWR Radio Holdings, LLC; KRZZ Licensing, Inc.; KWHY–22 Broadcasting, LLC; KXOL Licensing, Inc.; KXOS Radio Holdings, LLC; L.M. Communications, Inc.; L.M. Communications of Kentucky, LLC; L.M. Communications of South Carolina, Inc.; Meridian Media Group, LLC; Meruelo Radio Holdings, LLC; Mississippi Broadcasters, LLC; New South Radio, Inc.; Partnership Radio, L.L.C.; Pathfinder Communications Corporation; QBS Broadcasting, LLC; Sarkes Tarzian, Inc.; SBR Broadcasting Corporation; Serge Martin Enterprises, Inc.; Spanish Broadcasting System Holding Company, Inc.; Talking Stick Communications, L.L.C.; WCMQ Licensing, Inc.; Winton Road Broadcasting Co., LLC; WKLC, Inc.; WLEY Licensing, Inc.; WMEG Licensing, Inc.; WPAT Licensing, Inc.; WPYO Licensing, Inc.; WRMA Licensing, Inc.; WRXD Licensing, Inc.; WSBS Licensing, Inc.; WSKQ Licensing, Inc.; WSUN Licensing, Inc.; WXDJ Licensing, Inc.	Joint Broadcasters	7/18/22

TABLE 3—LIST OF COMMENTERS—Continued

Name of commenter	Abbreviated name	Date filed
American Lighting Association, Association of Equipment Manufacturers, Association of Home Appliance Manufacturers, National Electrical Manufacturers Association, North American Association of Food Equipment Manufacturers, Outdoor Power Equipment Institute, Plumbing Manufacturers International, Power Tool Institute, and Wi-SUN Alliance.	Joint Manufacturers	7/18/22
Astroscale U.S	Astroscale	7/18/22
CTIA—The Wireless Association®	CTIA	7/18/22
Lumen	Lumen	7/18/22
Maxar Technologies Inc.; Amazon Web Services, Inc.; Planet Labs PBC; BlackSky Global LLC; Care Weather Technologies, Inc.; Hedron Space Inc.; HawkEye 360, Inc.; Spire Global Inc.; Astro Digital US, Inc.; Umbra Lab, Inc.; and Loft Orbital Solutions Inc.	EESS Coalition	7/18/22
National Association of Broadcasters	NAB	7/18/22
National Religious Broadcasters	NRB	7/13/22
NCTA—The Internet & Television Association	NCTA	7/18/22
O3b Limited; SES Americom, Inc.; Telesat Canada; and WorldVu Satellites Limited d/b/a OneWeb	Satellite Coalition	7/18/22
Satellite Industry Association	SIA	7/18/22
Spaceflight, Inc	Spaceflight	7/18/22
TechFreedom	TechFreedom	7/18/22
Turion Space Corp	Turion	7/18/22
Wi-Fi Alliance®	Wi-Fi Alliance	7/18/22
WISPA—Broadband Without Boundaries	WISPA	7/18/22

EX PARTES

Name or abbreviated name of Filer	Ex Parte filing	Date filed
NAB	Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, NAB, to Marlene H. Dortch, Secretary, FCC.	7/27/22
NAB	Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, NAB, to Marlene H. Dortch, Secretary, FCC.	7/28/22
OneWeb, SES, and Telesat	Letter from Karis A. Hastings, SatCom Law, LLC, to Marlene H. Dortch, Secretary, FCC	8/5/22
OneWeb, SES, and Telesat	Letter from Karis A. Hastings, SatCom Law, LLC, to Marlene H. Dortch, Secretary, FCC	8/8/22
NAB	Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, NAB, to Marlene H. Dortch, Secretary, FCC.	8/9/22
Telesat	Letter from Elisabeth Neasmith, Director, Telesat, to Marlene H. Dortch, Secretary, FCC	8/12/22
East Arkansas Broadcasters	Letter from Bobby Caldwell, CEO, East Arkansas Broadcasters, to Marlene H. Dortch, Secretary, FCC.	8/12/22
WNRP (AM)	Letter from David E. Hoxeng, Owner, WNRP (AM), to Marlene H. Dortch, Secretary, FCC	8/12/22
State Broadcasters Associations.	Letter from Lauren Lynch Flick, attorney for the State Broadcasters Associations, to Marlene H. Dortch, Secretary, FCC.	8/12/22
Wheeler Broadcasting	Letter from Leonard Wheeler, President, Wheeler Broadcasting, to Marlene H. Dortch, Secretary, FCC.	8/15/22
South Seas Broadcasting and Delta Radio.	Letter from Larry Fuss, owner, South Seas Broadcasting and Delta Radio, to Marlene H. Dortch, Secretary, FCC.	8/15/22
State Broadcasters Associations.	Letter from Lauren Lynch Flick, attorney for the State Broadcasters Associations, to Marlene H. Dortch, Secretary, FCC.	8/15/22
State Broadcasters Associations.	Letter from Lauren Lynch Flick, attorney for the State Broadcasters Associations, to Marlene H. Dortch, Secretary, FCC.	8/15/22
NAB	Letter from Rick Kaplan, Chief Legal Officer and Executive Vice President, NAB, to Marlene H. Dortch, Secretary, FCC.	8/15/22
Bryan Broadcasting	Letter from Ben Downs, Vice President and General Manager, Bryan Broadcasting, to Marlene H. Dortch, Secretary, FCC.	8/15/22
Bustos Media	Letter from Amador S. Bustos, President, Bustos Media Holdings, LLC, to Marlene H. Dortch, Secretary, FCC.	8/18/22
Kaspar Broadcasting	Letter from Russ Kaspar, President, Kaspar Broadcasting Co., Inc. to Marlene H. Dortch, Secretary, FCC.	8/18/22
State Broadcasters Associations.	Letter from Lauren Lynch Flick, attorney for the State Broadcasters Associations, to Marlene H. Dortch, Secretary, FCC.	8/19/22
Cromwell Radio	Letter from Bayard H. Walters, President, Cromwell Group, Inc., to Jessica Rosenworcel, Chairwoman, FCC.	8/22/22
Mountain Top Media	Letter from Cindy May Johnson, President, Mountain Top Media, LLC, to Marlene H. Dortch, Secretary, FCC.	8/22/22

TABLE 4—CALCULATION OF FY 2022 REVENUE REQUIREMENTS AND PRO-RATA FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	FY 2022 payment units	Yrs	FY 2021 revenue estimate	Pro-rated FY 2022 revenue requirement	Computed FY 2022 regulatory fee	Rounded FY 2022 reg. fee	Expected FY 2022 revenue
PLMRS (Exclusive Use)	750	10	75,000	187,500	25.00	25	187,500
PLMRS (Shared use)	12,500	10	990,000	1,250,000	10.00	10	1,250,000
Microwave	18,000	10	4,750,000	4,500,000	25.00	25	4,500,000
Marine (Ship)	6,900	10	922,500	1,035,000	15.00	15	1,035,000
Aviation (Aircraft)	4,200	10	390,000	420,000	10.00	10	420,000
Marine (Coast)	210	10	16,000	84,000	40.00	40	84,000
Aviation (Ground)	350	10	110,000	70,000	20.00	20	70,000
AM Class A [1]	62	1	290,745	316,755	5,109	5,110	316,820
AM Class B [1]	1,443	1	3,610,880	3,930,011	2,724	2,725	3,932,175
AM Class C [1]	825	1	1,291,125	1,407,030	1,706	1,705	1,406,625
AM Class D [1]	1,421	1	4,267,835	4,648,721	3,271	3,270	4,646,670
FM Classes A, B1 and C3 [1]	3,125	1	8,886,395	9,804,141	3,137	3,135	9,796,875
FM Classes B, C, C0, C1 and C2 [1]	3,137	1	11,100,080	12,005,143	3,827	3,825	11,999,025
AM Construction Permits [2]	5	1	3,660	3,275	655	655	3,275
FM Construction Permits [2]	16	1	58,850	18,320	1,145	1,145	18,320
Digital Television [5] (including Satellite TV)	3.283 billion population	1	25,416,380	27,674,061	.0084303	.008430	27,673,145
Digital TV Construction Permits [2]	4	1	20,400	20,800	5,199	5,200	20,800
LPTV/Class A/Translators FM Trans/Boosters	5,466	1	1,649,920	1,799,713	329.3	330	1,803,780
CARS Stations	135	1	233,250	231,341	1,714	1,715	231,525
Cable TV Systems, including IPTV and DBS	66,500,000	1	76,244,000	76,851,478	1.1557	1.16	77,140,000
Interstate Telecommunication Service Providers	$27,700,000,000	1	120,400,000	125,327,520	0.004524	0.00452	125,204,000
Toll Free Numbers	34,700,000	1	4,020,000	4,306,310	0.12410	0.12	4,164,000
CMRS Mobile Services (Cellular/Public Mobile)	535,000,000	1	75,600,000	73,140,629	0.1367	0.14	74,900,000
CMRS Messaging Services	1,500,000	1	136,000	120,000	0.0800	0.080	120,000
BRS [3]	1,225	1	756,250	722,750	590	590	722,750
LMDS	350	1	206,910	206,500	590	590	206,500
Per Gbps circuit Int'l Bearer Circuits. Terrestrial (Common and Non-Common) and Satellite (Common and Non-Common)	12,000	1	468,700	467,047	38.92	39	468,000
Submarine Cable Providers (See chart at bottom of Appendix C) [4]	64.438	1	8,839,554	8,873,891	137,713	137,715	8,874,010
Earth Stations	2,900	1	1,785,000	1,798,221	620.1	620	1,798,000
Space Stations (Geostationary)	139	1	17,177,685	17,244,609	124,062	124,060	17,244,340
Space Stations (Non-Geostationary, Other)	10	1	3,435,550	3,400,062	340,006	340,005	3,400,050
Space Stations (Non-Geostationary, Less Complex)	6	1	858,865	850,015	141,669	141,670	850,020
Space Stations (Non-Geostationary, Small Satellite)	5	1	0	61,075	12,215	12,215	61,075
****** Total Estimated Revenue to be Collected			373,920,077	384,066,626			384,549,196
****** Total Revenue Requirement			374,000,000	381,950,000			381,950,000
Difference			(79,923)	2,116,626			2,599,196

Notes on Table 2

[1] The fee amounts listed in the column entitled ''Rounded New FY 2022 Regulatory Fee'' constitute a weighted average broadcast regulatory fee by class of service. The actual FY 2022 regulatory fees for AM/FM radio station are listed on a grid located at the end of Table 3.

[2] The AM and FM Construction Permit revenues and the Digital (VHF/UHF) Construction Permit revenues were adjusted, respectively, to set the regulatory fee to an amount no higher than the lowest licensed fee for that class of service. Reductions in the Digital (VHF/UHF) Construction Permit revenues, and in the AM and FM Construction Permit revenues, were offset by increases in the revenue totals for Digital television stations by market size, and in the AM and FM radio stations by class size and population served, respectively.

[3] The MDS/MMDS category was renamed Broadband Radio Service (BRS). *See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150–2162 and 2500–2690 MHz Bands,* Report & Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, 14169, para. 6 (2004).

[4] The chart at the end of Table 3 lists the submarine cable bearer circuit regulatory fees (common and non-common carrier basis) that resulted from the adoption of the *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Report and Order and Further Notice of Proposed Rulemaking, 24 FCC Rcd 6388 (2008) and *Assessment and Collection of Regulatory Fees for Fiscal Year 2008,* Second Report and Order, 24 FCC Rcd 4208 (2009). The Submarine Cable fee in Table 2 is a weighted average of the various fee payers in the chart at the end of Table 3.

[5] The actual digital television regulatory fees to be paid by call sign are identified in Table 7.

TABLE 5—FY 2022 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.
Aviation (Aircraft) (per station) (47 CFR part 87)	10.

TABLE 5—FY 2022 SCHEDULE OF REGULATORY FEES—Continued

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $s)
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers).	.14.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	590.
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	590.
AM Radio Construction Permits	655.
FM Radio Construction Permits	1,145.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	$.008430. See Appendix G for fee amounts due, also available at *https://www.fcc.gov/licensing-databases/fees/regulatory-fees.*
Digital TV Construction Permits	5,200.
Low Power TV, Class A TV, TV/FM Translators and FM Boosters (47 CFR part 74)	330.
CARS (47 CFR part 78)	1,715.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV and Direct Broadcast Satellite (DBS)	1.16.
Interstate Telecommunication Service Providers (per revenue dollar)	.00452.
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.12.
Earth Stations (47 CFR part 25)	620.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	124,060.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	340,005.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	141,670.
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	39.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2022 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
<=25,000	$1,050	$755	$655	$720	$1,145	$1,310
25,001–75,000	1,575	1,135	985	1,080	1,720	1,965
75,001–150,000	2,365	1,700	1,475	1,620	2,575	2,950
150,001–500,000	3,550	2,550	2,215	2,435	3,870	4,430
500,001–1,200,000	5,315	3,820	3,315	3,645	5,795	6,630
1,200,001–3,000,000	7,980	5,740	4,980	5,470	8,700	9,955
3,000,001–6,000,000	11,960	8,600	7,460	8,200	13,040	14,920
>6,000,000	17,945	12,905	11,195	12,305	19,570	22,390

FY 2022 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2021)	Fee ratio	FY 2022 Regulatory fees
Less than 50 Gbps	.0625 Units	$8,610
50 Gbps or greater, but less than 250 Gbps	.125 Units	17,215
250 Gbps or greater, but less than 1,500 Gbps	.25 Units	34,430
1,500 Gbps or greater, but less than 3,500 Gbps	.5 Units	68,860
3,500 Gbps or greater, but less than 6,500 Gbps	1.0 Unit	137,715
6,500 Gbps or greater	2.0 Units	275,430

Table 6—Sources of Payment Unit Estimates for FY 2022

In order to calculate individual service fees for FY 2022, we adjusted FY 2021 payment units for each service to more accurately reflect expected FY 2022 payment liabilities. We obtained our updated estimates through a variety of means and sources. For example, we used Commission licensee data bases, actual prior year payment records and industry and trade association projections, where available. The databases we consulted include our Universal Licensing System (ULS), International Bureau Filing System (IBFS), Consolidated Database System (CDBS), Licensing and Management System (LMS) and Cable Operations and Licensing System (COALS), as well as reports generated within the Commission such as the Wireless Telecommunications Bureau's *Numbering Resource Utilization Forecast.* Regulatory fee payment units are not all the same for all fee categories. For most fee categories, the term ''units'' reflect licenses or permits that have been issued, but for other fee categories, the term ''units'' reflect quantities such as subscribers, population counts, circuit counts, telephone numbers, and revenues. As more current data is received after the *Notice of Proposed Rulemaking (NPRM)* is released, the

Commission sometimes adjusts the NPRM fee rates to reflect the new information in the *Report and Order.* This is intended to make sure that the fee rates in the *Report and Order* reflect more recent and accurate information.

We sought verification for these estimates from multiple sources and, in all cases, we compared FY 2022 estimates with actual FY 2021 payment units to ensure that our revised estimates were reasonable. Where appropriate, we adjusted and/or rounded our final estimates to take into consideration the fact that certain variables that impact on the number of payment units cannot yet be estimated with sufficient accuracy. These include an unknown number of waivers and/or exemptions that may occur in FY 2022 and the fact that, in many services, the number of actual licensees or station operators fluctuates from time to time due to economic, technical, or other reasons. When we note, for example, that our estimated FY 2022 payment units are based on FY 2021 actual payment units, it does not necessarily mean that our FY 2022 projection is exactly the same number as in FY 2021. We have either rounded the FY 2022 number or adjusted it slightly to account for these variables.

Fee category	Sources of payment unit estimates
Land Mobile (All), Microwave, Marine (Ship and Coast), Aviation (Aircraft and Ground), Domestic Public Fixed.	Based on Wireless Telecommunications Bureau (WTB) projections of new applications and renewals taking into consideration existing Commission licensee data bases. Aviation (Aircraft) and Marine (Ship) estimates have been adjusted to take into consideration the licensing of portions of these services on a voluntary basis.
CMRS Cellular/Mobile Services	Based on WTB projection reports, and FY 2021 payment data.
CMRS Messaging Services	Based on WTB reports, and FY 2021 payment data.
AM/FM Radio Stations	Based on CDBS data, adjusted for exemptions, and actual FY 2021 payment units.
Digital TV Stations (Combined VHF/UHF units).	Based on LMS data, fee rate adjusted for exemptions, and population figures are calculated based on individual station parameters.
AM/FM/TV Construction Permits	Based on CDBS data, adjusted for exemptions, and actual FY 2021 payment units.
LPTV, Translators and Boosters, Class A Television.	Based on LMS data, adjusted for exemptions, and actual FY 2021 payment units.
BRS (formerly MDS/MMDS)LMDS	Based on WTB reports and actual FY 2021 payment units. Based on WTB reports and actual FY 2021 payment units.
Cable Television Relay Service (CARS) Stations.	Based on data from Media Bureau's COALS database and actual FY 2021 payment units.
Cable Television System Subscribers, Including IPTV Subscribers.	Based on publicly available data sources for estimated subscriber counts, trend information from past payment data, and actual FY 2021 payment units.
Interstate Telecommunication Service Providers.	Based on FCC Form 499–A worksheets due in April 2022, and any data assistance provided by the Wireline Competition Bureau.
Earth Stations	Based on International Bureau licensing data and actual FY 2021 payment units.
Space Stations (GSOs and NGSOs).	Based on International Bureau data reports and actual FY 2021 payment units.
International Bearer Circuits	Based on assistance provided by the International Bureau, any data submissions by licensees, adjusted as necessary, and actual FY 2021 payment units.
Submarine Cable Licenses	Based on International Bureau license information, and actual FY 2021 payment units.

Table 7—Factors, Measurements, and Calculations That Determine Station Signal Contours and Associated Population Coverages

AM Stations

For stations with nondirectional daytime antennas, the theoretical radiation was used at all azimuths. For stations with directional daytime antennas, specific information on each day tower, including field ratio, phase, spacing, and orientation was retrieved, as well as the theoretical pattern root-mean-square of the radiation in all directions in the horizontal plane (RMS) figure (milliVolt per meter (mV/m) @ 1 km) for the antenna system. The standard, or augmented standard if pertinent, horizontal plane radiation pattern was calculated using techniques and methods specified in sections 73.150 and 73.152 of the Commission's rules. Radiation values were calculated for each of 360 radials around the transmitter site. Next, estimated soil conductivity data was retrieved from a database representing the information in FCC Figure R3. Using the calculated horizontal radiation values, and the retrieved soil conductivity data, the distance to the principal community (5 mV/m) contour was predicted for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. (A block centroid is the center point of a small area containing population as computed by the U.S. Census Bureau.) The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

FM Stations

The greater of the horizontal or vertical effective radiated power (ERP) (kW) and respective height above average terrain (HAAT) (m) combination was used. Where the antenna height above mean sea level (HAMSL) was available, it was used in lieu of the average HAAT figure to calculate specific HAAT figures for each of 360 radials under study. Any available directional pattern information was applied as well, to produce a radial-specific ERP figure. The HAAT and ERP figures were used in conjunction with the Field Strength (50–50) propagation curves specified in 47 CFR 73.313 of the Commission's rules to predict the distance to the principal community (70 dBu (decibel above 1 microVolt per meter) or 3.17 mV/m) contour for each of the 360 radials. The resulting distance to principal community contours were used to form a geographical polygon. Population counting was accomplished by determining which 2010 block centroids were contained in the polygon. The sum of the population figures for all enclosed blocks represents the total population for the predicted principal community coverage area.

TABLE 8—SATELLITE CHARTS FOR FY 2022 REGULATORY FEES

[U.S.-licensed space stations]

Licensee	Call sign	Satellite name	Type
DIRECTV Enterprises, LLC	S2922	SKY–B1	GSO.
DIRECTV Enterprises, LLC	S2640	DIRECTV T11	GSO.
DIRECTV Enterprises, LLC	S2711	DIRECTV RB–1	GSO.
DIRECTV Enterprises, LLC	S2632	DIRECTV T8	GSO.
DIRECTV Enterprises, LLC	S2669	DIRECTV T9S	GSO.
DIRECTV Enterprises, LLC	S2641	DIRECTV T10	GSO.
DIRECTV Enterprises, LLC	S2797	DIRECTV T12	GSO.
DIRECTV Enterprises, LLC	S2930	DIRECTV T15	GSO.
DIRECTV Enterprises, LLC	S2673	DIRECTV T5	GSO.
DIRECTV Enterprises, LLC	S2133	SPACEWAY 2	GSO.
DIRECTV Enterprises, LLC	S3039	DIRECTV T16	GSO.
DISH Operating L.L.C	S2931	ECHOSTAR 18	GSO.
DISH Operating L.L.C	S2738	ECHOSTAR 11	GSO.
DISH Operating L.L.C	S2694	ECHOSTAR 10	GSO.
DISH Operating L.L.C	S2740	ECHOSTAR 7	GSO.
DISH Operating L.L.C	S2790	ECHOSTAR 14	GSO.
EchoStar Satellite Operating Corporation	S2811	ECHOSTAR 15	GSO.
EchoStar Satellite Operating Corporation	S2844	ECHOSTAR 16	GSO.
EchoStar Satellite Services L.L.C	S2179	ECHOSTAR 9	GSO.
ES 172 LLC	S2610	EUTELSAT 174A	GSO.
ES 172 LLC	S3021	EUTELSAT 172B	GSO.
Horizon-3 Satellite LLC	S2947	HORIZONS–3e	GSO.
Hughes Network Systems, LLC	S2663	SPACEWAY 3	GSO.
Hughes Network Systems, LLC	S2834	ECHOSTAR 19	GSO.
Hughes Network Systems, LLC	S2753	ECHOSTAR XVII	GSO.
Intelsat License LLC/ViaSat, Inc	S2160	GALAXY 28	GSO.
Intelsat License LLC, Debtor-in-Possession	S2414	INTELSAT 10–02	GSO.
Intelsat License LLC, Debtor-in-Possession	S2972	INTELSAT 37e	GSO.
Intelsat License LLC, Debtor-in-Possession	S2854	NSS–7	GSO.
Intelsat License LLC, Debtor-in-Possession	S2409	INELSAT 905	GSO.
Intelsat License LLC, Debtor-in-Possession	S2405	INTELSAT 901	GSO.
Intelsat License LLC, Debtor-in-Possession	S2408	INTELSAT 904	GSO.
Intelsat License LLC, Debtor-in-Possession	S2804	INTELSAT 25	GSO.
Intelsat License LLC, Debtor-in-Possession	S2959	INTELSAT 35e	GSO.
Intelsat License LLC, Debtor-in-Possession	S2237	INTELSAT 11	GSO.
Intelsat License LLC, Debtor-in-Possession	S2785	INTELSAT 14	GSO.
Intelsat License LLC, Debtor-in-Possession	S2380	INTELSAT 9	GSO.
Intelsat License LLC, Debtor-in-Possession	S2831	INTELSAT 23	GSO.
Intelsat License LLC, Debtor-in-Possession	S2915	INTELSAT 34	GSO.
Intelsat License LLC, Debtor-in-Possession	S2863	INTELSAT 21	GSO.
Intelsat License LLC, Debtor-in-Possession	S2750	INTELSAT 16	GSO.
Intelsat License LLC, Debtor-in-Possession	S2715	GALAXY 17	GSO.
Intelsat License LLC, Debtor-in-Possession	S2154	GALAXY 25	GSO.
Intelsat License LLC, Debtor-in-Possession	S2253	GALAXY 11	GSO.
Intelsat License LLC, Debtor-in-Possession	S2381	GALAXY 3C	GSO.
Intelsat License LLC, Debtor-in-Possession	S2887	INTELSAT 30	GSO.
Intelsat License LLC, Debtor-in-Possession	S2924	INTELSAT 31	GSO.
Intelsat License LLC, Debtor-in-Possession	S2647	GALAXY 19	GSO.
Intelsat License LLC, Debtor-in-Possession	S2687	GALAXY 16	GSO.
Intelsat License LLC, Debtor-in-Possession	S2733	GALAXY 18	GSO.
Intelsat License LLC, Debtor-in-Possession	S2385	GALAXY 14	GSO.
Intelsat License LLC, Debtor-in-Possession	S2386	GALAXY 13	GSO.
Intelsat License LLC, Debtor-in-Possession	S2422	GALAXY 12	GSO.
Intelsat License LLC, Debtor-in-Possession	S2387	GALAXY 15	GSO.
Intelsat License LLC, Debtor-in-Possession	S2704	INTELSAT 5	GSO.
Intelsat License LLC, Debtor-in-Possession	S2817	INTELSAT 18	GSO.
Intelsat License LLC, Debtor-in-Possession	S2960	JCSAT–RA	GSO.
Intelsat License LLC, Debtor-in-Possession	S2850	INTELSAT 19	GSO.
Intelsat License LLC, Debtor-in-Possession	S2368	INTELSAT 1R	GSO.
Intelsat License LLC, Debtor-in-Possession	S2988	TELKOM–2	GSO.
Intelsat License LLC, Debtor-in-Possession	S2789	INTELSAT 15	GSO.
Intelsat License LLC, Debtor-in-Possession	S2423	HORIZONS 2	GSO.
Intelsat License LLC, Debtor-in-Possession	S2846	INTELSAT 22	GSO.
Intelsat License LLC, Debtor-in-Possession	S2847	INTELSAT 20	GSO.
Intelsat License LLC, Debtor-in-Possession	S2948	INTELSAT 36	GSO.
Intelsat License LLC, Debtor-in-Possession	S2814	INTELSAT 17	GSO.
Intelsat License LLC, Debtor-in-Possession	S2410	INTELSAT 906	GSO.
Intelsat License LLC, Debtor-in-Possession	S2406	INTELSAT 902	GSO.
Intelsat License LLC, Debtor-in-Possession	S2939	INTELSAT 33e	GSO.
Intelsat License LLC, Debtor-in-Possession	S2382	INTELSAT 10	GSO.
Intelsat License LLC, Debtor-in-Possession	S2751	NEW DAWN	GSO.

