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Contents

Federal Register

Vol. 87, No. 182

Wednesday, September 21, 2022

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

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

CFR PARTS AFFECTED IN THIS ISSUE

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

Federal Register
Vol. 87, No. 182
Wednesday, September 21, 2022

Presidential Documents

Title 3—

The President

Proclamation 10448 of September 16, 2022

Constitution Day and Citizenship Day, and Constitution Week, 2022

By the President of the United States of America

A Proclamation

America is founded on the most powerful idea in history—that we are all created equal. That idea sparked our revolution, ignited a wave of change across the world, and beats in the hearts of Americans today. It is central to our Constitution, and citizenship embodies a true faith and allegiance to give it full meaning in our everyday lives. On this Constitution Day and Citizenship Day, and during this Constitution Week, we recommit to protecting and defending the very idea of America.

When our Founding Fathers came together nearly 250 years ago, they set in motion an experiment that changed the world. They disagreed and debated but ultimately came together to forge a new system of self-government—a system balanced between a strong Federal Government and the States, held together by co-equal branches and a separation of powers. America would not be a land of kings or dictators; it would be a Nation of laws—a Nation of order, not chaos; of peace, not violence. Here in America, the people rule through the ballot, and their will prevails.

As we have seen throughout our history, though, nothing about our democracy is guaranteed. America is an idea—one that requires constant stewardship. We have to fight for it, earn it, and renew it with each generation. That is why my Administration will do everything in our power to uphold and defend our Constitution against all enemies, foreign and domestic, and to protect the rights and freedoms that it promises us all. That means we have to be firm, resolute, and unyielding in defending the right to vote and ensuring that each vote is counted. It is a sacred right from which all others flow. But last year alone, nearly 20 States passed laws to make it harder to vote—not only to suppress the vote, but to subvert it. I have directed Federal agencies to promote voting access, and I appointed top civil rights advocates to the Department of Justice, which has doubled its voting rights staff. We need the Congress to finally pass the Freedom to Vote and John Lewis Voting Rights Advancement Acts to prevent voter suppression, protect election officials, ban dark money, and end partisan gerrymandering, preserving our democracy and the spirit of our Constitution.

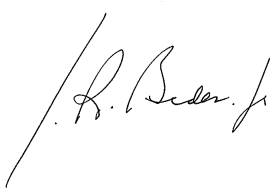
As we reflect today on the promise of our Nation, we also join millions of Americans in reaffirming the rights and responsibilities of citizenship and welcoming our new citizens, whose courage and faith in America has brought them here from every part of the world to start new lives. My Administration will keep working to make the naturalization process faster and more efficient and to build a more fair, orderly, and humane immigration system for all. The commitment, sacrifices, and dreams of new Americans have made us strong since our Nation's founding, and we celebrate their optimism, drive, and contributions.

We are living at an inflection point in history, engaged in a struggle between democracy and autocracy at home and abroad. We have to show the world that democracy can deliver. Today, this week, and always, it is up to us all to stand for the rule of law, to preserve the flame of democracy, and to keep the promise of America alive.

To honor the timeless principles enshrined in our Constitution, the Congress has, by joint resolution of February 29, 1952 (36 U.S.C. 106), designated September 17 as ''Constitution Day and Citizenship Day'' and authorized the President to issue a proclamation calling on United States officials to display the flag of the United States on all Government buildings on that day. By joint resolution of August 2, 1956 (36 U.S.C. 108), the Congress further requested that the President proclaim the week beginning September 17 and ending September 23 of each year as ''Constitution Week.''

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 17, 2022, as Constitution Day and Citizenship Day, and September 17 through September 23 as Constitution Week. On this day and during this week, we celebrate our Constitution and the rights of citizenship that together we enjoy as the people of this proud Nation.

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



[FR Doc. 2022–20578
Filed 9–20–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10449 of September 16, 2022

Minority Enterprise Development Week, 2022

By the President of the United States of America

A Proclamation

Every day, America's 9.2 million minority business enterprises deliver essential goods and services to their customers and help power the United States economy. They develop cutting-edge technologies, provide social services to people in need, construct roads and bridges, operate restaurants and retail shops, and make vital contributions to all industries. Minority business enterprises also provide proprietors and employees a sense of purpose, a source of dignity, and for some, a valuable asset to pass down through generations. During Minority Enterprise Development Week, we celebrate the ingenuity and dedication of America's minority entrepreneurs, and we recommit to helping all Americans access the resources they need to build thriving businesses and a fairer, more prosperous Nation.

Minority business enterprises generate $1.8 trillion in annual GDP and provide income to millions of workers, yet many of these businesses suffer from the vestiges of historical discrimination. Obstacles to accessing capital, barriers to entering new markets, and limited access to Government contracts make it difficult for operators to start and grow their enterprises. Minority business owners are still more likely to be turned down for loans, earn less revenue, and employ fewer workers than their non-minority counterparts. Today, firms owned by Black Americans, Latinos, American Indians, Alaska Natives, Asian Americans, Native Hawaiians, and Pacific Islanders make up approximately 18 percent of employer businesses, yet receive just over 10 percent of Federal procurement spending. These disparities contribute to America's racial wealth gap; estimates suggest that differences in business ownership account for 20 percent of the wealth gap between the average white household and the average Black household.

My Administration is committed to changing that. We have taken historic steps to counter chronic underinvestment in Black and Brown communities, boosting access to capital and markets. Our American Rescue Plan established the $10 billion State Small Business Credit Initiative at the Department of the Treasury, which will provide funding to States, territories, and Tribal Governments to establish lending and investment programs for main-street small businesses and early-stage companies in disadvantaged areas. The Bipartisan Infrastructure Law made permanent the Minority Business Development Agency, the only Federal agency dedicated to linking minority-owned businesses to private lenders, exporters, and public- and private-sector buyers; and it directs the Department of Transportation to prioritize contracts to small disadvantaged businesses. My Administration is also using the Federal Government's tremendous purchasing power to drive change: We have pledged to boost the share of Federal contracting dollars awarded to small disadvantaged businesses by an unprecedented 50 percent by 2025, which is projected to bring minority-owned businesses as much as $100 billion in new revenue over this time period.

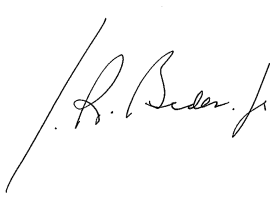
Our work is far from finished. I am calling on the Congress to strengthen funding for the Small Business Administration and the Minority Business Development Agency to support women, people of color, people with disabilities, veterans, and other underserved business owners. I have also called

for the expansion of the Treasury Department's Community Development Financial Institutions Fund, which will help local lenders deliver more credit, capital, and financial support to historically overlooked business owners and communities.

Since this Nation's founding, owning and operating a business has been an important path to achieving the American dream. This week and every week, my Administration will work to ensure that minority entrepreneurs have the resources to start and grow their own businesses, enriching their communities and the Nation. Together, we will grow the economy from the bottom up and the middle out, making sure it works for everyone.

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 18 through September 24, 2022, as Minority Enterprise Development Week. I call upon the people of the United States to acknowledge and celebrate the achievements and contributions of minority business owners and enterprises and commit to promote systemic economic equality.

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



[FR Doc. 2022–20579
Filed 9–20–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10450 of September 16, 2022

National Farm Safety and Health Week, 2022

By the President of the United States of America

A Proclamation

America's farmers, farmworkers, and ranchers serve one of our most vital needs—they feed our Nation and sustain our communities. They steward our lands so they have the power to provide for us, generation after generation. They offer meaningful jobs to millions of people, rooted in the rewards of hard work and the beauty of nature. They help fuel our economy and enable our country to compete in markets around the globe. During National Farm Safety and Health Week, we commit to improving the safety and well-being of everyone working on our farms.

For all they provide for our Nation, we know the many barriers farmers, farmworkers, and ranchers face. Extreme weather—made more frequent and ferocious by the climate crisis—can jeopardize or destroy a season's harvest, representing months, or even years, of investment and commitment. Fluctuating commodity prices and input costs can tighten profit margins and usher in tough, lean years. Accidents and injuries can cut precious lives short, dramatically threaten the livelihoods of survivors and their families, and rob businesses of the workers they rely upon.

My Administration is supporting the implementation of robust health and safety standards on farms and ranches. With up to $65 million from the American Rescue Plan, the United States Department of Agriculture (USDA) is helping to minimize the risks of injuries on farms, on ranches, and in processing plants. The USDA is also investing $100 million into partnerships with labor unions and other workforce development experts to better train agricultural employees. For the first time, the Department of Labor's Occupational Safety and Health Administration has launched a program to conduct heat-related indoor and outdoor workplace inspections in the face of yet another season of extreme and deadly heat.

My Administration is making health insurance more affordable and health care more accessible, which is especially important for farmers, ranchers, and farmworkers who suffer injuries. My Administration's Inflation Reduction Act and American Rescue Plan lowered annual premiums for families across the country. My Administration made a historic $1.5 billion investment in health workforce loan repayment and scholarship programs to incentivize primary care clinicians and other health care providers to work in underserved areas, including rural and Tribal communities. We are providing Federal field employees with training on the best uses of mental health resources and communication strategies while scaling our investment in programs that provide professional behavioral health counseling and other services to agricultural workers. We are also calling for programs that will reduce loan repayments for mental health and substance use disorder clinicians committed to practicing in rural and other underserved communities.

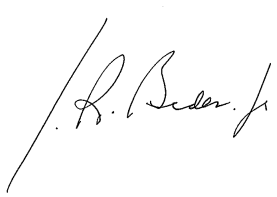
Supporting the well-being of our farmers, farmworkers, and ranchers means protecting their financial health as well. Last year, I signed into law the Extending Government Funding and Delivering Emergency Assistance Act, which includes $10 billion in assistance to agricultural producers impacted by wildfires, droughts, hurricanes, and winter storms. My Administration also announced $700 million in available grant funding for State agencies,

Tribal entities, and non-profit organizations to provide financial relief for farmworkers and meatpacking workers affected by the COVID-19 pandemic. We are devoted to ensuring that agricultural workers can do their jobs free from harm and that they can recover from accidents and injuries with dignity and financial security.

This week, we redouble our efforts to protect the health and safety of farmers, farmworkers, and ranchers, and we celebrate the immense contributions they have made and continue to make to our Nation.

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 18 through September 24, 2022, as National Farm Safety and Health Week. I call upon the people of the United States, including America's farmers and ranchers and agriculture-related institutions, organizations, and businesses, to reaffirm a dedication to farm safety and health. I also urge all Americans to express appreciation and gratitude to our farmers, farmworkers, and ranchers for their tireless service to our Nation.

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



[FR Doc. 2022–20580
Filed 9–20–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Proclamation 10451 of September 16, 2022

National Historically Black Colleges and Universities Week, 2022

By the President of the United States of America

A Proclamation

Historically Black Colleges and Universities (HBCUs) help prepare their students to excel in every profession, and they foster transformative movements for greater justice and equality in our democracy. During National Historically Black Colleges and Universities Week, we celebrate HBCUs for their longstanding legacy of molding trailblazers, visionaries, and public servants; for enabling students to make immense contributions to this country as Black professionals and tradespeople; and for bringing us closer to the promise of an America for all Americans.

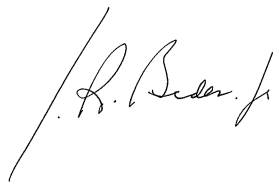
HBCUs have produced 40 percent of all Black engineers and 50 percent of all Black lawyers in America. Seventy percent of Black doctors in our country attended an HBCU, and 80 percent of Black judges are alumni of these schools. From the Fisk Jubilee Singers who performed for Queen Victoria to the female mathematicians who offered critical intelligence to NASA's first human space flights, to the brilliant legal scholars who helped dismantle structural segregation, and so many of the giants of the Civil Rights movement who dedicated their lives to lifting up the rights and dignity of all Americans, HBCUs have empowered graduates to form America's cultural identity, write our national story, and safeguard this country's most fundamental values. Our historic Vice President Kamala Harris is a HBCU graduate, as well as Michael Regan, Administrator of the Environmental Protection Agency.

My Administration is helping HBCUs weather the pandemic and make tuition more affordable for their students to continue this legacy of excellence and inclusion. Since taking office, we have invested a historic $5.8 billion to support staffing, teaching, and campus operations at these institutions. This includes providing HBCU students with emergency financial aid during the pandemic and forgiving over $1.6 billion in debt held by nearly half of all HBCUs to help them finance infrastructure improvement projects. This summer, I announced debt relief of up to $20,000 for low- and middle-income borrowers with Federal student loans, easing the burden of student loan debt for so many HBCU students and alumni. Students also have more financial resources because my Administration increased the maximum Pell Grant by $400 to $6,895—the largest increase in over a decade—helping 75 percent of students enrolled in HBCUs pay for their education. Additionally, I reestablished the President's Board of Advisors on HBCUs to bridge relationships between these schools and the private sector, and we launched a White House initiative to help HBCUs secure additional Federal funding. Further, I am proposing a historic investment to create and expand HBCU programs in fields like cybersecurity, engineering, and health care.

This is only the start of my Administration's campaign to empower HBCUs and expand their capacity to make even greater contributions to our society. This week and every week, we celebrate HBCUs for helping to make this country stronger and more inclusive, and we continue to champion and reinforce the ongoing achievements of these institutions—because we know that when they succeed, America succeeds.

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 18 through September 24, 2022, as National Historically Black Colleges and Universities Week. I call upon educators, public officials, professional organizations, corporations, and all Americans to observe this week with appropriate programs, ceremonies, and activities that acknowledge the countless contributions these institutions and their alumni have made to our country.

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



[FR Doc. 2022–20581
Filed 9–20–22; 8:45 am]
Billing code 3395–F2–P

Presidential Documents

Notice of September 19, 2022

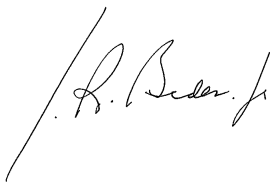
Continuation of the National Emergency With Respect to Persons Who Commit, Threaten To Commit, or Support Terrorism

On September 23, 2001, by Executive Order 13224, the President declared a national emergency pursuant to the International Emergency Economic Powers Act (50 U.S.C. 1701 *et seq.*) to deal with the unusual and extraordinary threat to the national security, foreign policy, and economy of the United States constituted by the grave acts of terrorism and threats of terrorism committed by foreign terrorists, including the terrorist attacks on September 11, 2001, in New York and Pennsylvania and against the Pentagon, and the continuing and immediate threat of further attacks against United States nationals or the United States.

On September 9, 2019, the President signed Executive Order 13886 to strengthen and consolidate sanctions to combat the continuing threat posed by international terrorism and to take additional steps to deal with the national emergency declared in Executive Order 13224, as amended.

The actions of persons who commit, threaten to commit, or support terrorism continue to pose an unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For this reason, the national emergency declared in Executive Order 13224 of September 23, 2001, as amended, and the measures adopted to deal with that emergency, must continue in effect beyond September 23, 2022. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing for 1 year the national emergency with respect to persons who commit, threaten to commit, or support terrorism declared in Executive Order 13224, as amended.

This notice shall be published in the *Federal Register* and transmitted to the Congress.



THE WHITE HOUSE,
September 19, 2022.

[FR Doc. 2022–20582
Filed 9–20–22; 8:45 am]
Billing code 3395–F2–P

Rules and Regulations

Federal Register
Vol. 87, No. 182
Wednesday, September 21, 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.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

[NRC–2022–0105]

RIN 3150–AK84

List of Approved Spent Fuel Storage Casks: Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System, Certificate of Compliance No. 1032, Amendment No. 8

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is confirming the effective date of October 11, 2022, for the direct final rule that was published in the **Federal Register** on July 26, 2022. This direct final rule amends the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System in the ''List of approved spent fuel storage casks'' to include Amendment No. 8 of Certificate of Compliance No. 1032. Amendment No. 8 also incorporates other minor editorial corrections.

DATES: The effective date of October 11, 2022, for the direct final rule published July 26, 2022 (87 FR 44273), is confirmed.

ADDRESSES: Please refer to Docket ID NRC–2022–0105 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0105. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The amendment to the certificate of compliance, the changes to the technical specifications, and the safety evaluation report can be viewed in ADAMS under Accession No. ML22242A214.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: James Firth, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission; telephone: 301–415–6628; email: *James.Firth@nrc.gov.*

SUPPLEMENTARY INFORMATION: On July 26, 2022 (87 FR 44273), the NRC published a direct final rule amending its regulations in part 72 of title 10 of the *Code of Federal Regulations* to revise the Holtec International HI–STORM Flood/Wind Multipurpose Canister Storage System listing within the ''List of approved spent fuel storage casks'' to include Amendment No. 8 to Certificate of Compliance No. 1032. Amendment No. 8 revises the description in the certificate of compliance for the HI–STORM Flood/Wind system to clearly indicate that only the portions of the components that contact the pool water need to be made of stainless steel or aluminum. Amendment No. 8 also incorporates other minor editorial corrections.

In the direct final rule published on July 26, 2022, the NRC stated that if no significant adverse comments were received, the direct final rule would become effective on October 11, 2022. The NRC did not receive any comments on the direct final rule. Therefore, this direct final rule will become effective as scheduled.

Dated: September 15, 2022.

For the Nuclear Regulatory Commission.

Cindy K. Bladey,

Chief, Regulatory Analysis and Rulemaking Support Branch, Division of Rulemaking, Environmental, and Financial Support Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2022–20349 Filed 9–20–22; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–1198; Special Conditions No. 25–831–SC]

Special Conditions: L2 Consulting Services, Inc., Bombardier Model CL–600–2B16 (604 Variant) Airplane; Electronic System Security Protection From Unauthorized Internal Access

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

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model CL–600–2B16 (604 variant) airplane. This airplane, as modified by L2 Consulting Services, Inc., will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport-category airplanes. This design feature is associated with the installation of a digital system that contains a wireless and hardwired network with hosted application functionality that allows access, from sources internal to the airplane, to the airplane's internal electronic components. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on L2 Consulting Services, Inc., on September 21, 2022. Send comments on or before November 7, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2022–1198 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://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 (DOT), 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, 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: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR), § 11.35, the FAA will post all comments received without change to *https://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to Thuan T. Nguyen, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone; 206–231–3365; email *Thuan.T.Nguyen@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thuan T. Nguyen, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone; 206–231–3365; email *Thuan.T.Nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to 14 CFR 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On March 17th, 2022, L2 Consulting Services, Inc., applied for a supplemental type certificate for the installation of a digital system that contains a wireless and hardwired network with hosted application functionality that allows access, from sources internal to the airplane, to the airplane's internal electronic components. The Bombardier Model CL–600–2B16 (604 variant) airplane is a twin-engine business jet with a maximum takeoff weight of 47,600 pounds (21,591 Kg) and a maximum seating capacity of twenty passengers and two crew members.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR), § 21.101, L2 Consulting Services Inc., must show that the Bombardier Model CL–600–2B16 (604 variant) airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A21EA, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model CL–600–2B16 (604 variant) airplane, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Model CL–600–2B16 (604 variant) airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The Bombardier Model CL–600–2B16 (604 variant) airplane will incorporate the following novel or unusual design feature, which is the installation of a digital system that contains a wireless and hardwired network with hosted application functionality that allows access, from sources internal to the airplane, to the airplane's internal electronic components.

Discussion

The Bombardier Model CL–600–2B16 (604 variant) airplane electronic system architecture and network configuration change is novel or unusual for commercial transport airplanes because it is composed of several connected wireless and hardwired networks. This proposed system and network

architecture is used for a diverse set of airplane functions, including:

- flight-safety related control and navigation systems,
- airline business and administrative support, and
- passenger entertainment.

The airplane's control domain and airline information services domain of these networks perform functions required for the safe operation and maintenance of the airplane. Previously, these domains had very limited connectivity with other network sources. This network architecture creates a potential for unauthorized persons to access the aircraft control domain and airline information services domain from sources internal to the airplane, and presents security vulnerabilities related to the introduction of computer viruses and worms, user errors, and intentional sabotage of airplane electronic assets (networks, systems, and databases) critical to the safety and maintenance of the airplane.

The existing FAA regulations did not anticipate these networked airplane-system architectures. Furthermore, these regulations and the current guidance material do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, data buses, and servers. Therefore, these special conditions ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems will not be compromised by unauthorized hardwired or wireless electronic connections from within the airplane. These special conditions also require the applicant to provide appropriate instructions to the operator to maintain all electronic-system safeguards that have been implemented as part of the original network design so that this feature does not allow or reintroduce security threats.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model CL–600–2B16 (604 variant) airplane. Should L2 Consulting Services, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A21EA to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on the Bombardier Model CL–600–2B16 (604 variant) airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Bombardier Model CL–600–2B16 (604 variant) airplane for airplane electronic-system internal access.

1. The applicant must ensure that the design provides isolation from, or airplane electronic-system security protection against, access by unauthorized sources internal to the airplane. The design must prevent inadvertent and malicious changes to, and all adverse impacts upon, airplane equipment, systems, networks, and other assets required for safe flight and operations.

2. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post-type-certification modifications that may have an impact on the approved electronic-system security safeguards.

Issued in Kansas City, Missouri, on September 15, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–20392 Filed 9–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2022–1197; Special Conditions No. 25–830–SC]

Special Conditions: L2 Consulting Services, Inc., Bombardier Model CL–600–2B16 (604 Variant) Airplane; Electronic System Security Protection From Unauthorized External Access

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

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Bombardier Model CL–600–2B16 (604 variant) airplane. This airplane, as modified by L2 Consulting Services, Inc., will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for airplanes. This design feature is associated with the installation of an electronic network system architecture that will allow increased connectivity to and access from external network sources, (*e.g.,* operator networks, wireless devices, internet connectivity, service provider satellite communications, electronic flight bags, etc.) to the airplane's previously isolated electronic assets (networks, systems, and databases). The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: This action is effective on L2 Consulting Services, Inc., on September 21, 2022. Send comments on or before November 7, 2022.

ADDRESSES: Send comments identified by Docket No. FAA–2022–1197 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://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 (DOT), 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, 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: Except for Confidential Business Information (CBI) as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR), § 11.35, the FAA will post all comments received without change to *https://www.regulations.gov/,* including any personal information you provide. The FAA will also post a report summarizing each substantive verbal contact received about these special conditions.

Confidential Business Information: Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these special conditions contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these special conditions, 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 the indicated comments will not be placed in the public docket of these special conditions. Send submissions containing CBI to Thuan T. Nguyen, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone; 206–231–3365; email *Thuan.T.Nguyen@faa.gov.* Comments the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these special conditions.

Docket: Background documents or comments received may be read at *https://www.regulations.gov/* at any time. Follow the online instructions for accessing the docket or go to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thuan T. Nguyen, Aircraft Information Systems, AIR–622, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service, Federal Aviation Administration, 2200 South 216th Street, Des Moines, Washington 98198; telephone; 206–231–3365; email *Thuan.T.Nguyen@faa.gov.*

SUPPLEMENTARY INFORMATION: The substance of these special conditions has been published in the **Federal Register** for public comment in several prior instances with no substantive comments received. Therefore, the FAA finds, pursuant to 14 CFR 11.38(b), that new comments are unlikely, and notice and comment prior to this publication are unnecessary.

Comments Invited

The FAA invites interested people to take part in this rulemaking by sending written comments, data, or views. The most helpful comments reference a specific portion of the special conditions, explain the reason for any recommended change, and include supporting data.

The FAA will consider all comments received by the closing date for comments. The FAA may change these special conditions based on the comments received.

Background

On March 17th, 2022, L2 Consulting Services, Inc., applied for a supplemental type certificate for the installation of an electronic network system architecture that will allow increased connectivity to and access from external network sources, (*e.g.,* operator networks, wireless devices, internet connectivity, service provider satellite communications, electronic flight bags, etc.) to the airplane's previously isolated electronic assets (networks, systems, and databases). The Bombardier Model CL–600–2B16 (604 variant) airplane is a twin-engine, transport category airplane, executive-interior business jet with a maximum takeoff weight of 47,600 pounds (21,591 Kg) and a maximum seating capacity of twenty passengers and two crew members.

Type Certification Basis

Under the provisions of title 14, Code of Federal Regulations (14 CFR), § 21.101, L2 Consulting Services Inc., must show that the Bombardier Model CL–600–2B16 (604 variant) airplane, as changed, continues to meet the applicable provisions of the regulations listed in Type Certificate No. A21EA, or the applicable regulations in effect on the date of application for the change, except for earlier amendments as agreed upon by the FAA.

If the Administrator finds that the applicable airworthiness regulations (*e.g.,* 14 CFR part 25) do not contain adequate or appropriate safety standards for the Bombardier Model CL–600–2B16 (604 variant) airplane, because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under § 21.101.

In addition to the applicable airworthiness regulations and special conditions, the Bombardier Model CL–600–2B16 (604 variant) airplane must comply with the fuel-vent and exhaust-emission requirements of 14 CFR part 34, and the noise-certification requirements of 14 CFR part 36.

The FAA issues special conditions, as defined in 14 CFR 11.19, in accordance with § 11.38, and they become part of the type certification basis under § 21.101.

Novel or Unusual Design Feature

The Bombardier Model CL–600–2B16 (604 variant) airplane will incorporate a novel or unusual design feature, which is the installation of an electronic network system architecture that will allow increased connectivity to and access from external network sources, (*e.g.,* operator networks, wireless devices, internet connectivity, service provider satellite communications, electronic flight bags, etc.) to the airplane's previously isolated electronic assets (networks, systems, and databases).

Discussion

The Bombardier Model CL–600–2B16 (604 variant) airplane electronic system architecture and network configuration is novel or unusual for commercial transport airplanes because it may allow increased connectivity to and access from aircraft external network sources, airline operations, and maintenance networks, to the airplane's control domain and airline information services domain. The airplane's control domain and airline information services domain perform functions required for the safe operation and maintenance of the airplane. Previously, these domains had very limited connectivity with external network sources. This data network and design integration creates a potential for unauthorized persons to access the aircraft control domain and airline

information services domain, and presents security vulnerabilities related to the introduction of computer viruses and worms, user errors, and intentional sabotage of airplane electronic assets (networks, systems, and databases) critical to the safety and maintenance of the airplane.

The existing FAA regulations did not anticipate these networked airplane-system architectures. Furthermore, these regulations and the current guidance material do not address potential security vulnerabilities, which could be exploited by unauthorized access to airplane networks, databuses, and servers. Therefore, these special conditions ensure that the security (*i.e.,* confidentiality, integrity, and availability) of airplane systems is not compromised by unauthorized wired or wireless electronic connections. This includes ensuring that the security of the airplane's systems is not compromised during maintenance of the airplane's electronic systems. These special conditions also require the applicant to provide appropriate instructions to the operator to maintain all electronic-system safeguards that have been implemented as part of the original network design so that this feature does not allow or introduce security threats.

These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

Applicability

As discussed above, these special conditions are applicable to the Bombardier Model CL–600–2B16 (604 variant) airplane. Should L2 Consulting Services, Inc., apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. A21EA to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well.

Conclusion

This action affects only a certain novel or unusual design feature on the Bombardier Model CL–600–2B16 (604 variant) airplane. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of this feature on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

Authority Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for Bombardier Model CL–600–2B16 (604 variant) airplane, as modified by L2 Consulting Services, Inc., for airplane electronic-unauthorized external access.

1. The applicant must ensure airplane electronic system security protection from access by unauthorized sources external to the airplane, including those possibly caused by maintenance activity.

2. The applicant must ensure that electronic system security threats are identified and assessed, and that effective electronic system security protection strategies are implemented to protect the airplane from all adverse impacts on safety, functionality, and continued airworthiness.

3. The applicant must establish appropriate procedures to allow the operator to ensure that continued airworthiness of the airplane is maintained, including all post type certification modifications that may have an impact on the approved electronic system security safeguards.

Issued in Kansas City, Missouri, on September 15, 2022.

Patrick R. Mullen,

Manager, Technical Innovation Policy Branch, Policy and Innovation Division, Aircraft Certification Service.

[FR Doc. 2022–20393 Filed 9–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0516; Project Identifier AD–2022–00262–E; Amendment 39–22157; AD 2022–18–06]

RIN 2120–AA64

Airworthiness Directives; General Electric Company Turbofan Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all General Electric Company (GE) GE90–110B1 and GE90–115B model turbofan engines and certain GE90–76B, GE90–85B, GE90–90B, and GE90–94B model turbofan engines. This AD was prompted by the detection of melt-related freckles in the forgings and billets, which may reduce the life of certain rotating compressor discharge pressure (CDP) high-pressure turbine (HPT) seals (rotating CDP seals), interstage HPT rotor seals, and HPT rotor stage 2 disks. This AD requires revising the airworthiness limitations section (ALS) of the applicable GE90–100 Engine Manual (EM) and the operator's existing approved maintenance program or inspection program, as applicable, to incorporate reduced life limits for these parts. This AD also requires the removal and replacement of certain interstage HPT rotor seals, identified by serial number (S/N), installed on GE90–76B, GE90–85B, GE90–90B, and GE90–94B model turbofan engines. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective October 26, 2022.

ADDRESSES: For service information identified in this final rule, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *www.ge.com.* You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

Examining the AD Docket

You may examine the AD docket at *www.regulations.gov* by searching for and locating Docket No. FAA–2022–0516; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all GE GE90–110B1 and GE90–115B model turbofan engines and certain GE90–76B, GE90–85B, GE90–90B, and GE90–94B model turbofan engines. The NPRM published in the **Federal Register** on May 27, 2022 (87 FR 32098). The NPRM was prompted by notification by the engine manufacturer of the detection of melt-related freckles in the forgings and billets, which may reduce the life of certain rotating CDP seals, interstage HPT rotor seals, and HPT rotor stage 2 disks on GE90–110B1 and GE90–115B model turbofan engines and may reduce the life of certain interstage HPT rotor seals on GE90–76B, GE90–85B, GE90–90B, and GE90–94B model turbofan engines. The manufacturer's investigation determined that, as a result of such freckles forming in the forgings and billets, certain rotating CDP seals, interstage HPT rotor seals, and HPT rotor stage 2 disks (life-limited parts (LLPs)) may have undetected subsurface anomalies that developed during the manufacturing process, resulting in reduced material properties and a lower fatigue life capability. Reduced material properties may cause premature LLP fracture, which could result in uncontained debris release. As a result of its investigation, the manufacturer determined the need to reduce the life limits of certain LLPs. To reflect these reduced life limits, the manufacturer revised the ALS of the affected GE90–100 EMs. Additionally, the manufacturer published service information that specifies procedures for the removal and replacement of certain interstage HPT rotor seals installed on GE90–76B, GE90–85B, GE90–90B, and GE90–94B model turbofan engines. In the NPRM, the FAA proposed to require revising the ALS of the applicable GE90–100 EM and the operator's existing approved maintenance program or inspection program, as applicable, to incorporate reduced life limits for certain LLPs. The NPRM also proposed to require the removal and replacement of certain interstage HPT rotor seals. The FAA is issuing this AD to address the unsafe condition on these products.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from six commenters. The commenters were Air Line Pilots Association, International (ALPA), American Airlines, The Boeing Company (Boeing), FedEx Express, Japan Airlines, and United Airlines. Five of the commenters, ALPA, American Airlines, Boeing, FedEx Express, and United Airlines, supported the proposal without change. The following presents the comment received on the NPRM and the FAA's response.

Request To Refer to Service Information

Japan Airlines requested that the FAA refer to GE90 SB 72–1211, latest revision, in the AD as the appropriate source of service information for the required actions. Japan Airlines noted that this would confirm the source of the affected interstage HPT rotor seal for the GE90–76B, GE90–85B, GE90–90B, and GE90–94B model engines. The FAA infers that Japan Airlines is requesting for GE90 SB 72–1211 to be incorporated by reference. The FAA disagrees with the request to incorporate GE90 SB 72–1211 by reference. Paragraph (c)(2) of this AD identifies the affected interstage HPT rotor seal installed on the GE90–76B, GE90–85B, and GE90–94B model turbofan engines by part number and serial number. The FAA did not change this AD as a result of this comment.

Conclusion

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

Related Service Information

The FAA reviewed GE GE90–100 SB 72–0851 R00, dated August 17, 2021. This service information provides reduced life limits for certain LLPs. The FAA also reviewed GE GE90 SB 72–1211 R00, dated March 9, 2022. This service information describes procedures for removing and replacing certain interstage HPT rotor seals.

Costs of Compliance

The FAA estimates that this AD affects 248 engines installed on airplanes of U.S. registry. The FAA estimates that zero engines installed on airplanes of U.S. registry will require replacement of the interstage HPT rotor seal.

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

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Revise ALS of EM and the operator's existing approved maintenance program or inspection program.	1 work-hour × $85 per hour = $85	$0	$85	$21,080
Replace interstage HPT rotor seal	1,500 work-hours × $85 per hour = $127,500	286,331	413,831	0

Authority for This Rulemaking

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

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

Regulatory Findings

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

responsibilities among the various levels of government.

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2022–18–06 General Electric Company: Amendment 39–22157; Docket No. FAA–2022–0516; Project Identifier AD–2022–00262–E.

(a) Effective Date

This airworthiness directive (AD) is effective October 26, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to:

(1) General Electric Company (GE) GE90–110B1 and GE90–115B model turbofan engines; and

(2) GE GE90–76B, GE90–85B, GE90–90B, and GE90–94B model turbofan engines with an installed interstage high-pressure turbine (HPT) rotor seal with part number (P/N) 2629M47P01 and serial number (S/N) NCU5430D.

(d) Subject

Joint Aircraft System Component (JASC) Code 7230, Turbine Engine Compressor Section, and JASC Code 7250, Turbine Section.

(e) Unsafe Condition

This AD was prompted by the detection of melt-related freckles in the forgings and billets, which may reduce the life of certain rotating compressor discharge pressure (CDP) HPT seals (rotating CDP seals), interstage HPT rotor seals, and HPT rotor stage 2 disks. The FAA is issuing this AD to prevent failure of the rotating CDP seal, interstage HPT rotor seal, and HPT rotor stage 2 disk. The unsafe condition, if not addressed, could result in uncontained debris release, damage to the engine, and damage to the airplane.

(f) Compliance

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

(g) Required Actions

(1) For affected GE90–110B1 and GE90–115B model turbofan engines, within 90 days after the effective date of this AD, revise the airworthiness limitations section (ALS) of the existing GE90–100 Engine Manual (EM) and the operator's existing approved maintenance program or inspection program, as applicable, by inserting the following information:

(i) For rotating CDP seal P/N 2479M03P01, insert the information in Table 1 to paragraph (g)(1)(i) of this AD.

TABLE 1 TO PARAGRAPH (g)(1)(i)—ROTATING CDP SEAL P/N 2479M03P01

Part name	Part No.	Life cycles
Seal, CDP	2479M03P01, For part serial numbers NOT listed in SB 72–0851, latest revision	15,000
Seal, CDP	2479M03P01, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 11.	5,300
Seal, CDP	2479M03P01, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 12.	10,400
Seal, CDP	2479M03P01, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A, Table 13.	13,900

(ii) For interstage HPT rotor seal P/N 2505M72P01, insert the information in Table 2 to paragraph (g)(1)(ii) of this AD.

TABLE 2 TO PARAGRAPH (g)(1)(ii)—INTERSTAGE HPT ROTOR SEAL P/N 2505M72P01

Part name	Part No.	Life cycles
Seal, Interstage	2505M72P01, For part serial numbers NOT listed in SB 72–0851, latest revision	15,000
Seal, Interstage	2505M72P01, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 8.	5,500
Seal, Interstage	2505M72P01, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 9.	10,900
Seal, Interstage	2505M72P01, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 10.	14,300

(iii) For HPT rotor stage 2 disk P/N 2505M73P03, insert the information in Table 3 to paragraph (g)(1)(iii) of this AD.

TABLE 3 TO PARAGRAPH (g)(1)(iii)—HPT ROTOR STAGE 2 DISK P/N 2505M73P03

Part name	Part No.	Life cycles
Disk, Stage 2	2505M73P03, For part serial numbers NOT listed in SB 72–0851, latest revision	15,000

TABLE 3 TO PARAGRAPH (g)(1)(III)—HPT ROTOR STAGE 2 DISK P/N 2505M73P03—Continued

Part name	Part No.	Life cycles
Disk, Stage 2	2505M73P03, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 1.	3,500
Disk, Stage 2	2505M73P03, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 2.	5,100
Disk, Stage 2	2505M73P03, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 3.	5,800
Disk, Stage 2	2505M73P03, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 4.	7,200
Disk, Stage 2	2505M73P03, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 5.	8,000
Disk, Stage 2	2505M73P03, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 6.	8,300
Disk, Stage 2	2505M73P03, For part serial numbers listed in SB 72–0851, latest revision APPENDIX A Table 7.	8,800

(2) For affected GE90–76B, GE90–85B, GE90–90B, and GE90–94B model turbofan engines, before the interstage HPT rotor seal, P/N 2629M47P01 and S/N NCU5430D, accumulates 7,400 cycles since new, remove the affected interstage HPT rotor seal from service and replace with a part eligible for installation.

(h) Definitions

For the purpose of this AD, a ''part eligible for installation'' is any interstage HPT rotor seal that does not have P/N 2629M47P01 and S/N NCU5430D.

(i) Alternative Methods of Compliance (AMOCs)

(1) The Manager, ECO Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or local Flight Standards District Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of the person identified in paragraph (j)(1) of this AD and email to: *ANE-AD-AMOC@faa.gov.*

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

(j) Related Information

(1) For more information about this AD, contact Alexei Marqueen, Aviation Safety Engineer, ECO Branch, FAA, 1200 District Avenue, Burlington, MA 01803; phone: (781) 238–7178; email: *Alexei.T.Marqueen@faa.gov.*

(2) For service information identified (but not incorporated by reference) in this AD, contact General Electric Company, 1 Neumann Way, Cincinnati, OH 45215; phone: (513) 552–3272; email: *aviation.fleetsupport@ge.com;* website: *www.ge.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 1200 District Avenue, Burlington, MA 01803. For information on the availability of this material at the FAA, call (817) 222–5110.

(k) Material Incorporated by Reference

None.

Issued on August 18, 2022.

Christina Underwood,

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

[FR Doc. 2022–19853 Filed 9–20–22; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61 and 121

[Docket No. FAA–2017–1106; Amdt. Nos. 61–150 And 121–385]

RIN 2120–AL03

Recognition of Pilot in Command Experience in the Military and Air Carrier Operations

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

ACTION: Final rule.

SUMMARY: This final rule provides additional crediting options for certain pilot in command (PIC) time to count towards the 1,000 hours of air carrier experience required to serve as a PIC in air carrier operations. In addition, this final rule allows credit for select military time in a powered-lift flown in horizontal flight towards the 250 hours of airplane time as PIC, or second in command (SIC) performing the duties of PIC, required for an airline transport pilot (ATP) certificate. This action is necessary to expand opportunities for pilots that meet the amended criteria to use relevant flight experience toward the requirements for an ATP certificate and to meet PIC qualification requirements for air carrier operations.

DATES: This rule is effective October 21, 2022.

ADDRESSES: For information on where to obtain copies of rulemaking documents and other information related to this final rule, see ''How To Obtain Additional Information'' in the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Barbara Adams, Air Transportation Division, AFS–200, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone (202) 267–8166; email *barbara.adams@faa.gov.*

SUPPLEMENTARY INFORMATION:

List of Abbreviations and Acronyms Frequently Used in This Document

ATP Airline Transport Pilot
NPRM Notice of Proposed Rulemaking

PIC Pilot in Command
SIC Second in Command

I. Executive Summary

This rulemaking provides relief to military pilots [1] of powered-lift seeking to obtain an airline transport pilot (ATP) certificate with an airplane category rating. As discussed in section III.a of this preamble, the FAA is allowing military pilots to credit flight time in a powered-lift operated in horizontal flight towards the 250-hour flight time requirement in an airplane in § 61.159(a)(5). This change assists military pilots of powered-lift in qualifying for an ATP certificate in the airplane category.

This final rule also includes several changes to the 1,000-hour air carrier experience required to serve as PIC in part 121 operations. As discussed in section III.B, this final rule allows pilots with part 121 PIC experience acquired prior to July 31, 2013, to count that time towards the 1,000 hours of air carrier experience required to serve as PIC in part 121 operations. Additionally, the final rule broadens the existing 500-hour credit for military pilots of fixed-wing airplanes and can count towards the 1,000-hour air carrier experience requirement by permitting certain powered-lift experiences to be credited. The change allows up to 500 hours of experience in multiengine powered-lift in operations where more than one pilot is required to be credited towards the 1,000-hour air carrier experience requirement.[2] Additionally, in response to comments received, the FAA is also permitting a pilot to credit PIC time in certain part 135 eligible on-demand multiengine aircraft operations to count towards the 1,000-hour air carrier experience requirement.

Because this final rule amends two disparate regulations, the FAA has provided the necessary background information in the relevant sections of the Discussion of the Final Rule and Public Comments.

II. Authority for This Rulemaking

The FAA's authority to issue rules on aviation safety is found in Title 49 *United States Code* (U.S.C.). Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority.

This rulemaking is promulgated under the authority described in U.S.C. 106(f), which establishes the authority of the Administrator to promulgate regulations and rules; U.S.C. 44701(a)(5), which requires the Administrator to promulgate regulations and minimum standards for other practices, methods, and procedures necessary for safety in air commerce and national security; and U.S.C. 44703(a), which requires the Administrator to issue airman certificates when the Administrator finds, after investigation, that an individual is qualified for and physically able to perform the duties related to, the position authorized by the certificate. This rulemaking revises the qualifications required to apply for an ATP certificate and the qualifications required to serve as PIC in part 121 operations. For these reasons, this rulemaking is within the scope of the FAA's authority.

III. Discussion of the Final Rule and Public Comments

On November 24, 2017, the FAA published a notice of proposed rulemaking (NPRM) titled *Recognition of Pilot in Command Experience in the Military and in Part 121 Air Carrier Operations*.[3] In the NPRM, the FAA proposed amendments to parts 61 and 121 that would alleviate the regulatory burden on pilots with military powered-lift experience and pilots with part 121 PIC experience prior to July 31, 2013.

The NPRM provided for a 60-day comment period, which ended on January 23, 2018. The FAA received and considered a total of 146 comments to the NPRM.[4] Commenters included major air carriers, cargo air carriers, powered-lift manufacturers, pilot labor associations, military pilots, and private citizens. The majority of the comments were from military pilots with experience operating powered-lift.

All of the commenters, including many from the military powered-lift community, generally supported the proposal. Some commenters recommended changes to the proposed rule language. The FAA also received several comments on the cost savings for military pilots who can use the powered-lift time towards the 250 hours of PIC time for an ATP certificate in the airplane category.

Because of the specific nature of each provision, the FAA discusses each amendment separately.

A. ATP Aeronautical Experience Requirements (§ 61.159)

Since 1969, the FAA has required an applicant for an ATP certificate with an airplane category rating to have at least 1,500 hours of flight time as a pilot.[5] Today, this requirement is found in § 61.159(a). As part of the 1,500 hours of the total time required, § 61.159(a)(5) requires the applicant to have at least 250 hours of flight time in an airplane as PIC, or as SIC performing the duties of PIC while under the supervision of a PIC,[6] or any combination thereof. The 250 hours of airplane time must include at least 100 hours of cross-country time and 25 hours of night time.[7]

Over the years, military pilots have asked the FAA whether they may credit their flight time in powered-lift aircraft, when operated in horizontal flight, towards the aeronautical experience requirement of § 61.159(a)(5) for an ATP certificate with an airplane category rating.[8] Prior to this final rule, § 61.159(a)(5) required a person to obtain 250 hours of flight time as a PIC (or SIC performing the duties of PIC while under the supervision of a PIC) in the airplane category, which was the category of aircraft for which the rating was sought. In 1997, the FAA established a separate category of aircraft for powered-lift and adopted § 61.163(a),[9] which prescribes the aeronautical experience required for an ATP certificate with a powered-lift category rating.[10] Because the FAA

[1] For the purposes of this rule, a military pilot is a U.S. military pilot or former U.S. military pilot who meets the requirements of § 61.73(b)(1), or a military pilot in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation who meets the requirements of § 61.73(c)(1).

[2] Prior to this final rule, the 500-hour credit accommodated military pilots of multiengine, turbine-powered fixed wing airplanes in operations where more than one pilot was required. 14 CFR 121.436(c).

[3] 82 FR 55791.

[4] The FAA notes that three comments were in response to other commenters.

[5] Final Rule, *Part 61 Certification: Pilots and Flight Instructors,* 34 FR 17162 (Oct. 23, 1969).

[6] The FAA considers an SIC to be performing the duties of PIC while under the supervision of a PIC when an SIC who is required by the type certification of the aircraft or the operation under which the flight is being conducted ''performs all the functions of the pilot-in-command including landings and takeoffs, en route flying, low approaches, and ground functions.'' *See* Memorandum to John Duncan from Rebecca MacPherson, Assistant Chief Counsel for Regulations (Apr. 13, 2012) (interpreting the provision of 14 CFR 61.159(a)(4), which at the time stated ''250 hours of flight time in an airplane as pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command'').

[7] 14 CFR 61.159(a)(5)(i) and (ii).

[8] 14 CFR 1.1 defines ''powered-lift'' as a heavier-than-air aircraft capable of vertical takeoff, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on nonrotating airfoil(s) for lift during horizontal flight.

[9] Final Rule, *Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules,* 62 FR 16220 (Apr. 4, 1997).

[10] Section 61.163(a)(3) requires a person who is applying for an ATP certificate with a powered-lift

Continued

established powered-lift as a separate category of aircraft rather than a class or type under an existing category, a pilot was precluded from crediting flight time in a powered-lift aircraft towards the airplane-specific aeronautical experience requirement of § 61.159(a)(5).[11]

In the NPRM for this rule, the FAA proposed to amend § 61.159(a)(5) by adding a new provision that would allow military pilots to credit flight time in a powered-lift operated in horizontal flight towards the 250-hour airplane flight time requirement.[12] Under the proposal, a military pilot would be allowed to credit flight time obtained in a powered-lift as PIC, or SIC performing the duties of PIC while under the supervision of a PIC, towards the aeronautical experience requirement of § 61.159(a)(5). Additionally, the proposed allowance for military time in powered-lift would have extended to the cross-country time and night time requirements of § 61.159(a)(5). The FAA did not propose to limit the amount of powered-lift time a military pilot may credit towards the 250 hours of airplane time other than stating the time credited must have been acquired in horizontal flight.

All commenters generally supported the proposal to permit credit for military powered-lift PIC time. Delta Airlines Flight Operations, Coalition of Airline Pilots Associations (CAPA), and AgustaWestland Philadelphia Corporation (AWPC) fully supported the proposal. Several commenters suggested changes to the proposed rule language, which are discussed below.

The Air Line Pilots Association, International (ALPA) suggested the FAA limit the amount of flight time a military powered-lift pilot may credit towards the 250 hours of airplane PIC time but did not state what it believed would be an appropriate amount of time. ALPA was concerned about the pilots' ability to track and verify the applicable powered-lift time. ALPA also stated that the number of takeoffs and landings in the ''airplane'' mode is important. ALPA believed it would be inappropriate to allow a pilot to credit 250 hours of powered-lift time that was conducted at cruise while most takeoffs and landings were done vertically.

An individual commenter responded to ALPA's concerns. With regard to ALPA's concerns about tracking the flight time, the commenter explained that a pilot can easily determine and log the flight time obtained in a powered-lift in horizontal flight. The commenter added that each military pilot signs each page of his or her logbook as a ''certified and correct record''; therefore, any powered-lift ''horizontal'' flight time credited towards the 250-hour aeronautical experience requirement could be properly accounted for in the pilot's records. With respect to takeoff and landing, the commenter believed that ALPA erred in suggesting that vertical takeoffs and landings are the standards for powered-lift. According to the commenter, a typical profile for both the V–22 and AV–8[13] includes takeoffs and landings in airplane mode. Nonetheless, because the FAA already proposed to preclude the crediting of vertical flight time in a powered-lift, the commenter found no reason to further limit the horizontal portion of powered-lift flight time simply because vertical landings or takeoffs occurred.

While the FAA acknowledges that military pilots do not typically log powered-lift time in each ''mode'' of flight (*i.e.,* horizontal or vertical), the FAA has determined that limiting the amount of credit on this basis is not necessary. As many of the commenters attested, a significant majority[14] of the time spent in powered-lift is in horizontal flight. Military pilots will have well in excess of 250 hours of PIC time in powered-lift. Even using the most conservative approximation, these pilots will generally have two to five times that amount of PIC-powered-lift time.[15] Because the applicable amount of powered-lift time will well exceed the 250-hour flight time requirement, the FAA finds it unnecessary to limit the amount of credit simply because military pilots may not have tracked the exact number of hours spent in horizontal flight. In response to ALPA's comment about the FAA's ability to verify the hours, the evaluator for the ATP certificate will determine if the pilot's records and desired credit sought are appropriate.[16] For these reasons, the FAA does not share ALPA's concern about the ability to track and verify the applicable amount of PIC powered-lift time.

In response to ALPA's concern about takeoffs and landings, the FAA recognizes that a military powered-lift pilot may conduct more takeoffs and landings in the vertical mode rather than ''airplane'' mode. As noted by commenters, however, this is not always the case. The type of takeoff and landing largely depends on the powered-lift and the military operation. Nevertheless, the FAA finds it unnecessary to limit the amount of military powered-lift time that may be credited towards the 250-hour requirement merely because the pilot may have conducted takeoffs and landings in the vertical mode. Section 61.159(a)(5) does not expressly require any of the 250 hours of airplane PIC time to include takeoffs and landings. The requirement in § 61.159(a)(5), which has existed since 1952,[17] is intended to require aeronautical experience performing the duties and functions of a PIC or SIC performing the duties of PIC while under the supervision of a PIC in an airplane.

The FAA recognizes that, in obtaining the 250 hours of PIC time in an airplane, a pilot who has learned to fly and acquired experience in an airplane will likely have obtained a certain amount of PIC experience performing takeoffs and landings in an airplane. The FAA finds, however, that this is not a basis to limit the amount of powered-lift time a military pilot may credit towards the 250 hours of airplane time, other than stating the time credited must have been acquired in horizontal flight. As previously stated, military powered-lift pilots will have two to five times the amount of PIC time required by the

category rating to obtain the same 250 hours of flight time in a powered-lift aircraft.

[11] For a more detailed discussion of the background relevant to the FAA's amendment to § 61.159, see the NPRM. 82 FR at 55793.

[12] In July 2013, the FAA published a final rule that permits military pilots to obtain an ATP certificate with 750 hours total time as a pilot as compared with the 1,500-hours generally required to apply for the certificate. Final Rule, *Pilot Certification and Qualification Requirements for Air Carrier Operations,* 78 FR 42324 (Jul. 15, 2013).

[13] The V–22 is a multiengine powered-lift military aircraft commonly known as the Osprey. The AV–8 and F–35B are single-engine powered-lift military aircraft commonly known as the Harrier and Lightning II, respectively.

[14] Commenters estimated that military pilots operate powered-lift aircraft in horizontal flight between 80–99% of the time. These comments are available in the docket for this rulemaking at *https://www.regulations.gov* at Docket No. FAA–2017–1106.

[15] Based on discussions with current and former military powered-lift pilots, the FAA determined that a military powered-lift pilot will generally have between 1,000–2,500 hours of total powered-lift time, which includes about 500–1,250 hours of PIC powered-lift time.

[16] A military powered-lift pilot will account for his or her flight time on the FAA Form 8710 (Airman Certificate or Rating Application). This flight time will be reviewed to determine eligibility for the certificate or rating sought by an FAA inspector or designee. In FAA Order 8900.1, volume 5, chapter 3, section 1, the FAA recognizes that the aeronautical experience shown in official military records may not always align with the required aeronautical experience requirements in part 61. See also FAA Order 8900.95A, volume 3, section 2, paragraph 2b, Note, (page 3–8) of the Designee Management Policy, which applies the 8900.1, volume 5 to designees. In such circumstances, an inspector who has past military flight experience as a military pilot may validate the flight records.

[17] Final Rule, *Aeronautical Experience Requirement for Airline Transport Pilot Rating,* 17 FR 3479 (Apr. 19, 1952). In 1952, the Civil Aeronautics Board adopted this requirement in § 21.16(a).

regulation. In addition, due to the quality and structure of military training and the demanding nature of military operations, the FAA finds that a pilot who has spent approximately 500–1,250 hours performing the duties and functions of a PIC in military powered-lift operations will have obtained a level of experience comparable to the experience obtained by accruing 250 hours of PIC time in an airplane.