TABLE 8—SATELLITE CHARTS FOR FY 2022 REGULATORY FEES—Continued

[U.S.-licensed space stations]

Licensee	Call sign	Satellite name	Type
Intelsat License LLC, Debtor-in-Possession	S3023	INTELSAT 39	GSO.
Leidos, Inc	S2371	LM–RPS2	GSO.
Ligado Networks Subsidiary, LLC	S2358	SKYTERRA–1	GSO.
Ligado Networks Subsidiary, LLC	AMSC–1	MSAT–2	GSO.
Novavision Group, Inc	S2861	DIRECTV KU–79W	GSO.
Satellite CD Radio LLC	S2812	FM–6	GSO.
SES Americom, Inc	S2415	NSS–10	GSO.
SES Americom, Inc	S2162	AMC–3	GSO.
SES Americom, Inc	S2347	AMC–6	GSO.
SES Americom, Inc	S2826	SES–2	GSO.
SES Americom, Inc	S2807	SES–1	GSO.
SES Americom, Inc	S2892	SES–3	GSO.
SES Americom, Inc	S2180	AMC–15	GSO.
SES Americom, Inc	S2445	AMC–1	GSO.
SES Americom, Inc	S2135	AMC–4	GSO.
SES Americom, Inc	S2713	AMC–18	GSO.
SES Americom, Inc	S2433	AMC–11	GSO.
SES Americom, Inc./Alascom, Inc	S2379	AMC–8	GSO.
Sirius XM Radio Inc	S2710	FM–5	GSO.
Sirius XM Radio Inc	S3033	XM–7	GSO.
Sirius XM Radio Inc	S3034	XM–8	GSO.
Skynet Satellite Corporation	S2933	TELSTAR 12V	GSO.
Skynet Satellite Corporation	S2357	TELSTAR 11N	GSO.
ViaSat, Inc	S2747	VIASAT–1	GSO.
XM Radio LLC	S2617	XM–3	GSO.
XM Radio LLC	S2616	XM–4	GSO.

NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH PETITION FOR DECLARATORY RULING

Licensee	Call sign	Satellite common name	Satellite type
ABS Global Ltd	S2987	ABS–3A	GSO.
DBSD Services Ltd	S2651	DBSD G1	GSO.
Empresa Argentina de Soluciones Satelitales S.A	S2956	ARSAT–2	GSO.
European Telecommunications Satellite Organization	S3031	EUTELSAT 133 WEST A	GSO.
Eutelsat S.A	S3056	EUTELSAT 8 WEST B	GSO.
Gamma Acquisition L.L.C	S2633	TerreStar 1	GSO.
Hispamar Satélites, S.A	S2793	AMAZONAS–2	GSO.
Hispamar Satélites, S.A	S2886	AMAZONAS–3	GSO.
Hispasat, S.A	S2969	HISPASAT 30W–6	GSO.
Inmarsat PLC	S2932	Inmarsat-4 F3	GSO.
Inmarsat PLC	S2949	Inmarsat-3 F5	GSO.
Intelsat License LLC	S3058	HISPASAT 143W–1	GSO.
New Skies Satellites B.V	S2756	NSS–9	GSO.
New Skies Satellites B.V	S2870	SES–6	GSO.
New Skies Satellites B.V	S3048	NSS–6	GSO.
New Skies Satellites B.V	S2828	SES–4	GSO.
New Skies Satellites B.V	S2950	SES–10	GSO.
Satelites Mexicanos, S.A. de C.V	S2695	EUTELSAT 113 WEST A	GSO.
Satelites Mexicanos, S.A. de C.V	S2926	EUTELSAT 117 WEST B	GSO.
Satelites Mexicanos, S.A. de C.V	S2938	EUTELSAT 115 WEST B	GSO.
Satelites Mexicanos, S.A. de C.V	S2873	EUTELSAT 117 WEST A	GSO.
SES Satellites (Gibraltar) Ltd	S2676	AMC 21	GSO.
SES Americom, Inc	S3037	NSS–11	GSO.
SES Americom, Inc	S2964	SES–11	GSO.
SES DTH do Brasil Ltda	S2974	SES–14	GSO.
SES Satellites (Gibraltar) Ltd	S2951	SES–15	GSO.
Embratel Tvsat Telecommunicacoes S.A	S2677	STAR ONE C1	GSO.
Embratel Tvsat Telecommunicacoes S.A	S2678	STAR ONE C2	GSO.
Embratel Tvsat Telecommunicacoes S.A	S2845	STAR ONE C3	GSO.
Telesat Brasil Capacidade de Satelites Ltda	S2821	ESTRELA DO SUL 2	GSO.
Telesat Canada	S2674	ANIK F1R	GSO.
Telesat Canada	S2703	ANIK F3	GSO.
Telesat Canada	S2646/S2472	ANIK F2	GSO.
Telesat International Ltd	S2955	TELSTAR 19 VANTAGE	GSO.
Viasat, Inc	S2902	VIASAT–2	GSO.

NON-U.S.-LICENSED SPACE STATIONS—MARKET ACCESS THROUGH EARTH STATION LICENSES

ITU name (if available)	Common name	Call sign	GSO/NGSO
APSTAR VI	APSTAR 6	M292090	GSO.
AUSSAT B 152E	OPTUS D2	M221170	GSO.
CAN–BSS3 and CAN–BSS	ECHOSTAR 23	SM1987/SM2975	GSO.
Ciel Satellite Group	Ciel-2	E050029	GSO.
Eutelsat 65 West A	Eutelsat 65 West A	E160081	GSO.
INMARSAT 4F1	INMARSAT 4F1	KA25	GSO.
INMARSAT 5F2	INMARSAT 5F2	E120072	GSO.
INMARSAT 5F3	INMARSAT 5F3	E150028	GSO.
JCSAT–2B	JCSAT–2B	M174163	GSO.
NIMIQ 5	NIMIQ 5	E080107	GSO.
QUETZSAT–1(MEX)	QUETZSAT–1	NUS1101	GSO.
Superbird C2	Superbird C2	M334100	GSO.
WILDBLUE–1	WILDBLUE–1	E040213	GSO.
Yamal 300K	Yamal 300K	M174162	GSO.

NON-GEOSTATIONARY SPACE STATIONS (NGSO)

ITU name (if available)	Common name	Call sign	NGSO
U.S.-Licensed NGSO Systems			
ORBCOMM License Corp	ORBCOMM	S2103	Other.
Iridium Constellation LLC	IRIDIUM	S2110	Other.
Space Exploration Holdings, LLC	SPACEX Ku/Ka-Band	S2983/S3018	Other.
Swarm Technologies	SWARM	S3041	Other.
Planet Labs	Flock/Skysats	S2912	Less Complex.
Maxar License	WorldView 1, 2 and 3, GeoEye-1	S2129/S2348	Less Complex.
BlackSky Global	Global	S3032	Less Complex.
Astro Digital U.S., Inc	LANDMAPPER	S3014	Less Complex.
Hawkeye 360	HE360	S3042	Less Complex.
Non-U.S.-Licensed NGSO Systems—Market Access Through Petition for Declaratory Ruling			
Telesat Canada	TELESAT Ku/Ka-Band	S2976	Other.
Kepler Communications, Inc	KEPLER	S2981	Other.
WorldVu Satellites Ltd	ONEWEB	S2963	Other.
Myriota Pty. Ltd	MYRIOTA	S3047	Other.
O3b Ltd	O3b	S2935	Other.
NGSO Systems That Are Partly U.S.-Licensed and Partly Non-U.S.-Licensed With Market Access Through Petition for Declaratory Ruling			
Globalstar License LLC	GLOBALSTAR	S2115	Other.
Spire Global	LEMUR & MINAS	S2946/S3045	Less Complex.
NGSO Systems Licensed Under the Streamlined Small Satellite Rules			
Capella Space Corp	Capella-2, Capella-3, Capella-4	S3073	Small Satellite.
Capella Space Corp	Capella-5, Capella-6	S3080	Small Satellite.
Loft Orbital Solutions Inc	YAM–2	S3052	Small Satellite.
Loft Orbital Solutions Inc	YAM–3	S3072	Small Satellite.
R2 Space, Inc	XR–1	S3067	Small Satellite.

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
3246	KAAH–TV	955,391	879,906	7,418
18285	KAAL	589,502	568,169	4,790
11912	KAAS–TV	220,262	219,922	1,854
56528	KABB	2,474,296	2,456,689	20,710
282	KABC–TV	17,540,791	16,957,292	142,950
1236	KACV–TV	372,627	372,330	3,139
33261	KADN–TV	877,965	877,965	7,401
8263	KAEF–TV	138,085	122,808	1,035
2728	KAET	4,217,217	4,184,386	35,274
2767	KAFT	1,204,376	1,122,928	9,466
62442	KAID	711,035	702,721	5,924

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
4145	KAII–TV	188,810	165,396	1,394
67494	KAIL	1,947,635	1,914,765	16,141
13988	KAIT	861,149	845,812	7,130
40517	KAJB	383,886	383,195	3,230
65522	KAKE	803,937	799,254	6,738
804	KAKM	380,240	379,105	3,196
148	KAKW–DT	2,615,956	2,531,813	21,343
51598	KALB–TV	943,307	942,043	7,941
51241	KALO	954,557	910,409	7,675
40820	KAMC	391,526	391,502	3,300
8523	KAMR–TV	366,476	366,335	3,088
65301	KAMU–TV	346,892	342,455	2,887
2506	KAPP	319,797	283,944	2,394
3658	KARD	703,234	700,887	5,908
23079	KARE	3,924,944	3,907,483	32,940
33440	KARK–TV	1,212,038	1,196,196	10,084
37005	KARZ–TV	1,113,486	1,095,224	9,233
32311	KASA–TV	1,161,837	1,119,457	9,437
41212	KASN	1,175,627	1,159,721	9,776
7143	KASW	4,174,437	4,160,497	35,073
55049	KASY–TV	1,145,133	1,100,391	9,276
33471	KATC	1,348,897	1,348,897	11,371
13813	KATN	97,466	97,128	819
21649	KATU	3,030,547	2,881,993	24,295
33543	KATV	1,257,777	1,234,933	10,410
50182	KAUT–TV	1,637,333	1,636,330	13,794
21488	KAUU	381,413	380,355	3,206
6864	KAUZ–TV	381,671	379,435	3,199
73101	KAVU–TV	319,618	319,484	2,693
49579	KAWB	186,919	186,845	1,575
49578	KAWE	136,033	133,937	1,129
58684	KAYU–TV	809,464	750,766	6,329
29234	KAZA–TV	14,973,535	13,810,130	116,419
17433	KAZD	6,776,778	6,774,172	57,106
1151	KAZQ	1,097,010	1,084,327	9,141
35811	KAZT–TV	436,925	359,273	3,029
4148	KBAK–TV	1,510,400	1,263,910	10,655
16940	KBCA	479,260	479,219	4,040
53586	KBCB	1,256,193	1,223,883	10,317
69619	KBCW	8,227,562	7,375,199	62,173
22685	KBDI–TV	4,042,177	3,683,394	31,051
56384	KBEH	17,736,497	17,695,306	149,171
65395	KBFD–DT	953,207	834,341	7,033
169030	KBGS–TV	159,269	156,802	1,322
61068	KBHE–TV	140,860	133,082	1,122
48556	KBIM–TV	205,701	205,647	1,734
29108	KBIN–TV	912,921	911,725	7,686
33658	KBJR–TV	275,585	271,298	2,287
83306	KBLN–TV	297,384	134,927	1,137
63768	KBLR	1,964,979	1,915,861	16,151
53324	KBME–TV	123,571	123,485	1,041
10150	KBMT	743,009	742,369	6,258
22121	KBMY	119,993	119,908	1,011
49760	KBOI–TV	715,191	708,374	5,972
55370	KBRR	149,869	149,868	1,263
66414	KBSD–DT	155,012	154,891	1,306
66415	KBSH–DT	102,781	100,433	847
19593	KBSI	756,501	754,722	6,362
66416	KBSL–DT	49,814	48,483	409
4939	KBSV	1,352,166	1,262,708	10,645
62469	KBTC–TV	3,697,981	3,621,965	30,533
61214	KBTV–TV	734,008	734,008	6,188
6669	KBTX–TV	4,404,648	4,401,048	37,101
35909	KBVO	1,498,015	1,312,360	11,063
58618	KBVU	135,249	120,827	1,019
6823	KBYU–TV	2,389,548	2,209,060	18,622
33756	KBZK	123,523	109,131	920
21422	KCAL–TV	17,499,483	16,889,157	142,376
11265	KCAU–TV	714,315	706,224	5,953
14867	KCBA	3,088,394	2,369,803	19,977

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
27507	KCBD	414,804	414,091	3,491
9628	KCBS–TV	17,853,152	16,656,778	140,417
49750	KCBY–TV	89,156	73,211	617
33710	KCCI	1,109,952	1,102,514	9,294
9640	KCCW–TV	284,280	276,935	2,335
63158	KCDO–TV	2,798,103	2,650,225	22,341
62424	KCDT	698,389	657,101	5,539
83913	KCEB	417,491	417,156	3,517
57219	KCEC	3,831,192	3,613,287	30,460
10245	KCEN–TV	1,795,767	1,757,018	14,812
13058	KCET	16,875,019	15,402,588	129,844
18079	KCFW–TV	177,697	140,192	1,182
132606	KCGE–DT	123,930	123,930	1,045
60793	KCHF	1,118,671	1,085,205	9,148
33722	KCIT	382,477	381,818	3,219
62468	KCKA	953,680	804,362	6,781
41969	KCLO–TV	138,413	132,157	1,114
47903	KCNC–TV	3,794,400	3,541,089	29,851
71586	KCNS	8,270,858	7,381,656	62,227
33742	KCOP–TV	17,386,133	16,647,708	140,340
19117	KCOS	1,014,396	1,014,205	8,550
63165	KCOY–TV	664,655	459,468	3,873
33894	KCPQ	4,439,875	4,312,133	36,351
53843	KCPT	2,507,879	2,506,224	21,127
33875	KCRA–TV	10,612,483	6,500,774	54,802
9719	KCRG–TV	1,136,762	1,107,130	9,333
60728	KCSD–TV	273,553	273,447	2,305
59494	KCSG	174,814	164,765	1,389
33749	KCTS–TV	4,177,824	4,115,603	34,695
41230	KCTV	2,547,456	2,545,645	21,460
58605	KCVU	684,900	674,585	5,687
10036	KCWC–DT	44,216	39,439	332
64444	KCWE	2,459,924	2,458,302	20,723
51502	KCWI–TV	1,043,811	1,042,642	8,789
42008	KCWO–TV	50,707	50,685	427
166511	KCWV	207,398	207,370	1,748
24316	KCWX	3,961,268	3,954,787	33,339
68713	KCWY–DT	80,904	80,479	678
22201	KDAF	6,648,507	6,645,226	56,019
33764	KDBC–TV	1,015,564	1,015,162	8,558
79258	KDCK	43,088	43,067	363
166332	KDCU–DT	753,204	753,190	6,349
38375	KDEN–TV	3,376,799	3,351,182	28,250
17037	KDFI	6,684,439	6,682,487	56,333
33770	KDFW	6,659,312	6,657,023	56,119
29102	KDIN–TV	1,088,376	1,083,845	9,137
25454	KDKA–TV	3,611,796	3,450,690	29,089
60740	KDKF	71,413	64,567	544
4691	KDLH	263,422	260,394	2,195
41975	KDLO–TV	208,354	208,118	1,754
55379	KDLT–TV	639,284	628,281	5,296
55375	KDLV–TV	96,873	96,620	815
25221	KDMD	375,328	373,408	3,148
78915	KDMI	1,141,990	1,140,939	9,618
56524	KDNL–TV	2,987,219	2,982,311	25,141
24518	KDOC–TV	17,503,793	16,701,233	140,791
1005	KDOR–TV	1,112,060	1,108,556	9,345
60736	KDRV	519,706	440,002	3,709
61064	KDSD–TV	64,314	59,635	503
53329	KDSE	42,896	41,432	349
56527	KDSM–TV	1,096,220	1,095,478	9,235
49326	KDTN	6,602,327	6,600,186	55,640
83491	KDTP	26,564	24,469	206
33778	KDTV–DT	7,959,349	7,129,638	60,103
67910	KDTX–TV	6,680,738	6,679,424	56,308
126	KDVR	3,644,912	3,521,884	29,689
18084	KECI–TV	211,745	193,803	1,634
51208	KECY–TV	399,372	394,379	3,325
58408	KEDT	513,683	513,683	4,330
55435	KEET	177,313	159,960	1,348

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
37103	KEKE	97,959	94,560	797
41983	KELO–TV	705,364	646,126	5,447
34440	KEMO–TV	8,270,858	7,381,656	62,227
2777	KEMV	619,889	559,135	4,714
26304	KENS	2,544,094	2,529,382	21,323
63845	KENV–DT	47,220	40,677	343
18338	KENW	87,017	87,017	734
50591	KEPB–TV	576,964	523,655	4,414
56029	KEPR–TV	453,259	433,260	3,652
49324	KERA–TV	6,681,083	6,677,852	56,294
40878	KERO–TV	1,285,357	1,164,979	9,821
61067	KESD–TV	166,018	159,195	1,342
25577	KESQ–TV	1,334,172	572,057	4,822
50205	KETA–TV	1,702,441	1,688,227	14,232
62182	KETC	2,913,924	2,911,313	24,542
37101	KETD	3,323,570	3,285,231	27,694
2768	KETG	426,883	409,511	3,452
12895	KETH–TV	6,088,821	6,088,677	51,328
55643	KETK–TV	1,031,567	1,030,122	8,684
2770	KETS	1,185,111	1,166,796	9,836
53903	KETV	1,355,714	1,350,740	11,387
92872	KETZ	526,890	523,877	4,416
68853	KEYC–TV	544,900	531,079	4,477
33691	KEYE–TV	2,732,257	2,652,529	22,361
60637	KEYT–TV	1,419,564	1,239,577	10,450
83715	KEYU	339,348	339,302	2,860
34406	KEZI	1,113,171	1,065,880	8,985
34412	KFBB–TV	93,519	91,964	775
125	KFCT	795,114	788,747	6,649
51466	KFDA–TV	385,064	383,977	3,237
22589	KFDM	732,665	732,588	6,176
65370	KFDX–TV	381,703	381,318	3,215
49264	KFFV	4,020,926	3,987,153	33,612
12729	KFFX–TV	409,952	403,692	3,403
83992	KFJX	515,708	505,647	4,263
42122	KFMB–TV	3,947,735	3,699,981	31,191
53321	KFME	393,045	392,472	3,309
74256	KFNB	80,382	79,842	673
21613	KFNE	54,988	54,420	459
21612	KFNR	10,988	10,965	92
66222	KFOR–TV	1,616,459	1,615,614	13,620
33716	KFOX–TV	1,023,999	1,018,549	8,586
41517	KFPH–DT	347,579	282,838	2,384
81509	KFPX–TV	963,969	963,846	8,125
31597	KFQX	186,473	163,637	1,379
59013	KFRE–TV	1,721,275	1,705,484	14,377
51429	KFSF–DT	7,348,828	6,528,430	55,035
66469	KFSM–TV	906,728	884,919	7,460
8620	KFSN–TV	1,836,607	1,819,585	15,339
29560	KFTA–TV	818,859	809,173	6,821
83714	KFTC	61,990	61,953	522
60537	KFTH–DT	6,080,688	6,080,373	51,258
60549	KFTR–DT	17,560,679	16,305,726	137,457
61335	KFTS	74,936	65,126	549
81441	KFTU–DT	113,876	109,731	925
34439	KFTV–DT	1,794,984	1,779,917	15,005
664	KFVE	82,902	73,553	620
592	KFVS–TV	895,871	873,777	7,366
29015	KFWD	6,666,428	6,660,565	56,149
35336	KFXA	875,538	874,070	7,368
17625	KFXB–TV	373,280	368,466	3,106
70917	KFXK–TV	934,043	931,791	7,855
84453	KFXL–TV	862,531	854,678	7,205
56079	KFXV	1,225,732	1,225,732	10,333
41427	KFYR–TV	130,881	128,301	1,082
25685	KGAN	1,083,213	1,057,597	8,916
34457	KGBT–TV	1,239,001	1,238,870	10,444
7841	KGCW	949,575	945,476	7,970
24485	KGEB	1,186,225	1,150,201	9,696
34459	KGET–TV	917,927	874,332	7,371

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
53320	KGFE	114,564	114,564	966
7894	KGIN	230,535	228,338	1,925
83945	KGLA–DT	1,645,641	1,645,641	13,873
34445	KGMB	953,398	851,088	7,175
58608	KGMC	1,936,675	1,914,168	16,136
36914	KGMD–TV	94,323	93,879	791
36920	KGMV	193,564	162,230	1,368
10061	KGNS–TV	267,236	259,548	2,188
34470	KGO–TV	8,637,074	7,929,294	66,844
56034	KGPE	1,699,131	1,682,082	14,180
81694	KGPX–TV	685,626	624,955	5,268
25511	KGTF	161,885	160,568	1,354
40876	KGTV	3,960,667	3,682,219	31,041
36918	KGUN–TV	1,398,527	1,212,484	10,221
34874	KGW	3,026,617	2,878,510	24,266
63177	KGWC–TV	80,475	80,009	674
63162	KGWL–TV	38,125	38,028	321
63166	KGWN–TV	469,467	440,388	3,712
63170	KGWR–TV	51,315	50,957	430
4146	KHAW–TV	95,204	94,851	800
60353	KHBS	631,770	608,052	5,126
27300	KHCE–TV	2,353,883	2,348,391	19,797
26431	KHET	959,060	944,568	7,963
21160	KHGI–TV	233,973	229,173	1,932
36917	KHII–TV	953,895	851,585	7,179
29085	KHIN	1,041,244	1,039,383	8,762
17688	KHME	181,345	179,706	1,515
47670	KHMT	175,601	170,957	1,441
47987	KHNE–TV	203,931	202,944	1,711
34867	KHNL	953,398	851,088	7,175
60354	KHOG–TV	765,360	702,984	5,926
4144	KHON–TV	953,207	886,431	7,473
34529	KHOU	6,083,336	6,081,785	51,269
4690	KHQA–TV	318,469	316,134	2,665
34537	KHQ–TV	822,371	774,821	6,532
30601	KHRR	1,227,847	1,166,890	9,837
34348	KHSD–TV	188,735	185,202	1,561
24508	KHSL–TV	625,904	608,850	5,133
69677	KHSV	2,059,794	2,020,045	17,029
64544	KHVO	94,226	93,657	790
23394	KIAH	6,099,694	6,099,297	51,417
34564	KICU–TV	8,233,041	7,174,316	60,479
56028	KIDK	305,509	302,535	2,550
58560	KIDY	116,614	116,596	983
53382	KIEM–TV	174,390	160,801	1,356
66258	KIFI–TV	324,422	320,118	2,699
16950	KIFR	2,180,045	2,160,460	18,213
10188	KIII	569,864	566,796	4,778
29095	KIIN	1,365,215	1,335,707	11,260
34527	KIKU	953,896	850,963	7,174
63865	KILM	17,256,205	15,804,489	133,232
56033	KIMA–TV	308,604	260,593	2,197
66402	KIMT	654,083	643,384	5,424
67089	KINC	2,002,066	1,920,903	16,193
34847	KING–TV	4,074,288	4,036,926	34,031
51708	KINT–TV	1,015,582	1,015,274	8,559
26249	KION–TV	2,400,317	855,808	7,214
62427	KIPT	171,405	170,455	1,437
66781	KIRO–TV	4,058,101	4,030,968	33,981
62430	KISU–TV	311,827	307,651	2,593
12896	KITU–TV	712,362	712,362	6,005
64548	KITV	953,207	839,906	7,080
59255	KIVI–TV	710,819	702,619	5,923
47285	KIXE–TV	467,518	428,118	3,609
13792	KJJC–TV	82,749	81,865	690
14000	KJLA	17,929,100	16,794,896	141,581
20015	KJNP–TV	98,403	98,097	827
53315	KJRE	16,187	16,170	136
59439	KJRH–TV	1,416,108	1,397,311	11,779
55364	KJRR	45,515	44,098	372

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
7675	KJTL	379,594	379,263	3,197
55031	KJTV–TV	406,283	406,260	3,425
13814	KJUD	31,229	30,106	254
36607	KJZZ–TV	2,388,965	2,209,183	18,623
83180	KKAI	953,400	919,742	7,753
58267	KKAP	957,786	923,172	7,782
24766	KKCO	206,018	172,628	1,455
35097	KKJB	629,939	624,784	5,267
22644	KKPX–TV	7,588,288	6,758,490	56,974
35037	KKTV	2,892,126	2,478,864	20,897
35042	KLAS–TV	2,094,297	1,940,030	16,354
52907	KLAX–TV	367,212	366,839	3,092
3660	KLBK–TV	387,783	387,743	3,269
65523	KLBY	31,102	31,096	262
38430	KLCS	16,875,019	15,402,588	129,844
77719	KLCW–TV	381,889	381,816	3,219
51479	KLDO–TV	250,832	250,832	2,115
37105	KLEI	175,045	138,087	1,164
56032	KLEW–TV	164,908	148,256	1,250
35059	KLFY–TV	1,355,890	1,355,409	11,426
54011	KLJB	1,027,104	1,012,309	8,534
11264	KLKN	1,161,979	1,122,111	9,459
52593	KLML	270,089	218,544	1,842
47975	KLNE–TV	123,324	123,246	1,039
38590	KLPA–TV	414,699	414,447	3,494
38588	KLPB–TV	749,053	749,053	6,315
749	KLRN	2,374,472	2,353,440	19,839
11951	KLRT–TV	1,171,678	1,152,541	9,716
8564	KLRU	2,614,658	2,575,518	21,712
8322	KLSR–TV	564,415	508,157	4,284
31114	KLST	199,067	169,551	1,429
24436	KLTJ	6,034,131	6,033,867	50,865
38587	KLTL–TV	423,574	423,574	3,571
38589	KLTM–TV	694,280	688,915	5,808
38591	KLTS–TV	947,141	944,257	7,960
68540	KLTV	1,069,690	1,051,361	8,863
12913	KLUJ–TV	1,195,751	1,195,751	10,080
57220	KLUZ–TV	1,079,718	1,019,302	8,593
11683	KLVX	2,044,150	1,936,083	16,321
82476	KLWB	1,065,748	1,065,748	8,984
40250	KLWY	541,043	538,231	4,537
64551	KMAU	213,060	188,953	1,593
51499	KMAX–TV	10,767,605	7,132,240	60,125
65686	KMBC–TV	2,506,035	2,504,622	21,114
35183	KMCB	69,357	66,203	558
41237	KMCC	2,064,592	2,010,262	16,947
42636	KMCI–TV	2,429,392	2,428,626	20,473
38584	KMCT–TV	267,004	266,880	2,250
22127	KMCY	71,797	71,793	605
162016	KMDE	35,409	35,401	298
26428	KMEB	221,810	203,470	1,715
39665	KMEG	708,748	704,130	5,936
35123	KMEX–DT	17,628,354	16,318,720	137,567
40875	KMGH–TV	3,815,224	3,574,344	30,132
35131	KMID	383,449	383,439	3,232
16749	KMIR–TV	2,760,914	730,764	6,160
63164	KMIZ	532,025	530,008	4,468
53541	KMLM–DT	293,290	293,290	2,472
52046	KMLU	711,951	708,107	5,969
47981	KMNE–TV	47,232	44,189	373
24753	KMOH–TV	199,885	184,283	1,554
4326	KMOS–TV	804,745	803,129	6,770
41425	KMOT	81,517	79,504	670
70034	KMOV	3,035,077	3,029,405	25,538
51488	KMPH–TV	1,725,397	1,697,871	14,313
73701	KMPX	6,678,829	6,674,706	56,268
44052	KMSB	1,321,614	1,039,442	8,762
68883	KMSP–TV	3,832,040	3,805,141	32,077
12525	KMSS–TV	1,068,120	1,066,388	8,990
43095	KMTP–TV	5,252,062	4,457,617	37,578

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
35189	KMTR	589,948	520,666	4,389
35190	KMTV–TV	1,346,549	1,344,796	11,337
77063	KMTW	761,521	761,516	6,420
35200	KMVT	184,647	176,351	1,487
32958	KMVU–DT	308,150	231,506	1,952
86534	KMYA–DT	200,764	200,719	1,692
51518	KMYS	2,273,888	2,267,913	19,119
54420	KMYT–TV	1,314,197	1,302,378	10,979
35822	KMYU	133,563	130,198	1,098
993	KNAT–TV	1,157,630	1,124,619	9,481
24749	KNAZ–TV	332,321	227,658	1,919
47906	KNBC	17,859,647	16,555,232	139,561
81464	KNBN	145,493	136,995	1,155
9754	KNCT	1,751,838	1,726,148	14,551
82611	KNDB	118,154	118,122	996
82615	KNDM	72,216	72,209	609
12395	KNDO	314,875	270,892	2,284
12427	KNDU	475,612	462,556	3,899
17683	KNEP	101,389	95,890	808
48003	KNHL	277,777	277,308	2,338
125710	KNIC–DT	2,398,296	2,383,294	20,091
59363	KNIN–TV	708,289	703,838	5,933
48525	KNLC	2,981,508	2,978,979	25,113
48521	KNLJ	655,000	642,705	5,418
84215	KNMD–TV	1,135,642	1,108,358	9,343
55528	KNME–TV	1,148,741	1,105,095	9,316
47707	KNMT	2,887,142	2,794,995	23,562
48975	KNOE–TV	733,097	729,703	6,151
49273	KNOP–TV	87,904	85,423	720
10228	KNPB	604,614	462,732	3,901
55362	KNRR	25,957	25,931	219
35277	KNSD	3,861,660	3,618,321	30,502
19191	KNSN–TV	611,981	459,485	3,873
23302	KNSO	1,824,786	1,803,796	15,206
35280	KNTV	8,525,818	8,027,505	67,672
144	KNVA	2,550,225	2,529,184	21,321
33745	KNVN	495,902	470,252	3,964
69692	KNVO	1,247,014	1,247,014	10,512
29557	KNWA–TV	822,906	804,682	6,783
59440	KNXV–TV	4,183,943	4,173,022	35,179
59014	KOAA–TV	1,608,528	1,203,731	10,147
50588	KOAB–TV	207,070	203,371	1,714
50590	KOAC–TV	1,957,282	1,543,401	13,011
58552	KOAM–TV	595,307	584,921	4,931
53928	KOAT–TV	1,132,372	1,105,116	9,316
35313	KOB	1,152,841	1,113,162	9,384
35321	KOBF	201,911	166,177	1,401
8260	KOBI	562,463	519,063	4,376
62272	KOBR	211,709	211,551	1,783
50170	KOCB	1,629,783	1,629,152	13,734
4328	KOCE–TV	17,446,133	16,461,581	138,771
84225	KOCM	1,434,325	1,433,605	12,085
12508	KOCO–TV	1,716,569	1,708,085	14,399
83181	KOCW	83,807	83,789	706
18283	KODE–TV	740,156	731,512	6,167
66195	KOED–TV	1,497,297	1,459,833	12,306
50198	KOET	658,606	637,640	5,375
51189	KOFY–TV	5,252,062	4,457,617	37,578
34859	KOGG	190,829	161,310	1,360
166534	KOHD	201,310	197,662	1,666
35380	KOIN	3,028,482	2,881,460	24,291
35388	KOKH–TV	1,627,116	1,625,246	13,701
11910	KOKI–TV	1,366,220	1,352,227	11,399
48663	KOLD–TV	1,216,228	887,754	7,484
7890	KOLN	1,225,400	1,190,178	10,033
63331	KOLO–TV	959,178	826,985	6,971
28496	KOLR	1,076,144	1,038,613	8,756
21656	KOMO–TV	4,132,260	4,087,435	34,457
65583	KOMU–TV	551,658	542,544	4,574
35396	KONG	4,006,008	3,985,271	33,596

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
60675	KOOD	113,416	113,285	955
50589	KOPB–TV	3,059,231	2,875,815	24,243
2566	KOPX–TV	1,501,110	1,500,883	12,652
64877	KORO	560,983	560,983	4,729
6865	KOSA–TV	340,978	338,070	2,850
34347	KOTA–TV	174,876	152,861	1,289
8284	KOTI	298,175	97,132	819
35434	KOTV–DT	1,417,753	1,403,838	11,834
56550	KOVR	10,784,477	7,162,989	60,384
51101	KOZJ	429,982	427,991	3,608
51102	KOZK	839,841	834,308	7,033
3659	KOZL–TV	992,495	963,281	8,120
35455	KPAX–TV	206,895	193,201	1,629
67868	KPAZ–TV	4,190,080	4,176,323	35,206
6124	KPBS	3,584,237	3,463,189	29,195
50044	KPBT–TV	340,080	340,080	2,867
77452	KPCB–DT	30,861	30,835	260
35460	KPDX	2,970,703	2,848,423	24,012
12524	KPEJ–TV	368,212	368,208	3,104
41223	KPHO–TV	4,195,073	4,175,139	35,196
61551	KPIC	156,687	105,807	892
86205	KPIF	265,080	258,174	2,176
25452	KPIX–TV	8,226,463	7,360,625	62,050
58912	KPJK	7,884,411	6,955,179	58,632
166510	KPJR–TV	3,402,088	3,372,831	28,433
13994	KPLC	1,406,085	1,403,853	11,834
41964	KPLO–TV	55,827	52,765	445
35417	KPLR–TV	2,991,598	2,988,106	25,190
12144	KPMR	1,731,370	1,473,251	12,420
47973	KPNE–TV	92,675	89,021	750
35486	KPNX	4,180,982	4,176,442	35,207
77512	KPNZ	2,394,311	2,208,707	18,619
73998	KPOB–TV	144,525	143,656	1,211
26655	KPPX–TV	4,186,998	4,171,450	35,165
53117	KPRC–TV	6,099,422	6,099,076	51,415
48660	KPRY–TV	42,521	42,426	358
61071	KPSD–TV	19,886	18,799	158
53544	KPTB–DT	322,780	320,646	2,703
81445	KPTF–DT	84,512	84,512	712
77451	KPTH	660,556	655,373	5,525
51491	KPTM	1,414,998	1,414,014	11,920
33345	KPTS	832,000	827,866	6,979
50633	KPTV	2,998,460	2,847,263	24,002
82575	KPTW	80,374	80,012	675
1270	KPVI–DT	271,379	264,204	2,227
58835	KPXB–TV	6,062,458	6,062,238	51,105
68695	KPXC–TV	3,362,518	3,341,951	28,173
68834	KPXD–TV	6,555,157	6,553,373	55,245
33337	KPXE–TV	2,437,178	2,436,024	20,536
5801	KPXG–TV	3,026,219	2,882,598	24,300
81507	KPXJ	1,138,632	1,135,626	9,573
61173	KPXL–TV	2,257,007	2,243,520	18,913
35907	KPXM–TV	3,507,312	3,506,503	29,560
58978	KPXN–TV	17,256,205	15,804,489	133,232
77483	KPXO–TV	953,329	913,341	7,699
21156	KPXR–TV	828,915	821,250	6,923
10242	KQCA	10,077,891	6,276,197	52,908
41430	KQCD–TV	35,623	33,415	282
18287	KQCK	3,220,160	3,162,711	26,662
78322	KQCW–DT	1,128,198	1,123,324	9,470
35525	KQDS–TV	304,935	301,439	2,541
35500	KQED	8,195,398	7,283,828	61,403
35663	KQEH	8,195,398	7,283,828	61,403
8214	KQET	2,981,040	2,076,157	17,502
5471	KQIN	596,371	596,277	5,027
17686	KQME	188,783	184,719	1,557
61063	KQSD–TV	32,526	31,328	264
8378	KQSL	196,316	139,439	1,175
20427	KQTV	1,494,987	1,401,160	11,812
78921	KQUP	697,016	551,824	4,652

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
306	KRBC–TV	229,395	229,277	1,933
166319	KRBK	983,888	966,187	8,145
22161	KRCA	17,540,791	16,957,292	142,950
57945	KRCB	8,783,441	8,503,802	71,687
41110	KRCG	684,989	662,418	5,584
8291	KRCR–TV	423,000	402,594	3,394
10192	KRCW–TV	2,966,912	2,842,523	23,962
49134	KRDK–TV	349,941	349,929	2,950
52579	KRDO–TV	2,622,603	2,272,383	19,156
70578	KREG–TV	149,306	95,141	802
34868	KREM	817,619	752,113	6,340
51493	KREN–TV	810,039	681,212	5,743
70596	KREX–TV	145,700	145,606	1,227
70579	KREY–TV	74,963	65,700	554
48589	KREZ–TV	148,079	105,121	886
43328	KRGV–TV	1,247,057	1,247,029	10,512
82698	KRII	133,840	132,912	1,120
29114	KRIN	949,313	923,735	7,787
25559	KRIS–TV	565,052	563,805	4,753
22204	KRIV	6,078,936	6,078,846	51,245
14040	KRMA–TV	3,722,512	3,564,949	30,053
14042	KRMJ	174,094	159,511	1,345
20476	KRMT	2,956,144	2,864,236	24,146
84224	KRMU	85,274	72,499	611
20373	KRMZ	36,293	33,620	283
47971	KRNE–TV	47,473	38,273	323
60307	KRNV–DT	955,490	792,543	6,681
65526	KRON–TV	8,573,167	8,028,256	67,678
53539	KRPV–DT	65,943	65,943	556
48575	KRQE	1,135,461	1,105,093	9,316
57431	KRSU–TV	1,000,289	998,310	8,416
82613	KRTN–TV	84,231	68,550	578
35567	KRTV	92,645	90,849	766
84157	KRWB–TV	111,538	110,979	936
35585	KRWF	85,596	85,596	722
55516	KRWG–TV	894,492	661,703	5,578
48360	KRXI–TV	725,391	548,865	4,627
307	KSAN–TV	135,063	135,051	1,138
11911	KSAS–TV	752,513	752,504	6,344
53118	KSAT–TV	2,539,658	2,502,246	21,094
35584	KSAX	365,209	365,209	3,079
35587	KSAZ–TV	4,203,126	4,178,448	35,224
38214	KSBI	1,577,231	1,575,865	13,285
19653	KSBW	5,083,461	4,429,165	37,338
19654	KSBY	535,029	495,562	4,178
82910	KSCC	517,740	517,740	4,365
10202	KSCE	1,015,148	1,010,581	8,519
35608	KSCI	17,446,133	16,461,581	138,771
72348	KSCW–DT	915,691	910,511	7,676
46981	KSDK	2,986,776	2,979,047	25,113
35594	KSEE	1,761,193	1,746,282	14,721
48658	KSFY–TV	670,536	607,844	5,124
17680	KSGW–TV	62,178	57,629	486
59444	KSHB–TV	2,432,205	2,431,273	20,496
73706	KSHV–TV	943,947	942,978	7,949
29096	KSIN–TV	340,143	338,811	2,856
34846	KSIX–TV	74,884	74,884	631
35606	KSKN	731,818	643,590	5,425
70482	KSLA	1,017,556	1,016,667	8,571
6359	KSL–TV	2,390,742	2,206,920	18,604
71558	KSMN	320,813	320,808	2,704
33336	KSMO–TV	2,401,201	2,398,686	20,221
28510	KSMQ–TV	524,391	507,983	4,282
35611	KSMS–TV	1,589,263	882,948	7,443
21161	KSNB–TV	658,560	656,650	5,536
72359	KSNC	174,135	173,744	1,465
67766	KSNF	621,919	617,868	5,209
72361	KSNG	145,058	144,822	1,221
72362	KSNK	48,715	45,414	383
67335	KSNT	622,818	594,604	5,013

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
10179	KSNV	1,967,781	1,919,296	16,180
72358	KSNW	791,403	791,127	6,669
61956	KSPS–TV	819,101	769,852	6,490
52953	KSPX–TV	7,078,228	5,275,946	44,476
166546	KSQA	382,328	374,290	3,155
53313	KSRE	75,181	75,181	634
35843	KSTC–TV	3,843,788	3,835,674	32,335
63182	KSTF	51,317	51,122	431
28010	KSTP–TV	3,788,898	3,782,053	31,883
60534	KSTR–DT	6,632,577	6,629,296	55,885
64987	KSTS	8,363,473	7,264,852	61,243
22215	KSTU	2,384,996	2,201,716	18,560
23428	KSTW	4,265,956	4,186,266	35,290
5243	KSVI	175,390	173,667	1,464
58827	KSWB–TV	3,677,190	3,488,655	29,409
60683	KSWK	79,012	78,784	664
35645	KSWO–TV	483,132	458,057	3,861
61350	KSYS	519,209	443,204	3,736
59988	KTAB–TV	274,707	274,536	2,314
999	KTAJ–TV	2,343,843	2,343,227	19,753
35648	KTAL–TV	1,094,332	1,092,958	9,214
12930	KTAS	471,882	464,149	3,913
81458	KTAZ	4,182,503	4,160,481	35,073
35649	KTBC	3,242,215	2,956,614	24,924
67884	KTBN–TV	17,795,677	16,510,302	139,182
67999	KTBO–TV	1,585,283	1,583,664	13,350
35652	KTBS–TV	1,163,228	1,159,665	9,776
28324	KTBU	6,035,927	6,035,725	50,881
67950	KTBW–TV	4,202,104	4,108,031	34,631
35655	KTBY	348,080	346,562	2,922
68594	KTCA–TV	3,693,877	3,684,081	31,057
68597	KTCI–TV	3,606,606	3,597,183	30,324
35187	KTCW	103,341	89,207	752
36916	KTDO	1,015,336	1,010,771	8,521
2769	KTEJ	419,750	417,368	3,518
83707	KTEL–TV	52,878	52,875	446
35666	KTEN	602,788	599,778	5,056
24514	KTFD–TV	3,210,669	3,172,543	26,745
35512	KTFF–DT	2,225,169	2,203,398	18,575
20871	KTFK–DT	6,969,307	5,211,719	43,935
68753	KTFN	1,017,335	1,013,157	8,541
35084	KTFQ–TV	1,151,433	1,117,061	9,417
29232	KTGM	159,358	159,091	1,341
2787	KTHV	1,275,053	1,246,348	10,507
29100	KTIN	281,096	279,385	2,355
66170	KTIV	751,089	746,274	6,291
49397	KTKA–TV	759,369	746,370	6,292
35670	KTLA	18,156,910	16,870,262	142,216
62354	KTLM	1,044,526	1,044,509	8,805
49153	KTLN–TV	5,381,955	4,740,894	39,966
64984	KTMD	6,095,741	6,095,606	51,386
14675	KTMF	187,251	168,526	1,421
10177	KTMW	2,261,671	2,144,791	18,081
21533	KTNC–TV	8,270,858	7,381,656	62,227
47996	KTNE–TV	100,341	95,324	804
60519	KTNL–TV	8,642	8,642	73
74100	KTNV–TV	2,094,506	1,936,752	16,327
71023	KTNW	450,926	432,398	3,645
8651	KTOO–TV	31,269	31,176	263
7078	KTPX–TV	1,066,196	1,063,754	8,967
68541	KTRE	441,879	421,406	3,552
35675	KTRK–TV	6,114,259	6,112,870	51,531
28230	KTRV–TV	714,833	707,557	5,965
69170	KTSC	3,124,536	2,949,795	24,867
61066	KTSD–TV	83,645	82,828	698
37511	KTSF	7,959,349	7,129,638	60,103
67760	KTSM–TV	1,015,348	1,011,264	8,525
35678	KTTC	815,213	731,919	6,170
28501	KTTM	76,133	73,664	621
11908	KTTU	1,324,801	1,060,613	8,941