To the extent ALPA is concerned that a military powered-lift pilot will not have airplane experience, particularly in takeoff and landing, prior to obtaining an ATP certificate in the airplane category, the FAA responds that military powered-lift pilots receive training and are qualified in an airplane prior to transitioning to a powered-lift. The amount of airplane-specific training varies depending upon which powered-lift the pilot will transition to. However, the comprehensive and demanding nature of military pilot training and the military's assessment of flight proficiency ensures that the pilot is capable of successfully performing takeoffs and landings in an airplane prior to operating a powered-lift. As evidenced by several commenters, military V–22 [18] pilots were required to demonstrate proficiency to the commercial level in the King Air 200 [19] while attending Naval Flight Training. With the required documentation outlined in § 61.73, the FAA acknowledges the airplane training and checking a military powered-lift pilot has completed and permits those pilots to apply for a commercial pilot certificate in the appropriate airplane class(es) as a result.[20]

Furthermore, the accumulation of 250 hours of PIC time in a military powered-lift does not automatically result in an ATP certificate in the airplane category. Rather, a military pilot will still be required to meet the other aeronautical experience requirements of § 61.159, including the requirement to obtain at least 50 hours of flight time in the class of airplane for the rating sought.[21] This means a military pilot seeking an ATP certificate with an airplane category multiengine class rating must have at least 50 hours of flight time in a multiengine airplane, which will provide the pilot with experience performing takeoffs and landings in the class of airplane appropriate to the rating sought. Additionally, the military pilot will still be required to complete the ATP certification training program (ATP CTP) required by § 61.156 for a multiengine airplane ATP certificate, pass the ATP knowledge test, and pass the ATP practical test or air carrier evaluation that results in the issuance of an ATP certificate. The ATP CTP requires 10 hours of training in a flight simulation training device (FSTD) that represents a multiengine turbine airplane.[22] In addition, the practical test—or the proficiency and competency checks required under parts 121 and 135—will be conducted in the class of airplane for the rating sought and will include an evaluation of the pilot's ability to take off and land the airplane.

For the reasons explained above, the FAA finds it unnecessary to limit the amount of PIC-powered-lift flight time that a military pilot may credit toward the 250-hour flight time requirement. Section 61.159(a)(5) remains unchanged from the proposed rulemaking.

One commenter suggested the FAA also allow powered-lift flight time to be credited toward the commercial pilot certificate in the airplane category with a multiengine class rating.

The FAA finds it unnecessary to amend the regulations in response to this comment. Consistent with the NPRM, the amendment to § 61.159(a)(5), which allows certain powered-lift times to be credited, applies only to military pilots. While a military pilot must satisfy the aeronautical requirements of § 61.159(a) to obtain an ATP certificate with an airplane category rating, a military pilot is not required to satisfy the aeronautical experience requirements of § 61.129(a) to obtain a commercial pilot certificate with an airplane category rating. Instead, § 61.73(a) allows military pilots to apply for a commercial pilot certificate with the appropriate aircraft category and class rating ''on the basis of their military pilot qualifications'' without taking a practical test.[23] Military powered-lift pilots receive comprehensive training in an airplane and a rating qualification prior to transitioning to the powered-lift.[24] Military powered-lift pilots may therefore obtain a commercial pilot certificate with an airplane category rating and single-engine or multiengine class rating(s), as appropriate, based on their military pilot qualifications, provided the pilot satisfies the requirements of § 61.73.[25] Because the regulations allow a military powered-lift pilot to obtain a commercial pilot certificate with an airplane category rating without satisfying the aeronautical experience requirements of § 61.129, the FAA finds it unnecessary to revise § 61.129 in response to the commenter.

Two commenters suggested the FAA allow powered-lift credit toward the requirements for the flight instructor certificate and the flight instructor certificate with an instrument rating.[26] One commenter specifically mentioned instructor ratings obtained based on military competency, which is a term associated with § 61.73. Because the commenters did not provide specific detail about the kind of credit that the FAA should allow, the FAA will address both avenues for obtaining an instructor certificate based on military experience in accordance with § 61.73(g) and adding instructor ratings through the regular FAA certification process in accordance with § 61.183.[27]

[18] The V–22 Osprey is a twin-engine powered-lift aircraft in a tiltrotor configuration. The maximum takeoff weight is approximately 52,600 lbs. It is operated by the military.

[19] King Air 200 is a twin-engine turboprop aircraft. The military uses this aircraft for pilot training in addition to passenger transportation, cargo, and intelligence gathering. Maximum takeoff weight is typically 12,500 lbs.

[20] The FAA more fully explains § 61.73 and the ability for a military powered-lift pilot to apply for a commercial pilot certificate with an airplane category and appropriate class ratings later in this section.

[21] 14 CFR 61.159(a)(3).

[22] 14 CFR 61.156(b).

[23] Under § 61.73(b), a person who qualifies as a military pilot or former military pilot in the U.S. Armed Forces may apply for a pilot certificate and ratings under § 61.73(a) if that person, in part, presents evidentiary documents described under § 61.73(h)(2) and presents official U.S military records that show, before the date of application, the person either: (1) passed an official U.S. military pilot and instrument proficiency check in a military aircraft of the kind of aircraft category, class, and type of aircraft (if applicable) for the ratings sought; or (2) logged 10 hours of pilot time as a military pilot in a U.S. military aircraft in the kind of aircraft category, class, and type (if applicable) for the aircraft rating sought. The evidentiary document that must be submitted in accordance with § 61.73(h)(2) is an official U.S. Armed Forces record that shows the person graduated from a U.S. Armed Forces undergraduate pilot training school and received a rating qualification as a military pilot.

[24] The training and testing received is acknowledged in FAA inspector guidance and was further validated based on discussions with current and former military pilots. A military powered-lift pilot obtains flight training and a rating qualification in an airplane prior to receiving training in the powered-lift aircraft. *See* FAA Order 8900.1, volume 5, chapter 12, section 15.

[25] A military pilot who holds a rating qualification in a single-engine airplane may only obtain a commercial pilot certificate with an airplane category single-engine class rating pursuant to § 61.73. The FAA emphasizes, however, that upon obtaining a commercial pilot certificate pursuant to § 61.73, that individual may add an airplane multiengine rating to his or her commercial pilot certificate in accordance with § 61.63(c).

[26] One of the individual commenters specified multiengine instructor and instrument instructor.

[27] Section 61.183 contains the eligibility requirements for obtaining a flight instructor certificate through the normal civilian certification process as opposed to obtaining a flight instructor certificate based on military competence under § 61.73(g).

As with military pilot ratings, § 61.73 allows a military instructor to obtain an FAA flight instructor certificate based on prior military instructor experience in a particular category and class of aircraft. For military instructor pilots seeking a flight instructor certificate from the FAA based on military experience pursuant to § 61.73(g), experience as a military powered-lift instructor does not make that pilot eligible for a flight instructor certificate in the airplane category. To obtain a flight instructor certificate through military competence, a person must: (1) hold an FAA commercial pilot certificate or ATP certificate with the category and class ratings for the instructor privileges being sought; (2) hold an instrument rating, or have instrument privileges, on the pilot certificate that is appropriate to the flight instructor rating sought; and (3) provide documentation that demonstrates that the pilot has a military qualification as an instructor pilot or examiner, completed military instructor pilot or examiner training, and completed a proficiency check as a military instructor pilot or examiner in the instructor ratings sought. Because § 61.73(g) is solely based on a person's military instructor experience, it would be inappropriate to give an airplane instructor rating (or credit towards a rating) to a military instructor who did not instruct in airplanes.

For example, in order to obtain a flight instructor certificate with airplane category multiengine class ratings, a military pilot would have to obtain either a commercial pilot certificate (and instrument rating) with airplane category multiengine class ratings or an ATP certificate with an airplane category multiengine class ratings and demonstrate he or she was a military instructor in multiengine airplanes in accordance with § 61.73(g). The same would apply to instrument privileges. The military pilot would have to demonstrate he or she holds or held an instrument rating or instrument privileges in the appropriate category of aircraft for the instructor rating sought and was qualified as a military instrument instructor to obtain an instrument instructor rating on their flight instructor certificate.

As noted, a military pilot may be initially qualified in an airplane before receiving a powered-lift qualification, thereby allowing the pilot to receive both airplane and powered-lift ratings through military competency. A military powered-lift instructor, however, does not receive an initial qualification as a military airplane instructor. Therefore, a military powered-lift instructor is eligible for only a powered-lift instructor rating through § 61.73(g).

To the extent that commenters suggested the FAA should issue airplane ratings on FAA flight instructor certificates based solely on military powered-lift instructor documentation, the FAA does not agree because these instructors have no specific military experience instructing in airplanes. Such an allowance would be inconsistent with the FAA's longstanding position that an instructor must demonstrate knowledge and skill in the category and class of aircraft in which he or she is going to instruct. With military competency, the instructor demonstrates this within the military system by obtaining a military instructor qualification and subsequently passing the FAA instructor knowledge test. Absent military competency, this demonstration is achieved through successful completion of the FAA knowledge test and practical test in accordance with § 61.183.

Section 61.183 prescribes the eligibility requirements for a person seeking an FAA flight instructor certificate or an additional flight instructor rating.[28] The FAA also disagrees with allowing military pilots to credit powered-lift time towards the flight time required for a flight instructor certificate with an airplane category rating under this section. The following paragraphs explain the FAA's rationale.

Section 61.183(c) requires an applicant for a flight instructor certificate to hold at least a commercial pilot certificate with the aircraft category and class rating appropriate to the flight instructor rating sought. As previously explained, a military powered-lift pilot is eligible for a commercial pilot certificate in the airplane category with the appropriate class rating based on the airplane rating qualification that the military pilot initially received prior to being qualified on the powered-lift. Therefore, the military powered-lift pilot already receives credit for his or her military experience as a pilot in an airplane to meet the eligibility requirement for a flight instructor certificate in § 61.183(c). The FAA has determined that where a military pilot cannot demonstrate prior military instructor experience in an airplane, it is not appropriate to give any credit toward an FAA instructor certificate with airplane ratings based on military instructor experience in a powered-lift. Rather, as with all instructors who seek to add an additional instructor rating, a military powered-lift instructor must satisfy the requirements of § 61.183 to add an airplane instructor rating, which includes flight time, an instructor endorsement, and a practical test.

To the extent that the commenters were recommending flight hour credit for powered-lift time, the only flight time required for a flight instructor certificate is 15 hours as PIC in the category and class of aircraft for the flight instructor rating sought.[29] The FAA notes that a person who is already certificated as a flight instructor under part 61 is also required to have 15 hours as PIC in the category and class of aircraft for the rating sought when he or she seeks to add an additional rating on his or her flight instructor certificate.[30]

When the FAA first adopted this 15-hour requirement,[31] it applied only to flight instructors seeking an additional rating, and the FAA acknowledged the difficulty and expense involved in obtaining PIC time in aircraft such as multiengine airplanes and helicopters. However, the FAA determined it was necessary to require some actual PIC time in the aircraft in which the flight instructor will instruct.[32] In 1997, the FAA adopted § 61.183(j), which imposed the 15-hour flight time requirement on applicants for a flight instructor certificate.[33] The FAA still finds it necessary to require an applicant for a flight instructor certificate or an additional rating to obtain 15 hours of PIC time in the category and class of aircraft prior to providing flight instruction in that category and class of aircraft. This requirement is intended to prevent a flight instructor from giving multiengine flight instruction, for example, in a category and class of aircraft in which they do not have sufficient experience.[34] The military powered-lift

[28] 14 CFR 61.191(a).

[29] 14 CFR 61.183(j). The FAA adopted this requirement for applicants seeking a flight instructor certificate in 1997. Final Rule, *Pilot, Flight Instructor, Ground Instructor, and Pilot School Certification Rules,* 62 FR 16220, 16273 (Apr. 4, 1997).

[30] 14 CFR 61.191. The FAA also notes that § 61.187 requires an applicant for a flight instructor certificate to obtain the flight training on the areas of operation listed in § 61.187 in an aircraft or FSTD that is representative of the category and class of aircraft for the flight instructor rating sought.

[31] Final Rule, *Certification: Pilots and Flight Instructors,* 38 FR 3156, 3160 (Feb. 1, 1973). The FAA notes that when it first proposed this flight time requirement, it proposed 25 hours of PIC time in the category and class of aircraft in which a rating is sought. NPRM, *Certification: Pilots and Flight Instructors,* 37 FR 6012, 6015 (Mar. 23, 1972). In the final rule, the FAA lowered the requirement to 15 hours in response to comments. 38 FR at 3161.

[32] 38 FR 3161.

[33] 62 FR 16220, 16273.

[34] 37 FR 6012, 6015.

pilot may have PIC airplane time from his or her military experience that could be used to meet the 15-hour requirement, but ultimately that pilot will need to demonstrate knowledge and skill instructing in airplanes in order to receive a flight instructor certificate with an airplane category rating.

AWPC and two individuals commented that the FAA should allow military pilots to credit powered-lift time toward an ATP certificate with a rotorcraft category helicopter class rating.[35] The FAA is not adopting a similar credit for the aeronautical experience required for an ATP certificate in the rotorcraft category with a helicopter class rating. As explained in the NPRM, powered-lift are predominantly operated in the horizontal flight regime. When operated in this mode, the FAA finds that powered-lift are, for all practical purposes, operated like airplanes. Many commenters supported this rationale.[36] The FAA finds that there would be a minimal benefit to crediting powered-lift time towards an ATP certificate with a rotorcraft rating.

AWPC also suggested the FAA allow powered-lift time to be credited towards the ATP certificate with a powered-lift category rating. The FAA finds it unnecessary to make any revisions to § 61.163, which prescribes the aeronautical experience requirements for persons seeking an ATP certificate with a powered-lift category rating. Unlike the 250-hour PIC requirement in § 61.159(a)(5), which was airplane category-specific,[37] the 250-hour PIC requirement in § 61.163(a)(3) is powered-lift category specific. Therefore, military pilots may already credit their PIC time in a powered-lift towards this requirement.[38] The FAA notes that military pilots may credit their powered-lift time towards the other aeronautical requirements of § 61.163 as well.

One commenter stated that powered-lift time should be allowed to count towards ''currency requirements'' [39] for both airplanes and helicopters. The commenter contended that many powered-lift pilots are being turned down from employment opportunities since they do not have recent experience in airplanes or helicopters.

Although the FAA understands the commenters' concern, the FAA does not control an employer's minimum requirements for hiring a pilot. It is the employer's decision as to the acceptable level of recent experience they require of a potential employee.

One commenter questioned the accuracy of the cost analysis for this rulemaking. The commenter suggested that the FAA's determination does not consider the total costs to the Federal Government, particularly to the Department of Defense (DoD). The commenter further suggested that the timing of this rulemaking could be costly to the armed services due to a convergence of circumstances that will exacerbate an existing pilot retention problem facing the armed services. The commenter urged the FAA to conduct another analysis of the cost impact to the entire Federal Government or request the armed services to provide feedback.

Two individuals submitted rebuttals to this commenter. One commenter stated that this proposal ''seeks to rectify rules that unfairly and inadvertently handicapped Honorably Discharged powered-lift veterans from capitalizing on the same military competency rules as their traditional ''fixed-wing'' peers. Military competency rules are not politically based—they only recognize the high quality of military training and flight time and allow pilots the ability to easily transfer their flight time to earn FAA certificates.'' [40] The other commenter agreed that the United States Air Force (USAF) has acknowledged a looming pilot shortage. However, the commenter stated that the United States Marine Corps (USMC) has not announced a pilot shortage, and this rulemaking primarily affects USMC aircraft. This commenter explained that the real issue is the correct accounting for experience gained by flying powered-lift and how that should translate to the FAA and civilian flight ratings and certification eligibility. The commenter asserted that, of the several aircraft mentioned in the NPRM, the USAF only flies a very small number of CV–22s; however, the individual who questioned the cost analysis based his entire argument on USAF pilot data.

In response to the commenter's concerns that this rulemaking would further exacerbate the military pilot shortage, the FAA reviewed recent literature, studies, and data on this issue to identify the causes of the military pilot shortage. Military pilots separate from service for a variety of reasons, especially the large pay gap between commercial and military pilots, which this rulemaking does not directly affect. As a result, the FAA has concluded that this rulemaking by itself will not increase the attrition rate of powered-lift pilots due to the limited relief and the small number of pilots with powered-lift time affected by the rulemaking. For a more detailed discussion of the FAA's reasons for this finding, please reference Section IV., Regulatory Notices and Analyses.

Furthermore, allowing military pilots to credit powered-lift time towards airplane time does not necessarily mean a pilot will leave the military sooner. In response to the commenter's request, the FAA had conversations with the Department of Defense.[41] Following these conversations, the FAA concluded that, although this final rule could make a separation for civilian flying jobs more appealing, that is not adequate justification for not giving credit for the relevant experience a military powered-lift pilot has gained. That training and experience can transfer to airplane flying, and requiring these pilots to accrue additional airplane time to satisfy the airplane PIC requirement for an ATP certificate is unnecessary and burdensome.

B. Minimum of 1,000 Hours in Air Carrier Operations To Serve as Pilot in Command in Part 121 Operations (§ 121.436)

The *Airline Safety and Federal Aviation Administration Extension Act of 2010* (Pub. L. 111–216, ''the Act''), directed the FAA to conduct rulemaking to improve the qualifications and training for pilots serving in air carrier operations. In support of the Act, the FAA published the *Pilot Certification and Qualification Requirements for Air Carrier Operations* final rule on July 15, 2013.[42] The rulemaking created new certification and qualification requirements for pilots in air carrier operations, including the addition of an experience requirement to serve as a PIC in part 121 operations.

Specifically, § 121.436(a)(3) requires pilots serving as PIC in part 121 operations to have, in addition to an

[35] 14 CFR 61.161 prescribes the aeronautical experience requirements for obtaining an ATP certificate in the rotorcraft category with a helicopter class rating. A pilot must have at least 75 hours of helicopter PIC time, or as SIC performing the duties of a PIC under the supervision of a PIC, to be eligible.

[36] See Docket No. FAA–2017–1106.

[37] Because this requirement was specific to the airplane category, flight time obtained in the powered-lift category could not be credited.

[38] Under § 61.51(j), a person may log flight time in a military aircraft under the direct operational control of the U.S. Armed Forces.

[39] In this context, the commenter is referring to employer established hiring requirements, not FAA requirements for currency.

[40] Docket Number: FAA–2017–1106–0136; Comment Tracking Number: 1k2–912t-fq9n.

[41] The FAA posted a record of conversation to FAA–2017–1106–0147.

[42] 78 FR 42324.

ATP certificate and an aircraft type rating, at least 1,000 hours of air carrier experience. Prior to this final rule, a pilot could satisfy the 1,000-hour air carrier experience requirement by using a combination of time serving as SIC in operations under part 121, or serving as PIC in operations under § 91.1053(a)(2)(i) or § 135.243(a)(1). One limitation on meeting the 1,000-hour air carrier experience requirement in § 121.436, however, was that it did not allow a pilot to use any flight time obtained as PIC in part 121 operations prior to July 31, 2013.[43] In addition, § 121.436(c) limited military flight time credit toward the 1,000-hour air carrier experience requirement to military time obtained as PIC of a multiengine, turbine-powered, fixed-wing airplane in an operation requiring more than one pilot.[44] Because the regulation expressly limited the creditable military flight time to PIC time acquired in fixed-wing airplanes, military pilots could not credit any of their military time obtained in multiengine, turbine-powered powered-lift aircraft towards the 1,000-hour air carrier experience requirement.

In the NPRM, the FAA proposed to amend these requirements to provide relief to pilots who obtained part 121 PIC experience prior to July 31, 2013, and to military pilots of powered-lift.

1. Part 121 Experience Prior to July 31, 2013

In the NPRM, the FAA proposed to add new § 121.436(d) to allow experience gained as PIC in part 121 operations prior to July 31, 2013, to count towards the 1,000 hours of air carrier experience required by § 121.436(a)(3).

ALPA and an individual commenter supported this proposal. The FAA did not receive any opposing comments or recommended changes. Therefore, for the reasons explained in the NPRM,[45] the FAA is adding new § 121.436(d) as proposed.[46]

2. Military Time

In the NPRM, the FAA proposed to amend § 121.436(c) to allow military flight time accrued as PIC of a multiengine, turbine-powered powered-lift aircraft to be credited towards the 1,000-hour air carrier experience requirement. Consistent with the existing requirement in § 121.436(c), the proposal would have required the operation to require more than one pilot.

Delta Air Lines, CAPA, three military commenters, and one individual fully supported the proposal.

ALPA agreed that the powered-lift time should be credited towards the requirements of § 121.436. However, similar to ALPA's comments on proposed § 61.159(c)(5), ALPA believed the FAA should reduce the number of creditable hours. ALPA was concerned with the military pilot's ability to accurately track the time spent in horizontal flight and the FAA's ability to verify this flight time. ALPA also argued that it would be inappropriate for a pilot to credit time spent in horizontal flight with takeoffs and landings being conducted vertically. ALPA, however, did not recommend the amount of time it believed would be appropriate.

One individual commenter disagreed with ALPA's suggestion to limit the amount of powered-lift time that may be credited towards § 121.436(a). This commenter explained that pilots can accurately track time in horizontal flight, most takeoffs and landings are not vertical, and since the vertical time is already omitted, there should be no reduction in credit.

The existing requirement in § 121.436(c) limits the amount of military time that may be credited towards the 1,000-hour air carrier experience requirement to 500 hours. The FAA finds it unnecessary to further limit the amount of military time that may be credited merely because the flight time was obtained while operating a multiengine, turbine-powered, powered-lift aircraft in horizontal flight. As explained in the NPRM, military flight time obtained as PIC of transport category powered-lift provides significant multi-crew experience substantially similar to that obtained in transport category fixed-wing airplanes. The FAA also finds that allowing a military-trained PIC of a multiengine, turbine-powered, powered-lift aircraft to credit up to 500 hours towards the 1,000-hour air carrier experience required to serve as PIC of an aircraft, is consistent with the intent of § 121.436. The FAA has previously recognized the quality of military training and appreciates the complexity of those kinds of transport-like operations. In addition, the FAA has acknowledged that powered-lift are predominantly operated in the horizontal flight regime, much like an airplane.[47] The FAA maintains, however, that while there is value in this experience, these pilots operate in a unique system that is different from a part 121 air carrier environment and military pilots will benefit from spending some time serving as a required crewmember in a civilian air carrier operation before upgrading to PIC. This time will prepare them for operating in compliance with the FAA regulations that govern civil aviation, the air carrier's particular operating specifications, and the airplane's operations manual.

To the extent ALPA is concerned that a military powered-lift pilot will not have airplane experience, particularly in takeoff and landing, prior to serving as a PIC in part 121 operations, the FAA responds that military powered-lift pilots receive training and are checked in an airplane prior to transitioning to a powered-lift.[48] In addition, a military pilot is checked in all modes of flight (*i.e.,* horizontal, vertical) in a powered-lift during military proficiency checks, including the performance of takeoffs and landings. Finally, prior to serving as a SIC in part 121, the pilot will also have been evaluated on the ability to take off and land an airplane used in air carrier operations. Furthermore, because § 121.436(c) limits the amount of creditable military flight time to 500 hours, a military powered-lift pilot will still be required to obtain at least 500 hours in an airplane prior to serving as PIC in part 121 operations.[49] During this time, the pilot will obtain a significant amount of experience performing takeoffs and landings in the airplane category.

As discussed in Section III.A of this preamble, the FAA does not share ALPA's concerns about tracking and verifying the amount of powered-lift time spent in horizontal flight. Military powered-lift pilots will generally have well in excess of 500 hours of PIC time

[43] As discussed more fully in the NPRM, the FAA granted petitions for exemption to allow pilots who had part 121 PIC experience prior to July 31, 2013, but were not employed as a part 121 PIC on July 31, 2013, to count their previously accrued part 121 PIC time towards the 1,000-hour air carrier experience requirement. The exemption allowed the pilot to serve as PIC in part 121 operations and permitted the part 119 certificate holder to employ the pilot as PIC.

[44] Under § 121.436(c), a military pilot may credit 500 hours of military flight time obtained as pilot in command of a multiengine turbine-powered, fixed-wing airplane in an operation requiring more than one pilot toward the 1,000-hour air carrier experience requirement.

[45] 82 FR at 55794–95.

[46] As discussed further in Section III.C of this preamble, the FAA is removing paragraph (d) (as it existed prior to this final rule) from § 121.436 as unnecessary.

[47] In horizontal flight, a powered-lift, like an airplane, is supported in flight by the dynamic reaction of the air against its wings.

[48] See Section III.A of the preamble to this final rule for a more detailed discussion of this training.

[49] Pursuant to § 121.436(a)(3), the pilot would be required to obtain the other 500 hours as SIC in operations under part 121, PIC in operations under § 91.1053(a)(2)(i), PIC in operations under § 135.243(a)(1), or any combination thereof.

in multiengine, turbine-powered powered-lift aircraft.[50] And, as many of the commenters attested to, a significant majority of the time spent in powered-lift is in horizontal flight.[51] For these reasons, the FAA finds it unnecessary to limit the amount of credit based on the fact that military pilots may not have tracked the exact number of hours spent in horizontal flight. Furthermore, as explained in Section III.A of this preamble, the evaluator will review and validate the pilot's records to determine if the amount of credit sought is appropriate.

For the reasons explained above, § 121.436(c) remains unchanged from the proposed rulemaking.

One commenter asked the FAA to allow select helicopter time to be credited towards the 1,000-hour air carrier experience requirement. The commenter argued that helicopters, such as the CH–46E,[52] are large aircraft, which have turbine-powered engines and are operated by more than one pilot. The commenter also stated that out of hover, the CH–46E is operated similarly to an airplane and frequently conducts running takeoffs and landings similar to an airplane.

In the 2013 final rule that established the air carrier experience required to serve as a PIC in part 121 operations, the FAA did not allow a PIC in a part 135 helicopter operation that requires that pilot to hold an ATP certificate by rule (§ 135.243) to credit that time. The FAA has determined that helicopter operations are not sufficiently similar to an air carrier operation or the environment in which an air carrier operates. While operations in a large helicopter, such as the CH–46E, may provide multi-crew experience in an aircraft that has turbine-powered engines, these operations are not substantially similar to operations in transport category fixed-wing airplanes. Unlike powered-lift, which are predominantly operated like an airplane when operated in horizontal flight, there are significant differences between helicopters and airplanes, including differences in operating speeds, typical operating altitudes, and aerodynamic differences. As a result, the FAA finds that the differences outweigh the similarities too much to justify the credit for air carrier experience and these pilots would benefit from the additional time flying an airplane in the air carrier environment prior to upgrading to PIC.

3. Eligible On-Demand Experience in Part 135

As previously explained, the FAA proposed to revise § 121.436 by expanding the types of operational experience that may be credited toward the 1,000-hour air carrier experience requirement. Specifically, the FAA proposed to allow flight time obtained as PIC in part 121 operations prior to July 31, 2013, to count towards the 1,000-hour air carrier experience requirement. In addition, the FAA proposed to allow military pilots to credit certain powered-lift flight times towards 1,000 hours. In the NPRM, the FAA explained how these proposals were consistent with the intent of the 1,000-hour air carrier experience requirement, which was adopted in the 2013 final rule.