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
22208	KTTV	17,380,551	16,693,085	140,723
28521	KTTW	329,633	326,405	2,752
65355	KTTZ–TV	380,240	380,225	3,205
35685	KTUL	1,416,959	1,388,183	11,702
10173	KTUU–TV	380,240	379,047	3,195
77480	KTUZ–TV	1,668,531	1,666,026	14,045
49632	KTVA	342,517	342,300	2,886
34858	KTVB	714,865	707,882	5,967
31437	KTVC	137,239	100,204	845
68581	KTVD	3,800,970	3,547,607	29,906
35692	KTVE	641,139	640,201	5,397
49621	KTVF	98,068	97,929	826
5290	KTVH–DT	228,832	184,264	1,553
35693	KTVI	2,995,764	2,991,513	25,218
40993	KTVK	4,184,825	4,173,028	35,179
22570	KTVL	419,849	369,469	3,115
18066	KTVM–TV	260,105	217,694	1,835
59139	KTVN	955,490	800,420	6,748
21251	KTVO	227,128	226,616	1,910
35694	KTVQ	179,797	173,271	1,461
50592	KTVR	147,808	54,480	459
23422	KTVT	6,912,366	6,908,715	58,240
35703	KTVU	8,297,634	7,406,751	62,439
35705	KTVW–DT	4,174,310	4,160,877	35,076
68889	KTVX	2,389,392	2,200,520	18,550
55907	KTVZ	201,828	198,558	1,674
18286	KTWO–TV	80,426	79,905	674
70938	KTWU	1,703,798	1,562,305	13,170
51517	KTXA	6,915,461	6,911,822	58,267
42359	KTXD–TV	6,706,651	6,704,781	56,521
51569	KTXH	6,092,710	6,092,525	51,360
10205	KTXL	8,306,449	5,896,320	49,706
308	KTXS–TV	247,603	246,760	2,080
69315	KUAC–TV	98,717	98,189	828
51233	KUAM–TV	159,358	159,358	1,343
2722	KUAS–TV	994,802	977,391	8,239
2731	KUAT–TV	1,485,024	1,253,342	10,566
60520	KUBD	14,817	13,363	113
70492	KUBE–TV	6,090,970	6,090,817	51,346
1136	KUCW	2,388,889	2,199,787	18,544
69396	KUED	2,388,995	2,203,093	18,572
69582	KUEN	2,364,481	2,184,483	18,415
82576	KUES	30,925	25,978	219
82585	KUEW	132,168	120,411	1,015
66611	KUFM–TV	187,680	166,697	1,405
169028	KUGF–TV	86,622	85,986	725
68717	KUHM–TV	154,836	145,241	1,224
69269	KUHT	6,080,222	6,078,866	51,245
62382	KUID–TV	432,855	284,023	2,394
169027	KUKL–TV	124,505	115,844	977
35724	KULR–TV	177,242	170,142	1,434
41429	KUMV–TV	41,607	41,224	348
81447	KUNP	130,559	43,472	366
4624	KUNS–TV	4,027,849	4,015,626	33,852
86532	KUOK	28,974	28,945	244
66589	KUON–TV	1,375,257	1,360,005	11,465
86263	KUPB	318,914	318,914	2,688
65535	KUPK	149,642	148,180	1,249
27431	KUPT	87,602	87,602	738
89714	KUPU	956,178	948,005	7,992
57884	KUPX–TV	2,374,672	2,191,229	18,472
23074	KUSA	3,802,407	3,560,546	30,015
61072	KUSD–TV	460,480	460,277	3,880
10238	KUSI–TV	3,572,818	3,435,670	28,963
43567	KUSM–TV	122,678	109,830	926
69694	KUTF	1,210,774	1,031,870	8,699
81451	KUTH–DT	2,219,788	2,027,174	17,089
68886	KUTP	4,191,015	4,176,014	35,204
35823	KUTV	2,388,625	2,199,731	18,544
63927	KUVE–DT	1,294,971	964,396	8,130

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
7700	KUVI–DT	1,204,490	1,009,943	8,514
35841	KUVN–DT	6,680,126	6,678,157	56,297
58609	KUVS–DT	4,043,413	4,005,657	33,768
49766	KVAL–TV	1,016,673	866,173	7,302
32621	KVAW	76,153	76,153	642
58795	KVCR–DT	18,215,524	17,467,140	147,248
35846	KVCT	288,221	287,446	2,423
10195	KVCW	1,967,550	1,918,809	16,176
64969	KVDA	2,566,563	2,548,720	21,486
19783	KVEA	17,538,249	16,335,335	137,707
12523	KVEO–TV	1,244,504	1,244,504	10,491
2495	KVEW	476,720	464,347	3,914
35852	KVHP	747,917	747,837	6,304
49832	KVIA–TV	1,015,350	1,011,266	8,525
35855	KVIE	10,759,440	7,467,369	62,950
40450	KVIH–TV	91,912	91,564	772
40446	KVII–TV	379,042	378,218	3,188
61961	KVLY–TV	350,732	350,449	2,954
16729	KVMD	15,274,297	14,512,400	122,340
83825	KVME–TV	26,711	22,802	192
25735	KVOA	1,317,956	1,030,404	8,686
35862	KVOS–TV	2,202,674	2,131,652	17,970
69733	KVPT	1,744,349	1,719,318	14,494
55372	KVRR	356,645	356,645	3,007
166331	KVSN–DT	2,706,244	2,283,409	19,249
608	KVTH–DT	303,755	299,230	2,523
2784	KVTJ–DT	1,466,426	1,465,802	12,357
607	KVTN–DT	936,328	925,884	7,805
35867	KVUE	2,661,290	2,611,314	22,013
78910	KVUI	257,964	251,872	2,123
35870	KVVU–TV	2,045,255	1,935,583	16,317
36170	KVYE	396,495	392,498	3,309
35095	KWBA–TV	1,129,524	1,073,029	9,046
78314	KWBM	657,822	639,560	5,391
27425	KWBN	953,207	840,455	7,085
76268	KWBQ	1,149,598	1,107,211	9,334
66413	KWCH–DT	883,647	881,674	7,433
71549	KWCM–TV	252,284	244,033	2,057
35419	KWDK	4,194,152	4,117,852	34,713
42007	KWES–TV	424,862	423,544	3,570
50194	KWET	127,976	112,750	950
35881	KWEX–DT	2,376,463	2,370,469	19,983
35883	KWGN–TV	3,706,455	3,513,537	29,619
37099	KWHB	979,393	978,719	8,251
36846	KWHE	952,966	834,341	7,033
26231	KWHY–TV	17,736,497	17,695,306	149,171
35096	KWKB	1,121,676	1,111,629	9,371
162115	KWKS	39,708	39,323	331
12522	KWKT–TV	1,299,675	1,298,478	10,946
21162	KWNB–TV	91,093	89,332	753
67347	KWOG	512,412	505,049	4,258
56852	KWPX–TV	4,220,008	4,148,577	34,973
6885	KWQC–TV	1,063,507	1,054,618	8,890
29121	KWSD	280,675	280,672	2,366
53318	KWSE	54,471	53,400	450
71024	KWSU–TV	725,554	468,295	3,948
25382	KWTV–DT	1,628,106	1,627,198	13,717
35903	KWTX–TV	2,071,023	1,972,365	16,627
593	KWWL	1,089,498	1,078,458	9,091
84410	KWWT	293,291	293,291	2,472
14674	KWYB	86,495	69,598	587
10032	KWYP–DT	128,874	126,992	1,071
35920	KXAN–TV	2,678,666	2,624,648	22,126
49330	KXAS–TV	6,774,295	6,771,827	57,087
24287	KXGN–TV	14,217	13,883	117
35954	KXII	2,323,974	2,264,951	19,094
55083	KXLA	17,929,100	16,794,896	141,581
35959	KXLF–TV	258,100	217,808	1,836
53847	KXLN–DT	6,085,891	6,085,712	51,303
35906	KXLT–TV	348,025	347,296	2,928

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
61978	KXLY–TV	772,116	740,960	6,246
55684	KXMA–TV	32,005	31,909	269
55686	KXMB–TV	142,755	138,506	1,168
55685	KXMC–TV	97,569	89,483	754
55683	KXMD–TV	37,962	37,917	320
47995	KXNE–TV	305,839	304,682	2,568
81593	KXNW	602,168	597,747	5,039
35991	KXRM–TV	1,843,363	1,500,689	12,651
1255	KXTF	140,746	140,312	1,183
25048	KXTV	10,759,864	7,477,140	63,032
35994	KXTX–TV	6,721,578	6,718,616	56,638
62293	KXVA	185,478	185,276	1,562
23277	KXVO	1,404,703	1,403,380	11,830
9781	KXXV	1,771,620	1,748,287	14,738
31870	KYAZ	6,038,257	6,038,071	50,901
29086	KYIN	581,748	574,691	4,845
60384	KYLE–TV	323,330	323,225	2,725
33639	KYMA–DT	396,278	391,619	3,301
47974	KYNE–TV	980,094	979,887	8,260
53820	KYOU–TV	651,334	640,935	5,403
36003	KYTV	1,095,904	1,083,524	9,134
55644	KYTX	927,327	925,550	7,802
13815	KYUR	379,943	379,027	3,195
5237	KYUS–TV	12,496	12,356	104
33752	KYVE	301,951	259,559	2,188
55762	KYVV–TV	67,201	67,201	567
25453	KYW–TV	11,212,189	11,008,413	92,801
69531	KZJL	6,037,458	6,037,272	50,894
69571	KZJO	4,147,016	4,097,776	34,544
61062	KZSD–TV	41,207	35,825	302
33079	KZTV	567,635	564,464	4,758
57292	WAAY–TV	1,498,006	1,428,197	12,040
1328	WABC–TV	20,948,273	20,560,001	173,321
4190	WABE–TV	5,308,575	5,291,523	44,608
43203	WABG–TV	393,020	392,348	3,307
17005	WABI–TV	530,773	510,729	4,305
16820	WABM	1,772,367	1,742,240	14,687
23917	WABW–TV	1,097,560	1,096,376	9,242
19199	WACH	1,403,222	1,400,385	11,805
189358	WACP	9,415,263	9,301,049	78,408
23930	WACS–TV	786,536	783,207	6,602
60018	WACX	4,292,829	4,288,149	36,149
361	WACY–TV	946,580	946,071	7,975
455	WADL	4,610,065	4,606,521	38,833
589	WAFB	1,857,882	1,857,418	15,658
591	WAFF	1,527,517	1,456,436	12,278
70689	WAGA–TV	6,000,355	5,923,191	49,933
48305	WAGM–TV	64,721	63,331	534
37809	WAGV	1,313,257	1,159,076	9,771
706	WAIQ	611,733	609,794	5,141
701	WAKA	799,637	793,645	6,690
4143	WALA–TV	1,320,419	1,318,127	11,112
70713	WALB	773,899	772,467	6,512
60536	WAMI–DT	5,449,193	5,449,193	45,937
70852	WAND	1,388,118	1,386,074	11,685
39270	WANE–TV	1,146,442	1,146,442	9,665
52280	WAOE	2,963,253	2,907,224	24,508
64546	WAOW	636,957	629,068	5,303
52073	WAPA–TV[27]	3,764,742	2,794,738	23,560
49712	WAPT	793,621	791,620	6,673
67792	WAQP	2,135,670	2,131,399	17,968
13206	WATC–DT	5,732,204	5,705,819	48,100
71082	WATE–TV	1,874,433	1,638,059	13,809
22819	WATL	5,882,837	5,819,099	49,055
20287	WATM–TV	893,989	749,183	6,316
11907	WATN–TV	1,787,595	1,784,560	15,044
13989	WAVE	1,891,797	1,880,563	15,853
71127	WAVY–TV	2,080,708	2,080,691	17,540
54938	WAWD	579,079	579,023	4,881
65247	WAWV–TV	705,790	700,361	5,904

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
12793	WAXN–TV	2,677,951	2,669,224	22,502
65696	WBAL–TV	9,743,335	9,344,875	78,777
74417	WBAY–TV	1,225,928	1,225,335	10,330
71085	WBBH–TV	2,017,267	2,017,267	17,006
65204	WBBJ–TV	662,148	658,839	5,554
9617	WBBM–TV	9,914,233	9,907,806	83,523
9088	WBBZ–TV	1,269,256	1,260,686	10,628
70138	WBDT	3,831,757	3,819,550	32,199
51349	WBEC–TV	5,421,355	5,421,355	45,702
10758	WBFF	8,523,983	8,381,042	70,652
12497	WBFS–TV	5,349,613	5,349,613	45,097
6568	WBGU–TV	1,343,816	1,343,816	11,328
81594	WBIF	309,707	309,707	2,611
84802	WBIH	718,439	706,994	5,960
717	WBIQ	1,563,080	1,532,266	12,917
46984	WBIR–TV	1,978,347	1,701,857	14,347
67048	WBKB–TV	136,823	130,625	1,101
34167	WBKI	2,104,090	2,085,393	17,580
4692	WBKO	963,413	862,651	7,272
76001	WBKP	55,655	55,305	466
68427	WBMM	562,284	562,123	4,739
73692	WBNA	1,699,683	1,666,248	14,046
23337	WBNG–TV	1,435,634	1,051,932	8,868
71217	WBNS–TV	2,847,721	2,784,795	23,476
72958	WBNX–TV	3,639,256	3,630,531	30,605
71218	WBOC–TV	813,888	813,888	6,861
71220	WBOY–TV	711,302	621,367	5,238
60850	WBPH–TV	10,613,847	9,474,797	79,873
7692	WBPX–TV	6,833,712	6,761,949	57,003
5981	WBRA–TV	1,726,408	1,677,204	14,139
71221	WBRC	1,884,007	1,849,135	15,588
71225	WBRE–TV	2,879,196	2,244,735	18,923
38616	WBRZ–TV	2,223,336	2,222,309	18,734
82627	WBSF	1,836,543	1,832,446	15,448
30826	WBTV	4,433,795	4,296,893	36,223
66407	WBTW	1,975,457	1,959,172	16,516
16363	WBUI	981,884	981,868	8,277
59281	WBUP	126,472	112,603	949
60830	WBUY–TV	1,569,254	1,567,815	13,217
72971	WBXX–TV	2,142,759	1,984,544	16,730
25456	WBZ–TV	7,960,556	7,730,847	65,171
63153	WCAU	11,269,831	11,098,540	93,561
363	WCAV	1,032,270	874,886	7,375
46728	WCAX–TV	784,748	665,685	5,612
39659	WCBB	964,079	910,222	7,673
10587	WCBD–TV	1,149,489	1,149,489	9,690
12477	WCBI–TV	680,511	678,424	5,719
9610	WCBS–TV	22,087,789	21,511,236	181,340
49157	WCCB	3,642,232	3,574,928	30,137
9629	WCCO–TV	3,837,442	3,829,714	32,284
14050	WCCT–TV	5,818,471	5,307,612	44,743
69544	WCCU	694,550	693,317	5,845
3001	WCCV–TV	3,391,703	2,062,994	17,391
23937	WCES–TV	1,098,868	1,097,706	9,254
65666	WCET	3,123,290	3,110,519	26,222
46755	WCFE–TV	459,417	419,756	3,539
71280	WCHS–TV	1,352,824	1,274,766	10,746
42124	WCIA	834,084	833,547	7,027
711	WCIQ	3,186,320	3,016,907	25,433
71428	WCIU–TV	10,052,136	10,049,244	84,715
9015	WCIV	1,152,800	1,152,800	9,718
42116	WCIX	554,002	549,911	4,636
16993	WCJB–TV	977,492	977,492	8,240
11125	WCLF	4,097,389	4,096,624	34,535
68007	WCLJ–TV	2,305,723	2,303,534	19,419
50781	WCMH–TV	2,756,260	2,712,989	22,870
9917	WCML	233,439	224,255	1,890
9908	WCMU–TV	707,702	699,551	5,897
9922	WCMV	425,499	411,288	3,467
9913	WCMW	106,975	104,859	884

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
32326	WCNC–TV	3,883,049	3,809,706	32,116
53734	WCNY–TV	1,342,821	1,279,429	10,786
73642	WCOV–TV	889,102	884,417	7,456
40618	WCPB	560,426	560,426	4,724
59438	WCPO–TV	3,330,885	3,313,654	27,934
10981	WCPX–TV	9,753,235	9,751,916	82,209
71297	WCSC–TV	1,028,018	1,028,018	8,666
39664	WCSH	1,755,325	1,548,824	13,057
69479	WCTE	612,760	541,314	4,563
18334	WCTI–TV	1,688,065	1,685,638	14,210
31590	WCTV	1,065,524	1,065,464	8,982
33081	WCTX	7,844,936	7,332,431	61,812
65684	WCVB–TV	7,780,868	7,618,496	64,224
9987	WCVE–TV	1,721,004	1,712,249	14,434
83304	WCVI–TV	50,601	50,495	426
34204	WCVN–TV	2,129,816	2,120,349	17,875
9989	WCVW	1,505,484	1,505,330	12,690
73042	WCWF	1,077,314	1,077,194	9,081
35385	WCWG	3,630,551	3,299,114	27,812
29712	WCWJ	1,661,270	1,661,132	14,003
73264	WCWN	1,909,223	1,621,751	13,671
2455	WCYB–TV	2,363,002	2,057,404	17,344
11291	WDAF–TV	2,539,581	2,537,411	21,390
21250	WDAM–TV	512,594	500,343	4,218
22129	WDAY–TV	339,239	338,856	2,857
22124	WDAZ–TV	151,720	151,659	1,278
71325	WDBB	1,792,728	1,762,643	14,859
71326	WDBD	940,665	939,489	7,920
71329	WDBJ	1,626,017	1,435,762	12,103
51567	WDCA	8,101,358	8,049,329	67,856
16530	WDCQ–TV	1,269,199	1,269,199	10,699
30576	WDCW	8,155,998	8,114,847	68,408
54385	WDEF–TV	1,730,762	1,530,403	12,901
32851	WDFX–TV	271,499	270,942	2,284
43846	WDHN	452,377	451,978	3,810
71338	WDIO–DT	341,506	327,469	2,761
714	WDIQ	663,062	620,124	5,228
53114	WDIV–TV	5,450,318	5,450,174	45,945
71427	WDJT–TV	3,267,652	3,256,507	27,452
39561	WDKA	658,699	658,277	5,549
64017	WDKY–TV	1,204,817	1,173,579	9,893
67893	WDLI–TV	4,147,298	4,114,920	34,689
72335	WDPB	596,888	596,888	5,032
83740	WDPM–DT	1,365,977	1,364,744	11,505
1283	WDPN–TV	11,594,463	11,467,616	96,672
6476	WDPX–TV	6,833,712	6,761,949	57,003
28476	WDRB	2,054,813	2,037,086	17,173
12171	WDSC–TV	3,389,559	3,389,559	28,574
17726	WDSE	330,994	316,643	2,669
71353	WDSI–TV	1,100,302	1,042,191	8,786
71357	WDSU	1,649,083	1,649,083	13,902
7908	WDTI	2,092,242	2,091,941	17,635
65690	WDTN	3,831,757	3,819,550	32,199
70592	WDTV	962,532	850,394	7,169
25045	WDVM–TV	3,074,837	2,646,508	22,310
4110	WDWL	2,638,361	1,977,410	16,670
49421	WEAO	3,960,217	3,945,408	33,260
71363	WEAR–TV	1,520,973	1,520,386	12,817
7893	WEAU	1,006,393	971,050	8,186
61003	WEBA–TV	641,354	632,282	5,330
19561	WECN	2,886,669	2,157,288	18,186
48666	WECT	1,156,807	1,156,807	9,752
13602	WEDH	5,328,800	4,724,167	39,825
13607	WEDN	3,451,170	2,643,344	22,283
69338	WEDQ	5,379,887	5,365,612	45,232
21808	WEDU	5,379,887	5,365,612	45,232
13594	WEDW	5,996,408	5,544,708	46,742
13595	WEDY	5,328,800	4,724,167	39,825
24801	WEEK–TV	752,596	752,539	6,344
6744	WEFS	3,380,743	3,380,743	28,500