In the 2013 final rule, the FAA adopted § 121.436(a)(3) to require a PIC in part 121 operations to have 1,000 hours of air carrier experience. In addition, the FAA determined which operational experience may count towards the 1,000-hour requirement. In the preamble, the FAA explained that the intent of the 1,000-hour air carrier experience requirement in § 121.436(a)(3) is to prevent two pilots in part 121 operations with little or no air carrier experience from being paired together as crewmembers in line operations. In addition, the regulation ensures that pilots obtain at least one full year of relevant air carrier operational experience before assuming the authority and responsibility of a PIC in operations conducted in part 121 operations. The FAA ultimately determined that certain operational experience outside of serving as a SIC in part 121 may count towards the 1,000-hour air carrier experience requirement if the operations: (1) require an ATP certificate, (2) are multi-crew operations, and (3) generally use turbine aircraft. The FAA reasoned that these operations are most applicable to part 121 operations.

In response to the NPRM, Ameristar Air Cargo and Gulf & Caribbean Cargo asked the FAA to revise § 121.436(a)(3) to also allow operational experience obtained under part 135 where the PIC meets the requirements stated in § 135.4(a)(2)(ii)(A)[53] to count towards the 1,000-hour requirement. These commenters made a generalized argument that if a part 135 cargo-only PIC holds an ATP certificate and appropriate type rating, then that cargo flying time should count toward the air carrier experience requirement. They believed this rule change would be consistent with the intent of the 2013 final rule because it would include flight time where the PIC must hold an ATP certificate and has extensive experience in air carrier operations. In addition, an anonymous commenter asked the FAA to allow persons to credit time serving as PIC in eligible on-demand operations under § 135.4 to count towards the 1,000-hour air carrier experience requirement. This commenter explained that § 135.4 requires a two-pilot crew and, for operations in multiengine turbine-powered fixed-wing and powered-lift aircraft, the PIC is required to hold an ATP certificate with applicable type ratings. This commenter believed that not including these operations in the list of operational experience in § 121.436(a)(3) was an oversight.

Upon review of these comments, the FAA agrees that excluding certain eligible on-demand operations from the list of operational experience in § 121.436(a)(3) was an oversight.[54] In eligible on-demand operations where the PIC is required to satisfy § 135.4(a)(2)(ii)(A),[55] that PIC is exercising the privileges of an ATP certificate in a position where the certificate is required by rule in the United States. In addition, eligible on-demand operations conducted in accordance with this regulation are multi-crew operations and are conducted in turbine-powered aircraft. As explained in the 2012 NPRM,[56] these were the reasons the FAA proposed to allow flight time obtained as PIC in part 121 operations prior to July 31, 2013, to count towards the 1,000-hour air carrier experience requirement. Therefore, consistent with the proposal, the FAA is revising § 121.436(a)(3) to also include

[50] Based on discussions with current and former military pilots, the FAA determined that a military powered-lift pilot will generally have between 1,000–2,500 hours of total powered-lift time, which includes about 500–1,250 hours of PIC powered-lift time.

[51] Commenters estimated that powered-lift aircraft are operated in horizontal flight between 80–99% of the time. These comments are available in the docket for this rulemaking at docket No. FAA–2017–1106.

[52] The CH–46E is a medium-lift tandem-rotor transport helicopter powered by twin turboshaft engines.

[53] Under § 135.4(a)(2)(ii)(A), an ''eligible on-demand operation'' using multi-engine turbine-powered fixed-wing and powered-lift aircraft requires the PIC to hold an ATP certificate with applicable type ratings.

[54] On September 15, 2018, the FAA granted USA Jet Airlines an exemption from § 121.436(a)(3) allowing pilots to use the flight time gained as PIC at USA Jet Airlines in accordance with § 135.4(a)(2)(ii)(A) to count towards the 1,000-hour air carrier experience requirement. Exemption No. 17940 (Docket No. FAA–2015–6560).

[55] Section 135.4(a)(2)(ii)(A) requires the PIC to hold an ATP certificate.

[56] Pilot Certification and Qualification Requirements for Air Carrier Operations, 77 FR 12374, February 29, 2012.

operational experience obtained in eligible on-demand operations where the PIC is required to satisfy § 135.4(a)(2)(ii)(A). The FAA notes that this revision is also consistent with the intent of the 1,000-hour air carrier experience requirement, as evident from the preamble to the 2013 final rule.[57] Furthermore, for ease of readability, the FAA is reorganizing § 121.436(a)(3) by listing the creditable operational experience in subparagraphs (a)(3)(i) through (v).

Allowing eligible on-demand operations conducted in accordance with § 135.4(a)(2)(ii)(A) to count towards the 1,000-hour air carrier experience requirement will provide an avenue for pilots in part 135 all-cargo operations to accrue PIC time that may be credited towards the 1,000-hour requirement. However, to the extent Ameristar Air Cargo and Gulf & Caribbean Cargo believe that all part 135 cargo-only turbojet PIC flight time should be counted towards the 1,000-hour requirement in § 121.436(a)(3), the FAA disagrees. The regulations do not require a PIC of part 135 all-cargo turbojet operation to hold an ATP certificate.[58] As explained in the 2013 final rule and the NPRM to this final rule, the FAA determined that the ability to fly at the ATP certificate level and have demonstrated this proficiency during evaluation is an important regulatory differentiation.

The FAA first proposed that certain operations under part 135 should require an ATP certificate in 1977. In the 1977 NPRM, the FAA stated the requirement to hold an ATP certificate to act as PIC in some part 135 operations was ''based in part on operational complexity and the number of persons carried, would provide a level of safety more comparable to that provided by part 121.'' [59] The FAA still maintains this position. Operations under §§ 91.1053(a)(2)(i), 135.243(a)(1) and 135.4(a)(2)(ii)(A) require an ATP certificate, are multi-crew operations, generally use turbine aircraft, and therefore, are the most comparable to part 121 operations. In response to the commenters' argument that a PIC who holds an ATP certificate should be allowed to credit time obtained in a part 135 cargo operation, the FAA disagrees. Because the regulations do not require an ATP certificate for cargo-only operations under part 135, the FAA finds that the operational complexity of part 135 cargo operations is not substantially similar to operations conducted under part 121, §§ 135.243(a)(1), 135.4(a)(2)(ii)(A), and 91.1053(a)(2)(i). As explained in the 2013 final rule and the associated NPRM, while other parts 91 and part 135 operations may involve certain elements that are relatable to part 121 operations, the varied nature of operations does not make credit toward the 1,000-hour requirement appropriate. Therefore, because turbojet pilots in part 135 cargo operations are not required to hold an ATP certificate, the time accrued in such operations should not count toward the requirements of § 121.436(a)(3).

C. Miscellaneous Amendments

Prior to this rulemaking, § 121.436(a)(3) contained an exception from the 1,000-hour air carrier experience requirement for pilots who ''are'' employed as PIC in part 121 operations on July 31, 2013. Because the date referenced in paragraph (a)(3) has passed, the FAA proposed to revise the statement to accept pilots who ''were'' employed as PIC in part 121 operations on July 31, 2013. The FAA received no comments on this proposed change. Therefore, the FAA is adopting this revision as proposed. However, due to the restructuring of § 121.436(a)(3), the FAA has decided to relocate this requirement from proposed § 121.436(a)(3) to § 121.436(e) for ease of readability.

In the NPRM, the FAA also proposed to remove paragraph (d) from § 121.436 (as it existed prior to this final rule) because the dates in the provision are no longer relevant, thereby making the requirements obsolete. The FAA did not receive any comments on this proposed change. The FAA is therefore removing paragraph (d) as proposed.[60]

D. Comment Regarding the Regulatory Evaluation

In the NPRM, the FAA requested comments on whether the enactment of counting military powered-lift time towards airplane PIC time would change these pilots' military retirement decisions. One commenter expressed concern that the rulemaking would exacerbate an existing pilot retention problem facing the military, specifically referring to the Air Force. The commenter pointed out that the FAA analysis did not consider the total costs to the Federal government, particularly to the Department of Defense. As the analysis did not consider the cost to train and retain pilots, the commenter indicated he thought the analysis was lacking. The commenter pointed out that no analysis was performed on the impact the proposed rule change would have on the retention of military pilots. As more pilots retire from the armed forces, the military must increase the number of pilots trained in order to overcome this deficit.

In response to the commenter's claim that this rulemaking would exacerbate the existing pilot retention problem, the FAA reviewed recent literature and publications on military pilot shortage. The FAA found that pilot retention problems likely arise for the following reasons:

a. Significant gap (approximately $55,000 per year) between Air Force pilot pay ($80,000 average salary plus a bonus of $13,000, or a total of approximately $93,000 per year) [61] and civilian pilot pay ($148,010 average salary) [62]

b. In comparison to flying commercial aircraft in the civilian workforce, military pilots face higher occupational and safety risks while performing duties around the world. In addition, military pilots experience high burnout rates due to assignments up to one year away from home and families,[63]

c. After fifteen years of flying in uniform, military pilots get fewer flying assignments and more desk or managerial duties in their early forties,[64]

d. Military pilots serve, on average, about twenty years in the Air Force, and a large majority of them transition to become commercial airline pilots to earn much higher salaries for approximately another twenty years until the mandatory retirement age of 65 in commercial airlines.[65]

[57] 78 FR at 42356–57.

[58] 14 CFR 135.243(a).

[59] Part 135 Regulatory Review Program Air Taxi Operators and Commercial Operators, 42 FR 43490, 43504, August 29, 1977.

[60] As previously discussed, the FAA is adding a new paragraph (d) to § 121.436.

[61] *https://www.payscale.com/research/US/Job=U.S._Air_Force_Fighter_Pilot/Salary/* Last accessed on December 17, 2021.

[62] *https://datausa.io/profile/soc/aircraft-pilots-flight-engineers* Last accessed on December 17, 2021.

[63] ''Quality of life and service'' section of this article starts with the following paragraph: ''Job dissatisfaction, career dissatisfaction, frequent and long deployments, poor quality of life, non-competitive pay and lack of personal and professional development are among the reasons cited for why many experienced military pilots separate from military service,'' the DOT study states. Source: *https://federalnewsnetwork.com/dod-personnel-notebook/2019/04/new-study-shows-grim-outlook-for-future-of-air-force-pilot-shortage/* Accessed on December 17, 2021.

[64] *https://www.defenseone.com/ideas/2016/07/us-air-force-short-700-fighter-pilots-our-plan/129907/?oref=d-skybox* Accessed on December 17, 2021. ''. . . from dramatically reduced flying hours for the high-end fight as a result of Pentagon budget cuts. . .'', ''We are . . . working to get help for fighter squadrons burdened with time-consuming administrative duties. . .''

[65] *https://www.airforcetimes.com/news/your-air-force/2020/03/04/air-force-no-progress-in-closing-*

Military pilots separate from service for these reasons that pre-exist this rule. In particular, the large pay gap between commercial and military pilots, which this rulemaking does not directly affect, plays a major role in the military retention problem. As a result, the FAA has concluded that this rulemaking by itself will not increase the attrition rate of powered-lift pilots due to the limited relief and the small number of pilots with powered-lift time affected by the rulemaking.

Recent reports suggest the Air Force is attempting to fill the projected gaps for 800 active duty pilots and 1,150 reserve pilots.[66] The Air Force needs 12,842 active duty pilots, 3,843 Air National Guard pilots, and 3,684 reserve pilots in a steady state.[67]

According to one pilot training school, 1,500 hours of required flight time can be earned in over 2 years.[68] The final rule allows a relatively small number of pilots (estimated 70 pilots against a total pool of over 12,800 military pilots) to get a credit of 250 hours of flight time towards the 1,500 hours needed for an ATP certificate. What this means is that military pilots switching to civilian commercial air carrier jobs will get the ATP certificate 4 to 6 months earlier.

Given average 20 years in military service and additional 20 years of potential civilian employment (a total combined 40 years of professional career for a pilot who started in the military and ended in commercial air carriers), a maximum potential gain of 6 months due to the rule is rather a small incentive for military pilots to accelerate their retirement or retire in very large numbers.

Although the FAA recognizes that this rulemaking could make separation for civilian flying jobs marginally more appealing, this will not substantively increase the attrition rate that the Air Force is trying to address because of broader, pre-existing reasons previously discussed. Further, the FAA emphasizes that the commenter's concern is not an adequate or appropriate justification for not giving credit for relevant experience a military powered-lift pilot has gained. That training and experience can transfer to airplane flying, and requiring these pilots to accrue additional airplane time to satisfy the airplane PIC requirement for an ATP certificate is unnecessary and burdensome. It could also be that crediting powered-lift time towards airplane time does not necessarily mean a pilot will leave the military sooner.

IV. Regulatory Notices and Analyses

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

In conducting these analyses, the FAA has determined that this rule has benefits that justify its costs and is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866. The rule will not have a significant economic impact on a substantial number of small entities, will not create unnecessary obstacles to the foreign commerce of the United States, and will not impose an unfunded mandate on State, local, or tribal governments, or on the private sector by exceeding the threshold identified previously. This portion of the preamble summarizes the FAA's analysis of the economic impacts of this final rule.

A. Regulatory Evaluation

The rulemaking will be relieving to pilots and air carriers by expanding opportunities for pilots that meet the amended criteria to use relevant flight experience toward the requirements for an ATP certificate and to meet PIC qualification requirements for air carrier operations. The FAA identifies cost savings and benefits from the rule for the following parts:

1. ATP Aeronautical Experience Requirements (§ 61.159)

Amendment of § 61.159(a)(5) to allow military pilots to credit experience in military powered-lift flown in horizontal flight towards the 250 hours of airplane time as pilot in command (PIC), or second in command (SIC) performing the duties of PIC while under the supervision of a PIC, required for the certificate. This rule will relieve those military pilots who are seeking an ATP certificate in the airplane category of the expense of accruing civilian PIC flight time in airplanes to meet the PIC airplane time requirement. The FAA notes that the multiengine airplane ATP certificate is required to serve at a part 121 air carrier.[69] At an estimated $175 an hour per flight hour,[70] the value of 250 flight hours is a cost savings of $43,750[71] per pilot.

Examples of powered-lift for which pilots could receive credit include[72] the AV–8B, which is a single-engine aircraft, and the MV–22, which is a multiengine aircraft. The FAA obtained data[73] on the number of pilots with experience in these aircraft that separated from the U.S. Marine Corps[74]

pilot-shortfall/ ''The Air Force in 2016 began increasingly to discuss the problem of pilot retention and its difficulty in holding on the skilled pilots in the face of a major hiring wave by deep-pocketed commercial airlines.'' Accessed on December 17, 2021.

[66] *https://federalnewsnetwork.com/dod-personnel-notebook/2019/04/new-study-shows-grim-outlook-for-future-of-air-force-pilot-shortage/* Accessed on December 17, 2021.

[67] Ibid. footnote 62.

[68] *https://atpflightschool.com/become-a-pilot/airline-career/how-long-to-become-a-pilot.html* Accessed on December 17, 2021.

[69] Although the part 121 air carrier requires a multiengine airplane ATP certificate, the PIC time in airplanes required for an ATP certificate is not category specific. Therefore, the FAA estimates the military pilot would use a single-engine airplane to accrue the necessary time because it is the cheaper option.

[70] A newer Cessna 182 rents for $175 per hour ''wet'' that includes maintenance, insurance, fuel, airport fees and additional duties or taxes. Source: *https://www.aopa.org/go-fly/aircraft-and-ownership/buying-an-aircraft/reducing-the-cost-of-flying.* Accessed December 17, 2021. This is an appropriate estimate for avoided training center or flight time costs because military pilots seeking a commercial pilot certificate will choose a lower cost alternative to obtain it. Part 61 rules do not specify which type of aircraft needs to be flown to accrue required flight time. Cessna 182 represents a reasonable average airplane type typically chosen to obtain a commercial pilot certificate. *https://www.aopa.org/training-and-safety/active-pilots/safety-and-technique/operations/commercial-pilot-certificate,* Accessed on December 17, 2021.

[71] This cost savings estimate has been updated from the NPRM's $37,500 ($150/hour × 250 hours) as the FAA used $175/hour in estimating cost savings.

[72] Flight-time in an F–35B can also be credited, but as these aircraft are new, there is not sufficient data on pilots separating from the military with experience in this aircraft. Therefore, the FAA did not include F–35B pilots in its estimates.

[73] Marine Corps Total Force System, Total Force Data Warehouse, U.S. Marine Corps.

[74] The majority of the aircraft this rule affects are flown in the U.S. Marine Corps. Although the U.S. Marine Corps has the majority of these pilots, the U.S. Air Force also has some powered-lift pilots. As

Continued

each year between 2014 and 2018. An average of 70 pilots per year, with experience in these two aircraft, separated from the U.S. Marine Corps over the years 2014 to 2018. The data did not indicate the number of hours of experience each pilot had, nor did it indicate how many will seek an ATP certificate and apply their military experience. The FAA makes the simplifying assumption that each year all of these 70 pilots will apply 250 hours of military PIC experience in powered-lift while in horizontal flight towards an ATP certificate in the airplane category. The resulting cost savings over a 10-year analysis period is $30.6 million [75] undiscounted or $21.5 million and $26.1 million discounted at 7 percent and 3 percent discount rates, respectively. The annualized value of estimated cost savings is $3.1 million using either a 7 percent or 3 percent discount rate.

Pilots might also save additional expenses, such as the cost of travel and lodging, which they might otherwise incur to reach a location, such as a flight school, where they can obtain flight time. These pilots might further benefit by advancing more quickly in their careers and receiving higher pay sooner as well.

2. Part 121 Experience Prior to July 31, 2013 (§ 121.436)

Modification of the part 121 air carrier experience required to serve as a PIC will allow credit for experience as PIC if a pilot held that position prior to July 31, 2013.[76] Currently, such experience does not count towards qualifying to be a PIC without filing for an exemption. This recognition of previous status and qualification for part 121 PIC employment service will relieve the individual pilots, part 121 air carriers that will employ those pilots, and the Federal government of procedural costs for developing, filing, and reviewing petitions for exemption. The combined cost of an exemption to the pilots and the FAA is about $1,500.[77] The FAA has granted eight such exemptions [78] to individual pilots over the years 2013 to 2019. Each exemption costs $1,500 and has to be renewed every 5 years. Assuming the number of exemptions will continue at the same rate (1.14 = 8 exemptions ÷ 7 years), one exemption (rounding down to one per year) is expected to be issued every year without the rule. Given the exemption renewal cycle every five years during the 10-year analysis period of the rule, the FAA estimates a total of 21 renewals—8 in year one through year five and 13 in years six through ten. The FAA estimates the cost savings due to avoided exemptions will be $46,500 undiscounted [79] or $30,795 and $38,668 discounted at seven percent and three percent, respectively. The annualized value of estimated cost savings due to avoidance of these 31 exemptions in total, including 10 new ones and 21 renewals over a 10-year period, is $4,384 and $4,533 at seven percent and three percent discount rates, respectively.

3. Military Time (§ 121.436)

Amends § 121.436(c) by expanding the 500 hours of credit a military pilot can take for PIC time in a multiengine, turbine-powered, fixed-wing airplane, accrued in a multi-crew environment that is currently allowed to apply towards the 1,000 hours of air carrier experience required to serve as a PIC in part 121, to include PIC experience in a powered-lift. Allowing powered-lift flight time obtained in the military to be credited to experience required to serve as a PIC could allow pilots with this experience to advance more quickly in their careers and conceivably benefit from higher wage rates 6 to 9 months [80] sooner than if they had to accumulate the experience while working at an air carrier as a SIC. Consequently, their lifetime earnings as airline pilots could increase because they could advance to a higher-paying job sooner. However, this more rapid advance is more realistic for pilots working at regional carriers because upgrade time at major airlines proceeds more slowly. The FAA did not quantify this benefit because there is not an estimate for the number of military powered-lift pilots that separate from the military and are subsequently hired by an airline. As a result, the FAA does not have an estimate on how many are hired by a major airline versus a regional airline. Finally, the time it takes to upgrade to PIC can be highly variable depending on the individual air carrier and, over time, the varying state of the industry, making a quantification of benefits extremely difficult.

4. Eligible On-Demand Experience in Part 135 (§ 121.436)

Amends § 121.436(a)(3) to allow eligible on-demand pilots that meet the requirements of § 135.4(a)(2)(ii)(A) to credit that PIC time towards the 1,000 hours of flight time required to serve as PIC in part 121. This will allow pilots with this experience to accelerate more quickly in their careers. It could also avoid the need for exemptions from this provision. The FAA did not quantify this savings because the FAA does not have an estimate of the number of pilots that could take advantage of this relief and the variability in the time it takes to upgrade to PIC from one air carrier to another makes the quantification of benefits difficult.

5. Summary of Total Quantified Cost Savings

The FAA quantified these two cost savings: (1) cost savings due to 250 hours of military PIC experience in powered-lift while in horizontal flight credited towards ATP experience requirements, and (2) cost savings due to avoided exemptions.

The total quantified cost savings over a 10-year period will be $30,671,500 ($30,625,000 + $46,500) undiscounted or $21,540,513 ($21,509,718 + $30,795) and $26,162,414 ($26,123,746 + $38,668) discounted at seven percent and three percent discount rates, respectively. The annualized value of estimated total cost savings due to 250 hours of military PIC experience credit and avoided exemptions over a 10-year period is $3,066,884 ($3,062,500 + $4,384) and $3,067,033 ($3,062,500 + $4,533) at seven percent and three percent discount rate, respectively.

Therefore, the FAA has determined that this rule is not a ''significant regulatory action'' as defined in section 3(f) of Executive Order 12866.

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the FAA does not have data on the number of Air Force pilots, the cost savings may be underestimated. In addition, the FAA received input from comments that the U.S. Air Force flies a very small number of affected powered-lift aircraft.

[75] Using the previously estimated $43,750 cost savings per pilot, annual cost savings would be $3,062,500 (=$43,750 × 70 pilots) or $30,625,000 over a 10-year period in undiscounted dollars.

[76] Cost savings due to the part 121 experience prior to July 31, 2013, are likely to decrease over the 10-year period of analysis as there would be fewer pilots who would be filing for an exemption.

[77] This cost assumption is based on a review of FAA exemption information received between 2013 and 2019.

[78] Exemption No. 13993 (Docket No. FAA–2014–0658); Exemption No. 15473 (FAA–2016–1287); Exemption No. 17177 (FAA–2016–9249); Exemption No. 18197 (Docket No. FAA–2019–0030), Exemption No. 17819 (Docket No. FAA–2017–1165); Exemption No. 17902 (Docket No. 2018–0252); Exemption No. 18288 (Docket No. 2019–0432); and Exemption No. 18309 (Docket No. 2019–0555).

[79] During the 10-year period of analysis, the FAA assumed there will be one new exemption request each year, or 10 new exemption requests, and one renewal request each year after year six until year 10, or 5 renewals in addition to 8 exemptions that will come to renewal twice between 2021 and 2029 (16 renewals). Total number of exemption requests both new and renewals would be 31 (10 new + 21 renewals. Therefore, the total undiscounted cost savings estimate would be $46,500 (31 × $1,500).

[80] The FAA estimates that on average an airline pilot will fly 55–85 hours per month. This equates to a range of 6–9 months to accrue 500 hours of flight time.

B. Regulatory Flexibility Act

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

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

The rulemaking will be relieving to pilots who take the opportunity to reduce the cost of earning an ATP certificate [81] by applying flight time obtained in powered-lift in the military to meet the airplane PIC flight time requirements. It will also be relieving to pilots who would like to advance more quickly in their careers by applying flight time earned in eligible powered-lift operations in the military, flight time earned during certain part 135 eligible on-demand operations, and part 121 PIC flight time earned prior to July 31, 2013, to further their careers into a position as PIC in part 121 operations.

The FAA has determined this rulemaking will not impose a significant economic impact on a substantial number of small entities because it will be relieving to pilots, and pilots are not small entities.

Therefore, as provided in section 605(b), the head of the FAA certifies that this rulemaking will not result in a significant economic impact on a substantial number of small entities.

C. International Trade Impact Assessment

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

D. Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (in 1995 dollars) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' The FAA currently uses an inflation-adjusted value of $165 million in lieu of $100 million. This rule does not contain such a mandate; therefore, the requirements of Title II of the Act do not apply.

E. Paperwork Reduction Act

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

F. International Compatibility and Cooperation

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to conform to International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA has reviewed the corresponding ICAO Standards and Recommended Practices and has identified no differences with these regulations.

G. Environmental Analysis

FAA Order 1050.1F identifies FAA actions that are categorically excluded from the preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act in the absence of extraordinary circumstances. The FAA has determined this rulemaking action qualifies for the categorical exclusion identified in paragraphs 5–6.6 and involves no extraordinary circumstances.

V. Executive Order Determinations

A. Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The agency determined that this action will not have a substantial direct effect on the States, or the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, does not have Federalism implications.

B. Executive Order 13211, Regulations that Significantly Affect Energy Supply, Distribution, or Use

The FAA analyzed this final rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. The agency has determined that it is not a ''significant energy action'' under the executive order, and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy.

C. Executive Order 13609, International Cooperation

Executive Order 13609, Promoting International Regulatory Cooperation, promotes international regulatory cooperation to meet shared challenges involving health, safety, labor, security, environmental, and other issues and to reduce, eliminate, or prevent unnecessary differences in regulatory requirements. The FAA has analyzed

[81] The FAA acknowledges that some providers of training schools and facilities providing flight services to pilots might lose revenue due to reduced demand for such services by pilots directly affected by this rule. However, the RFA requires an agency to perform a regulatory flexibility analysis of small entity impacts only when a rule directly regulates small entities. This final rule does not directly affect the aviation training schools and other related service providers. Therefore, the FAA did not analyze the indirect impacts of this rule on those small training schools and providers.

this action under the policies and agency responsibilities of Executive Order 13609, and has determined that this action would have no effect on international regulatory cooperation.

VI. How To Obtain Additional Information

A. Electronic Filing and Access

A copy of the notice of proposed rulemaking (NPRM), all comments received, the final rule, and all background material may be viewed online at *https://www.regulations.gov* using the docket number listed above. A copy of this rule will be placed in the docket. Electronic retrieval help and guidelines are available on the website. It is available 24 hours each day, 365 days each year. An electronic copy of this document may also be downloaded from the Office of the Federal Register's website at *https://www.federalregister.gov* and the Government Publishing Office's website at *https://www.govinfo.gov*. A copy may also be found on the FAA's Regulations and Policies website at *https://www.faa.gov/regulations_policies.*

Copies may also be obtained by sending a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9677. Commenters must identify the docket or amendment number of this rulemaking.

All documents the FAA considered in developing this final rule, including economic analyses and technical reports, may be accessed in the electronic docket for this rulemaking.

B. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. A small entity with questions regarding this document may contact its local FAA official, or the person listed under the **FOR FURTHER INFORMATION CONTACT** heading at the beginning of the preamble. To find out more about SBREFA on the internet, visit *http://www.faa.gov/regulations_policies/rulemaking/sbre_act/.*

List of Subjects

14 CFR Part 61

Aircraft, Airmen, Aviation safety.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Aviation safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends chapter I of title 14, Code of Federal Regulations, as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

■ 1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40113, 44701–44703, 44707, 44709–44711, 44729, 44903, 45102–45103, 45301–45302; Sec. 2307 Pub. L. 114–190, 130 Stat. 615 (49 U.S.C. 44703 note).