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
24215	WEHT	857,558	844,070	7,116
721	WEIQ	1,055,632	1,055,193	8,895
18301	WEIU–TV	458,480	458,416	3,864
69271	WEKW–TV	1,263,049	773,108	6,517
60825	WELF–TV	1,477,691	1,387,044	11,693
26602	WELU	2,248,146	1,678,682	14,151
40761	WEMT	1,726,085	1,186,706	10,004
69237	WENH–TV	4,500,498	4,328,222	36,487
71508	WENY–TV	656,240	517,754	4,365
83946	WEPH	604,105	602,833	5,082
81508	WEPX–TV	950,012	950,012	8,009
25738	WESH	4,063,973	4,053,252	34,169
65670	WETA–TV	8,315,499	8,258,807	69,622
69944	WETK	670,087	558,842	4,711
60653	WETM–TV	870,206	770,731	6,497
18252	WETP–TV	2,167,383	1,888,574	15,921
2709	WEUX	380,569	373,680	3,150
72041	WEVV–TV	752,417	751,094	6,332
59441	WEWS–TV	4,112,984	4,078,299	34,380
72052	WEYI–TV	3,715,686	3,652,991	30,795
72054	WFAA	6,917,502	6,907,616	58,231
81669	WFBD	817,914	817,389	6,891
69532	WFDC–DT	8,155,998	8,114,847	68,408
10132	WFFF–TV	633,649	552,182	4,655
25040	WFFT–TV	1,095,429	1,095,411	9,234
11123	WFGC	3,018,351	3,018,351	25,445
6554	WFGX	1,493,866	1,493,319	12,589
13991	WFIE	743,079	740,909	6,246
715	WFIQ	546,563	544,258	4,588
64592	WFLA–TV	5,583,544	5,576,649	47,011
22211	WFLD	9,957,301	9,954,828	83,919
72060	WFLI–TV	1,294,209	1,189,897	10,031
39736	WFLX	5,740,086	5,740,086	48,389
72062	WFMJ–TV	4,328,477	3,822,691	32,225
72064	WFMY–TV	4,772,783	4,746,167	40,010
39884	WFMZ–TV	10,613,847	9,474,797	79,873
83943	WFNA	1,391,519	1,390,447	11,721
47902	WFOR–TV	5,398,266	5,398,266	45,507
11909	WFOX–TV	1,603,324	1,603,324	13,516
40626	WFPT	5,829,153	5,442,279	45,878
21245	WFPX–TV	2,637,949	2,634,141	22,206
25396	WFQX–TV	537,340	534,314	4,504
9635	WFRV–TV	1,263,353	1,256,376	10,591
53115	WFSB	4,752,788	4,370,519	36,843
6093	WFSG	364,961	364,796	3,075
21801	WFSU–TV	576,105	576,093	4,856
11913	WFTC	3,787,177	3,770,207	31,783
64588	WFTS–TV	5,236,379	5,236,287	44,142
16788	WFTT–TV	4,523,828	4,521,879	38,119
72076	WFTV	3,882,888	3,882,888	32,733
70649	WFTX–TV	1,758,172	1,758,172	14,821
60553	WFTY–DT	5,678,755	5,560,460	46,875
25395	WFUP	234,863	234,436	1,976
60555	WFUT–DT	20,362,721	19,974,644	168,386
22108	WFWA	1,035,114	1,034,862	8,724
9054	WFXB	1,393,865	1,393,510	11,747
3228	WFXG	1,070,032	1,057,760	8,917
70815	WFXL	793,637	785,106	6,618
19707	WFXP	583,315	562,500	4,742
24813	WFXR	1,426,061	1,286,450	10,845
6463	WFXT	7,494,070	7,400,830	62,389
22245	WFXU	218,273	218,273	1,840
43424	WFXV	702,682	612,494	5,163
25236	WFXW	274,078	270,967	2,284
41397	WFYI	2,389,627	2,388,970	20,139
53930	WGAL	6,287,688	5,610,833	47,299
2708	WGBA–TV	1,170,375	1,170,127	9,864
24314	WGBC	249,415	249,235	2,101
72099	WGBH–TV	7,711,842	7,601,732	64,083
12498	WGBO–DT	9,828,737	9,826,530	82,838

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
11113	WGBP–TV	1,820,589	1,812,232	15,277
72098	WGBX–TV	7,803,280	7,636,641	64,377
72096	WGBY–TV	4,470,009	3,739,675	31,525
72120	WGCL–TV	6,027,276	5,961,471	50,255
62388	WGCU	1,510,671	1,510,671	12,735
54275	WGEM–TV	361,598	356,682	3,007
27387	WGEN–TV	43,037	43,037	363
7727	WGFL	877,163	877,163	7,394
25682	WGGB–TV	3,443,386	3,053,436	25,740
11027	WGGN–TV	4,002,841	3,981,382	33,563
9064	WGGS–TV	2,759,326	2,705,067	22,804
72106	WGHP	4,174,964	4,123,106	34,758
710	WGIQ	363,849	363,806	3,067
12520	WGMB–TV	1,742,708	1,742,659	14,691
25683	WGME–TV	1,495,724	1,325,465	11,174
24618	WGNM	742,458	741,502	6,251
72119	WGNO	1,641,765	1,641,765	13,840
9762	WGNT	2,128,079	2,127,891	17,938
72115	WGN–TV	9,942,959	9,941,552	83,807
40619	WGPT	578,294	344,300	2,902
65074	WGPX–TV	2,765,350	2,754,743	23,222
64547	WGRZ	1,878,725	1,812,309	15,278
63329	WGTA	1,061,654	1,030,538	8,687
66285	WGTE–TV	2,210,496	2,208,927	18,621
59279	WGTQ	95,618	92,019	776
59280	WGTU	358,543	353,477	2,980
23948	WGTV	5,989,342	5,917,966	49,888
7623	WGTW–TV	807,797	807,797	6,810
24783	WGVK	2,439,225	2,437,526	20,548
24784	WGVU–TV	1,825,744	1,784,264	15,041
21536	WGWG	986,963	986,963	8,320
56642	WGWW	1,677,166	1,647,976	13,892
58262	WGXA	779,955	779,087	6,568
73371	WHAM–TV	1,381,564	1,334,653	11,251
32327	WHAS–TV	1,955,983	1,925,901	16,235
6096	WHA–TV	1,635,777	1,628,950	13,732
13950	WHBF–TV	1,712,339	1,704,072	14,365
12521	WHBQ–TV	1,736,335	1,708,345	14,401
10894	WHBR	1,302,764	1,302,041	10,976
65128	WHDF	1,553,469	1,502,852	12,669
72145	WHDH	7,441,208	7,343,735	61,908
83929	WHDT	5,768,239	5,768,239	48,626
70041	WHEC–TV	1,322,243	1,279,606	10,787
67971	WHFT–TV	5,417,409	5,417,409	45,669
41458	WHIO–TV	3,877,520	3,868,597	32,612
713	WHIQ	1,278,174	1,225,940	10,335
61216	WHIZ–TV	911,245	840,696	7,087
65919	WHKY–TV	3,358,493	3,294,261	27,771
18780	WHLA–TV	554,446	515,561	4,346
48668	WHLT	484,432	483,532	4,076
24582	WHLV–TV	3,906,201	3,906,201	32,929
37102	WHMB–TV	2,959,585	2,889,145	24,355
61004	WHMC	774,921	774,921	6,533
36117	WHME–TV	1,455,358	1,455,110	12,267
37106	WHNO	1,499,653	1,499,653	12,642
72300	WHNS	2,549,610	2,270,868	19,143
48693	WHNT–TV	1,569,885	1,487,578	12,540
66221	WHO–DT	1,120,480	1,099,818	9,271
6866	WHOI	736,125	736,047	6,205
72313	WHP–TV	4,030,693	3,538,096	29,826
51980	WHPX–TV	5,579,464	5,114,336	43,114
73036	WHRM–TV	535,778	532,820	4,492
25932	WHRO–TV	2,169,238	2,169,237	18,287
68058	WHSG–TV	5,870,314	5,808,605	48,967
4688	WHSV–TV	845,013	711,912	6,001
9990	WHTJ	807,960	690,381	5,820
72326	WHTM–TV	2,829,585	2,367,000	19,954
11117	WHTN	1,914,755	1,905,733	16,065
27772	WHUT–TV	7,649,763	7,617,337	64,214
18793	WHWC–TV	1,123,941	1,091,281	9,199

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
72338	WHYY–TV	10,448,829	10,049,700	84,719
5360	WIAT	1,837,072	1,802,810	15,198
63160	WIBW–TV	1,234,347	1,181,009	9,956
25684	WICD	1,238,332	1,237,046	10,428
25686	WICS	1,149,358	1,147,264	9,671
24970	WICU–TV	740,115	683,435	5,761
62210	WICZ–TV	1,249,974	965,416	8,138
18410	WIDP	2,559,306	1,899,768	16,015
26025	WIFS	1,583,693	1,578,870	13,310
720	WIIQ	353,241	347,685	2,931
68939	WILL–TV	1,178,545	1,158,147	9,763
6863	WILX–TV	3,378,644	3,218,221	27,130
22093	WINK–TV	1,851,105	1,851,105	15,605
67787	WINM	1,001,485	971,031	8,186
41314	WINP–TV	2,935,057	2,883,944	24,312
3646	WIPB	1,965,353	1,965,174	16,566
48408	WIPL	850,656	799,165	6,737
53863	WIPM–TV [1]	2,196,157	1,554,017	2,435
53859	WIPR–TV [1]	3,596,802	2,811,148	23,698
10253	WIPX–TV	2,305,723	2,303,534	19,419
39887	WIRS[12]	1,091,825	757,978	5,056
71336	WIRT–DT	127,001	126,300	1,065
13990	WIS	2,644,715	2,600,887	21,925
65143	WISC–TV	1,734,112	1,697,537	14,310
13960	WISE–TV	1,070,155	1,070,155	9,021
39269	WISH–TV	2,912,963	2,855,253	24,070
65680	WISN–TV	3,003,636	2,997,695	25,271
73083	WITF–TV	2,412,561	2,191,501	18,474
73107	WITI	3,111,641	3,102,097	26,151
594	WITN–TV	1,861,458	1,836,905	15,485
61005	WITV	871,783	871,783	7,349
7780	WIVB–TV	1,900,503	1,820,106	15,343
11260	WIVT	855,138	613,934	5,175
60571	WIWN	3,338,845	3,323,941	28,021
62207	WIYC	639,641	637,499	5,374
73120	WJAC–TV	2,219,529	1,897,986	16,000
10259	WJAL	8,750,706	8,446,074	71,200
50780	WJAR	7,108,180	6,976,099	58,809
35576	WJAX–TV	1,630,782	1,630,782	13,747
27140	WJBF	1,601,088	1,588,444	13,391
73123	WJBK	5,748,623	5,711,224	48,146
37174	WJCL	938,086	938,086	7,908
73130	WJCT	1,618,817	1,617,292	13,634
29719	WJEB–TV	1,607,603	1,607,603	13,552
65749	WJET–TV	747,431	717,721	6,050
7651	WJFB	2,310,517	2,302,217	19,408
49699	WJFW–TV	277,530	268,295	2,262
73136	WJHG–TV	864,121	859,823	7,248
57826	WJHL–TV	2,034,663	1,462,129	12,326
68519	WJKT	655,780	655,373	5,525
1051	WJLA–TV	8,750,706	8,447,643	71,214
86537	WJLP	21,384,863	21,119,366	178,036
9630	WJMN–TV	160,991	154,424	1,302
61008	WJPM–TV	623,939	623,787	5,259
58340	WJPX [6 10 12]	3,254,481	2,500,195	21,077
21735	WJRT–TV	2,788,684	2,543,446	21,441
23918	WJSP–TV	4,225,860	4,188,428	35,308
41210	WJTC	1,381,529	1,379,283	11,627
48667	WJTV	987,206	980,717	8,267
73150	WJW	3,977,148	3,905,325	32,922
61007	WJWJ–TV	1,034,555	1,034,555	8,721
58342	WJWN–TV [6]	2,063,156	1,461,497	5,056
53116	WJXT	1,622,616	1,622,616	13,679
11893	WJXX	1,618,191	1,617,272	13,634
32334	WJYS	9,667,341	9,667,317	81,495
25455	WJZ–TV	9,743,335	9,350,346	78,823
73152	WJZY	4,432,745	4,301,117	36,258
64983	WKAQ–TV [3]	3,697,088	2,731,588	2,843
6104	WKAR–TV	1,693,373	1,689,830	14,245
34171	WKAS	542,308	512,994	4,325

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
51570	WKBD–TV	5,065,617	5,065,350	42,701
73153	WKBN–TV	4,898,622	4,535,576	38,235
13929	WKBS–TV	1,082,894	937,847	7,906
74424	WKBT–DT	866,325	824,795	6,953
54176	WKBW–TV	2,247,191	2,161,366	18,220
53465	WKCF	4,241,181	4,240,354	35,746
73155	WKEF	3,730,595	3,716,127	31,327
34177	WKGB–TV	413,268	411,587	3,470
34196	WKHA	511,281	400,721	3,378
34207	WKLE	856,237	846,630	7,137
34212	WKMA–TV	524,617	524,035	4,418
71293	WKMG–TV	3,817,673	3,817,673	32,183
34195	WKMJ–TV	1,477,906	1,470,645	12,398
34202	WKMR	463,316	428,462	3,612
34174	WKMU	344,430	344,050	2,900
42061	WKNO	1,645,867	1,642,092	13,843
83931	WKNX–TV	1,684,178	1,459,493	12,304
34205	WKOH	584,645	579,258	4,883
67869	WKOI–TV	3,831,757	3,819,550	32,199
34211	WKON	1,080,274	1,072,320	9,040
18267	WKOP–TV	1,555,654	1,382,098	11,651
64545	WKOW	1,918,224	1,899,746	16,015
21432	WKPC–TV	1,525,919	1,517,701	12,794
65758	WKPD	283,454	282,250	2,379
34200	WKPI–TV	606,666	481,220	4,057
27504	WKPT–TV	1,131,213	887,806	7,484
58341	WKPV [10]	1,132,932	731,199	5,056
11289	WKRC–TV	3,281,914	3,229,223	27,222
73187	WKRG–TV	1,526,600	1,526,075	12,865
73188	WKRN–TV	2,409,767	2,388,588	20,136
34222	WKSO–TV	658,441	642,090	5,413
40902	WKTC	1,387,229	1,386,779	11,691
60654	WKTV	1,573,503	1,342,387	11,316
73195	WKYC	4,180,327	4,124,135	34,766
24914	WKYT–TV	1,174,615	1,156,978	9,753
71861	WKYU–TV	411,448	409,310	3,450
34181	WKZT–TV	1,044,532	1,020,878	8,606
18819	WLAE–TV	1,397,967	1,397,967	11,785
36533	WLAJ	4,100,475	4,063,963	34,259
2710	WLAX	469,017	447,381	3,771
68542	WLBT	948,671	947,857	7,990
39644	WLBZ	373,129	364,346	3,071
69328	WLED–TV	332,718	174,998	1,475
63046	WLEF–TV	200,517	199,188	1,679
73203	WLEX–TV	969,481	964,735	8,133
37806	WLFB	798,916	688,519	5,804
37808	WLFG	1,614,321	1,282,063	10,808
73204	WLFI–TV	2,243,009	2,221,313	18,726
73205	WLFL	3,747,583	3,743,960	31,562
19777	WLII–DT [4 8]	2,801,102	2,153,564	18,155
37503	WLIO	1,067,232	1,050,170	8,853
38336	WLIW	20,027,920	19,717,729	166,220
27696	WLJC–TV	1,401,072	1,281,256	10,801
71645	WLJT–DT	385,493	385,380	3,249
53939	WLKY	1,927,997	1,919,810	16,184
11033	WLLA	2,081,693	2,081,436	17,547
17076	WLMB	2,754,484	2,747,490	23,161
68518	WLMT	1,736,552	1,733,496	14,613
22591	WLNE–TV	6,429,522	6,381,825	53,799
74420	WLNS–TV	4,100,475	4,063,963	34,259
73206	WLNY–TV	7,501,199	7,415,578	62,513
84253	WLOO	913,960	912,674	7,694
56537	WLOS	3,086,751	2,544,360	21,449
37732	WLOV–TV	609,526	607,780	5,124
13995	WLOX	1,182,149	1,170,659	9,869
38586	WLPB–TV	1,219,624	1,219,407	10,280
73189	WLPX–TV	1,066,912	1,022,543	8,620
66358	WLRN–TV	5,447,399	5,447,399	45,922
73226	WLS–TV	10,174,464	10,170,757	85,739
73230	WLTV–DT	5,427,398	5,427,398	45,753

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
37176	WLTX	1,580,677	1,578,645	13,308
37179	WLTZ	689,521	685,358	5,778
21259	WLUC–TV	92,246	85,393	720
4150	WLUK–TV	1,251,563	1,247,414	10,516
73238	WLVI	7,441,208	7,343,735	61,908
36989	WLVT–TV	10,613,847	9,474,797	79,873
3978	WLWC	3,281,532	3,150,875	26,562
46979	WLWT	3,367,381	3,355,009	28,283
54452	WLXI	4,184,851	4,166,318	35,122
55350	WLYH	2,829,585	2,367,000	19,954
43192	WMAB–TV	405,483	399,560	3,368
43170	WMAE–TV	686,076	653,173	5,506
43197	WMAH–TV	1,257,393	1,256,995	10,596
43176	WMAO–TV	369,696	369,343	3,114
47905	WMAQ–TV	9,914,395	9,913,272	83,569
59442	WMAR–TV	9,198,495	9,072,076	76,478
43184	WMAU–TV	642,328	636,504	5,366
43193	WMAV–TV	1,008,339	1,008,208	8,499
43169	WMAW–TV	726,173	715,450	6,031
46991	WMAZ–TV	1,185,678	1,136,616	9,582
66398	WMBB	935,027	914,607	7,710
43952	WMBC–TV	18,706,132	18,458,331	155,604
42121	WMBD–TV	742,729	742,660	6,261
83969	WMBF–TV	445,363	445,363	3,754
60829	WMCF–TV	612,942	609,635	5,139
9739	WMCN–TV	10,448,829	10,049,700	84,719
19184	WMC–TV	2,047,403	2,043,125	17,224
189357	WMDE	6,384,827	6,257,910	52,754
73255	WMDN	278,227	278,018	2,344
16455	WMDT	731,868	731,868	6,170
39656	WMEA–TV	902,755	853,857	7,198
39648	WMEB–TV	511,761	494,574	4,169
70537	WMEC	218,027	217,839	1,836
39649	WMED–TV	30,488	29,577	249
39662	WMEM–TV	71,700	69,981	590
41893	WMFD–TV	1,561,367	1,324,244	11,163
41436	WMFP	5,792,048	5,564,295	46,907
61111	WMGM–TV	807,797	807,797	6,810
43847	WMGT–TV	601,894	601,309	5,069
73263	WMHT	1,719,949	1,550,977	13,075
68545	WMLW–TV	1,843,933	1,843,663	15,542
53819	WMOR–TV	5,394,541	5,394,541	45,476
81503	WMOW	121,150	105,957	893
65944	WMPB	7,279,563	7,190,696	60,618
43168	WMPN–TV	856,237	854,089	7,200
65942	WMPT	8,637,742	8,584,398	72,366
60827	WMPV–TV	1,423,052	1,422,411	11,991
10221	WMSN–TV	1,947,942	1,927,158	16,246
2174	WMTJ [11]	3,143,148	2,365,308	19,940
6870	WMTV	1,548,616	1,545,459	13,028
73288	WMTW	1,940,292	1,658,816	13,984
23935	WMUM–TV	925,814	920,835	7,763
73292	WMUR–TV	5,242,334	5,057,770	42,637
42663	WMVS	3,172,534	3,112,231	26,236
42665	WMVT	3,172,534	3,112,231	26,236
81946	WMWC–TV	946,858	916,989	7,730
56548	WMYA–TV	1,650,798	1,571,594	13,249
74211	WMYD	5,750,989	5,750,873	48,480
20624	WMYT–TV	4,432,745	4,301,117	36,258
25544	WMYV	3,901,915	3,875,210	32,668
73310	WNAB	2,176,984	2,166,809	18,266
73311	WNAC–TV	7,310,183	6,959,064	58,665
47535	WNBC	21,952,082	21,399,204	180,395
83965	WNBW–DT	1,400,631	1,396,012	11,768
72307	WNCF	667,683	665,950	5,614
50782	WNCN	3,795,494	3,783,131	31,892
57838	WNCT–TV	1,935,414	1,887,929	15,915
41674	WNDU–TV	1,863,764	1,835,398	15,472
28462	WNDY–TV	2,912,963	2,855,253	24,070
71928	WNED–TV	1,387,961	1,370,480	11,553

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
60931	WNEH	1,261,482	1,255,218	10,581
41221	WNEM–TV	1,475,094	1,471,908	12,408
49439	WNEO	3,353,869	3,271,369	27,578
73318	WNEP–TV	3,429,213	2,838,000	23,924
18795	WNET	21,113,760	20,615,190	173,786
51864	WNEU	7,135,190	7,067,520	59,579
23942	WNGH–TV	5,744,856	5,595,366	47,169
67802	WNIN	908,275	891,946	7,519
41671	WNIT	1,305,447	1,305,447	11,005
48457	WNJB	20,787,272	20,036,393	168,907
48477	WNJN	20,787,272	20,036,393	168,907
48481	WNJS	7,383,483	7,343,269	61,904
48465	WNJT	7,383,483	7,343,269	61,904
73333	WNJU	21,952,082	21,399,204	180,395
73336	WNJX–TV [2]	1,628,732	1,170,083	2,573
61217	WNKY	379,002	377,357	3,181
71905	WNLO	1,900,503	1,820,106	15,343
4318	WNMU	181,736	179,662	1,515
73344	WNNE	792,551	676,539	5,703
54280	WNOL–TV	1,632,389	1,632,389	13,761
71676	WNPB–TV	2,130,047	1,941,707	16,369
62137	WNPI–DT	167,931	161,748	1,364
41398	WNPT	2,266,543	2,235,316	18,844
28468	WNPX–TV	2,084,890	2,071,017	17,459
61009	WNSC–TV	2,431,154	2,425,044	20,443
61010	WNTV	2,419,841	2,211,019	18,639
16539	WNTZ–TV	344,704	343,849	2,899
7933	WNUV	9,098,694	8,906,508	75,082
9999	WNVC	807,960	690,381	5,820
10019	WNVT	1,721,004	1,712,249	14,434
73354	WNWO–TV	2,872,428	2,872,250	24,213
136751	WNYA	1,923,118	1,651,777	13,924
30303	WNYB	1,785,269	1,756,096	14,804
6048	WNYE–TV	19,414,613	19,180,858	161,695
34329	WNYI	1,627,542	1,338,811	11,286
67784	WNYO–TV	1,430,491	1,409,756	11,884
73363	WNYT	1,679,494	1,516,775	12,786
22206	WNYW	20,075,874	19,753,060	166,518
69618	WOAI–TV	2,525,811	2,513,887	21,192
66804	WOAY–TV	581,486	443,210	3,736
41225	WOFL	4,048,104	4,043,672	34,088
70651	WOGX	1,112,408	1,112,408	9,378
8661	WOI–DT	1,173,757	1,170,432	9,867
39746	WOIO	3,821,233	3,745,335	31,573
71725	WOLE–DT [4]	1,784,094	1,312,984	7,978
73375	WOLF–TV	2,990,646	2,522,858	21,268
60963	WOLO–TV	2,635,715	2,594,980	21,876
36838	WOOD–TV	2,507,053	2,501,084	21,084
67602	WOPX–TV	3,877,863	3,877,805	32,690
64865	WORA–TV [3 13]	3,594,115	2,762,755	23,290
73901	WORO–DT	3,243,301	2,511,742	21,174
60357	WOST	1,193,381	853,762	7,197
66185	WOSU–TV	2,843,651	2,776,901	23,409
131	WOTF–TV	3,451,383	3,451,383	29,095
10212	WOTV	2,368,797	2,368,397	19,966
50147	WOUB–TV	756,762	734,988	6,196
50141	WOUC–TV	1,713,515	1,649,853	13,908
23342	WOWK–TV	1,159,175	1,083,663	9,135
65528	WOWT	1,380,979	1,377,287	11,611
31570	WPAN	1,254,821	1,254,636	10,577
51988	WPBF	3,190,307	3,186,405	26,861
21253	WPBN–TV	442,005	430,953	3,633
62136	WPBS–TV	338,448	301,692	2,543
13456	WPBT	5,416,604	5,416,604	45,662
13924	WPCB–TV	2,934,614	2,800,516	23,608
64033	WPCH–TV	5,948,778	5,874,163	49,519
4354	WPCT	195,270	194,869	1,643
69880	WPCW	3,393,365	3,188,441	26,879
17012	WPDE–TV	1,772,233	1,769,553	14,917
52527	WPEC	5,764,571	5,764,571	48,595