■ 2. Amend § 61.159 by revising paragraph (a)(5) to read as follows:

§ 61.159 Aeronautical experience: Airplane category rating.

(a) * * *

(5) 250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties of pilot in command while under the supervision of a pilot in command, or any combination thereof, subject to the following:

(i) The flight time requirement must include at least—

(A) 100 hours of cross-country flight time; and

(B) 25 hours of night flight time.

(ii) Except for a person who has been removed from flying status for lack of proficiency or because of a disciplinary action involving aircraft operations, a U.S. military pilot or former U.S. military pilot who meets the requirements of § 61.73(b)(1), or a military pilot in the Armed Forces of a foreign contracting State to the Convention on International Civil Aviation who meets the requirements of § 61.73(c)(1), may credit flight time in a powered-lift aircraft operated in horizontal flight toward the flight time requirement.

* * * * *

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

■ 3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(f), 106(g), 40103, 40113, 40119, 41706, 42301 preceding note added by Pub. L. 112–95, sec. 412, 126 Stat. 89, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44729, 44732; 46105; Pub. L. 111–216, 124 Stat. 2348 (49 U.S.C. 44701 note); Pub. L. 112–95 126 Stat 62 (49 U.S.C. 44732 note).

■ 4. Amend § 121.436 by revising paragraphs (a)(3), (c), and (d) and adding paragraph (e) to read as follows:

§ 121.436 Pilot Qualification: Certificates and experience requirements.

(a) * * *

(3) If serving as pilot in command in part 121 operations, has 1,000 hours as:

(i) Second in command in operations under this part;

(ii) Pilot in command in operations under § 91.1053(a)(2)(i) of this chapter;

(iii) Pilot in command in operations under § 135.243(a)(1) of this chapter;

(iv) Pilot in command in eligible on-demand operations that require the pilot to satisfy § 135.4(a)(2)(ii)(A) of this chapter; or

(v) Any combination thereof.

* * * * *

(c) For the purpose of satisfying the flight hour requirement in paragraph (a)(3) of this section, a pilot may credit 500 hours of military flight time provided the flight time was obtained—

(1) As pilot in command in a multiengine, turbine-powered, fixed-wing airplane or powered-lift aircraft, or any combination thereof; and

(2) In an operation requiring more than one pilot.

(d) For the purpose of satisfying the flight hour requirement in paragraph (a)(3) of this section, a pilot may credit flight time obtained as pilot in command in operations under this part prior to July 31, 2013.

(e) For those pilots who were employed as pilot in command in part 121 operations on July 31, 2013, compliance with the requirements of paragraph (a)(3) of this section is not required.

Issued under authority provided by 49 U.S.C. 106(f), 44701(a)(5), and 44703 in Washington, DC.

Billy Nolen,

Acting Administrator.

[FR Doc. 2022–20328 Filed 9–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 522

RIN 3141–AA73

Submission of Gaming Ordinance or Resolution

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC) is amending the procedures for Submission of Gaming Ordinance or Resolution under the Indian Gaming Regulatory Act. The

amendment revises the regulations controlling the submission and approval requirements of tribal gaming ordinances or resolutions and amendments thereof. Notably, the rule: authorizes the submission of documents in electronic or physical form; clarifies that the submission requirements apply to amendments of ordinances or resolutions; eliminates the requirement that an Indian tribe provide copies of all gaming regulations with its submission and instead requires a tribe to submit gaming regulations only upon request; initiates the 90-day deadline for the NIGC Chair ruling upon receipt of a complete submission; requires tribes that subsequently amend a gaming ordinance pending before the Chair to provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission; and eliminates the requirement that the NIGC Chair publish a tribe's entire gaming ordinance in the **Federal Register**, requiring notice of approval to be published with the Chair's approval letter instead. In addition, the NIGC has made other non-substantive revisions, such as citation to cross references, minor grammatical revisions, and formatting changes.

DATES: Effective October 21, 2022.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, National Indian Gaming Commission; 1849 C Street NW, MS 1621, Washington, DC 20240. Telephone: (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands.

On January 22, 1993, the NIGC published a final rule in the **Federal Register** called *Submission of Gaming Ordinance or Resolution.* 58 FR 5810. The rule added part 522, which established a process for Indian tribes to submit a gaming ordinance, resolution, or amendment for the NIGC Chair's review and approval as required by 25 U.S.C. 2710(b)(2) and (d)(2)(a). The NIGC's intent was to assist tribal gaming operators with maintaining compliance with IGRA and implement its provisions germane to gaming ordinances or resolutions. The Commission promulgated three minor amendments thereafter. 58 FR 16494, 73 FR 6029, and 80 FR 31994.

On March 23, 1993, the Commission amended its submission requirements at § 522.2(h) to include identification of a law enforcement agency that will take fingerprints and a description of the procedures for conducting a criminal history check by a law enforcement agency. 58 FR 16494.

On February 1, 2008, the Commission amended part 522's submission requirements to codify that a tribe shall provide Indian lands or environmental and public health and safety documentation upon the NIGC Chair's request, 25 U.S.C. 2710(b), (2)(e), and (d)(1). 73 FR 6029.

On June 5, 2015, the Commission amended part 522 to remove and update references to other regulations and make minor grammatical changes. 80 FR 31994.

It has been approximately twenty-nine years since the NIGC first promulgated part 522, with few revisions. During the intervening period, Indian gaming has undergone a meteoric expansion. During that expansion, the NIGC has continued to utilize part 522, and continues to look for ways to improve the regulations. The amendments reflect the Agency's intent to ensure that NIGC regulations meet the needs of the tribal gaming industry.

Through this rule, the NIGC amends its regulations to make several changes. The Commission will no longer require the submission of a physical copy of the ordinance. This rule will authorize the submission of documents in electronic or physical form, saving time and preventing inadvertent delays in review. The Commission will publish an updated bulletin that includes directions for electronic submission.

The amendment also clarifies that the 90-day deadline for the NIGC Chair's decision to approve an ordinance does not begin until the NIGC has received a complete submission and that the submission requirements apply to amendments of ordinances or resolutions. Submission of amendments will also require the submission of a conformed copy of the Ordinance.

The Commission also recognizes that a tribe's gaming ordinance often creates the tribal regulatory authority that will draft and implement the tribe's gaming regulations. As such, the Commission is amending the rule to eliminate the requirement that a tribe provide copies of all gaming regulations with its submission. Instead, tribes will only be required to submit gaming regulations upon request.

In most circumstances, if the NIGC identifies any issues during an ordinance review period that may lead to a disapproval recommendation to the Chair, it will discuss those issues with the submitting tribe and allow for the tribe to address the issues before a final decision is made by the Chair. This rule requires tribes that subsequently amend a gaming ordinance pending the Chair's decision to provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission.

This rule eliminates the requirement that the NIGC Chair publish a tribe's entire gaming ordinance in the **Federal Register**. Instead, the regulation will require the Agency to publish notice of each approved ordinance and the Chair's approval letter in the **Federal Register**. The Agency will continue its existing practice of publishing the ordinance itself on the NIGC's website.

Finally, the NIGC has made other non-substantive revisions, such as corrections to cross references, minor grammatical revisions, and formatting changes.

II. Development of the Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the gaming ordinance or resolution submission process. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The proposed amendment to the gaming ordinance or resolution submission regulations were intended to improve the Agency's efficiency in processing gaming ordinance or resolution submissions, clarify existing regulations, and eliminate unnecessary obstacles for tribal gaming operators.

The Commission held two virtual consultation sessions in July of 2021 to receive tribal input on the possible changes. The Commission reviewed all comments received as part of the consultation process. After considering the comments received from the public and through tribal consultations, the Commission published a notice of proposed rulemaking on December 9, 2021, 86 FR 70067. The notice of proposed rulemaking indicated that comments were due on or before January 10, 2022. On January 14, 2022, 87 FR 2384, the NIGC published a correction to the notice of proposed rulemaking, clarifying that the comment period would close on February 7, 2022. On June 16, 2022, 87 FR 36280, the NIGC announced the reopening of the comment period until June 23, 2022.

The Commission reviewed all of the public's comments and now proposes these changes, which it believes will improve the gaming ordinance or resolution submission process.

III. Review of Public Comments

The Commission received the following comments in response to the notice of proposed rulemaking.

Comment: A commenter disagreed with requiring a tribe to submit to the Chair a copy of the tribe's constitution, governing document(s), or an accurate and true description of the tribe's governmental entity and authority to enact the submitted ordinance or resolution, with a request for approval of a class II or class III ordinance or resolution or amendment thereto. The commenter stated that the documents submitted should be sufficient.

Response: The Commission agrees and accepts this recommendation. Generally, a tribe submits a resolution enacted by the tribe's governing body that indicates it was adopted pursuant to tribal law that is signed by a tribal official who certifies the authenticity or accuracy of the resolution that adopted the class II or class III ordinance resolution, or amendment thereto. Generally, this is sufficient.

IGRA requires that the Chair shall approve an ordinance or resolution unless the Chair specifically determines that the ordinance or resolution was not adopted in compliance with the tribe's governing documents. 25 U.S.C. 2710(d)(2)(B). In order to make such a determination, the Chair may need copies of the tribe's governing documents or, for those tribes that do not have a written constitution or governing documents, a description of the governmental organization and authority to approve ordinances. The purpose is not to question or interpret the tribe's law or structure, but simply to ensure that any ordinance approved was enacted by the tribe pursuant to its own laws. As part of its existing review process, the NIGC often requests such documents. It proposed to add the submission here to clarify the Chair's responsibility, not to grant the Chair additional authority. The NIGC will meet our obligations, however, through existing internal processes to ensure that the ordinance was adopted pursuant to the tribe's own laws or rules. The Commission will also publish a Bulletin discussing IGRA's requirement in this regard and the NIGC's process for ensuring that all ordinances are adopted by the authorized body pursuant to the tribe's governing requirements.

Comment: A commenter requested that we clarify the requirement that a tribe identify the entity that will take fingerprints and provide a copy of the procedures for conducting a criminal history check with a request for approval of a class II or class III ordinance, resolution, or amendment thereto.

Response: Currently, NIGC regulations require that a tribe provide the identification of the law enforcement agency that will take fingerprints and a description of the procedures for conducting a criminal history check with a request for approval of a class II or class III ordinance or resolution. 25 CFR 522.2(h). This requirement relates to background investigations performed by tribes on individuals seeking to be licensed as a key employee or primary management official of a gaming operation. The background investigation requires the tribe to request fingerprints from each key employee or primary management official.

The NIGC has long taken the position that a tribe or its tribal gaming regulatory authority qualifies as a law enforcement agency for this limited purpose. The current revision clarifies this position by removing the language suggesting that only traditional police agencies can take fingerprints.

Comment: A commenter supported the removal of the requirement to publish a tribe's class III gaming ordinance in the **Federal Register** along with the Chair's approval thereof. The commenter believes that it is a matter of tribal sovereignty for each tribe to determine whether to make its gaming ordinance publicly available.

Response: The Commission appreciates the comment. The requirement is being removed because IGRA requires all tribal gaming ordinances contain the same requirements concerning a tribe's sole proprietary interest and responsibility for the gaming activity, use of net revenues, annual audits, health and safety, and background investigations and licensing of key employees and primary management officials. The Commission, therefore, believes that publication of each ordinance in the **Federal Register** would be redundant and result in unnecessary cost to the Commission. Thus, the Commission believes that publishing a notice of approved Class III tribal gaming ordinances in the **Federal Register** is sufficient to meet the requirements of 25 U.S.C. 2710(d)(2)(B).

The Commission disagrees with the commenter's opinion that the decision to make a gaming ordinance publicly available should be determined by each tribe. Tribal gaming ordinances provide information of which the public, including tribal members, should be aware. This includes informing tribal members whether the tribe has elected to make per capita distribution, informing those seeking to be licensed as a primary management official or key employee the standards for obtaining a license, and informing patrons of a gaming operation the procedures for resolving disputes between the gaming public and the tribe. For this reason, the Commission posts every ordinance and approval thereof on its website (*www.nigc.gov*) under General Counsel, Gaming Ordinances.

IV. Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0003.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC consultation policy specifies that it will consult with tribes on Commission Actions with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on a number of topics, including proposed changes to the gaming ordinance or resolution submission and approval process.

List of Subjects in 25 CFR Part 522

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

■ Therefore, for reasons stated in the preamble, the Commission revises 25 CFR part 522 to read as follows:

PART 522—SUBMISSION OF GAMING ORDINANCE OR RESOLUTION

Sec.

Authority: 25 U.S.C. 2706, 2710, 2712.

§ 522.1 Scope of this part.

This part applies to any class II or class III gaming ordinance or resolution, or amendment thereto adopted by a tribe.

§ 522.2 Submission requirements.

A tribe shall submit to the Chair via electronic or physical mail all of the following information with a request for approval of a class II or class III ordinance or resolution, or amendment thereto:

(a) One copy of an ordinance or resolution certified as authentic by an authorized tribal official that meets the approval requirements in § 522.5(b) or § 522.7.

(b) A copy of the procedures to conduct or cause to be conducted background investigations on key employees and primary management officials and to ensure that key employees and primary management officials are notified of their rights under the Privacy Act as specified in § 556.2 of this chapter;

(c) A copy of the procedures to issue tribal licenses to primary management officials and key employees promulgated in accordance with § 558.3 of this chapter;

(d) When an ordinance or resolution concerns class III gaming, a copy of any approved tribal-state compact or class III procedures as prescribed by the Secretary that are in effect at the time the ordinance or amendment is passed;

(e) A copy of the procedures for resolving disputes between the gaming public and the tribe or the management contractor;

(f) A copy of the designation of an agent for service under § 519.1 of this chapter; and

(g) Identification of the entity that will take fingerprints and a copy of the procedures for conducting a criminal history check. Such a criminal history check shall include a check of criminal history records information maintained by the Federal Bureau of Investigation.

(h) A tribe shall provide Indian lands or tribal gaming regulations or environmental and public health and safety documentation that the Chair may request in the Chair's discretion. The tribe shall have 30 days from receipt of a request for additional documentation to respond.

§ 522.3 Amendment.

(a) Within 15 days after adoption, a tribe shall submit for the Chair's approval, via electronic or physical mail, any amendment to an ordinance or resolution.

(b) A tribe shall submit to the Chair all of the following information with a request for approval of an amendment:

(1) One copy of the amendment certified as authentic by an authorized tribal official;

(2) Any submission under § 522.2(b) through (h) that has been modified since it prior conveyance to the Chair for an ordinance, resolution, or amendment approval; and

(3) A conforming copy of the entire ordinance or resolution.

§ 522.4 Amendment approvals and disapprovals.

(a) No later than 90 days after the submission of any amendment to a class II ordinance or resolution the Chair shall approve the amendment if the Chair finds that:

(1) A tribe meets the amendment submission requirements of § 522.3(b); and

(2) The amendment complies with § 522.5(b).

(b) No later than 90 days after a tribe submits any amendment to a class II ordinance for approval, the Chair may disapprove the amendment if the Chair determines—

(1) A tribe failed to comply with the amendment submission requirements of § 522.3; or

(2) The amendment does not comply with § 522.5(b).

(c) No later than 90 days after the submission of any amendment to a class III ordinance or resolution, the Chair shall approve the amendment if the Chair finds that—

(1) A tribe meets the amendment submission requirements of § 522.3(b); and

(2) The amendment complies with § 522.7(b) and (c).

(d) No later than 90 days after a tribe submits any amendment to a class III ordinance for approval, the Chair may disapprove the amendment if the Chair determines that—

(1) A tribal governing body did not adopt the amendment in compliance

with the governing documents of the tribe;

(2) The amendment does not comply with § 522.7(b) and (c); or

(3) A tribal governing body was significantly and unduly influenced in the adoption of the amendment by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(e) The Chair shall notify a tribe of its right to appeal a disapproval under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§ 522.5 Approval requirements for class II ordinances.

No later than 90 days after the submission to the Chair including all materials required under § 522.2, the Chair shall approve the class II ordinance or resolution if the Chair finds that:

(a) A tribe meets the submission requirements contained in § 522.2; and

(b) The class II ordinance or resolution provides that—

(1) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under either § 522.11 or § 522.12;

(2) A tribe shall use net revenues from any tribal gaming or from any individually owned games only for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe and its members (if a tribe elects to make per capita distributions, the plan must be approved by the Secretary of the Interior under 25 U.S.C. 2710(b)(3));

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government agencies;

(3) A tribe shall cause to be conducted independent audits of gaming operations annually and shall submit the results of those audits to the Commission;

(4) All gaming related contracts that result in purchases of supplies, services, or concessions for more than $25,000 in any year (except contracts for professional legal or accounting services) shall be specifically included within the scope of the audit conducted under paragraph (b)(3) of this section;

(5) A tribe shall perform background investigations and issue licenses for key employees and primary management officials according to requirements that are at least as stringent as those in parts 556 and 558 of this chapter;

(6) A tribe shall issue a separate license to each place, facility, or location on Indian lands where a tribe elects to allow class II gaming; and

(7) A tribe shall construct, maintain and operate a gaming facility in a manner that adequately protects the environment and the public health and safety.

(c) A tribe that subsequently amends a gaming ordinance pending before the Chair shall also provide an authentic resolution withdrawing the pending submission and resubmitting the revised submission.

§ 522.6 Disapproval of a class II ordinance.

(a) No later than 90 days after a tribe submits an ordinance for approval under § 522.2, the Chair may disapprove an ordinance if it determines that a tribe failed to comply with the requirements of § 522.2 or § 522.5(b).

(b) The Chair shall notify a tribe of its right to appeal under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§ 522.7 Approval requirements for class III ordinances.

No later than 90 days after the submission to the Chair under § 522.2, the Chair shall approve the class III ordinance or resolution if:

(a) A tribe meets the submission requirements contained in § 522.2;

(b) The ordinance or resolution meets the requirements contained in § 522.5(b)(2) through (7); and

(c) The tribe shall have the sole proprietary interest in and responsibility for the conduct of any gaming operation unless it elects to allow individually owned gaming under § 522.11.

§ 522.8 Disapproval of a class III ordinance.

(a) Notwithstanding compliance with the requirements of § 522.7 and no later than 90 days after a submission under § 522.2, the Chair shall disapprove an ordinance or resolution if the Chair determines that:

(1) A tribal governing body did not adopt the ordinance or resolution in compliance with the governing documents of the tribe; or

(2) A tribal governing body was significantly and unduly influenced in the adoption of the ordinance or resolution by a person having a direct or indirect financial interest in a management contract, a person having management responsibility for a management contract, or their agents.

(b) The Chair shall notify a tribe of its right of appeal a disapproval under part 582 of this chapter. A disapproval shall be effective immediately unless appealed under part 582 of this chapter.

§ 522.9 Publication of class III ordinance and approval.

The Chair shall publish notice of approval of class III tribal gaming ordinances or resolutions in the **Federal Register**, along with the Chair's approval thereof.

§ 522.10 Approval by operation of law.

If the Chair fails to approve or disapprove an ordinance, resolution, or amendment thereto submitted under § 522.2 or § 522.3 within 90 days after the date of submission to the Chair, the tribal ordinance, resolution, or amendment thereto shall be considered to have been approved by the Chair but only to the extent that such ordinance, resolution, or amendment thereto is consistent with the provisions of the Indian Gaming Regulatory Act (IGRA or Act) and this chapter.

§ 522.11 Individually owned class II and class III gaming operations other than those operating on September 1, 1986.

For licensing of individually owned gaming operations other than those operating on September 1, 1986 (addressed under § 522.12), a tribal ordinance shall require:

(a) That the gaming operation be licensed and regulated under an ordinance or resolution approved by the Chair;

(b) That income to the tribe from an individually owned gaming operation be used only for the purposes listed in § 522.4(b)(2);

(c) That not less than 60 percent of the net revenues be income to the tribe;

(d) That the owner pay an assessment to the Commission under § 514.1 of this chapter;

(e) Licensing standards that are at least as restrictive as those established by State law governing similar gaming within the jurisdiction of the surrounding State; and

(f) Denial of a license for any person or entity that would not be eligible to receive a State license to conduct the same activity within the jurisdiction of the surrounding State. State law standards shall apply with respect to purpose, entity, pot limits, and hours of operation.

§ 522.12 Individually owned class II gaming operations operating on September 1, 1986.

For licensing of individually owned gaming operations operating on September 1, 1986, under § 502.3(e) of this chapter, a tribal ordinance shall contain the same requirements as those in § 522.11(a) through (d).

§ 522.13 Revocation of class III gaming.

A governing body of a tribe, in its sole discretion and without the approval of the Chair, may adopt an ordinance or resolution revoking any prior ordinance or resolution that authorizes class III gaming.

(a) A tribe shall submit to the Chair one copy of any revocation ordinance or resolution certified as authentic by an authorized tribal official.

(b) The Chairman shall publish such ordinance or resolution in the **Federal Register** and the revocation provided by such ordinance or resolution shall take effect on the date of such publication.

(c) Notwithstanding any other provision of this section, any person or entity operating a class III gaming operation on the date of publication in the **Federal Register** under paragraph (b) of this section may, during a one-year period beginning on the date of publication, continue to operate such operation in conformance with a tribal-state compact.

(d) A revocation shall not affect:

(1) Any civil action that arises during the one-year period following publication of the revocation; or

(2) Any crime that is committed during the one-year period following publication of the revocation.

Dated: September 14, 2022.

E. Sequoyah Simermeyer,

Chairman.

Jeannie Hovland

Vice Chair.

[FR Doc. 2022–20235 Filed 9–20–22; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF THE INTERIOR

National Indian Gaming Commission

25 CFR Part 571

RIN 3141–AA72

Audit Standards

AGENCY: National Indian Gaming Commission.

ACTION: Final rule.

SUMMARY: The National Indian Gaming Commission (NIGC) is amending its Audit standards regulations. The amendments eliminate the Commission waiver requirement for reviewed financial statements and allow all operations grossing less than $2 million in the previous fiscal year to submit reviewed financial statements provided that the tribe or tribal gaming regulatory authority (TGRA) permits the gaming operation to submit reviewed financials. The amendments also create a third tier of financial reporting for charitable gaming operations with annual gross revenues of $50,000 or less where, if permitted by the tribe, a tribal or charitable gaming operation may submit financial information on a monthly basis to the tribe or the TGRA and in turn, the tribe or TGRA provides an annual certification to the NIGC regarding the gaming operation's compliance with the financial reporting requirements. The amendments also add a provision clarifying that the submission of an adverse opinion does not satisfy the regulation's reporting requirements.

DATES: This rule is effective October 21, 2022.

FOR FURTHER INFORMATION CONTACT: Michael Hoenig, National Indian Gaming Commission; Telephone: (202) 632–7003.

SUPPLEMENTARY INFORMATION:

I. Background

The Indian Gaming Regulatory Act (IGRA or Act), Public Law 100–497, 25 U.S.C. 2701 *et seq.,* was signed into law on October 17, 1988. The Act establishes the National Indian Gaming Commission (NIGC or Commission) and sets out a comprehensive framework for the regulation of gaming on Indian lands. On January 22, 1993, the Commission promulgated § 571.12 establishing audit standards for tribal gaming facilities. On July 27, 2009, the Commission amended the regulation to allow tribes with multiple facilities to consolidate their audit statements into one and to allow operations earning less than $2 million in gross gaming revenue to file an abbreviated statement.

II. Development of the Rule

On June 9, 2021, the National Indian Gaming Commission sent a Notice of Consultation announcing that the Agency intended to consult on several topics, including proposed changes to the Audit standards. Prior to consultation, the Commission released proposed discussion drafts of the regulations for review. The amendments to the Audit standards are designed to reduce the financial hurdles that small and charitable gaming operations face regarding the audit requirement. They also clarify which types of audit opinions satisfy the audit submission requirements. The Commission held two virtual consultation sessions in September and one virtual consultation in October of 2021 to receive tribal input on any proposed changes.

The Commission then published a proposed rule for notice and comments on June 1, 2022 at 87 FR 33091 and extended the comment period to August 1, 2022 on July 13, 2022 at 87 FR 41637.

III. Review of Public Comments

The Commission received several general and specific comments on the proposed amendments.

Comment: One commenter proposed changes to eliminate the ''prepared by a certified public accountant'' language from the financial statements element of audit submissions.

Response: Commission agrees and has revised the rule accordingly.

Comment: One commenter proposed changes to clarify that the independent certified public accountant is the entity that may issue an adverse opinion and that any adverse opinions must still be submitted to the Commission.

Response: Commission agrees and has revised the rule accordingly.

Comment: One commenter expressed appreciation for the Commission's proposal to continue accepting adverse opinions that result from financial statements prepared in accordance with generally accepted accounting principles as promulgated by the Financial Accounting Standards Board rather than the Governmental Accounting Standards Board.

Response: Commission appreciates the comment and has maintained the exception in this rule.

Comment: Two commenters noted that the discussion draft circulated during the consultation rounds addressed disclaimed audits, but the proposed rule did not. They asked what the Commission's position is on disclaimed audits.

Response: At this time, the Commission has chosen to continue to accept disclaimed audit opinions, but may revisit the issue in the future. The Compliance Division will continue to carefully review each disclaimed opinion and the circumstances behind them.

Comment: One commenter expressed concern that tribes who go to the effort and expense of conducting an audit only to receive an adverse opinion are now subject to the same violation as a tribe that failed to submit anything at all.

Response: The reasons for receiving an adverse opinion and the difference in circumstances is more appropriately

considered in the Civil Fine Assessment process, which requires the Chairman to weigh the unique facts and circumstances—including good faith efforts toward compliance—for each violation.

Comment: Two commenters are concerned that this creates a new basis for a violation without requiring an intermediate investigative or technical assistance step.

Response: Under the amended rule, if a tribe submits an adverse opinion, the Chair must still follow the procedures set forth in IGRA and NIGC regulations before taking any enforcement action. The Commission has determined that this amendment is necessary for the Chairman to protect the tribal gaming industry and its assets.

Comment: One commenter has requested more detail on how a tribe or TGRA must notify NIGC that it has given permission for a gaming operation to submit reviewed financial statements.

Response: Upon reviewing this section of the regulation, the Commission determined that notice is not necessary and has revised the rule accordingly. The Commission presumes by submission of the reviewed financial statements that the tribe or TGRA has given permission for the review process. If any questions arise about a gaming operation's authority to file reviewed statements, the Compliance Division will contact the tribe or TGRA for confirmation.

Comment: Several commenters asked what constitutes a ''reason to believe'' that a gaming operation's assets are at risk or are being misused under IGRA, and suggest that it should be more clearly defined.

Response: The Commission disagrees. Nothing in IGRA or NIGC regulations requires the Commission to reduce the audit requirements to a review of financial statements or submission of financial records to the TGRA. The Commission is taking this step to relieve the burden on certain small and charitable gaming operations. That being said, the Commission and the Chairman still have the regulatory responsibility placed on it under IGRA to ensure that the Tribe is the primary beneficiary of its gaming operations and that gaming revenues are used for the purposes set forth in IGRA. The Commission believes the standard set forth in this rule allows the NIGC to achieve both of those goals and adequately limits the Chairman's discretion to a good faith belief in a threat to gaming assets.

Comment: Several commenters noted that draft circulated during consultations included changes to the language regarding gaming operations consolidating audits for multiple places, facilities, or locations, but the proposed rule did not contain these changes.

Response: In the draft submitted for consultation, the language in § 571.12(d) stated: ''If a tribe has multiple gaming facilities or operations on the tribe's Indian lands, the tribe may choose to satisfy the annual audit requirement of paragraph (b) with a consolidated audit if the following requirements are satisfied. . . .'' This change was inadvertently left out of the NPRM, and the language reverted back to that in the existing regulation, ''If a gaming operation has multiple gaming places. . . .'' The Commission is reinstating the language proposed in the consultation draft, as it is more accurate.

Comment: One commenter expressed appreciation for the third tier of financial reporting established for operations with gross gaming revenue under $50,000.

Response: Commission appreciates this comment.

Comment: Several commenters requested that the Commission increase the $50,000 threshold for reviewed financial statements to $100,000 or higher.

Response: Commission disagrees. The reviewed financial statements submitted to date do not indicate any benefit to raising the threshold at this time. The Commission may revisit this in the future if circumstances change.

IV. Regulatory Matters

Regulatory Flexibility Act

The rule will not have a significant impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* Moreover, Indian tribes are not considered to be small entities for the purposes of the Regulatory Flexibility Act.

Small Business Regulatory Enforcement Fairness Act

The rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule does not have an effect on the economy of $100 million or more. The rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, local government agencies or geographic regions. Nor will the rule have a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of the enterprises, to compete with foreign based enterprises.

Unfunded Mandate Reform Act

The Commission, as an independent regulatory agency, is exempt from compliance with the Unfunded Mandates Reform Act, 2 U.S.C. 1502(1); 2 U.S.C. 658(1).

Takings

In accordance with Executive Order 12630, the Commission has determined that the rule does not have significant takings implications. A takings implication assessment is not required.

Civil Justice Reform

In accordance with Executive Order 12988, the Commission has determined that the rule does not unduly burden the judicial system and meets the requirements of section 3(a) and 3(b)(2) of the Order.

National Environmental Policy Act

The Commission has determined that the rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969, 42 U.S.C. 4321, *et seq.*

Paperwork Reduction Act

The information collection requirements contained in this rule were previously approved by the Office of Management and Budget (OMB) as required by 44 U.S.C. 3501 *et seq.* and assigned OMB Control Number 3141–0001.

Tribal Consultation

The National Indian Gaming Commission is committed to fulfilling its tribal consultation obligations—whether directed by statute or administrative action such as Executive Order (E.O.) 13175 (Consultation and Coordination with Indian Tribal Governments)—by adhering to the consultation framework described in its Consultation Policy published July 15, 2013. The NIGC's consultation policy specifies that it will consult with tribes on Commission Action with Tribal Implications, which is defined as: Any Commission regulation, rulemaking, policy, guidance, legislative proposal, or operational activity that may have a substantial direct effect on an Indian tribe on matters including, but not limited to the ability of an Indian tribe to regulate its Indian gaming; an Indian tribe's formal relationship with the Commission; or the consideration of the Commission's trust responsibilities to Indian tribes.

Pursuant to this policy, on June 9, 2021, the National Indian Gaming

Commission sent a Notice of Consultation to the public, announcing the Agency intended to consult on several topics, including proposed amendments to NIGC audit standards. The Commission held two virtual consultation sessions in September and one virtual consultation session in October of 2021 to receive tribal input on proposed changes.

List of Subjects in 25 CFR Part 571

Gambling, Indian—lands, Indian—tribal government, Reporting and recordkeeping requirements.

Therefore, for reasons stated in the preamble, 25 CFR part 571 is amended as follows:

PART 571—MONITORING AND INVESTIGATIONS

■ 1. The authority citation for part 571 continues to read as follows:

Authority: 25 U.S.C. 2706(b), 2710(b)(2)(C), 2715, 2716.

■ 2. Revise § 571.12 to read as follows:

§ 571.12 Audit standards.

(a) Each tribe shall prepare comparative financial statements covering all financial activities of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year.

(b) A tribe shall engage an independent certified public accountant to conduct an annual audit of the financial statements of each class II and class III gaming operation on the tribe's Indian lands for each fiscal year. The audit and auditor must meet the following standards:

(1) The independent certified public accountant must be licensed by a state board of accountancy.

(2) Financial statements shall conform to generally accepted accounting principles and the annual audit shall conform to generally accepted auditing standards.

(3) The independent certified public accountant expresses an opinion on the financial statements. If the independent certified public accountant issues an adverse opinion, it still must be submitted, but does not satisfy this requirement unless:

(i) It is the result of the gaming operation meeting the definition of a state or local government and the gaming operation prepared its financial statements in accordance with generally accepted accounting principles (GAAP) as promulgated by Financial Accounting Standards Board (FASB); or

(ii) The adverse opinion pertains to a consolidated audit pursuant to paragraph (d) of this section and the operations not attributable to the adverse opinion are clearly identified.

(c) If a gaming operation has gross gaming revenues of less than $2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The independent certified public accountant completes a review of the financial statements conforming to the statements on standards for accounting and review services of the gaming operation; and

(2) The tribe or tribal gaming regulatory authority (TGRA) permits the gaming operation to submit a review of the financial statements according to this paragraph (c); provided that

(3) If the Chair of the NIGC has reason to believe that the assets of a gaming operation are not being appropriately safeguarded or the revenues are being misused under the Indian Gaming Regulatory Act (IGRA), the Chair may, at his or her discretion, require any gaming operation subject to this paragraph (c) to submit additional information or comply with the annual audit requirement of paragraph (b) of this section.

(d) If a tribe has multiple gaming facilities or operations on the tribe's Indian lands, the tribe may choose to satisfy the annual audit requirement of paragraph (b) of this section with a consolidated audit if the following requirements are satisfied:

(1) The tribe is the owner of all the facilities;

(2) The independent certified public accountant completes an audit conforming to generally accepted auditing standards of the consolidated financial statements;

(3) The consolidated financial statements include consolidating schedules for each gaming place, facility, or location; and

(4) The independent certified public accountant expresses an opinion on the consolidated financial statement as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(e) If there are multiple gaming operations on a tribe's Indian lands and each operation has gross gaming revenues of less than $2,000,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(1) The tribe chooses to consolidate the financial statements of the gaming operations;

(2) The consolidated financial statements include consolidating schedules for each operation;

(3) The independent certified public accountant completes a review of the consolidated schedules conforming to the statements on standards for accounting and review services for each gaming facility or location; and

(4) The independent certified public accountant expresses an opinion on the consolidated financial statements as a whole and subjects the accompanying financial information to the auditing procedures applicable to the audit of consolidated financial statements.

(f)(1) If a tribal or charitable gaming operation has gross gaming revenues of less than $50,000 during the prior fiscal year, the annual audit requirement of paragraph (b) of this section is satisfied if:

(i) The gaming operation creates, prepares, and maintains records in accordance with Generally Accepted Accounting Principles;

(ii) At a minimum, the gaming operation provides the tribe or tribal gaming regulatory authority (TGRA) with the following financial information on a monthly basis:

(A) Each occasion when gaming was offered in a month;

(B) Gross gaming revenue for each month;

(C) Amounts paid out as, or paid for, prizes for each month;

(D) Amounts paid as operating expenses, providing each recipient's name; the date, amount, and check number or electronic transfer confirmation number of the payment; and a brief description of the purpose of the operating expense;

(E) All deposits of gaming revenue;

(F) All withdrawals of gaming revenue;

(G) All expenditures of net gaming revenues, including the recipient's name, the date, amount, and check number or electronic transfer confirmation number of the payment; and a brief description of the purpose of the expenditure; and

(H) The names of each employee and volunteer, and the salary or other compensation paid to each person;

(iii) The tribe or TGRA permits the gaming operation to be subject to this paragraph (f), and the tribe or TGRA informs the NIGC in writing of such permission; and

(iv) Within 30 days of the gaming operation's fiscal year end, the tribe or the TGRA provides a certification to the NIGC that the tribe or TGRA reviewed the gaming operation's financial information, and after such review, the tribe or TGRA concludes that the gaming operation conducted the gaming in a manner that protected the integrity of the games offered and safeguarded

the assets used in connection with the gaming operation, and the gaming operation expended net gaming revenues in a manner consistent with IGRA, NIGC regulations, the tribe's gaming ordinance or resolution, and the tribe's gaming regulations.

(2) If the tribe or TGRA does not or cannot provide the NIGC with the certification required by paragraph (f)(1)(v) of this section within 30 days of the gaming operation's fiscal year end, the gaming operation must otherwise comply with the annual audit requirement of paragraph (b) of this section.

(3) The tribe or TGRA may impose additional financial reporting requirements on gaming operations that otherwise qualify under this paragraph (f).

(4) If the Chair of the NIGC has reason to believe that the assets of a gaming operation are not being appropriately safeguarded or the revenues are being misused under IGRA, the Chair may, at his or her discretion, require any gaming operation subject to this paragraph (f) to submit additional information or comply with the annual audit requirement of paragraph (b) of this section.

(5) This paragraph (f) does not affect other requirements of IGRA and NIGC regulations, including, but not limited to, fees and quarterly fee statements (25 U.S.C. 2717; 25 CFR part 514); requirements for revenue allocation plans (25 U.S.C. 2710(b)(3)); requirements for individually-owned gaming (25 U.S.C. 2710(b)(4), (d); 25 CFR 522.10); minimum internal control standards for Class II gaming and agreed-upon procedures reports (25 CFR part 543); background and licensing for primary management officials and key employees of a gaming operation (25 U.S.C. 2710(b)(2)(F); 25 CFR parts 556, 558); and facility licenses (25 CFR part 559).

Dated: September 14, 2022.

E. Sequoyah Simermeyer,

Chairman.

Jeannie Hovland,

Vice Chair.

[FR Doc. 2022–20230 Filed 9–20–22; 8:45 am]

BILLING CODE 7565–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0674]

RIN 1625–AA00

Safety Zone; KE Electric Party Firework Show; Detroit River; Detroit, MI

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for navigable waters near the Downtown Detroit, Detroit, MI. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards associated with fireworks displays created by the K/E Electric Party Firework Show display. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Detroit or his designated representative.

DATES: This rule is effective from 9:30 p.m. through 10:00 p.m. on September 24, 2022.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2022–0674 in the ''SEARCH'' box and click ''SEARCH.'' Click on Open Docket Folder on the line associated with this rule.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Ms. Tracy Girard, Waterways Department, Coast Guard Sector Detroit, telephone (313) 568–9564, email *Tracy.M.Girard@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable. The event sponsor notified the Coast Guard with insufficient time to accommodate the comment period. This safety zone must be established by September 24, 2022 in order to protect the public and vessels from the hazards associated with a maritime fireworks display.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be contrary to the rule's objectives of protecting the public and vessels on the navigable waters in the vicinity of the fireworks display.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Detroit (COTP) has determined that potential hazards associated with fireworks displays will be a safety concern for anyone within a 420-foot radius of the launch site. The likely combination of recreational vessels, darkness punctuated by bright flashes of light, and fireworks debris falling into the water presents risks of collisions which could result in serious injuries or fatalities. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the fireworks display.

IV. Discussion of the Rule

This rule establishes a safety zone that will be enforced from 9:30 p.m. through 10:30 p.m. on September 24, 2022. The safety zone will encompass all U.S. navigable waters of the Detroit River within a 420-foot radius of the fireworks launch site located at the The ICON Center in downtown Detroit, MI. The duration of the safety zone is intended to protect personnel, vessels, and the marine environment in these navigable waters during the fireworks display. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the COTP Detroit or his designated representative. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking.

Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. Vessel traffic will be able to safely transit around this safety zone which would impact a small designated area of the Detroit River for approximately 1 hour during the evening when vessel traffic is normally low. Moreover, under certain conditons vessels may still transit through the safety zone when permitted by the COTP Detroit or his designated representative.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting apprixmately 1 hour that will prohibit entry within a 420-foot radius of where the fireworks display will be conducted. It is categorically excluded from further review under paragraph L[60] of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.3.

■ 2. Add § 165.T09–0674 to read as follows:

§ 165.T09–0674 Safety Zone; KE Electric Party Firework Show; Detroit River, Detroit, MI.

(a) *Location.* The following area is a temporary safety zone: all U.S. navigable waters of the Detroit River within a 420-foot radius of the fireworks launch site located at position 42°20.18′ N 083°00.73′ W. All geographic coordinates are North American Datum of 1983 (NAD 83).

(b) *Enforcement period.* This regulation will be enforced from 9:30 p.m. through 10:30 p.m. on September 24, 2022. The COTP Detroit or his designated representative may suspend enforcement of the safety zone at any time.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into, transiting or anchoring within this safety zone is prohibited unless authorized by the COTP Detroit or his designated representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the COTP Detroit or his designated representative.

(3) The ''designated representative'' of the COTP Detroit is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP Detroit to act on his behalf. The designated representative of the COTP Detroit will be aboard either a Coast Guard or Coast Guard Auxiliary vessel. The COTP Detroit or his designated representative may be contacted via VHF Channel 16.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the COTP Detroit or his designated representative to obtain permission to do so. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP Detroit or his designated representative.

Dated: September 6, 2022.

Brad W. Kelly,

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

[FR Doc. 2022–20452 Filed 9–20–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2022–0798]

RIN 1625–AA00

Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX

AGENCY: Coast Guard, DHS.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°49′27.0″ N, 097°08′38.5″ W; 27°49′34.0″ N, 097°08′41″ W; 27°49′26.4″ N, 097°08′29.1″ W; 27°49′35.9″ N, 097°08′31.7″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipelines that will be removed from the floor of the Corpus Christi Shipping Channel. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sector Corpus Christi or a designated representative.

DATES: This rule is effective without actual notice from September 21, 2022 through 3 p.m. on September 22, 2022. For the purposes of enforcement, actual notice will be used from 9 a.m. on September 19, 2022 until September 21, 2022.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Lieutenant Commander Anthony Garofalo, Sector Corpus Christi Waterways Management Division, U.S. Coast Guard; telephone 361–939–5130, email *CCWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

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

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. We must establish this safety zone immediately to protect personnel, vessels, and the marine environment from potential hazards created by pipeline removal operations and lack sufficient time to provide a reasonable comment period and then to consider those comments before issuing the rule.

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

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Corpus Christi (COTP) has determined that potential hazards associated with pipeline removal operations occurring from 9 a.m. on September 19, 2022 through 3 p.m. on September 22, 2022 will be a safety concern for anyone within the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°49′27.0″ N, 097°08′38.5″ W; 27°49′34.0″ N, 097°08′41″ W; 27°49′26.4″ N, 097°08′29.1″ W; 27°49′35.9″ N, 097°08′31.7″ W. The purpose of this rule is to ensure safety of vessels and persons on these navigable waters in the safety zone while pipelines are removed from the floor of the Corpus Christi Shipping Channel.

IV. Discussion of the Rule

This rule establishes a temporary safety zone from 9 a.m. on September 19, 2022 through 3 p.m. on September 22, 2022 and will be subject to enforcement from 9 a.m. to 3 p.m. each day. The safety zone will encompass all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°49′27.0″ N, 097°08′38.5″ W; 27°49′34.0″ N, 097°08′41″ W; 27°49′26.4″ N, 097°08′29.1″ W; 27°49′35.9″ N, 097°08′31.7″ W. The pipeline will be removed along the floor of the Corpus Christi Shipping Channel. No vessel or person is permitted to enter the temporary safety zone during the effective period without obtaining permission from the COTP or a designated representative, who may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450. The Coast Guard will issue Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The temporary safety zone will be enforced for a short period of only 6 hours each day. The rule does not completely restrict the traffic within a waterway and allows mariners to request permission to enter the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section above.

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, and Environmental Planning, COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a temporary safety zone for navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°49′27.0″ N, 097°08′38.5″ W; 27°49′34.0″ N, 097°08′41″ W; 27°49′26.4″ N, 097°08′29.1″ W; 27°49′35.9″ N, 097°08′31.7″ W. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by pipeline that will be removed from the floor of the Corpus Christi Shipping Channel. It is categorically excluded from further review under paragraph L60(c) Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

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

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T08–0798 to read as follows:

§ 165.T08–0798 Safety Zone; Corpus Christi Shipping Channel, Corpus Christi, TX.

(a) *Location.* The following area is a safety zone: all navigable waters of the Corpus Christi Shipping Channel in a zone defined by the following coordinates; 27°49′27.0″ N, 097°08′38.5″ W; 27°49′34.0″ N, 097°08′41″ W; 27°49′26.4″ N, 097°08′29.1″ W; 27°49′35.9″ N, 097°08′31.7″ W.

(b) *Enforcement period.* This section will be enforced from 9 a.m. to 3 p.m. daily on September 19, 2022 through September 22, 2022.

(c) *Regulations.* (1) According to the general regulations in § 165.23 of this part, entry into this temporary safety zone is prohibited unless authorized by the Captain of the Port Sector Corpus Christi (COTP) or a designated representative. They may be contacted on Channel 16 VHF–FM (156.8 MHz) or by telephone at 361–939–0450.

(2) If permission is granted, all persons and vessels shall comply with the instructions of the COTP or designated representative.

(d) *Information broadcasts.* The COTP or a designated representative will inform the public of the enforcement times and date for this safety zone through Broadcast Notices to Mariners, Local Notices to Mariners, and/or Safety Marine Information Broadcasts as appropriate.

J.B. Gunning,

Captain, U.S. Coast Guard, Captain of the Port Sector Corpus Christi.

[FR Doc. 2022–20432 Filed 9–20–22; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 71

RIN 2900–AR28

Extension of Program of Comprehensive Assistance for Family Caregivers Eligibility for Legacy Participants and Legacy Applicants

AGENCY: Department of Veterans Affairs.

ACTION: Interim final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations that govern VA's Program of Comprehensive Assistance for Family Caregivers (PCAFC) by extending eligibility for legacy participants, legacy applicants and their Family Caregivers, and the applicable benefits afforded to such Family Caregivers, to include the monthly stipend, by three years. VA is also making non-substantive technical amendments to the regulations.

DATES:

Effective date: This interim final rule is effective September 21, 2022.

Comment date: Comments must be received on or before November 21, 2022.

ADDRESSES: Comments must be submitted through *www.Regulations.gov.* Comments received will be available at regulations.gov for public viewing, inspection or copies.

FOR FURTHER INFORMATION CONTACT: Colleen Richardson, PsyD, Executive Director, Caregiver Support Program, Patient Care Services, Veterans Health Administration, Department of Veterans Affairs, 810 Vermont Ave. NW, Washington, DC 20420, (202) 461–7337. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION:

I. Background

In 2010, section 1720G of title 38 of the United States Code (U.S.C.) was codified when it was enacted as part of the Caregivers and Veterans Omnibus Health Services Act of 2010. Public Law (Pub. L.) 111–163, 124 Stat. 1130 (2010). As originally enacted, section 1720G required VA, in part, to establish a Program of Comprehensive Assistance for Family Caregivers (PCAFC) for Family Caregivers of eligible veterans who have a serious injury incurred or aggravated in the line of duty in the active military, naval, or air service on or after September 11, 2001. VA implemented PCAFC through its regulations in part 71 of title 38, Code of Federal Regulations (CFR). PCAFC provides certain benefits such as training, respite care, counseling, technical support, beneficiary travel (to attend required caregiver training and for an eligible veteran's medical appointments), access to health care (if qualified) through the Civilian Health and Medical Program of the Department of Veterans Affairs (CHAMPVA), and a monthly stipend. 38 U.S.C. 1720G; 38 CFR 71.25(d), 71.40.

In 2018, section 161 of the John S. McCain III, Daniel K. Akaka, and Samuel R. Johnson VA Maintaining Internal Systems and Strengthening Integrated Outside Networks Act of 2018 (VA MISSION Act of 2018), Public Law 115–182, 132 Stat. 1393 (2018), amended 38 U.S.C. 1720G by expanding PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, in a phased approach, establishing new benefits for designated Primary Family Caregivers of eligible veterans, and making other changes affecting program eligibility and VA's evaluation of PCAFC applications. To incorporate these and other necessary changes to improve and expand VA's PCAFC, VA amended 38 CFR part 71. 85 **Federal Register** (FR) 46226 (July 31, 2020). These changes took effect on October 1, 2020. *Id.* As part of that rulemaking, VA revised the eligibility criteria for PCAFC in § 71.20, identified a legacy cohort (*i.e.,* legacy applicants, legacy participants, and their Family Caregivers, as those terms are defined in § 71.15) who were approved for PCAFC under the previous eligibility criteria, and created a one-year transition period whereby the legacy cohort would continue to remain eligible for PCAFC while VA reassessed whether the legacy cohort would continue to be eligible for PCAFC under the new eligibility criteria.

When VA established the initial one-year transition period for the legacy cohort, VA intended to establish a transition plan for legacy participants and legacy applicants who may or may not meet the new eligibility criteria and whose Primary Family Caregivers could have their stipend amount impacted by changes to the stipend payment calculation. 85 FR 13356 (March 6, 2020). The one-year period was intended to provide a reasonable amount of time for VA to conduct reassessments, minimize disruption to those individuals, including disruptions that would result from the changes to the stipend payment calculation, and provide a fair and reasonable time for transition. 85 FR 46253. VA intended that all legacy applicants, legacy participants, and their Family Caregivers would have the same transition period, regardless of when the reassessment was completed during the one-year transition period. *Id.* This transition period was intended to ensure equitable treatment for all legacy applicants, legacy participants, and their Family Caregivers. *Id.*

On September 22, 2021, VA published an interim final rule (First PCAFC Extension for Legacy Cohort) which amended 38 CFR part 71, by extending the one-year transition period and timeline for VA to conduct all necessary reassessments of the legacy cohort for one additional year (that is, until September 30, 2022). 86 FR 52614 (September 22, 2021). A targeted discussion explaining why VA created the legacy cohort and the initial one-year transition period is more fully described in the First PCAFC Extension for Legacy Cohort, and that description is adopted by reference into this preamble. *See id.* at 52615.

On March 25, 2022, the U.S. Court of Appeals for the Federal Circuit issued a decision that set aside certain PCAFC criteria that VA established as part of the July 31, 2020 rulemaking. *Veteran Warriors, Inc.* v. *Sec'y of Veterans Affairs,* 29 F.4th 1320 (Fed. Cir. 2022). The court's decision applies to cases and claims initiated on or after the date of the decision, as well as any PCAFC

determination still open on direct review before VA as of that date. Matters still open on direct review include determinations concerning stipend decreases or discharges for the legacy cohort made in the course of reassessments completed before March 25, 2022. As a result, VA must repeat certain reassessments of the legacy cohort to account for the court's interpretation, as explained in more detail below.

For the reasons explained in the subsequent discussion below, VA is extending the transition period and timeline for VA to complete reassessments of the legacy cohort by three additional years (that is, until September 30, 2025). Accordingly, VA is amending 38 CFR 71.20(b) and (c) regarding program eligibility; § 71.30(e) regarding reassessments; and § 71.40(c)(4)(i)(B) through (D), (c)(4)(ii)(C)(*2*)(*i*) and (*ii*), and the note to (c)(4)(ii)(C)(*2*) regarding the stipend methodology, to account for the additional three-year period through September 30, 2025.

Additionally, VA is making technical amendments to correct the citation in the definition of ''General Caregiver'' in § 71.15; and in §§ 71.20(a)(2)(ii) and (iii) and 71.25(a)(3)(ii)(A) and (B), VA is making technical amendments to reflect the date VA submitted to Congress a certification that VA fully implemented the information technology (IT) system required by section 162 of the VA MISSION Act of 2018 (*i.e.,* October 1, 2020) and the date that is two years after the Secretary submitted such certification to Congress (*i.e.,* October 1, 2022).

II. Extension of Transition Period for Legacy Cohort

VA published the First PCAFC Extension for Legacy Cohort because VA was unable to conduct all reassessments of the legacy cohort within the one-year period provided in the July 31, 2020 rulemaking. 86 FR 52616. Since the First PCAFC Extension for Legacy Cohort was published, VA has made significant progress in completing reassessments of the legacy cohort. As stated in the First PCAFC Extension for the Legacy Cohort, as of July 1, 2021, VA had only completed four percent of the estimated 19,800 reassessments needed for the legacy cohort. *Id.* As of August 3, 2022, VA has completed approximately 95 percent of the reassessments needed for the legacy cohort; [1] however, as discussed below, the outcome of the *Veteran Warriors* decision has impacted VA's ability to rely on certain determinations made during many of the reassessments that were completed. Therefore, VA believes an additional three-year transition period is necessary while VA completes the remaining reassessments and repeats certain reassessments that were completed before the *Veteran Warriors* decision.

A. Veteran Warriors, Inc. v. Sec'y of Veterans Affairs (Veteran Warriors)

In the July 31, 2020 rulemaking, VA added a ''need for supervision, protection, or instruction'' as a basis upon which VA could determine that a veteran or servicemember is in need of personal care services under 38 CFR 71.20(a)(3). VA defined the term, ''need for supervision, protection, or instruction,'' to mean ''an individual has a functional impairment that directly impacts the individual's ability to maintain his or her personal safety on a daily basis.'' 38 CFR 71.15. This term and its definition were intended to implement the two criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) (that is, ''a need for supervision or protection based on symptoms or residuals of neurological or other impairment or injury'' and ''a need for regular or extensive instruction or supervision without which the ability of the veteran to function in daily life would be seriously impaired'', respectively). The term ''need for supervision, protection, or instruction'' is also referenced in the definition of ''unable to self-sustain in the community'' in 38 CFR 71.15, which is applied for purposes of determining the applicable stipend level in § 71.40(c)(4)(i)(A).

In *Veteran Warriors,* several parts of the July 31, 2020 rulemaking were challenged, including VA's definition of need for supervision, protection, or instruction. On March 25, 2022, the U.S. Court of Appeals for the Federal Circuit set aside VA's definition of ''need for supervision, protection, or instruction'' because it determined that the definition was inconsistent with the statutory language. *Veteran Warriors* at 1342–43. The court dismissed or denied the petition for review with respect to the other regulatory provisions challenged. Thus, none of the other PCAFC criteria or requirements in 38 CFR part 71 were impacted by the court's decision.