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
84088	WPFO	1,329,690	1,209,873	10,199
54728	WPGA–TV	559,495	559,025	4,713
60820	WPGD–TV	2,355,629	2,343,715	19,758
73875	WPGH–TV	3,236,098	3,121,767	26,316
2942	WPGX	425,098	422,872	3,565
73879	WPHL–TV	10,421,216	10,246,856	86,381
73881	WPIX	20,638,932	20,213,158	170,397
53113	WPLG	5,587,129	5,587,129	47,099
11906	WPMI–TV	1,468,001	1,467,594	12,372
10213	WPMT	2,412,561	2,191,501	18,474
18798	WPNE–TV	1,161,295	1,160,631	9,784
73907	WPNT	3,172,170	3,064,423	25,833
28480	WPPT	10,613,847	9,474,797	79,873
51984	WPPX–TV	8,206,117	7,995,941	67,406
47404	WPRI–TV	7,254,721	6,990,606	58,931
51991	WPSD–TV	883,814	879,213	7,412
12499	WPSG	10,798,264	10,529,460	88,763
66219	WPSU–TV	1,055,133	868,013	7,317
73905	WPTA	1,099,180	1,099,180	9,266
25067	WPTD	3,423,417	3,411,727	28,761
25065	WPTO	2,961,254	2,951,883	24,884
59443	WPTV–TV	5,840,102	5,840,102	49,232
57476	WPTZ	792,551	676,539	5,703
8616	WPVI–TV	11,491,587	11,302,701	95,282
48772	WPWR–TV	9,957,301	9,954,828	83,919
51969	WPXA–TV	6,587,205	6,458,510	54,445
71236	WPXC–TV	1,561,014	1,561,014	13,159
5800	WPXD–TV	5,249,447	5,249,447	44,253
37104	WPXE–TV	3,067,071	3,057,388	25,774
48406	WPXG–TV	2,577,848	2,512,150	21,177
73312	WPXH–TV	1,471,601	1,451,634	12,237
73910	WPXI	3,300,896	3,197,864	26,958
2325	WPXJ–TV	2,357,870	2,289,706	19,302
52628	WPXK–TV	1,801,997	1,577,806	13,301
21729	WPXL–TV	1,639,180	1,639,180	13,818
48608	WPXM–TV	5,153,621	5,153,621	43,445
73356	WPXN–TV	20,878,066	20,454,468	172,431
27290	WPXP–TV	5,565,072	5,565,072	46,914
50063	WPXQ–TV	3,281,532	3,150,875	26,562
70251	WPXR–TV	1,375,640	1,200,331	10,119
40861	WPXS	2,339,305	2,251,498	18,980
53065	WPXT	1,002,128	952,535	8,030
37971	WPXU–TV	700,488	700,488	5,905
67077	WPXV–TV	1,919,794	1,919,794	16,184
74091	WPXW–TV	8,075,268	8,024,342	67,645
21726	WPXX–TV	1,562,675	1,560,834	13,158
73319	WQAD–TV	1,101,012	1,089,523	9,185
65130	WQCW	1,307,345	1,236,020	10,420
71561	WQEC	183,969	183,690	1,549
41315	WQED	3,529,305	3,426,684	28,887
3255	WQHA	3,229,803	1,875,347	15,809
60556	WQHS–DT	3,996,567	3,952,672	33,321
53716	WQLN	602,232	577,633	4,869
52075	WQMY	410,269	254,586	2,146
64550	WQOW	369,066	358,576	3,023
5468	WQPT–TV	941,381	933,107	7,866
64690	WQPX–TV	1,644,283	1,212,587	10,222
52408	WQRF–TV	1,375,774	1,354,979	11,422
2175	WQTO [11]	2,864,201	1,598,365	6,193
8688	WRAL–TV	3,852,675	3,848,801	32,445
10133	WRAY–TV	4,184,851	4,166,318	35,122
64611	WRAZ	3,800,594	3,797,515	32,013
136749	WRBJ–TV	1,030,831	1,028,010	8,666
3359	WRBL	1,493,140	1,461,459	12,320
57221	WRBU	2,933,497	2,929,776	24,698
54940	WRBW	4,080,267	4,077,341	34,372
59137	WRCB	1,587,742	1,363,582	11,495
47904	WRC–TV	8,188,601	8,146,696	68,677
54963	WRDC	3,972,477	3,966,864	33,441
55454	WRDQ	3,930,315	3,930,315	33,133

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
73937	WRDW–TV	1,564,584	1,533,682	12,929
66174	WREG–TV	1,642,307	1,638,585	13,813
61011	WRET–TV	2,419,841	2,211,019	18,639
73940	WREX	2,303,027	2,047,951	17,264
54443	WRFB [13]	2,674,527	1,975,375	2,843
73942	WRGB	1,757,575	1,645,483	13,871
411	WRGT–TV	3,451,036	3,416,078	28,798
74416	WRIC–TV	2,059,152	1,996,075	16,827
61012	WRJA–TV	1,204,291	1,201,900	10,132
412	WRLH–TV	2,017,508	1,959,111	16,515
61013	WRLK–TV	1,229,094	1,228,616	10,357
43870	WRLM	3,960,217	3,945,408	33,260
74156	WRNN–TV	19,853,836	19,615,370	165,358
73964	WROC–TV	1,203,412	1,185,203	9,991
159007	WRPT	110,009	109,937	927
20590	WRPX–TV	2,637,949	2,634,141	22,206
62009	WRSP–TV	1,156,134	1,154,040	9,729
40877	WRTV	2,919,683	2,895,164	24,406
15320	WRUA	2,905,193	2,121,362	17,883
71580	WRXY–TV	1,784,000	1,784,000	15,039
48662	WSAV–TV	1,000,315	1,000,309	8,433
6867	WSAW–TV	652,442	646,386	5,449
36912	WSAZ–TV	1,239,187	1,168,954	9,854
56092	WSBE–TV	7,535,710	7,266,304	61,255
73982	WSBK–TV	7,290,901	7,225,463	60,911
72053	WSBS–TV	42,952	42,952	362
73983	WSBT–TV	1,763,215	1,752,698	14,775
23960	WSB–TV	5,897,425	5,828,269	49,132
69446	WSCG	867,516	867,490	7,313
64971	WSCV	5,465,435	5,465,435	46,074
70536	WSEC	538,090	536,891	4,526
49711	WSEE–TV	613,176	595,476	5,020
21258	WSES	1,829,499	1,796,561	15,145
73988	WSET–TV	1,575,886	1,340,273	11,299
13993	WSFA	1,166,744	1,132,826	9,550
11118	WSFJ–TV	1,675,987	1,667,150	14,054
10203	WSFL–TV	5,344,129	5,344,129	45,051
72871	WSFX–TV	970,833	970,833	8,184
73999	WSIL–TV	672,560	669,176	5,641
4297	WSIU–TV	1,019,939	937,070	7,900
74007	WSJV	1,651,178	1,644,683	13,865
78908	WSKA	546,588	431,354	3,636
74034	WSKG–TV	892,402	633,163	5,338
76324	WSKY–TV	1,934,585	1,934,519	16,308
57840	WSLS–TV	1,447,286	1,277,753	10,771
21737	WSMH	2,339,224	2,327,660	19,622
41232	WSMV–TV	2,447,769	2,404,766	20,272
70119	WSNS–TV	9,914,395	9,913,272	83,569
74070	WSOC–TV	3,706,808	3,638,832	30,675
66391	WSPA–TV	3,388,945	3,227,025	27,204
64352	WSPX–TV	1,298,295	1,174,763	9,903
17611	WSRE	1,354,495	1,353,634	11,411
63867	WSST–TV	331,907	331,601	2,795
60341	WSTE–DT	3,723,967	3,033,272	25,570
21252	WSTM–TV	1,455,586	1,379,393	11,628
11204	WSTR–TV	3,297,280	3,286,795	27,708
19776	WSUR–DT [8]	3,714,790	3,015,529	7,978
2370	WSVI	50,601	50,601	427
63840	WSVN	5,588,748	5,588,748	47,113
73374	WSWB	1,530,002	1,102,316	9,293
28155	WSWG	381,004	380,910	3,211
71680	WSWP–TV	902,592	694,697	5,856
74094	WSYM–TV	1,498,905	1,498,671	12,634
73113	WSYR–TV	1,329,977	1,243,098	10,479
40758	WSYT	1,970,721	1,739,071	14,660
56549	WSYX	2,635,937	2,592,420	21,854
65681	WTAE–TV	2,995,755	2,860,979	24,118
23341	WTAJ–TV	1,187,718	948,598	7,997
4685	WTAP–TV	512,358	494,914	4,172
416	WTAT–TV	1,111,476	1,111,476	9,370

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
67993	WTBY–TV	15,858,470	15,766,438	132,911
29715	WTCE–TV	2,620,599	2,620,599	22,092
65667	WTCI	1,216,209	1,104,698	9,313
67786	WTCT	608,457	607,620	5,122
28954	WTCV[59]	3,254,481	2,500,195	21,077
74422	WTEN	1,902,431	1,613,747	13,604
9881	WTGL	3,707,507	3,707,507	31,254
27245	WTGS	966,519	966,357	8,146
70655	WTHI–TV	928,934	886,846	7,476
70162	WTHR	2,949,339	2,901,633	24,461
147	WTIC–TV	5,318,753	4,707,697	39,686
26681	WTIN–TV[7]	3,714,547	2,898,224	2,573
66536	WTIU	1,570,257	1,569,135	13,228
1002	WTJP–TV	1,947,743	1,907,300	16,079
4593	WTJR	334,527	334,221	2,817
70287	WTJX–TV	135,017	121,498	1,024
47401	WTKR	2,149,376	2,149,375	18,119
82735	WTLF	349,696	349,691	2,948
23486	WTLH	1,065,127	1,065,105	8,979
67781	WTLJ	1,622,365	1,621,227	13,667
65046	WTLV	1,757,600	1,739,021	14,660
1222	WTLW	1,646,714	1,644,206	13,861
74098	WTMJ–TV	3,096,406	3,085,983	26,015
74109	WTNH	7,845,782	7,332,431	61,812
19200	WTNZ	1,699,427	1,513,754	12,761
590	WTOC–TV	993,098	992,658	8,368
74112	WTOG	5,268,364	5,267,177	44,402
4686	WTOK–TV	417,919	412,276	3,475
13992	WTOL	4,184,020	4,174,198	35,188
21254	WTOM–TV	120,369	117,121	987
74122	WTOV–TV	3,892,886	3,619,899	30,516
82574	WTPC–TV	2,049,246	2,042,851	17,221
86496	WTPX–TV	255,972	255,791	2,156
6869	WTRF–TV	2,941,511	2,565,375	21,626
67798	WTSF	922,441	851,465	7,178
11290	WTSP	5,506,869	5,489,954	46,280
4108	WTTA	5,583,544	5,576,649	47,011
74137	WTTE	2,690,341	2,650,354	22,342
22207	WTTG	8,101,358	8,049,329	67,856
56526	WTTK	2,844,384	2,825,807	23,822
74138	WTTO	1,877,570	1,844,214	15,547
56523	WTTV	2,522,077	2,518,133	21,228
10802	WTTW	9,729,982	9,729,634	82,021
74148	WTVA	823,492	810,123	6,829
22590	WTVC	1,579,628	1,366,976	11,524
8617	WTVD	3,790,354	3,775,757	31,830
55305	WTVE	5,156,905	5,152,997	43,440
36504	WTVF	2,384,622	2,367,601	19,959
74150	WTVG	4,405,350	4,397,113	37,068
74151	WTVH	1,390,502	1,327,319	11,189
10645	WTVI	2,856,703	2,829,960	23,857
63154	WTVJ	5,458,451	5,458,451	46,015
595	WTVM	1,498,667	1,405,957	11,852
72945	WTVO	1,409,708	1,398,825	11,792
28311	WTVP	678,884	678,539	5,720
51597	WTVQ–DT	989,786	983,552	8,291
57832	WTVR–TV	1,816,197	1,809,035	15,250
16817	WTVS	5,511,091	5,510,837	46,456
68569	WTVT	5,473,148	5,460,179	46,029
3661	WTVW	839,003	834,187	7,032
35575	WTVX	3,157,609	3,157,609	26,619
4152	WTVY	974,532	971,173	8,187
40759	WTVZ–TV	2,156,534	2,156,346	18,178
66908	WTWC–TV	1,061,101	1,061,079	8,945
20426	WTWO	737,341	731,294	6,165
81692	WTWV	1,527,511	1,526,625	12,869
51568	WTXF–TV	10,784,256	10,492,549	88,452
41065	WTXL–TV	1,054,514	1,054,322	8,888
8532	WUAB	3,821,233	3,745,335	31,573
12855	WUCF–TV	3,707,507	3,707,507	31,254

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
36395	WUCW	3,664,480	3,657,236	30,830
69440	WUFT	1,372,142	1,372,142	11,567
413	WUHF	1,152,580	1,147,972	9,677
8156	WUJA	2,638,361	1,977,410	16,670
69080	WUNC–TV	4,184,851	4,166,318	35,122
69292	WUND–TV	1,504,532	1,504,532	12,683
69114	WUNE–TV	3,146,865	2,625,942	22,137
69300	WUNF–TV	2,625,583	2,331,723	19,656
69124	WUNG–TV	3,605,143	3,588,220	30,249
60551	WUNI	7,209,571	7,084,349	59,721
69332	WUNJ–TV	1,116,458	1,116,458	9,412
69149	WUNK–TV	1,991,039	1,985,696	16,739
69360	WUNL–TV	3,055,263	2,834,274	23,893
69444	WUNM–TV	1,357,346	1,357,346	11,442
69397	WUNP–TV	1,402,186	1,393,524	11,747
69416	WUNU	1,202,495	1,201,481	10,128
83822	WUNW	1,109,237	570,072	4,806
6900	WUPA	5,966,454	5,888,379	49,639
13938	WUPL	1,721,320	1,721,320	14,511
10897	WUPV	1,933,664	1,914,643	16,140
19190	WUPW	2,100,914	2,099,572	17,699
23128	WUPX–TV	1,102,435	1,089,118	9,181
65593	WUSA	8,750,706	8,446,074	71,200
4301	WUSI–TV	339,507	339,507	2,862
60552	WUTB	8,523,983	8,381,042	70,652
30577	WUTF–TV	7,918,927	7,709,189	64,988
57837	WUTR	526,114	481,957	4,063
415	WUTV	1,589,376	1,557,474	13,130
16517	WUVC–DT	3,768,817	3,748,841	31,603
48813	WUVG–DT	6,029,495	5,965,975	50,293
3072	WUVN	1,233,568	1,157,140	9,755
60560	WUVP–DT	10,421,216	10,246,856	86,381
9971	WUXP–TV	2,316,872	2,305,293	19,434
417	WVAH–TV	1,373,555	1,295,383	10,920
23947	WVAN–TV	1,026,862	1,025,950	8,649
65387	WVBT	1,885,169	1,885,169	15,892
72342	WVCY–TV	3,111,641	3,102,097	26,151
60559	WVEA–TV	4,553,004	4,552,113	38,374
74167	WVEC	2,098,679	2,092,868	17,643
5802	WVEN–TV	3,921,016	3,919,361	33,040
61573	WVEO [5]	1,091,825	757,978	5,056
69946	WVER	888,756	758,441	6,394
10976	WVFX	731,193	609,763	5,140
47929	WVIA–TV	3,429,213	2,838,000	23,924
3667	WVII–TV	368,022	346,874	2,924
70309	WVIR–TV	1,945,637	1,908,395	16,088
74170	WVIT	5,846,093	5,357,639	45,165
18753	WVIZ	3,695,223	3,689,173	31,100
70021	WVLA–TV	1,897,179	1,897,007	15,992
81750	WVLR	1,412,728	1,300,554	10,964
35908	WVLT–TV	1,888,607	1,633,633	13,772
74169	WVNS–TV	916,451	588,963	4,965
11259	WVNY	742,579	659,270	5,558
29000	WVOZ–TV [9]	1,132,932	731,199	5,056
71657	WVPB–TV	992,798	959,526	8,089
60111	WVPT	767,268	642,173	5,414
70491	WVPX–TV	4,147,298	4,114,920	34,689
66378	WVPY	756,696	632,649	5,333
67190	WVSN	2,948,832	2,137,333	18,018
69943	WVTA	888,756	758,441	6,394
69940	WVTB	455,880	257,445	2,170
74173	WVTM–TV	2,009,346	1,940,153	16,355
74174	WVTV	3,091,132	3,083,108	25,991
77496	WVUA	2,209,921	2,160,101	18,210
4149	WVUE–DT	1,658,125	1,658,125	13,978
4329	WVUT	273,293	273,215	2,303
74176	WVVA	1,037,632	722,666	6,092
3113	WVXF	85,191	78,556	662
12033	WWAY	1,208,625	1,208,625	10,189
30833	WWBT	1,924,502	1,892,842	15,957

TABLE 9—FY 2022 FULL-SERVICE BROADCAST TELEVISION STATIONS BY CALL SIGN—Continued

Facility Id.	Call sign	Service area population	Terrain limited population	Terrain limited fee amount ($)
20295	WWCP–TV	2,811,278	2,548,691	21,485
24812	WWCW	1,390,985	1,212,308	10,220
23671	WWDP	5,792,048	5,564,295	46,907
21158	WWHO	2,762,344	2,721,504	22,942
14682	WWJE–DT	7,209,571	7,084,349	59,721
72123	WWJ–TV	5,562,031	5,561,777	46,886
166512	WWJX	518,866	518,846	4,374
6868	WWLP	3,838,272	3,077,800	25,946
74192	WWL–TV	1,788,624	1,788,624	15,078
3133	WWMB	1,547,974	1,544,778	13,022
74195	WWMT	2,538,485	2,531,309	21,339
68851	WWNY–TV	375,600	346,623	2,922
74197	WWOR–TV	19,853,836	19,615,370	165,358
65943	WWPB	3,197,858	2,775,966	23,401
23264	WWPX–TV	2,299,441	2,231,612	18,812
68547	WWRS–TV	2,324,155	2,321,066	19,567
61251	WWSB	3,340,133	3,340,133	28,157
23142	WWSI	11,269,831	11,098,540	93,561
16747	WWTI	196,531	190,097	1,603
998	WWTO–TV	5,613,737	5,613,737	47,324
26994	WWTV	1,034,174	1,022,322	8,618
84214	WWTW	1,527,511	1,526,625	12,869
26993	WWUP–TV	116,638	110,592	932
23338	WXBU	4,030,693	3,538,096	29,826
61504	WXCW	1,749,847	1,749,847	14,751
61084	WXEL–TV	5,416,604	5,416,604	45,662
60539	WXFT–DT	10,174,464	10,170,757	85,739
23929	WXGA–TV	608,494	606,849	5,116
51163	WXIA–TV	6,179,680	6,035,625	50,880
53921	WXII–TV	3,630,551	3,299,114	27,812
146	WXIN	2,836,532	2,814,815	23,729
39738	WXIX–TV	2,911,054	2,900,875	24,454
414	WXLV–TV	4,364,244	4,334,365	36,539
68433	WXMI	1,988,970	1,988,589	16,764
64549	WXOW	425,378	413,264	3,484
6601	WXPX–TV	4,594,588	4,592,639	38,716
74215	WXTV–DT	20,362,721	19,974,644	168,386
12472	WXTX	699,095	694,837	5,857
11970	WXXA–TV	1,680,670	1,537,868	12,964
57274	WXXI–TV	1,184,860	1,168,696	9,852
53517	WXXV–TV	1,191,123	1,189,584	10,028
10267	WXYZ–TV	5,622,543	5,622,140	47,395
12279	WYCC	9,729,982	9,729,634	82,021
77515	WYCI	35,873	26,508	223
70149	WYCW	3,388,945	3,227,025	27,204
62219	WYDC	560,266	449,486	3,789
18783	WYDN	2,577,848	2,512,150	21,177
35582	WYDO	1,330,728	1,330,728	11,218
25090	WYES–TV	1,872,245	1,872,059	15,781
53905	WYFF	2,626,363	2,416,551	20,372
49803	WYIN	6,956,141	6,956,141	58,640
24915	WYMT–TV	1,180,276	863,881	7,283
17010	WYOU	2,879,196	2,226,883	18,773
77789	WYOW	91,839	91,311	770
13933	WYPX–TV	1,529,500	1,413,583	11,917
4693	WYTV	4,898,622	4,535,576	38,235
5875	WYZZ–TV	1,042,140	1,036,721	8,740
15507	WZBJ	1,626,017	1,435,762	12,103
28119	WZDX	1,596,771	1,514,654	12,769
70493	WZME	5,996,408	5,544,708	46,742
81448	WZMQ	73,423	72,945	615
71871	WZPX–TV	2,039,157	2,039,157	17,190
136750	WZRB	952,279	951,693	8,023
418	WZTV	2,312,658	2,301,187	19,399
83270	WZVI	76,992	75,863	640
19183	WZVN–TV	1,981,488	1,981,488	16,704
49713	WZZM	1,574,546	1,548,835	13,057

[1] Call signs WIPM and WIPR are stations in Puerto Rico that are linked together with a total fee of $26,133.
[2] Call signs WNJX and WAPA are stations in Puerto Rico that are linked together with a total fee of $26,133.
[3] Call signs WKAQ and WORA are stations in Puerto Rico that are linked together with a total fee of $26,133.

[4] Call signs WOLE and WLII are stations in Puerto Rico that are linked together with a total fee of $26,133.
[5] Call signs WVEO and WTCV are stations in Puerto Rico that are linked together with a total fee of $26,133.
[6] Call signs WJPX and WJWN are stations in Puerto Rico that are linked together with a total fee of $26,133.
[7] Call signs WAPA and WTIN are stations in Puerto Rico that are linked together with a total fee of $26,133.
[8] Call signs WSUR and WLII are stations in Puerto Rico that are linked together with a total fee of $26,133.
[9] Call signs WVOZ and WTCV are stations in Puerto Rico that are linked together with a total fee of $26,133.
[10] Call signs WJPX and WKPV are stations in Puerto Rico that are linked together with a total fee of $26,133.
[11] Call signs WMTJ and WQTO are stations in Puerto Rico that are linked together with a total fee of $26,133.
[12] Call signs WIRS and WJPX are stations in Puerto Rico that are linked together with a total fee of $26,133.
[13] Call signs WRFB and WORA are stations in Puerto Rico that are linked together with a total fee of $26,133.