As a result of the court's decision, effective March 25, 2022, VA is required to apply clauses (ii) and (iii) of 38 U.S.C. 1720G(a)(2)(C) in place of the regulatory definition at 38 CFR 71.15 when making determinations under the PCAFC regulations that became effective on October 1, 2020. Further, in addition to cases and claims initiated on or after March 25, 2022, the judicial interpretation in *Veteran Warriors* also applies to any PCAFC determination (*e.g.,* claim, case, appeal) ''still open on direct review'' before VA as of March 25, 2022, in any future decision that will be issued as part of that direct review. *See George* v. *McDonough,* 142 S. Ct. 1953, 1962 (2022) (citing the general rule from *Harper* v. *Virginia Dept. of Taxation,* 509 U.S. 86, 97 (1993) that the new interpretation of a statute can only retroactively affect decisions still open on direct review).

In general, new judicial interpretations apply to cases pending when the judicial interpretation is issued, but do not provide a basis to reopen final decisions. *See generally Jordan* v. *Nicholson,* 401 F.3d 1296, 1298–99 (Fed. Cir. 2005) (citing *Reynoldsville Casket Co.* v. *Hyde,* 514 U.S. 749, 752 (1995) as an example of the United States Supreme Court denying an attempt to reopen a final decision); *Disabled Am. Veterans* v. *Gober,* 234 F.3d 682, 698 (Fed. Cir. 2000) (citing *Harper,* 509 U.S. at 97 (1993), in stating that ''new interpretation of a statute can only retroactively effect decisions still open on direct review, not those decision[s] that are final''); *Rivers* v. *Roadway Express,* 511 U.S. 298, 311–13 (1994) (discussing retroactive application of statutes). In general, cases are pending when no decision containing language ''from which a claimant could deduce that the claim was adjudicated'' has been issued. *Ingram* v. *Nicholson,* 21 Vet. App. 232, 243 (2007).

In the context of PCAFC, VA interprets ''still open on direct review'' to mean that, as of March 25, 2022, VA had not issued the last notice of decision that it intends to issue or provide the claimant on a PCAFC determination. This includes decisions pertaining to joint applications, reassessments, discharges, revocations, and stipend changes. Matters ''still open on direct review'' also encompass determinations for which VA had, as of March 25, 2022, issued advanced notice of its findings, but not ''final notice'' as that term is used in 38 CFR 71.40(c)(4)(ii)(C)(*1*)(*ii*) and (c)(4)(ii)(C)(*2*)(*ii*) and 71.45(b)(1)(ii)(A). Under those provisions, VA provides a 60-day advanced notice period before

[1] Reassessment data provided in this rulemaking come from the Caregiver Record Management Application (CARMA) system. CARMA provides a snapshot in time, as of the point when the report was run. This data is agile due to factors such as delayed data entry and data corrections, and therefore this data should be considered an estimate.

issuing a final notice in the case of a stipend decrease based on a reassessment or a discharge based on the eligible veteran not meeting the eligibility criteria in § 71.20(a)(1) through (4). As a result, for those determinations involving the ''need for supervision, protection, or instruction'' definition that were still pending issuance of a last notice of decision on March 25, 2022, VA must re-evaluate such determinations based on the *Veteran Warriors* decision, as such determinations are considered ''still open on direct review.''

For the legacy cohort, the 60-day advanced notice period for stipend decreases under § 71.40(c)(4)(ii)(C)(*2*)(*ii*) and discharges under § 71.45(b)(1)(i)(A) (because the eligible veteran does not meet the requirements of § 71.20) cannot begin until October 1, 2022, by regulation, and thus, could not have been issued before March 25, 2022. Prior to March 25, 2022, when a reassessment of a member of the legacy cohort under § 71.30(e) resulted in a decision to decrease the stipend or discharge the individual, VA provided such preliminary findings to the individual, with the intent of adopting those findings in its advanced notice of findings to be provided on October 1, 2022. However, because final notice of VA's decision regarding stipend decreases or discharges for the legacy cohort cannot be issued before 60 days after October 1, 2022, those cases or claims are ''still open on direct review'' by VA. Moreover, because VA's preliminary findings regarding stipend decreases and discharges made in the course of reassessments under § 71.30(e) for the legacy cohort were based, at least in part, on VA's definition for need for supervision, protection, or instruction that was invalidated by the decision in *Veteran Warriors,* VA can no longer rely on those preliminary findings.

In contrast, for any PCAFC decision in which VA had issued a final decision notice before March 25, 2022, VA is not required to proactively reopen the matter and adjudicate the decision again in accordance with *Veteran Warriors. See Jordan,* 401 F.3d at 1298–99; *Disabled Am. Veterans,* 234 F.3d at 698; *Rivers,* 511 U.S. at 311–13. Such decisions include those in which members of the legacy cohort received notice of a decision that was favorable before March 25, 2022 (*i.e.,* a reassessment that resulted in a determination of continued eligibility for PCAFC under 38 CFR 71.20(a) with the same monthly stipend payment or an increased monthly stipend payment). Upon making such determinations, VA provides written notice of the decision. When a reassessment results in an increase in the monthly stipend payment for a Primary Family Caregiver of a legacy applicant or legacy participant, the increase takes effect as of the date of the reassessment. 38 CFR 71.40(c)(4)(ii)(C)(*2*)(*i*). Such determination is considered final and is not subject to the 60-day advanced notice period for stipend decreases under § 71.40(c)(4)(ii)(C)(*2*)(*ii*) and discharges under § 71.45(b)(1)(i)(A). Therefore, VA would not repeat reassessments for the legacy cohort that resulted in a favorable determination before March 25, 2022. However, this would not preclude a claimant from requesting a review of or appealing a PCAFC decision issued before March 25, 2022, to the extent authorized by law.

Prior to the *Veteran Warriors* decision on March 25, 2022, VA had completed approximately 80 percent of the reassessments for the legacy cohort. As a result of those reassessments, VA determined that approximately 12,970 of the legacy participants and legacy applicants in the legacy cohort that were reassessed were no longer eligible for PCAFC, and approximately 360 legacy participants and legacy applicants that were reassessed would remain eligible but their Primary Family Caregiver's monthly stipend would be reduced based on the stipend level criteria in § 71.40(c)(4)(i)(A). Each of these approximately 13,330 individuals was provided preliminary findings from VA following their reassessments.

Since VA cannot rely on preliminary findings regarding stipend decreases and discharges for the legacy cohort that were based on VA's definition for need for supervision, protection, or instruction that was invalidated by the decision in *Veteran Warriors,* VA must repeat reassessments for such members of the legacy cohort who were reassessed using the definition of need for supervision, protection, or instruction (hereinafter referred to as ''repeat reassessments''). In light of the short timeframe between the date *Veteran Warriors* was decided and September 30, 2022, VA will not be able to complete the remaining reassessments and repeat reassessments before the transition period for the legacy cohort is set to end under VA's current regulations. In order to maintain equity and parity within the legacy cohort, VA believes it is prudent to extend the eligibility for the entire legacy cohort until all members of the legacy cohort have been reassessed using the same eligibility criteria.[2]

B. Duration of Extension

VA believes that a three-year extension is necessary to complete remaining reassessments and repeat reassessments, particularly as the second phase of PCAFC expansion begins on October 1, 2022, when VA anticipates an influx of an unknown quantity of applications. VA expects the surge in new applications associated with the second phase of PCAFC expansion will impact its ability to timely complete the remaining reassessments and repeat reassessments.

The VA MISSION Act of 2018 amended 38 U.S.C. 1720G by expanding eligibility for PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, in a two-phase approach. As described in the First PCAFC Extension for Legacy Cohort, VA received a dramatic increase in PCAFC applications at the onset of the first phase of expansion. VA anticipates the second phase of expansion, which takes effect October 1, 2022, will also result in a surge in new applications. VA believes it has adequately prepared for the influx of applications that will be received beginning on October 1, 2022, through staffing enhancements, streamlining processes, and continuing to provide Caregiver Support Program staff with focused trainings. VA increased the number of approved Caregiver Support Program positions by over 350 in fiscal year 2022, bringing the total number of positions to 2,325. As of August 30, 2022, 89 percent of all positions have been filled. VA has streamlined its approach to the PCAFC assessment process by eliminating redundancies in assessments and evaluations, where possible. Targeted trainings have been provided to PCAFC staff focused on the process of conducting evaluations of PCAFC eligibility to build consistency and standardization in decision making, as well as delivery of PCAFC services. Trainings have reinforced a holistic approach in evaluating not only eligibility for PCAFC but also identifying opportunities for referrals to supports and services beyond PCAFC that are available through VA and outside VA. Each of these initiatives has positioned VA to improve the experience of those already participating in PCAFC, those who are

[2] Changes to 38 CFR part 71 that are required as a result of *Veteran Warriors* will be addressed in a separate rulemaking.

applying for PCAFC currently, and individuals who will apply as a result of second phase of expansion.

While VA has planned and prepared for a surge in new applications as a result of this long-awaited second phase of expansion, similar to the surge in applications VA received as a result of the first phase of expansion, VA did so based on the presumption that all necessary reassessments of the legacy cohort would have already been completed before October 1, 2022. VA does not know the exact quantity of applications VA will receive under the second phase of expansion, but VA anticipates that completing necessary reassessments of the legacy cohort while also adjudicating a surge in PCAFC applications received on and after October 1, 2022, will be challenging. Thus, to mitigate delay in new Family Caregivers obtaining PCAFC benefits, VA anticipates focusing our resources initially on evaluating these new applications received at the onset of the second phase of expansion, which will mean that additional time is needed to complete necessary reassessments and repeat reassessments of the legacy cohort.

This current scenario closely mirrors the scenario when the first phase of PCAFC expansion began in 2020. At that time, VA experienced a surge of new applications but also had to conduct reassessments of the legacy cohort. VA found that two years were needed (from October 1, 2020, to September 30, 2022) to complete most of the legacy cohort reassessments under 38 CFR 71.30(e), as explained in the First PCAFC Extension for Legacy Cohort. *See* 86 FR 52615.

While VA has planned and prepared for a surge in new applications starting October 1, 2022, it needs to extend the transition period for three additional years to complete reassessments and repeat reassessments of the legacy cohort. While VA acknowledges that it determined two years were needed under the previous expansion, VA believes that three years will be needed during phase two of expansion to accommodate unforeseen circumstances or barriers that could interfere with VA's ability to complete reassessments and repeat reassessments.

For those reasons explained above, VA is now extending the transition period for three additional years (until September 30, 2025) for the legacy cohort while VA completes the remaining reassessments and repeat reassessments. This extension will ensure that all members of the legacy cohort have the same transition period and the same effective date for any termination or reduction in benefits, regardless of whether the reassessment was completed before or after the *Veteran Warriors* decision.

Without this extension, the current regulations would require VA to proceed in one of two ways starting October 1, 2022, both of which would be harmful to a portion of legacy applicants, legacy participants, and their Family Caregivers. First, VA could carry out the stipend decreases and discharges based on the determinations regarding the legacy cohort that were made before *Veteran Warriors* using the ''need for supervision, protection, or instruction'' regulatory definition. However, that would be unfair and inequitable to those legacy participants, legacy applicants, and their Family Caregivers because they would not have the benefit of being reassessed under the same criteria as those reassessed after *Veterans Warriors* (under the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii)), and the outcome of their determinations may be different if VA applied the statutory criteria in section 1720G(a)(2)(C)(ii) and (iii).

In the alternative, VA could set aside the stipend decreases and discharges based on the determinations that were made before *Veterans Warriors* using the ''need for supervision, protection, or instruction'' regulatory definition, but proceed in carrying out the stipend decreases and discharges that were determined after *Veteran Warriors,* as those determinations correctly used the statutory criteria in section 1720G(a)(2)(C)(ii) and (iii). However, this too would be unfair and inequitable to those legacy participants, legacy applicants, and their Family Caregivers with determinations made after *Veteran Warriors* because it would mean that they would have a shorter transition period than those for whom VA initiates repeat reassessments after October 1, 2022, because their determinations were made before *Veterans Warriors.* This is because the legacy applicants, legacy participants, and their Family Caregivers who are reassessed and found to be no longer eligible for PCAFC, or eligible but with a reduced stipend amount, would be impacted at different times. Some legacy participants, legacy applicants, and their Family Caregivers would experience negative impacts before others within this same cohort based on when they are reassessed. The varying impact would result from no reason other than that VA reassessed certain individuals prior to the *Veterans Warriors* decision and needed to conduct a repeat reassessment at a later date after October 1, 2022, than those individuals who were reassessed after *Veterans Warriors* under the statutory criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) before that date.

C. Stipend Payment Provisions

Special Rule for Primary Family Caregivers Subject to Decrease Because of Monthly Stipend Rate

The initial one-year transition period for the legacy cohort was intended to establish a transition plan for the legacy cohort who may or may not meet the new eligibility criteria and whose Primary Family Caregivers could have their stipend amount impacted by changes to the stipend payment calculation. 85 FR 13356 (March 6, 2020). VA intended for the stipend amount for Primary Family Caregivers of legacy participants and legacy applicants to remain generally unchanged during the transition period, unless it is to their benefit, and so long as the eligible veteran did not relocate. 85 FR 13387. To this end, 38 CFR 71.40(c)(4)(i)(D) permits the Primary Family Caregiver of an eligible veteran who meets the requirements of § 71.20(b) (*i.e.,* legacy participants) to receive a monthly stipend that is not less than the amount the Primary Family Caregiver was eligible to receive as of the day before October 1, 2020 (based on the eligible veteran's address on record with PCAFC on such date), so long as the eligible veteran resides at the same address on record with PCAFC as of the day before October 1, 2020. VA believed that this special rule would provide legacy participants and their Primary Family Caregivers time to adjust to the proposed changes in PCAFC eligibility and the stipend payment methodology. *Id.* at 13385. When VA published the First PCAFC Extension for Legacy Cohort, VA continued for an additional year this special rule, and VA believes it is necessary to continue this special rule for an additional three years while VA completes reassessments and repeat reassessments for the legacy cohort.

VA believes this is necessary as the transition period for the legacy cohort is intertwined with the special rule in § 71.40(c)(4)(i)(D). VA never anticipated that the transition period associated with the special rule would be any different than the transition period authorized in other provisions of part 71 concerning the legacy cohort. VA's transition plan was intended to mitigate potentially negative impact on the legacy cohort based on changes VA made to the PCAFC eligibility criteria and stipend payment methodology. 85 FR 46268, 46270, and 46275. It was

never VA's intention to remove the special rule in § 71.40(c)(4)(i)(D) before the conclusion of the transition period for the legacy cohort in other provisions of part 71 and doing so could cause hardship to the Primary Family Caregivers still receiving stipends under the special rule.

Moreover, CARMA, which is the workflow management tool used within the Caregiver Support Program and which automates the stipend payment calculation, intricately intertwines the transition period and the special rule. The workflow functionality within CARMA allows a Primary Family Caregiver to be transitioned off the special rule only if the legacy participant relocates to a new address or if the Primary Family Caregiver is eligible for a higher monthly stipend level as a result of a reassessment under § 71.30(e)(1) or as a result of Office of Personnel Management (OPM) updates to the General Schedule (GS). This functionality is by design, and bifurcating this functionality would require additional development, time, and resources. In the future, if VA determines that it is appropriate to uncouple the special rule from the transition period associated with the legacy cohort, VA will do so in a future rulemaking.

Adjustments to Stipend Payments

When VA established the initial one-year transition period for the legacy cohort, § 71.40(c)(4)(ii) was revised to address adjustments to stipend payments. 85 FR 46297. Section 71.40(c)(4)(ii)(C)(*2*) focuses on adjustments to monthly stipends pursuant to reassessments conducted by VA under § 71.30 for eligible veterans who meet the requirements of § 71.20(b) or (c) (*i.e.,* legacy participants and legacy applicants) whose Primary Family Caregivers received monthly stipends pursuant to § 71.40(c)(4)(i)(B) or (D). Section 71.40(c)(4)(ii)(C)(*2*)(*i*) focuses on reassessments that result in an increase in the monthly stipend, sets forth the effective date of this increase, and authorizes retroactive payments because of this increase. Under § 71.40(c)(4)(ii)(C)(*2*)(*i*), VA provides retroactive payments back to October 1, 2020 in recognition that not all legacy participants and legacy applicants are reassessed at one time but rather are reassessed at different points during the transition period. Retroactive payments ensure that the Primary Family Caregivers of all legacy participants and legacy applicants meeting the requirements of § 71.20(a) receive the benefit of any stipend increase as of October 1, 2020, regardless of when the reassessment is completed during the transition period.

Further, § 71.40(c)(4)(ii)(C)(*2*)(*i*) states that if more than one reassessment is completed during the two-year period beginning on October 1, 2020, the retroactive payment would only apply if the first reassessment during the two-year period beginning on October 1, 2020 results in an increase in the monthly stipend payment, and retroactive payments only apply as a result of the first reassessment. VA believed that any subsequent reassessment completed after the initial reassessment of a legacy participant or legacy applicant would likely be based on changes in the circumstances of the legacy participant or legacy applicant, such that retroactive payments back to a date before a previous reassessment would not be warranted. 85 FR 13389.

However, as a result of *Veteran Warriors,* VA must initiate repeat reassessments for purposes unrelated to the specific circumstances of the legacy participant or legacy applicant. As discussed above, the repeat reassessments are needed because the definition of need for supervision, protection, or instruction that was relied upon by VA during reassessments completed before *Veteran Warriors,* was invalidated by the court's decision. VA cannot rely on preliminary findings regarding stipend decreases and discharges for the legacy cohort that were based on VA's definition of need for supervision, protection, or instruction that was invalidated by the decision in *Veteran Warriors.* Since this decision, VA has applied 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of this definition when making PCAFC eligibility and stipend level determinations.

To maintain equity among members of the legacy cohort, VA believes that those who will require a repeat reassessment as a result of *Veteran Warriors* should be eligible to receive a retroactive payment under 38 CFR 71.40(c)(4)(ii)(C)(*2*)(*i*) if the repeat reassessment results in a stipend increase. For example, a reassessment of a legacy participant and their Primary Family Caregiver could have been completed in February 2022 applying the definition of need for supervision, protection, or instruction, among other applicable criteria, which resulted in a determination of continued eligibility under § 71.20(a), but at a reduced monthly stipend amount. If a repeat reassessment is completed in November 2022 applying 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the definition of need for supervision, protection, or instruction, which results in a determination of continued eligibility, but at the higher monthly stipend level, which is more than the monthly stipend amount the Primary Family Caregiver was receiving before the repeat reassessment, VA believes the Primary Family Caregiver should be eligible for the retroactive increase back to October 1, 2020, which is presumably what would have been authorized had VA applied section 1720G(a)(2)(C)(ii) and (iii) in place of the definition of need for supervision, protection, or instruction during the first reassessment.

Therefore, VA adds a sentence to the end of 38 CFR 71.40(c)(4)(ii)(C)(*2*)(*i*) explaining that notwithstanding the previous sentence (*i.e.,* the last sentence in the current paragraph), if the first reassessment during the five-year period beginning on October 1, 2020 was completed by VA before March 25, 2022, and such reassessment did not result in an increase in the monthly stipend payment, the retroactive payment described in this paragraph applies to the first reassessment initiated by VA on or after March 25, 2022 that applies the criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the definition of need for supervision, protection, or instruction that was invalidated by *Veteran Warriors,* if such reassessment results in an increase in the monthly stipend payment, and only as a result of such reassessment.

III. Changes to 38 CFR Part 71

For the reasons explained above, VA amends its regulations codified in 38 CFR 71.20 regarding program eligibility, § 71.30 regarding reassessments, and § 71.40 regarding caregiver benefits, to extend the transition period for legacy applicants, legacy participants, and their Family Caregivers from two years to five years (that is, until October 1, 2025) and to extend the time period for VA to conduct reassessments of such individuals from two years to five years (that is, until October 1, 2025).

VA amends § 71.20 by removing the words ''two years'' in § 71.20(b) and (c), and adding, in their place, the words ''five years''.

VA amends § 71.30 by removing the words ''two-year'' in paragraphs (e)(1) and (2) and adding, in their place, the words ''five-year''.

VA also amends § 71.40 by removing the words ''two years'' in paragraphs (c)(4)(i)(B) through (D) and adding, in their place, the words ''five years''. VA similarly amends paragraph (c)(4)(ii)(C)(*2*)(*i*) by removing the words ''two-year'' and adding, in their place, the words ''five-year''. Additionally, VA

revises paragraph (c)(4)(ii)(C)(*2*)(*i*) by adding a sentence to the end of the paragraph explaining that notwithstanding the previous sentence (*i.e.,* the last sentence in the current paragraph), if the first reassessment during the five-year period beginning on October 1, 2020 was completed by VA before March 25, 2022, and such reassessment did not result in an increase in the monthly stipend payment, the retroactive payment described in this paragraph applies to the first reassessment initiated by VA on or after March 25, 2022 that applies the criteria in section 1720G(a)(2)(C)(ii) and (iii) in place of the definition of need for supervision, protection, or instruction that was invalidated by *Veteran Warriors,* if such reassessment results in an increase in the monthly stipend payment, and only as a result of such reassessment. Lastly, VA amends paragraph (c)(4)(ii)(C)(*2*)(*ii*) and the note to paragraph (c)(4)(ii)(C)(*2*) by removing the words ''October 1, 2022'', and adding, in their place, the words ''October 1, 2025''.

IV. Technical Amendments

The VA MISSION Act of 2018 amended 38 U.S.C. 1720G by expanding eligibility for PCAFC to Family Caregivers of eligible veterans who incurred or aggravated a serious injury in the line of duty before September 11, 2001, in a two-phase approach. The first phase expanded PCAFC to eligible veterans who incurred or aggravated a serious injury (including traumatic brain injury, psychological trauma, or other mental disorder) in the line of duty on or before May 7, 1975, and began on the date the Secretary submitted a certification to Congress that VA fully implemented a required IT system required by section 162(a) of the VA MISSION Act of 2018. 38 U.S.C. 1720G(a)(2)(B)(ii). The second phase will begin two years after the date the Secretary submitted such certification to Congress. *Id.* at 1720G(a)(2)(B)(iii). As part of the July 31, 2020 rulemaking, VA referenced these dates of certification required by the VA MISSION Act of 2018 in 38 CFR 71.20(a)(2)(ii) and (iii) and 71.25(a)(3)(ii)(A) and (B) by using the phrases ''date specified in a future **Federal Register** document'' and ''date published in a future **Federal Register** document''. 85 FR 46295–96. Section 71.20(a)(2)(ii) and (iii) refer to the time periods within which the individual's serious injury must have been incurred or aggravated for purposes of the first and second phases of expansion, respectively. Section 71.20(a)(3)(ii)(A) and (B) refer to the dates VA will begin approving joint applications pursuant to § 71.20(a)(2)(ii) and (iii), respectively.

On October 7, 2020, VA published a **Federal Register** Notice (FRN) announcing that, in accordance with the requirements of the VA MISSION Act of 2018, the Secretary submitted to Congress on October 1, 2020, a certification that VA fully implemented the IT system required by the Act. 85 FR 63358 (October 7, 2020). This certification enabled VA to begin the first phase of the PCAFC expansion on October 1, 2020, and the second phase will begin on October 1, 2022. VA is amending §§ 71.20(a)(2)(ii) and (iii) and 71.25(a)(3)(ii)(A) and (B), to reflect these dates.

Thus, § 71.20(a)(2)(ii) is amended to replace ''on the date specified in a future **Federal Register** document'' with ''October 1, 2020''. Section 71.20(a)(2)(iii) is amended to replace ''two years after the date specified in a future **Federal Register** document as described in paragraph (a)(2)(ii) of this section'' with ''October 1, 2022''. Section 71.25(a)(3)(ii)(A) is amended to replace ''the date published in a future **Federal Register** document that is specified in such section'' and ''the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii)'' with ''October 1, 2020''. Section 71.25(a)(3)(ii)(B) is amended to replace ''the date that is two years after the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii)'' each time it appears with ''October 1, 2022''.

These are non-substantive technical amendments that will reflect the publication of the October 7, 2020 FRN and add clarity to the regulation but will have no impact on PCAFC eligibility criteria nor VA's administration of PCAFC.

Additionally, in the July 31, 2020 rulemaking, VA redesignated § 71.30, which pertained to the Program of General Caregiver Support Services (PGCSS), as § 71.35. 85 FR 46296. The definition for general caregiver under § 71.15 refers to an individual who meets the requirements of PGCSS; however, the cross-reference in the definition directs readers to § 71.30, which now pertains to reassessments of eligible veterans and Family Caregivers. Accordingly, the definition for general caregiver is amended to include the correct cross-reference to § 71.35.

Further, in § 71.40 in the note to paragraph (c)(4)(ii)(C)(*2*), VA is redesignating the note as ''Note 1 to paragraph (c)(4)(ii)(C)(*2*)''. The Office of **Federal Register** has directed that even if there is only one note in a section, it must still be designated as ''Note 1.'' Therefore, we are redesignating the note accordingly.

Administrative Procedure Act

The Secretary of Veterans Affairs finds that there is good cause under 5 U.S.C. 553(b)(B) to publish this rule without prior notice and opportunity for public comment, as notice and comment would be impracticable and contrary to public interest. Generally, VA would seek notice and comment in advance of issuing a final rule. However, in this circumstance, VA does not have sufficient time to provide the public with the opportunity for prior notice and comment and have the amendments effective by October 1, 2022. To provide such opportunity would cause harm to the eligible veterans and Family Caregivers who greatly benefit from and rely on PCAFC. As discussed earlier, due to the *Veteran Warriors* case, for those determinations involving the ''need for supervision, protection, or instruction'' definition in 38 CFR 71.15 that were still pending issuance of a last notice of decision on March 25, 2022, VA must re-evaluate such determinations based on the *Veteran Warriors* decision. VA cannot rely on preliminary findings regarding stipend decreases and discharges for the legacy cohort that were based on VA's regulatory definition for need for supervision, protection, or instruction, and therefore these reassessments must be repeated. At the time of the court's decision, VA had already completed approximately 80 percent of assessments for the legacy cohort. However, VA will not be able to repeat reassessments that were completed prior to the *Veteran Warriors* decision in addition to completing remaining reassessments that have yet to be completed by October 1, 2022. The time period is much too short for VA to be able to repeat and complete all these reassessments.