TABLE 10—FY 2021 SCHEDULE OF REGULATORY FEES

[Regulatory fees for the categories shaded in gray are collected by the Commission in advance to cover the term of the license and are submitted at the time the application is filed.]

Fee category	Annual regulatory fee (U.S. $s)
PLMRS (per license) (Exclusive Use) (47 CFR part 90)	25.
Microwave (per license) (47 CFR part 101)	25.
Marine (Ship) (per station) (47 CFR part 80)	15.
Marine (Coast) (per license) (47 CFR part 80)	40.
Rural Radio (47 CFR part 22) (previously listed under the Land Mobile category)	10.
PLMRS (Shared Use) (per license) (47 CFR part 90)	10.
Aviation (Aircraft) (per station) (47 CFR part 87)	10.
Aviation (Ground) (per license) (47 CFR part 87)	20.
CMRS Mobile/Cellular Services (per unit) (47 CFR parts 20, 22, 24, 27, 80 and 90) (Includes Non-Geographic telephone numbers).	.15.
CMRS Messaging Services (per unit) (47 CFR parts 20, 22, 24 and 90)	.08.
Broadband Radio Service (formerly MMDS/MDS) (per license) (47 CFR part 27)	605.
Local Multipoint Distribution Service (per call sign) (47 CFR, part 101)	605.
AM Radio Construction Permits	610.
FM Radio Construction Permits	1,070.
AM and FM Broadcast Radio Station Fees	See Table Below.
Digital TV (47 CFR part 73) VHF and UHF Commercial Fee Factor	$.007793.
	See Appendix G for fee amounts due, also available at *https://www.fcc.gov/licensing-databases/fees/regulatory-fees.*
Digital TV Construction Permits	5,100.
Low Power TV, Class A TV, TV/FM Translators and FM Boosters (47 CFR part 74)	320.
CARS (47 CFR part 78)	1,555.
Cable Television Systems (per subscriber) (47 CFR part 76), Including IPTV (per subscriber) and Direct Broadcast Satellite (DBS) (per subscriber).	.98.
Interstate Telecommunication Service Providers (per revenue dollar)	.00400.
Toll Free (per toll free subscriber) (47 CFR section 52.101 (f) of the rules)	.12.
Earth Stations (47 CFR part 25)	595.
Space Stations (per operational station in geostationary orbit) (47 CFR part 25) also includes DBS Service (per operational station) (47 CFR part 100).	116,855.
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Other)	343,555
Space Stations (per operational system in non-geostationary orbit) (47 CFR part 25) (Less Complex)	122,695.
International Bearer Circuits—Terrestrial/Satellites (per Gbps circuit)	$43.
Submarine Cable Landing Licenses Fee (per cable system)	See Table Below.

FY 2021 RADIO STATION REGULATORY FEES

Population served	AM Class A	AM Class B	AM Class C	AM Class D	FM Classes A, B1 & C3	FM Classes B, C, C0, C1 & C2
≤25,000	$975	$700	$610	$670	$1,070	$1,220
25,001–75,000	1,465	1,050	915	1,000	1,605	1,830
75,001–150,000	2,195	1,575	1,375	1,510	2,410	2,745
150,001–500,000	3,295	2,365	2,060	2,265	3,615	4,125
500,001–1,200,000	4,935	3,540	3,085	3,390	5,415	6,175
1,200,001–3,000,000	7,410	5,320	4,635	5,090	8,130	9,270
3,000,001–6,000,000	11,105	7,975	6,950	7,630	12,185	13,895
>6,000,000	16,665	11,965	10,425	11,450	18,285	20,850

FY 2021 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (capacity as of December 31, 2020)	Fee ratio (units)	FY 2021 regulatory fees
Less than 50 Gbps	.0625	$9,495
50 Gbps or greater, but less than 250 Gbps	.125	18,990

FY 2021 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS—Continued

Submarine cable systems (capacity as of December 31, 2020)	Fee ratio (units)	FY 2021 regulatory fees
250 Gbps or greater, but less than 1,500 Gbps	.25	37,980
1,500 Gbps or greater, but less than 3,500 Gbps	.5	75,955
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	151,910
6,500 Gbps or greater	2.0	303,820

V. Final Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), an Initial Regulatory Flexibility Analysis (IRFA) was included in the *Notice of Proposed Rulemaking* for fiscal year (FY) 2022 (*FY 2022 NPRM*) released in June 2022. The Commission sought written public comment on the proposals in the *FY 2022 NPRM,* including comment on the IRFA. No comments were filed addressing the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

A. Need for, and Objectives of, the Report and Order

2. In the *Report and Order,* we adopt a regulatory fee schedule to collect $381,950,000 in congressionally mandated regulatory fees for FY 2022. Under section 9 of the Communications Act of 1934, as amended, (Act or Communications Act), regulatory fees are mandated by Congress and collected to recover the regulatory costs associated with the Commission's oversight and regulatory activities in an amount that can be reasonably expected to equal the amount of the Commission's annual appropriation. The objective in adopting the regulatory fee schedule is to comply with the Congressional mandate to recover the total amount of the Commission's annual appropriation, from the various industries for which the Commission provides oversight and/or regulation, with a fair, administrable and sustainable fee framework based on the number of full-time equivalents (FTEs) involved in such oversight and regulation in the licensing bureaus.

3. In the *FY 2022 NPRM,* we sought comment on the methodology for assessing regulatory fees and the FY 2022 regulatory fee schedule, as well as on other issues related to the collection of regulatory fees including: (i) space station regulatory fees, including new regulatory fees for small satellites; (ii) continuing to use our methodology for calculating television broadcaster regulatory fees based on population; (iii) calculating the cost of collection of regulatory fees in establishing the annual de minimis threshold; (iv) reclassification of certain FTEs; (v) adopting new regulatory fee categories and (vi) how our proposals may promote or inhibit advances in diversity, equity, inclusion, and accessibility. For FY 2022, we adopt the regulatory fee schedule set forth in Appendices B and C to the *Report and Order.*

B. Summary of the Significant Issues Raised by the Public Comments in Response to the IRFA

4. None.

C. Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration

5. No comments were filed by the Chief Counsel for Advocacy of the Small Business Administration.

D. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

6. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the rules adopted herein. The RFA generally defines the term ''small entity'' as having the same meaning as the terms ''small business,'' ''small organization,'' and ''small governmental jurisdiction.'' In addition, the term ''small business'' has the same meaning as the term ''small-business concern'' under the Small Business Act. A ''small-business concern'' is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.

7. *Small Businesses, Small Organizations, Small Governmental Jurisdictions.* Our actions, over time, may affect small entities that are not easily categorized at present. We therefore describe here, at the outset, three broad groups of small entities that could be directly affected herein. First, there are industry-specific size standards for small businesses that are used in the regulatory context. These types of small businesses represent 99.9% of all businesses in the United States, which translates to flexibility analysis, according to data from the Small Business Administration's (SBA) Office of Advocacy. In general, a small business is an independent business having fewer than 500 employees. There are 32.5 million such businesses.

8. Next, the type of small entity described as a ''small organization'' is generally ''any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.'' The Internal Revenue Service (IRS) uses a revenue benchmark of $50,000 or less to delineate its annual electronic filing requirements for small exempt organizations. Nationwide, for tax year 2020, there were approximately 447,689 small exempt organizations in the U.S. reporting revenues of $50,000 or less according to the registration and tax data for exempt organizations available from the IRS.

9. Finally, the small entity described as a ''small governmental jurisdiction'' is defined generally as ''governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.'' U.S. Census Bureau data from the 2017 Census of Governments indicate that there were 90,075 local governmental jurisdictions consisting of general purpose governments and special purpose governments in the United States. Of this number there were 36,931 general purpose governments (county, municipal, and town or township) with populations of less than 50,000 and 12,040 special purpose governments—independent school districts with enrollment populations of less than 50,000. Accordingly, based on the 2017 U.S. Census of Governments data, we estimate that at least 48,971 entities fall into the category of ''small governmental jurisdictions.''

10. *Incumbent Local Exchange Carriers (Incumbent LECs).* Neither the Commission nor the SBA have developed a small business size standard specifically for incumbent local exchange carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees

as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 1,227 providers that reported they were incumbent local exchange service providers. Of these providers, the Commission estimates that 929 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of incumbent local exchange carriers can be considered small entities.

11. *Wired Telecommunications Carriers.* The U.S. Census Bureau defines this industry as establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. Wired Telecommunications Carriers are also referred to as wireline carriers or fixed local service providers.

12. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 5,183 providers that reported they were engaged in the provision of fixed local services. Of these providers, the Commission estimates that 4,737 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

13. *Competitive Local Exchange Carriers (LECs).* Neither the Commission nor the SBA has developed a size standard for small businesses specifically applicable to local exchange services. Providers of these services include several types of competitive local exchange service providers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 3,956 providers that reported they were competitive local exchange service providers. Of these providers, the Commission estimates that 3,808 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

14. *Interexchange Carriers (IXCs).* Neither the Commission nor the SBA have developed a small business size standard specifically for Interexchange Carriers. Wired Telecommunications Carriers is the closest industry with a SBA small business size standard. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 151 providers that reported they were engaged in the provision of interexchange services. Of these providers, the Commission estimates that 131 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, the Commission estimates that the majority of providers in this industry can be considered small entities.

15. *Operator Service Providers (''OSPs'').* Neither the Commission nor the SBA has developed a small business size standard specifically for operator service providers. The closest applicable industry with a SBA small business size standard is Wired Telecommunications Carriers. The SBA small business size standard classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms in this industry that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 32 providers that reported they were engaged in the provision of operator services. Of these providers, the Commission estimates that all 32 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, all of these providers can be considered small entities.

16. *Local Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Local Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 293 providers that reported they were engaged in the provision of local resale services. Of these providers, the Commission estimates that 289 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

17. *Toll Resellers.* Neither the Commission nor the SBA have developed a small business size standard specifically for Toll Resellers. Telecommunications Resellers is the closest industry with a SBA small business size standard. The Telecommunications Resellers industry comprises establishments engaged in

purchasing access and network capacity from owners and operators of telecommunications networks and reselling wired and wireless telecommunications services (except satellite) to businesses and households. Establishments in this industry resell telecommunications; they do not operate transmission facilities and infrastructure. Mobile virtual network operators (MVNOs) are included in this industry. The SBA small business size standard for Telecommunications Resellers classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that 1,386 firms in this industry provided resale services for the entire year. Of that number, 1,375 firms operated with fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 518 providers that reported they were engaged in the provision of toll services. Of these providers, the Commission estimates that 495 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

18. *Wireless Telecommunications Carriers (except Satellite).* This industry comprises establishments engaged in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 2,893 firms in this industry that operated for the entire year. Of that number, 2,837 firms employed fewer than 250 employees. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 797 providers that reported they were engaged in the provision of wireless services. Of these providers, the Commission estimates that 715 providers have 1,500 or fewer employees. Consequently, using the SBA's small business size standard, most of these providers can be considered small entities.

19. *Satellite Telecommunications.* This industry comprises firms ''primarily engaged in providing telecommunications services to other establishments in the telecommunications and broadcasting industries by forwarding and receiving communications signals via a system of satellites or reselling satellite telecommunications.'' Satellite telecommunications service providers include satellite and earth station operators. The SBA small business size standard for this industry classifies a business with $35 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 275 firms in this industry operated for the entire year. Of this number, 242 firms had revenue of less than $25 million. Additionally, based on Commission data in the 2021 Universal Service Monitoring Report, as of December 31, 2020, there were 71 providers that reported they were engaged in the provision of satellite telecommunications services. Of these providers, the Commission estimates that approximately 48 providers have 1,500 or fewer employees. Consequently using the SBA's small business size standard, a little more than of these providers can be considered small entities.

20. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

21. *Television Broadcasting.* This industry is comprised of ''establishments primarily engaged in broadcasting images together with sound.'' These establishments operate television broadcast studios and facilities for the programming and transmission of programs to the public. These establishments also produce or transmit visual programming to affiliated broadcast television stations, which in turn broadcast the programs to the public on a predetermined schedule. Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies businesses having $41.5 million or less in annual receipts as small. 2017 U.S. Census Bureau data indicate that 744 firms in this industry operated for the entire year. Of that number, 657 firms had revenue of less than $25,000,000. Based on this data we estimate that the majority of television broadcasters are small entities under the SBA small business size standard.

22. The Commission estimates that as of March 31, 2022, there were 1,373 licensed commercial television stations. Of this total, 1,280 stations (or 93.2%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Television Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates as of March 31, 2022, there were 384 licensed noncommercial educational (NCE) television stations, 383 Class A TV stations, 1,840 LPTV stations and 3,231 TV translator stations. The Commission however does not compile, and otherwise does not have access to financial information for these television broadcast stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these television station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

23. *Radio Stations.* This industry is comprised of ''establishments primarily engaged in broadcasting aural programs by radio to the public.'' Programming may originate in their own studio, from an affiliated network, or from external sources. The SBA small business size standard for this industry classifies firms having $41.5 million or less in annual receipts as small. U.S. Census Bureau data for 2017 show that 2,963 firms operated in this industry during that year. Of this number, 1,879 firms operated with revenue of less than $25 million per year. Based on this data and the SBA's small business size standard, we estimate a majority of such entities are small entities.

24. The Commission estimates that as of March 2022, there were 4,508 licensed commercial AM radio stations

and 6,763 licensed commercial FM radio stations, for a combined total of 11,271 commercial radio stations. Of this total, 11,269 stations (or 99.98%) had revenues of $41.5 million or less in 2021, according to Commission staff review of the BIA Kelsey Inc. Media Access Pro Database (BIA) on June 1, 2022, and therefore these licensees qualify as small entities under the SBA definition. In addition, the Commission estimates that as of March 31, 2022, there were 4,119 licensed noncommercial (NCE) FM radio stations, 2,049 low power FM (LPFM) stations, and 8,919 FM translators and boosters. The Commission however does not compile, and otherwise does not have access to financial information for these radio stations that would permit it to determine how many of these stations qualify as small entities under the SBA small business size standard. Nevertheless, given the SBA's large annual receipts threshold for this industry and the nature of these radio station licensees, we presume that all of these entities qualify as small entities under the above SBA small business size standard.

25. *Cable Companies and Systems (Rate Regulation).* The Commission has developed its own small business size standard for the purpose of cable rate regulation. Under the Commission's rules, a ''small cable company'' is one serving 400,000 or fewer subscribers nationwide. Based on industry data, there are about 420 cable companies in the U.S. Of these, only five have more than 400,000 subscribers. In addition, under the Commission's rules, a ''small system'' is a cable system serving 15,000 or fewer subscribers. Based on industry data, there are about 4,139 cable systems (headends) in the U.S. Of these, about 639 have more than 15,000 subscribers. Accordingly, the Commission estimates that the majority of cable companies and cable systems are small.

26. *Cable System Operators (Telecom Act Standard).* The Communications Act of 1934, as amended, contains a size standard for a ''small cable operator,'' which is ''a cable operator that, directly or through an affiliate, serves in the aggregate fewer than one percent of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000.'' For purposes of the Telecom Act Standard, the Commission determined that a cable system operator that serves fewer than 677,000 subscribers, either directly or through affiliates, will meet the definition of a small cable operator based on the cable subscriber count established in a 2001 Public Notice. Based on industry data, only four cable system operators have more than 677,000 subscribers. Accordingly, the Commission estimates that the majority of cable system operators are small under this size standard. We note however, that the Commission neither requests nor collects information on whether cable system operators are affiliated with entities whose gross annual revenues exceed $250 million. Therefore, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act.

27. *Direct Broadcast Satellite (DBS) Service.* DBS service is a nationally distributed subscription service that delivers video and audio programming via satellite to a small parabolic ''dish'' antenna at the subscriber's location. DBS is included in the Wired Telecommunications Carriers industry which comprises establishments primarily engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired telecommunications networks. Transmission facilities may be based on a single technology or combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution; and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry.

28. The SBA small business size standard for Wired Telecommunications Carriers classifies firms having 1,500 or fewer employees as small. U.S. Census Bureau data for 2017 show that 3,054 firms operated in this industry for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on this data, the majority of firms in this industry can be considered small under the SBA small business size standard. According to Commission data however, only two entities provide DBS service—DIRECTV (owned by AT&T) and DISH Network, which require a great deal of capital for operation. DIRECTV and DISH Network both exceed the SBA size standard for classification as a small business. Therefore, we must conclude based on internally developed Commission data, in general DBS service is provided only by large firms.

29. *All Other Telecommunications.* This industry is comprised of establishments primarily engaged in providing specialized telecommunications services, such as satellite tracking, communications telemetry, and radar station operation. This industry also includes establishments primarily engaged in providing satellite terminal stations and associated facilities connected with one or more terrestrial systems and capable of transmitting telecommunications to, and receiving telecommunications from, satellite systems. Providers of internet services (*e.g.,* dial-up ISPs) or voice over internet protocol (VoIP) services, via client-supplied telecommunications connections are also included in this industry. The SBA small business size standard for this industry classifies firms with annual receipts of $35 million or less as small. U.S. Census Bureau data for 2017 show that there were 1,079 firms in this industry that operated for the entire year. Of those firms, 1,039 had revenue of less than $25 million. Based on this data, the Commission estimates that the majority of ''All Other Telecommunications'' firms can be considered small.

30. *RespOrgs.* Responsible Organizations, or RespOrgs (also referred to as Toll-Free Number (TFN) providers), are entities chosen by toll free subscribers to manage and administer the appropriate records in the toll-free Service Management System for the toll-free subscriber. Based on information on the website of SOMOS, the entity that maintains a registry of Toll-Free Number providers (SMS/800 TFN Registry) for the more than 42 million Toll-Free numbers in North America, and the TSS Registry, a centralized registry for the use of Toll-Free Numbers in text messaging and multimedia services, there were approximately 446 registered RespOrgs/Toll-Free Number providers in July 2021. RespOrgs are often wireline carriers, however they can be include non-carrier entities. Accordingly, the description below for RespOrgs include both Carrier RespOrgs and Non-Carrier RespOrgs.

31. *Carrier RespOrgs.* Neither the Commission nor the SBA have developed a small business size standard for Carrier RespOrgs. *Wired Telecommunications Carriers,* and *Wireless Telecommunications Carriers (except Satellite)* are the closest industries with a SBA small business size applicable to Carrier RespOrgs.

32. *Wired Telecommunications Carriers* are establishments primarily

engaged in operating and/or providing access to transmission facilities and infrastructure that they own and/or lease for the transmission of voice, data, text, sound, and video using wired communications networks. Transmission facilities may be based on a single technology or a combination of technologies. Establishments in this industry use the wired telecommunications network facilities that they operate to provide a variety of services, such as wired telephony services, including VoIP services, wired (cable) audio and video programming distribution, and wired broadband internet services. By exception, establishments providing satellite television distribution services using facilities and infrastructure that they operate are included in this industry. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. U.S. Census Bureau data for 2017 show that there were 3,054 firms that operated for the entire year. Of this number, 2,964 firms operated with fewer than 250 employees. Based on that data, we conclude that the majority of Carrier RespOrgs that operated with wireline-based technology are small.

33. *Wireless Telecommunications Carriers (except Satellite)* engage in operating and maintaining switching and transmission facilities to provide communications via the airwaves. Establishments in this industry have spectrum licenses and provide services using that spectrum, such as cellular services, paging services, wireless internet access, and wireless video services. The SBA small business size standard for this industry classifies a business as small if it has 1,500 or fewer employees. For this industry, U.S. Census Bureau data for 2017 show that there were 2,893 firms that operated for the entire year. Of this number, 2,837 firms employed fewer than 250 employees. Based on this data, we conclude that the majority of Carrier RespOrgs that operated with wireless-based technology are small.

34. *Non-Carrier RespOrgs.* Neither the Commission, nor the SBA have developed a small business size standard Non-Carrier RespOrgs. *Other Services Related to Advertising* and *Other Management Consulting Services*'' are the closest industries with a SBA small business size applicable to Non-Carrier RespOrgs.

35. The *Other Services Related to Advertising* industry contains establishments primarily engaged in providing advertising services (except advertising agency services, public relations agency services, media buying agency services, media representative services, display advertising services, direct mail advertising services, advertising material distribution services, and marketing consulting services). The SBA small business size standard for this industry classifies a business as small that has annual receipts of $16.5 million or less. U.S. Census Bureau data for 2017 show that 5,650 firms operated in this industry for the entire year. Of that number, 3,693 firms operated with revenue of less than $10 million. Based on this data, we conclude that a majority of non-carrier RespOrgs who provide TFN-related management consulting services are small.

36. *Other Management Consulting Services.* This industry comprises establishments primarily engaged in providing operating advice and assistance to businesses and other organizations on marketing issues, such as developing marketing objectives and policies, sales forecasting, new product developing and pricing, licensing and franchise planning, and marketing planning and strategy. The SBA small business size standard for this industry classifies firms with annual receipts of $16.5 million or less as small. U.S. Census Bureau data for 2017 show that 4,696 firms operated in this industry for the entire year. Of this number, 3,700 firms had revenue of less than $10 million. Based on this data, we conclude that a majority of firms that operate in this industry are small.

E. Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

37. The *Report and Order* does not adopt any new reporting, recordkeeping, or other compliance requirements. Small and other regulated entities are required to pay regulatory fees on an annual basis. The cost of compliance with the annual regulatory fee assessment for small entities is the amount assessed for their the regulatory fee category and should not require small entities to hire professionals in order to comply. Small entities that qualify can take advantage of the exemption from payment of regulatory fees allowed under the de minimis threshold discussed below in Section F. Small entities can also reduce their cost of compliance by availing themselves of the flexibility options for regulatory payees that the Commission made available in FYs 2020 and 2021 as a result of the COVID–19 pandemic. Pursuant to those options, small entities may request a waiver, reduction, deferral and/or installment payment of their FY 2022 regulatory fees.

F. Steps Taken To Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered

38. The RFA requires an agency to provide, ''a description of the steps the agency has taken to minimize the significant economic impact on small entities . . . including a statement of the factual, policy, and legal reasons for selecting the alternative adopted in the final rule and why each one of the other significant alternatives to the rule considered by the agency which affect the impact on small entities was rejected.

39. The *Report and Order* for FY 2022 maintains several approaches from the FY 2021 regulatory fee framework which will minimize the significant economic impact for some small entities. Specifically, the FY 2022 regulatory fee framework maintains: (1) the methodology adopted using the population-based calculations for TV broadcasters that was initially adopted because it is a fairer methodology for smaller broadcasters; and (2) the flexibility for regulatory payees to request a waiver, reduction, deferral and/or installment payments of their regulatory fees adopted for FYs 2020 and 2021 as a result of the financial hardships produced by the COVID–19 pandemic. The waiver process is an easier filing process for smaller entities that may not be familiar with our procedural filing rules and (3) the application of the Commission's de minimis threshold rule adopted pursuant to section 9(e)(2) of the Act, which exempts a regulatee from paying regulatory fees if the sum total of all of its annual regulatory fee liabilities is $1,000 or less for the fiscal year. The de minimis threshold applies only to filers of annual regulatory fees and provides relief to small and other entities with lower annual regulatory fees.

40. There were alternative proposals on various elements of the methodology for assessing regulatory fees and the FY 2022 regulatory fee schedule that the Commission proposed in the *FY 2022 NPRM,* as well as other issues related to the collection of regulatory fees. Below we discuss a number of these proposals and why they were not adopted.

41. *Allocating Full-time Equivalents.* Several commenters questioned the Commission's allocation methodology, including proposing that we create an additional allocation category for the apportionment of regulatory fees. In the *Report and Order,* we decline to modify the allocation methodology explaining that the Commission's regulatory fees must cover the entire appropriation,

including those FTEs who may work on issues for which we do not have regulatory fee categories. As a result, we continue to find that, consistent with section 9 of the Act, regulatory fees are not based on a precise allocation of specific employees with certain work assignments each fiscal year and instead are based on a higher-level approach.

42. *Space Station and Submarine Cable Regulatory Fees.* Fee modification alternatives involved three areas for this category—Non-Geostationary Orbit System (NGSO) Regulatory Fees, Spacecraft Performing On-Orbit Servicing (OOS) and Rendezvous and Proximity Operations (RPO) and Submarine Cable Regulatory Fees. We decline to make any fee modifications or to create additional regulatory fee categories for FY 2022 and adopt fee rates for NGSO space stations for FY 2022 for the reasons discussed below.

43. *NGSO Space Station Regulatory Fees.* We adopt the fee rates for NGSO space stations for FY 2022. We decline to change the methodology for calculating the regulatory fee for small satellites and small spacecraft (together, small satellites) that we adopted in the Report and Order attached to the *FY 2022 NPRM.* We also decline to create additional regulatory fee categories for FY 2022. The NGSO fee allocation maintained was adopted to ensure that regulatory fees more closely reflected the FTE oversight and regulation for each space station category, and no new arguments have been raised to warrant changes to the NSGO fee categories. We further decline to modify the definition of ''small satellites'' for the purposes of regulatory fee assessment. Only space stations licensed pursuant to the streamlined small satellite licensing process under sections 25.122 and 25.123 of our rules are eligible to be assessed the small satellite regulatory fee. As the Commission noted in the *FY 2022 NPRM,* the streamlined small satellite rules are designed to lower the regulatory burden and reduce staff resources required for licensing, but the rules also restrict the benefits received by these licensees.

44. *OOS and RPO.* In the *FY 2022 NPRM,* we sought comment on adopting regulatory fee categories for spacecraft performing OOS and RPO. Proposals from commenters included creating a new fee category and how to define services in the new category, and having an interim regulatory fee that is the same amount as the small satellite fee. Commenters recognize, however, that in-space servicing is a relatively new industry. We decline to adopt a new regulatory fee for both OOS and RPO, and more generally for in-space servicing operations for FY 2022, because the Commission is required to notify Congress at least 90 days prior to creating such a change to the regulatory fee schedule. Further, even absent the notice requirement, we find that the record does not support such action at this time. We do not currently have the experience or the robust record needed to establish definitions and methodologies for a new fee category for these operations that would fairly recover any costs that might be associated with such services. Similarly, in light of the Commission's lack of experience and information, we decline to adopt an interim regulatory fee. We will gain a better understanding how to recover any regulatory costs and benefits that might be associated with these operations as we gain more experience in oversight and regulation of this industry. In addition, the Commission expects to gain more insight into this industry through the record associated with its Notice of Inquiry regarding commercial and other non-governmental In-space Servicing, Assembly, and Manufacturing (ISAM) activities.

45. *Submarine Cable Regulatory Fees.* We reject a request to revise its regulatory fee methodology for submarine cable operators. The request contended that the ''regulatory fee structure based upon cable system capacity is contrary to the mandate of the Communications Act, is overly burdensome, and is disconnected from the Commission's responsibilities for regulatory oversight of the submarine cable industry'' and our methodology ''fails to take into consideration that the size of a system is not tied to the number of customers, nor the amount of revenue that it will generate.'' We are not persuaded that our assessment of these regulatory fees based on capacity is contrary to the Act and is not reasonably related to the benefits provided. Additionally, the arguments proffered in this proceeding were the same arguments rejected by the Commission in the FY 2020 and FY 2021 proceedings.

46. *Broadcaster Regulatory Fees for FY 2022.* The Commission received proposals to reduce broadcasters regulatory fees associated with the Broadband DATA Act, UHF/VHF Stations and the Methodology for Full-Service TV Regulatory Fees. We decline to adopt any of the alternative proposals for the reasons discussed below.

47. *Broadband DATA Act.* In the *FY 2022 NPRM,* broadcasters' regulatory fees are not exempt from the costs associated with work done by the Commission relating to broadband as they had been in FY 2021. Commenters contended that they should continue to be exempt from Commission work associated with broadband. We disagree. In FY 2021, the Commission adjusted its regulatory fees assessment approach for broadcasters to account for the unusual circumstances associated with the Broadband DATA Act. Broadcasters or ''Media Services'' licensees were excluded from part of their share of indirect costs as a result of the one-time nature and magnitude of the earmark, the statutory text, the legislative history, and the record in the proceeding. In doing so, all other regulatory fee payors within the core bureaus, including cable, direct broadcast satellite (DBS), and Internet Protocol television (IPTV) providers regulated by the Media Bureau, had to absorb these indirect costs to ensure that the Commission collected the full annual appropriation as required by law. We decline to continue to exempt broadcasters because the Congressional mandate which was the impetus for the methodology change in FY 2021 is not present for FY 2022.

48. *UHF/VHF Stations.* Modification of the FY 2022 regulatory fees for VHF stations was proposed based on the contention that UHF stations should be assessed greater regulatory fees than VHF stations because of the ability of UHF stations to offer a wider array of services and thereby obtain greater revenues while VHF stations that cannot. As the Commission did in FY 2020, we decline to categorically lower FY 2022 regulatory fees for VHF stations to account for signal limitations.

49. *Methodology for Full-Service TV Regulatory Fees.* In the *FY 2022 NPRM,* the Commission rejected a request to revise the population-based methodology used for regulatory fee assessments for full-service television broadcasters proposed. Finding a population-based methodology to be more equitable, the Commission completed the transition to a population-based full-power broadcast television regulatory fee in FY 2020. In the *FY 2022 NPRM,* we addressed this specific issue stating that it we are not reopening the FY 2020 decision to use the population-based methodology to determine these regulatory fees. We recognize that the population-based methodology increases fees for some licensees and reduces fees for others, but in the end the population-based metric better conforms with the actual service authorized here—broadcasting television to the American people. Small and other entities can seek a waiver, reduction, or deferment of the fee, interest charge, or penalty on a case-

by-case basis, ''in any specific instance for good cause shown, where such action would promote the public interest.''

50. *De Minimis Threshold.* The Commission previously retained the de minimis threshold amount of $1,000 for determining whether a party is exempt from paying regulatory fees because the average cost for the Commission to collect regulatory fees did not exceed $1,000. In the *Report and Order,* we decline to increase this threshold or redefine the ''cost of collection'' to provide relief to small broadcasters, as proposed by some commenters. We acknowledge that the de minimis threshold has the collateral effect of providing financial relief to some regulatory fee payors, however, we do not interpret the language of section 9(e)(2) of the Act to allow providing relief for financial hardship as a factor that can be considered in setting this threshold. Moreover, nothing in the text of the statute supports using policy factors outside of the cost of collection in establishing the de minimis threshold. Further, we determine that raising the threshold on such a basis would result in exempting classes or categories of fee payors in a manner contrary to the limited waiver provisions for regulatory fees.

51. Nevertheless, we conducted a review of the de minimis threshold and calculated the average cost of collecting FY 2021 regulatory fees and included the cost of collecting payor fee data and the cost of processing waiver and installment plan requests, as suggested by some commenters. In the final analysis, the inclusion of these costs did not increase the Commission's average cost of collection above the $1,000 de minimis threshold. Therefore, we determined that the current costs for the Commission to collect regulatory fees including the costs of collecting payor fee data and processing waiver and installment requests, does not justify an increase to the existing $1,000 de minimis threshold.

52. Regarding the definition of the ''cost of collection,'' we do not agree that the cost of collecting a regulatory fee should be expanded to include all of the Commission's costs to administer the regulatory fee program each year. Rather, we believe a sensible interpretation of the language of section 9(e)(2) of the Act includes only those costs incurred by the Commission once the Commission has established the annual fees. This occurs when the Commission's regulatory fee report and order is released. Our belief in part, relies on the Debt Collection Improvement Act of 1996, as amended, 31 U.S.C. 3701 *et seq.* (DCIA), which governs the federal administrative debt collection process for most federal agencies, including the Commission, and indicates that the collection of debt begins after an agency has determined that the debt is due.

53. *Reclassification of FTEs from Direct to Indirect.* In the *FY 2022 NPRM,* the Commission sought comment generally on whether prior reclassifications of FTEs from direct to indirect produce a more accurate regulatory fee assessment. Comments relating to the 38 FTEs in the Wireline Competition Bureau who work on non-high-cost programs of the Universal Service Fund that were allocated as indirect FTEs for regulatory fee purposes by the Commission in 2017, and the Commission's 2019 reassignment of 95 FTEs (of which 64 were not auctions-funded) as indirect FTEs when the Commission created the Office of Economics and Analytics (OEA), contended that such allocations severely departed from the statutory requirement that regulatory fees be adjusted to reflect the benefits received by the payor by the Commission's activities, and should not be apportioned to regulatory payees that do not benefit from work by the FTEs. Based on these contentions, commenters request that Commission make changes associated with these allocations.

54. As we explain in the *Report and Order,* indirect FTEs work on a variety of issues and their time in many instances does not directly address oversight and regulation of a particular regulated entity or regulatory fee category. Moreover, pursuant to section 9 of the Act, regulatory fees must reflect the ''full-time equivalent number of employees within the bureaus and offices of the Commission, adjusted to take into account factors that are reasonably related to the benefits provided to the payor of the fee by the Commission's activities.'' However, while we continue to find that the Commission was supported in its decision in 2017 to reassign the 38 FTEs in the Wireline Competition Bureau who work on non-high cost programs of the Universal Service Fund as indirect, we agree with broadcast commenters that the method for calculating the fees associated with these indirect FTEs should be corrected given the record in this proceeding, as well as the Commission's prior findings. Therefore, we exclude ''Media Services'' licensees from recovery of the funds associated with the 38 indirect FTEs who work on non-high cost Universal Service Fund issues. While we acknowledge that other commenters have raised arguments about the Commission's allocation of indirect FTEs more generally, we find that the record currently before us is not sufficiently developed to support affording similar relief to other regulatory fee payors based upon indirect FTE areas of work at this time. We believe that these issues would benefit from additional comment, as set forth in the accompanying Notice of Inquiry.

55. We are not persuaded that changes are required for the OEA FTE allocation, at this time, and expressly rejected the changes proposed in comments. First, an FTE is a full-time equivalent, not an employee, and is based on the hours of work devoted to the regulation and oversight of the fee categories and not a particular job title. Second, FTE time working on auctions issues is not included in the Commission's regulatory fee calculations and is funded separately. Also, OEA FTE numbers attributed to non-auction work stem from FTE levels in OEA's Data Division, Economic Analysis Division, Industry Analysis Division, and its Front Office. The OEA staff participates in the review of all Commission-level items, from all of the Commission's bureaus and offices, and provides economic and other data analysis to the Commission.

56. *Proposals for New Regulatory Fee Categories.* The Commission previously requested comments in the FY 2021 proceeding on adopting new regulatory fee categories and on ways to improve its regulatory fee process for any and all categories of service. In response to our request for additional comments on these issues in the *FY 2022 NPRM,* we received new regulatory fee category proposals for: Holders of Experimental Licenses, Broadband Internet Access Service, Holders of Equipment Authorizations, Operators of Databases of Spectrum Used on an Unlicensed Basis, and Users of Spectrum on an Unlicensed Basis. We decline to adopt any new regulatory fee categories in the *Report and Order* because, at this time, there is not a sufficient basis to warrant adding the new proposed regulatory fees. Further, there is a lack of evidence and information in the record which would allow us to create these new fee categories and establish a fair, administrable and sustainable system for assessing the fees.

G. Report to Congress

57. The Commission will send a copy of the *Report and Order and Notice of Inquiry,* including this FRFA, in a report to Congress pursuant to the Congressional Review Act. In addition, the Commission will send a copy of the

Report and Order and Notice of Inquiry, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Report and Order,* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

VI. Ordering Clauses

58. Accordingly, *it is ordered* that, pursuant to the authority found in sections 4(i) and (j), 9, 9A, and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 159, 159A, and 303(r), this Report and Order *is hereby adopted*.

59. *It is further ordered* that the FY 2022 section 9 and 9A regulatory fees assessment requirements and the rules set forth in the Final Rules *are adopted* as specified herein.

60. *It is further ordered* that the Report and Order *shall be effective* upon publication in the **Federal Register**.

61. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this Report and Order, including the Final Regulatory Flexibility Analysis in this document, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Broadband, Reporting and recordkeeping requirements, Telecommunications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Final Rules

Part 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

■ 2. Section 1.1151 is revised to read as follows:

§ 1.1151 Authority to prescribe and collect regulatory fees.

Authority to impose and collect regulatory fees is contained in section 9 of the Communications Act, as amended by sections 101–103 of title I of the Consolidated Appropriations Act of 2018 (Pub. L. 115–141, 132 Stat. 1084), 47 U.S.C. 159, which directs the Commission to prescribe and collect annual regulatory fees to recover the cost of carrying out the functions of the Commission.

■ 3. Section 1.1152 is revised to read as follows:

§ 1.1152 Schedule of annual regulatory fees for wireless radio services.

TABLE 1 TO § 1.1152

Exclusive use services (per license)	Fee amount
1. Land Mobile (Above 470 MHz and 220 MHz Local, Base Station & SMRS) (47 CFR part 90):	
(a) New, Renew/Mod (FCC 601 & 159)	$25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
220 MHz Nationwide:	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
2. Microwave (47 CFR part 101) (Private):	
(a) New, Renew/Mod (FCC 601 & 159)	25.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	25.00
(c) Renewal Only (FCC 601 & 159)	25.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	25.00
3. Shared Use Services	
Land Mobile (Frequencies Below 470 MHz—except 220 MHz):	
(a) New, Renew/Mod (FCC 601 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(c) Renewal Only (FCC 601 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	10.00
Rural Radio (47 CFR part 22):	
(a) New, Additional Facility, Major Renew/Mod (Electronic Filing) (FCC 601 & 159)	10.00
(b) Renewal, Minor Renew/Mod (Electronic Filing)	10.00
4. Marine Coast:	
(a) New Renewal/Mod (FCC 601 & 159)	40.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	40.00
(c) Renewal Only (FCC 601 & 159)	40.00
(d) Renewal Only (Electronic Filing) (FCC 601 & 159)	40.00
5. Aviation Ground:	
(a) New, Renewal/Mod (FCC 601 & 159)	20.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 601 & 159)	20.00
(c) Renewal Only (FCC 601 & 159)	20.00
(d) Renewal Only (Electronic Only) (FCC 601 & 159)	20.00
6. Marine Ship:	
(a) New, Renewal/Mod (FCC 605 & 159)	15.00
(b) New, Renewal/Mod (Electronic Filing) (FCC 605 & 159)	15.00
(c) Renewal Only (FCC 605 & 159)	15.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	15.00
7. Aviation Aircraft:	
(a) New, Renew/Mod (FCC 605 & 159)	10.00
(b) New, Renew/Mod (Electronic Filing) (FCC 605 & 159)	10.00

TABLE 1 TO § 1.1152—Continued

Exclusive use services (per license)	Fee amount
(c) Renewal Only (FCC 605 & 159)	10.00
(d) Renewal Only (Electronic Filing) (FCC 605 & 159)	10.00
8. CMRS Cellular/Mobile Services (per unit) (FCC 159)	[1].14
9. CMRS Messaging Services (per unit) (FCC 159)	[2].08
10. Broadband Radio Service (formerly MMDS and MDS)	590
11. Local Multipoint Distribution Service	590

[1] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.
[2] These are standard fees that are to be paid in accordance with § 1.1157(b) of this chapter.

■ 4. Section 1.1153 is revised to read as follows:

§ 1.1153 Schedule of annual regulatory fees and filing locations for mass media services.

TABLE 1 TO § 1.1153

Radio [AM and FM] (47 CFR part 73)	Fee amount
1. AM Class A:	
<=25,000 population	$1,050.
25,001–75,000 population	1,575.
75,001–150,000 population	2,365.
150,001–500,000 population	3,550.
500,001–1,200,000 population	5,315.
1,200,001–3,000,000 population	7,980.
3,000,001–6,000,000 population	11,960.
>6,000,000 population	17,945.
2. AM Class B:	
≤25,000 population	755.
25,001–75,000 population	1,135.
75,001–150,000 population	1,700.
150,001–500,000 population	2,550.
500,001–1,200,000 population	3,820.
1,200,001–3,000,000 population	5,740.
3,000,001–6,000,000 population	8,600.
>6,000,000 population	12,905.
3. AM Class C:	
≤25,000 population	655.
25,001–75,000 population	985.
75,001–150,000 population	1,475.
150,001–500,000 population	2,215.
500,001–1,200,000 population	3,315.
1,200,001–3,000,000 population	4,980.
3,000,001–6,000,000 population	7,460.
>6,000,000 population	11,195.
4. AM Class D:	
≤25,000 population	720.
25,001–75,000 population	1,080.
75,001–150,000 population	1,620.
150,001–500,000 population	2,435.
500,001–1,200,000 population	3,645.
1,200,001–3,000,000 population	5,470.
3,000,001–6,000,000 population	8,200.
>6,000,000 population	12,305.
5. AM Construction Permit	655.
6. FM Classes A, B1 and C3:	
≤25,000 population	1,145.
25,001–75,000 population	1,720.
75,001–150,000 population	2,575.
150,001–500,000 population	3,870.
500,001–1,200,000 population	5,795.
1,200,001–3,000,000 population	8,700.
3,000,001–6,000,000 population	13,040.
>6,000,000 population	19,570.
7. FM Classes B, C, C0, C1 and C2:	
≤25,000 population	1,310.
25,001–75,000 population	1,965.
75,001–150,000 population	2,950.
150,001–500,000 population	4,430.
500,001–1,200,000 population	6,630.

TABLE 1 TO § 1.1153—Continued

Radio [AM and FM] (47 CFR part 73)	Fee amount
1,200,001–3,000,000 population	9,955.
3,000,001–6,000,000 population	14,920.
>6,000,000 population	22,390.
8. FM Construction Permits	1,145.
TV (47 CFR part 73)	
9. Digital TV (UHF and VHF Commercial Stations):	
1. Digital TV Construction Permits	5,200.
2. Television Fee Factor	.008430 per population count.
10. Low Power TV, Class A TV, FM Translator, & TV/FM Booster (47 CFR part 74)	330.

■ 5. Section 1.1154 is revised to read as follows:

§ 1.1154 Schedule of annual regulatory charges for common carrier services.

TABLE 1 TO § 1.1154

Radio facilities	Fee amount
1. Microwave (Domestic Public Fixed) (Electronic Filing) (FCC Form 601 & 159)	$25.00.
Carriers	
1. Interstate Telephone Service Providers (per interstate and international end-user revenues (see FCC Form 499–A).	.00452.
2. Toll Free Number Fee	.12 per Toll Free Number.

■ 6. Section 1.1155 is revised to read as follows:

§ 1.1155 Schedule of regulatory fees for cable television services.

TABLE 1 TO § 1.1155

	Fee amount
1. Cable Television Relay Service	$1,715
2. Cable TV System, Including IPTV (per subscriber), and DBS (per subscriber)	1.16

■ 6. Section 1.1156 is revised to read as follows:

§ 1.1156 Schedule of regulatory fees for international services.

(a) *Geostationary orbit (GSO) and non-geostationary orbit (NGSO) space stations.* The following schedule applies for the listed services:

TABLE 1 TO PARAGRAPH (a)

Fee category	Fee amount
Space Stations (Geostationary Orbit)	$124,060
Space Stations (Non-Geostationary Orbit)—Other	340,005
Space Stations (Non-Geostationary Orbit)—Less Complex	141,670
Space Stations (per license/call sign in non-geostationary orbit) (47 CFR part 25) (Small Satellite)	12,215
Earth Stations: Transmit/Receive & Transmit only (per authorization or registration)	620

(b) *International terrestrial and satellite Bearer Circuits.* (1) Regulatory fees for International Bearer Circuits are to be paid by facilities-based common carriers that have active (used or leased) international bearer circuits as of December 31 of the prior year in any terrestrial or satellite transmission facility for the provision of service to an end user or resale carrier, which includes active circuits to themselves or to their affiliates. In addition, non-common carrier terrestrial and satellite operators must pay a fee for each active circuit sold or leased to any customer, including themselves or their affiliates, other than an international common carrier authorized by the Commission to provide U.S. international common carrier services. ''Active circuits'' for purposes of this paragraph (b) include backup and redundant circuits. In addition, whether circuits are used specifically for voice or data is not relevant in determining that they are active circuits.

(2) The fee amount, per active Gbps circuit will be determined for each fiscal year.

TABLE 2 TO PARAGRAPH (b)(2)

International terrestrial and satellite (capacity as of December 31, 2021)	Fee amount
Terrestrial Common Carrier and Non-Common Carrier; Satellite Common Carrier and Non-Common Carrier	$39 per Gbps circuit.

(c) *Submarine cable.* Regulatory fees for submarine cable systems will be paid annually, per cable landing license, for all submarine cable systems operating based on their lit capacity as of December 31 of the prior year. The fee amount will be determined by the Commission for each fiscal year.

TABLE 3 TO PARAGRAPH (c)—FY 2021 INTERNATIONAL BEARER CIRCUITS—SUBMARINE CABLE SYSTEMS

Submarine cable systems (lit capacity as of December 31, 2021)	Fee ratio (units)	FY 2022 regulatory fees
Less than 50 Gbps	.0625	$8,610
50 Gbps or greater, but less than 250 Gbps	.125	17,215
250 Gbps or greater, but less than 1,500 Gbps	.25	34,430
1,500 Gbps or greater, but less than 3,500 Gbps	.5	68,860
3,500 Gbps or greater, but less than 6,500 Gbps	1.0	137,715
6,500 Gbps or greater	2.0	275,430

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