Therefore, absent regulatory action, as mentioned earlier, the current regulations would require VA to proceed in one of two ways, both of which would be harmful to a portion of legacy applicants, legacy participants, and their Family Caregivers. First, VA could carry out the stipend decreases and discharges based on the determinations regarding the legacy cohort that were made before *Veteran Warriors* using the ''need for supervision, protection, or instruction'' regulatory definition. In the alternative, VA could set aside the stipend decreases and discharges based on the determinations that were made before *Veterans Warriors* using the ''need for supervision, protection, or instruction''

regulatory definition, but proceed in carrying out the stipend decreases and discharges that were determined after *Veteran Warriors,* as those determinations correctly used the statutory criteria in section 1720G(a)(2)(C)(ii) and (iii). However, as explained earlier, neither option would be fair and equitable to all members of the legacy cohort.

Therefore, extending the transition and reassessment period in advance of October 1, 2022, is necessary to provide time for VA to repeat reassessments that were completed prior to the *Veterans Warriors* decision (in addition to complete remaining reassessments) in order to maintain equity and parity among the legacy applicants, legacy participants, and their Family Caregivers. Otherwise, certain eligible veterans and Family Caregivers may be harmed, which would be contrary to public interest.

Notwithstanding the need to publish these amendments as an interim final rule, VA invites public comments on the amendments and will fully consider and address any comments received.

For the reasons stated above, the Secretary also finds good cause under 5 U.S.C. 553(d)(3) to make this interim final rule effective on the date of its publication in the **Federal Register**.

Executive Orders 12866 and 13563

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, and other advantages; distributive impacts; and equity). Executive Order 13563 (Improving Regulation and Regulatory Review) emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. The Office of Information and Regulatory Affairs has determined that this rule is a significant regulatory action under Executive Order 12866. The Regulatory Impact Analysis associated with this rulemaking can be found as a supporting document at *www.regulations.gov.*

Regulatory Flexibility Act

The Secretary hereby certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (5 U.S.C. 601–612). This interim final rule extends the time for VA to conduct reassessments of legacy applicants, legacy participants, and their Family Caregivers and the transition period for such individuals. This rule will have no impact on small entities. Therefore, pursuant to 5 U.S.C. 605(b), the initial and final regulatory flexibility analysis requirements of 5 U.S.C. 603 and 604 do not apply.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before issuing any rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. This interim final rule will have no such effect on State, local, and tribal governments, or on the private sector.

Paperwork Reduction Act

This interim final rule contains no provisions constituting a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521).

Congressional Review Act

Pursuant to Congressional Review Act) (5 U.S.C. 801 *et seq.*), the Office of Information and Regulatory Affairs designated this rule as not a major rule, as defined by 5 U.S.C. 804(2).

List of Subjects in 38 CFR Part 71

Administrative practice and procedure, Claims, Health care, Health facilities, Health professions, Mental health programs, Public assistance programs, Travel and transportation expenses, Veterans.

Signing Authority

Denis McDonough, Secretary of Veterans Affairs, approved this document on August 19, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Consuela Benjamin,

Regulations Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.

For the reasons stated in the preamble, the Department of Veterans Affairs amends 38 CFR part 71 as follows:

PART 71—CAREGIVERS BENEFITS AND CERTAIN MEDICAL BENEFITS OFFERED TO FAMILY MEMBERS OF VETERANS

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

Authority: 38 U.S.C. 501, 1720G, unless otherwise noted.

Section 71.40 also issued under 38 U.S.C. 111(e), 1720B, 1782.

Section 71.47 also issued under 31 U.S.C. 3711; 38 U.S.C. 5302, 5314.

Section 71.50 also issued under 38 U.S.C. 1782.

§ 71.15 [Amended]

■ 2. Amend § 71.15 by, in the definition of ''General Caregiver'', removing ''§ 71.30'' and adding in its place ''§ 71.35''.

§ 71.20 [Amended]

■ 3. Amend § 71.20 by:

■ a. In paragraph (a)(2)(ii), removing ''on the date specified in a future **Federal Register** document'' and adding in its place ''October 1, 2020''.

■ b. In paragraph (a)(2)(iii), removing ''two years after the date specified in a future **Federal Register** document as described in paragraph (a)(2)(ii) of this section'' and adding in its place ''October 1, 2022''.

■ c. In paragraphs (b) and (c), removing ''two years'' and adding in its place ''five years''.

§ 71.25 [Amended]

■ 4. Amend § 71.25 by:

■ a. In paragraph (a)(3)(ii)(A), removing ''the date published in a future **Federal Register** document that is specified in such section'' and ''the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii)'' and adding in their places ''October 1, 2020''.

■ b. In paragraph (a)(3)(ii)(B), removing ''the date that is two years after the date published in a future **Federal Register** document that is specified in § 71.20(a)(2)(ii)'' each time it appears and adding in its place ''October 1, 2022''.

§ 71.30 [Amended]

■ 5. Amend § 71.30(e)(1) and (2) by removing ''two-year'' and adding in its place ''five-year''.

■ 6. Amend § 71.40 by:

■ a. In the introductory text of paragraph (c)(4)(i)(B), removing ''two years'' and adding in its place ''five years''.

■ b. In paragraphs (c)(4)(i)(C) and (D), removing ''two years'' and adding in its place ''five years''.

■ c. In paragraph (c)(4)(ii)(C)(*2*)(*i*):

■ i. Removing ''two-year'' each time it appears and adding in its place ''five-year''.
■ ii. Adding a sentence to the end of the paragraph.
■ d. In paragraph (c)(4)(ii)(C)(*2*)(*ii*), removing ''October 1, 2022'' each time it appears and adding in its place ''October 1, 2025''.
■ e. In the note to paragraph (c)(4)(ii)(C)(*2*):
■ i. Redesignating the note as note 1 to paragraph (c)(4)(ii)(C)(*2*).
■ ii. Removing ''October 1, 2022'' each time it appears and adding in its place ''October 1, 2025''.

The revision reads as follows:

§ 71.40 Caregiver benefits.

* * * * *

(c) * * *
(4) * * *
(ii) * * *
(C) * * *
(*2*) * * *

(*i*) * * * Notwithstanding the previous sentence, if the first reassessment during the five-year period beginning on October 1, 2020 was completed by VA before March 25, 2022, and such reassessment did not result in an increase in the monthly stipend payment, the retroactive payment described in this paragraph (c)(4)(ii)(C)(*2*)(*i*) applies to the first reassessment initiated by VA on or after March 25, 2022 that applies the criteria in 38 U.S.C. 1720G(a)(2)(C)(ii) and (iii) in place of the definition of ''need for supervision, protection, or instruction'' that was invalidated by *Veteran Warriors, Inc.* v. *Sec'y of Veterans Affairs,* 29 F.4th 1320, 1342–43 (Fed. Cir. 2022), if such reassessment results in an increase in the monthly stipend payment, and only as a result of such reassessment.

* * * * *

[FR Doc. 2022–20271 Filed 9–20–22; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2020–0575; FRL–10205–02–R3]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Reasonably Available Control Technology Determinations for PPG Industries Springdale Plant's Case-by-Case Sources Under the 2008 8-Hour Ozone National Ambient Air Quality Standards

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision was submitted by the Pennsylvania Department of Environmental Protection (PADEP), on behalf of the Allegheny County Health Department (ACHD), to establish and require reasonably available control technology (RACT) for sources at PPG Industries Springdale Plant (PPG Springdale), a major source of volatile organic compounds (VOC), pursuant to the Commonwealth of Pennsylvania's conditionally approved RACT regulations. In this action, EPA is approving source-specific RACT determinations (case-by-case or CbC) submitted by PADEP for certain VOC sources at PPG Springdale, a facility in Allegheny County. This RACT evaluation was submitted to meet RACT requirements for the 2008 8-hour ozone national ambient air quality standard (NAAQS). EPA is approving this revision to the Pennsylvania SIP in accordance with the requirements of the Clean Air Act (CAA) and EPA's implementing regulations.

DATES: This final rule is effective on October 21, 2022.

ADDRESSES: EPA has established a docket for this action under Docket ID Number EPA–R03–OAR–2020–0575. All documents in the docket are listed on the *www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* confidential business information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available through *www.regulations.gov,* or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Mr. Riley Burger, Permits Branch (3AD10), Air and Radiation Division, U.S. Environmental Protection Agency, Region III, Four Penn Center, 1600 John F. Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2217. Mr. Burger can also be reached via electronic mail at *burger.riley@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On May 7, 2021, EPA published a notice of proposed rulemaking (NPRM). 86 FR 24564. In the NPRM, EPA proposed approval of case-by-case RACT determinations for sources at ten facilities in Allegheny County, as EPA found that that the RACT controls for these sources met the CAA RACT requirements for the 2008 8-hour ozone NAAQS. On October 21, 2021, EPA approved case-by-case RACT determinations for sources at nine of these major NO_X and VOC emitting facilities in Allegheny County and noted that EPA was not taking final action on PPG Springdale at that time. 86 FR 58220. This rule takes final action on the case-by-case RACT determination for sources at the one remaining facility included in the May 7, 2021 NPRM, PPG Springdale. PADEP, on behalf of ACHD, initially submitted the revisions to its SIP to address case-by-case VOC RACT sources at PPG Springdale on May 7, 2020.

As more fully explained in the NPRM, under certain circumstances, states are required to submit SIP revisions to address RACT requirements for both major sources of nitrogen oxides (NO_X) and VOC and any source covered by control technique guidelines (CTG) for each ozone NAAQS. Which NO_X and VOC sources in Pennsylvania are considered ''major,'' and are therefore subject to RACT, is dependent on the location of each source within the Commonwealth. NO_X sources in Pennsylvania located in any ozone attainment areas or in any nonattainment areas designated moderate or below are subject to a major source threshold of 100 tons per year (tpy) because of the Ozone Transport Region (OTR) requirements in CAA section 182(f)(1). See definition of ''Major NO_X emitting facility'' at 25 Pa. Code 121.1 and 40 CFR 52.2020(c)(1). Similarly, VOC sources located in any ozone attainment areas or in any nonattainment areas designated serious or below are subject to a source threshold of 50 tpy because of the OTR requirements in CAA section 184(b)(2). See definition of ''Major VOC emitting facility'' at 25 Pa. Code 121.1 and 40 CFR 52.2020(c)(1).

On May 16, 2016, PADEP submitted a SIP revision addressing RACT for both the 1997 and 2008 8-hour ozone NAAQS in Pennsylvania. PADEP's May 16, 2016 SIP revision intended to address certain outstanding non-CTG VOC RACT, VOC CTG RACT, and major source VOC and NO_X RACT requirements for both standards. The SIP revision requested approval of

Pennsylvania's 25 Pa. Code 129.96–100, *Additional RACT Requirements for Major Sources of NO_X and VOCs* (the ''presumptive'' RACT II rule). Prior to the adoption of the RACT II rule, Pennsylvania relied on the NO_X and VOC control measures in 25 Pa. Code 129.92–95, *Stationary Sources of NO_X and VOCs,* (the RACT I rule) to meet RACT for non-CTG major VOC sources and major NO_X sources. The requirements of the RACT I rule remain as previously approved in Pennsylvania's SIP and continue to be implemented as RACT.[1] On September 26, 2017, PADEP submitted a supplemental SIP revision including a letter, dated September 22, 2017, which committed to address various deficiencies identified by EPA in PADEP's original May 16, 2016 ''presumptive'' RACT II rule SIP revision.

On May 9, 2019, EPA conditionally approved the RACT II rule based on the commitments PADEP made in its September 22, 2017 letter.[2] 84 FR 20274. In EPA's final conditional approval, EPA established conditions requiring PADEP to submit, for EPA's approval, SIP revisions to address any facility-wide or system-wide NO_X emissions averaging plans approved under 25 Pa. Code 129.98 and any case-by-case RACT determinations under 25 Pa. Code 129.99. PADEP committed to submitting these additional SIP revisions within 12 months of EPA's final conditional approval (*i.e.,* by May 9, 2020). Through multiple submissions between 2017 and 2020, PADEP submitted to EPA for approval the various SIP submissions to implement its RACT II case-by-case determinations and alternative NO_X emissions limits. This rule takes final action on a SIP revision for VOC sources at PPG Springdale, based on EPA's review.

The SIP revision in this action only establishes 2008 8-hour ozone NAAQS RACT requirements. Applicable RACT requirements under the CAA for sources located in Allegheny County for the 1997 8-hour ozone NAAQS were previously satisfied. See 78 FR 34584 (June 10, 2013).

II. Summary of SIP Revision and EPA Analysis

A. Summary of SIP Revision

To satisfy a requirement from EPA's May 9, 2019 conditional approval, PADEP submitted to EPA SIP revisions addressing alternative NO_X or VOC emissions limits and/or case-by-case RACT requirements for major sources in Pennsylvania subject to 25 Pa. Code 129.98 or 129.99. Among the submitted SIP revisions were case-by-case RACT determinations for sources in Allegheny County, which PADEP submitted on behalf of ACHD. PADEP's submission included a SIP revision pertaining to case-by-case RACT determinations for the existing VOC emissions units at PPG Springdale that required a case-by-case RACT determination.

In the case-by-case RACT determinations for PPG Springdale submitted by PADEP on behalf of ACHD, an evaluation was completed to determine if previously SIP-approved, case-by-case RACT emission limits or operational controls (herein referred to as RACT I and contained in RACT I permits) were more stringent than the new RACT II presumptive or case-by-case requirements. If previously SIP-approved RACT I requirements are more stringent, such RACT I requirements continue to apply to the applicable source. If the new case-by-case RACT II requirements are more stringent than the RACT I requirements, then the RACT II requirements supersede the prior RACT I requirements.[3]

Here, EPA is approving a SIP revision pertaining to case-by-case RACT requirements for certain VOC sources at PPG Springdale. PPG is a major source of VOC and was subject to RACT I under the name PPG Industries, Inc.—Springdale. The case-by-case RACT determinations submitted by PADEP, on behalf of ACHD, consist of an evaluation of all reasonably available controls at the time of evaluation for each affected emissions unit, resulting in a determination of what specific emissions limit or control measures satisfy RACT for that particular unit. The adoption of additional, or revised emissions limits or control measures to existing SIP-approved RACT I requirements were specified as requirements in a revised federally enforceable permit (hereafter RACT II permit) issued by ACHD to PPG Springdale. The RACT II permit was submitted as part of the Pennsylvania RACT SIP revision for EPA's approval in the Pennsylvania SIP under 40 CFR 52.2020(d)(1). The RACT II permit being approved in this action for PPG Industries Springdale Plant (formerly PPG Industries, Inc.—Springdale) is permit number 0057–OP18a, effective February 28, 2020, and is part of the docket for this rulemaking, which is available online at *https://www.regulations.gov,* Docket No. EPA–R03–OAR–2020–0575.[4] For certain VOC sources at PPG Springdale, EPA is incorporating by reference in the Pennsylvania SIP the source-specific emissions limits and control measures in the RACT II permit, and is determining that these provisions satisfy the RACT requirement under the 2008 8-hour ozone NAAQS.

B. EPA's Final Action

This CbC RACT SIP revision incorporates determinations by ACHD of source-specific RACT II controls for individual VOC emission units at PPG Springdale, where those units are not covered by or cannot meet Pennsylvania's presumptive RACT regulation. After thorough review and evaluation of the information submitted to EPA by PADEP on behalf of ACHD, in its SIP revision submittals for sources at PPG Springdale, EPA found that: (1) ACHD's case-by-case RACT determinations and conclusions establish limits and/or controls on individual sources that are reasonable and appropriately considered technically and economically feasible controls; and (2) ACHD's determinations are consistent with the CAA, EPA regulations, and applicable EPA guidance.

ACHD, in its RACT II determinations, considered the prior source-specific RACT I requirements and, where more stringent, retained those RACT I requirements as part of its new RACT determinations. EPA found that all the proposed revisions to previously SIP-approved RACT I requirements would

[1] The EPA granted conditional limited approval of Pennsylvania's case-by-case RACT I rule on March 23, 1998 pending Pennsylvania's submission of and EPA's determination on proposals for facilities subject to case-by-case (source-specific) RACT requirements. 63 FR 13789. On May 3, 2001, EPA removed the conditional status of its 1998 approval once the state certified that it had submitted case-by-case RACT I proposals for sources subject to the RACT requirements, but retained the limited nature of the approval. 66 FR 22123. EPA granted full approval on October 22, 2008 once it approved all case-by-case RACT I proposals submitted by Pennsylvania. 73 FR 62891. Through this RACT II rule, certain source-specific RACT I requirements will be superseded by more stringent requirements. See Section II of the preamble to this final rule.

[2] On August 27, 2020, the Third Circuit Court of Appeals issued a decision vacating EPA's approval of three provisions of Pennsylvania's presumptive RACT II rule applicable to certain coal-fired power plants. *Sierra Club* v. *EPA,* 972 F.3d 290 (3d Cir. 2020). PPG Springdale is not subject to the presumptive RACT II provisions at issue in that *Sierra Club* decision.

[3] While the prior SIP-approved RACT I permit for PPG Springdale will remain part of the SIP, this RACT II rule will incorporate by reference the RACT II requirements through the RACT II permit and clarify the ongoing applicability of specific conditions in the RACT I permit.

[4] The RACT II permit included in the docket for this rule is a redacted version of the facilities' federally enforceable permit. It reflects the specific RACT requirements being approved into the Pennsylvania SIP via this final action.

result in equivalent or additional reductions of VOC emissions. Consistent with section 110(l) of the CAA, the revisions for this major VOC source will not result in additional VOC emissions and thus should not interfere with any applicable requirement concerning attainment.

Other specific requirements of the 2008 8-hour ozone NAAQS case-by-case RACT determinations for PPG Springdale and the rationale for EPA's action are explained more thoroughly in the NPRM, and its associated technical support document (TSD), and will not be restated here.

III. Public Comments and EPA Responses

EPA received one comment relevant to PPG Springdale on the May 7, 2021 NPRM. 86 FR 24564. A summary of the comment and EPA's response are discussed in this section. A copy of the comment can be found in the docket for this rule action.

Comment 1: The comment requests that EPA not take final action on the revisions pertaining to PPG Springdale as certain RACT requirements are involved in the appeal of the facility's permit before ACHD's hearing officer. The comment requests EPA delay action until the appeal is adjudicated or resolved, and any modifications to the permit are finalized.

Response 1: Under Clean Air Act Section 110(k), EPA has a statutory responsibility to act on plan revisions submitted by states by specified deadlines. EPA's failure to act within those deadlines can subject EPA to a lawsuit for our failure to timely execute a mandatory statutory duty. There is no provision in the Clean Air Act to toll the statutory deadline pending the outcome of state proceedings, or for any other reason. As long as the SIP revision is pending before EPA, our statutory obligation to approve or disapprove that revision in whole or part remains. Pennsylvania could formally withdraw the SIP revision from EPA's consideration but has not done so. EPA therefore remains under a statutory duty under section 110(k) of the Act to approve or disapprove this SIP revision in whole or part. EPA has determined that it will complete its statutory duty as proposed to approve this SIP revision with respect to PPG Springdale. If the outcome of the appeal process affects the RACT determination, Pennsylvania can then submit any proposed SIP revision with supporting documentation for the changes to EPA for review and appropriate agency action. At this time EPA is finalizing these case-by-case RACT determinations for PPG Springdale.

IV. Final Action

EPA is approving case-by-case RACT determinations for certain VOC sources at PPG Springdale, as required to meet obligations pursuant to the 2008 8-hour ozone NAAQS, as revisions to the Pennsylvania SIP.

V. Incorporation by Reference

In this document, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of source-specific RACT determinations under the 2008 8-hour ozone NAAQS for one major VOC-emitting facility in Pennsylvania, as discussed in Section II. of this preamble. EPA has made, and will continue to make, these materials generally available through *www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rule of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.[5]

VI. Statutory and Executive Order Reviews

A. General Requirements

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

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

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

B. Submission to Congress and the Comptroller General

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. Section 804, however, exempts from section 801 the following types of rules: Rules of particular applicability; rules relating to agency management or personnel; and rules of agency organization, procedure, or practice that do not substantially affect the rights or obligations of non-agency parties. 5 U.S.C. 804(3). Because this is a rule of particular applicability, EPA is not required to submit a rule report regarding this action under section 801.

[5] 62 FR 27968 (May 22, 1997).

C. Petitions for Judicial Review

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by November 21, 2022. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action.

This action approving Pennsylvania's NO_X and VOC RACT requirements for one facility for the 2008 8-hour ozone NAAQS may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

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

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

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

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

Subpart NN—Pennsylvania

■ 2. In § 52.2020, the table in paragraph (d)(1) is amended by:

■ a. Revising the entry ''PPG Industries, Inc.—Springdale''; and

■ b. Adding an entry at the end of the table for ''PPG Industries Springdale Plant (formerly referenced as PPG Industries, Inc.—Springdale)''.

The revision and addition read as follows:

§ 52.2020 Identification of plan.

* * * * *

(d) * * *

(1) * * *

Name of source	Permit No.	County	State effective date	EPA approval date	Additional explanations/ §§ 52.2063 and 52.2064 citations [1]
*	*	*	*	*	* *
PPG Industries, Inc.—Springdale.	CO–254	Allegheny	12/19/96	10/12/01, 66 FR 52050	See also 52.2064(l)(1).
*	*	*	*	*	* *
PPG Industries Springdale Plant (formerly referenced as PPG Industries, Inc.—Springdale).	0057–OP18a	Allegheny	2/28/2020	9/21/2022 [INSERT **FEDERAL REGISTER** CITATION].	52.2064(l)(1).

[1] The cross-references that are not § 52.2064 are to material that pre-date the notebook format. For more information, see § 52.2063.

* * * * *

■ 3. Amend § 52.2064 by adding paragraph (l) to read as follows:

§ 52.2064 EPA-approved Source-Specific Reasonably Available Control Technology (RACT) for Volatile Organic Compounds (VOC) and Oxides of Nitrogen (NO_X).

* * * * *

(l) Approval of source-specific RACT requirements for 2008 8-hour ozone national ambient air quality standard for PPG Springdale is incorporated as specified. (Rulemaking Docket No. EPA–OAR–2020–0575.)

(1) PPG Industries Springdale Plant—Incorporating by reference Permit No. 0057–OP18a, effective February 28, 2020, as redacted by ACHD, which supersedes Consent Order 254, issued December 19, 1996, except for Conditions 1.13 through 1.22, which remain as RACT requirements. See also § 52.2063(c)(165)(i)(B)(*2*), for prior RACT approval.

(2) [Reserved]

[FR Doc. 2022–20108 Filed 9–20–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[EPA–R01–OAR–2021–0883; FRL–10221–01–R1]

Notification of Memorandum of Agreement; Massachusetts; Clean Air Act (CAA) Sections 111(d) and/or 129 Federal Plan Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification.

SUMMARY: On October 15, 2021, the United States Environmental Protection Agency's (EPA) Region 1 Acting Administrator signed a Memorandum of Agreement (MOA) between the Massachusetts Department of Environmental Protection (MassDEP) and EPA Region 1 regarding existing affected sources subject to Clean Air Act (CAA) sections 111(d) and/or 129 Federal Plan requirements. Subsequently, the MOA became effective upon signature of the MassDEP Commissioner on November 9, 2021. This document is informing the public of the MOA and making a copy of the document accessible.

DATES: On November 9, 2021, the MOA between EPA Region 1 and MassDEP was finalized upon signature of both parties.

ADDRESSES: EPA has established a docket for this action under Docket Identification No. EPA–R01–OAR–2021–0883. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *i.e.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if possible, you contact the contact listed in the **FOR FURTHER INFORMATION CONTACT** section to schedule your inspection. The Regional Office's official hours of business are

Monday through Friday, 8:30 a.m. to 4:30 p.m., excluding legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Jessica Kilpatrick, Air Permits, Toxics, & Indoor Programs Branch, Air and Radiation Division, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Mail Code: 05–2, Boston, MA 02109–0287. Telephone: 617–918–1652. Fax: 617–918–0652 Email: *kilpatrick.jessica@epa.gov.*

SUPPLEMENTARY INFORMATION: As a result of MassDEP's expressed interest in exercising its authority in the implementation and enforcement of CAA sections 111(d) and 129 Federal Plan requirements for existing sources in Massachusetts, EPA Region 1 developed and submitted a preliminary draft of the MOA to MassDEP for its feedback in April 2020. Region 1 staff and legal counsel worked with MassDEP Air and Climate Programs staff and legal counsel to develop an agreed upon final draft.

Both EPA and MassDEP agree that the MOA is mutually advantageous and an effective mechanism to protect air quality. Accordingly, the MOA was signed by the Acting EPA Region 1 Administrator on October 15, 2021, and was signed by the MassDEP Commissioner on November 9, 2021. It addresses the functions MassDEP will assume, and the authorities EPA will continue to retain, for the implementation and enforcement of the CAA section 111(d) and/or section 129 Federal Plan requirements for affected sources in the Commonwealth of Massachusetts.

The MOA delineates the scope of the agreement, the mechanism of coordinating implementation and enforcement authority of the Federal Plan requirements via MassDEP's Title V operating permit program, standards affected by this MOA, the roles and responsibilities MassDEP will assume as well as those that EPA will continue to retain, and the administration of this agreement. The Federal Plans that are specifically covered by this MOA are codified at title 40 Code of Federal Regulations (CFR), part 62, subpart JJJ (for ''small municipal waste combustors''), subpart LLL (for ''sewage sludge incinerators''), and subpart OOO (for ''municipal solid waste landfills''). Furthermore, the MOA also describes the method by which EPA and MassDEP will coordinate the implementation and enforcement of future Federal Plans.

The text of EPA Region 1's and MassDEP's MOA, effective November 9, 2021, is reproduced below:

Memorandum of Agreement Between the Massachusetts Department of Environmental Protection and the United States Environmental Protection Agency Regarding Existing Affected Sources Subject to Clean Air Act Sections 111(d) and/or 129 Federal Plan Requirements

I. Introduction

A. The purpose of this Memorandum of Agreement (MOA) is to coordinate implementation and enforcement responsibilities and authorities between the U.S. Environmental Protection Agency, Region 1 (EPA), and the Massachusetts Department of Environmental Protection (MassDEP) with respect to the Federal Plan requirements for affected sources [1] promulgated by EPA pursuant to Clean Air Act (CAA) section 111(d) and/or section 129, as further specified herein. The CAA section 111(d) and/or section 129 Federal Plans that are covered by this MOA are codified at Title 40 Code of Federal Regulations (CFR), Part 62, subpart JJJ (for ''small municipal waste combustors''), subpart LLL (for ''sewage sludge incinerators''), and subpart OOO (for ''municipal solid waste landfills''). In addition, this MOA details the process by which future federal plans promulgated under Part 62 will be implemented and enforced by MassDEP should it accept to exercise this responsibility. This MOA does not cover ''large municipal waste combustors'' subject to the State Plan approved by EPA and codified at 310 CMR 7.08(2).

B. MassDEP and EPA concur that it is mutually advantageous and the best use of resources to coordinate their efforts in the implementation and enforcement of these Federal Plans by entering this MOA.

C. MassDEP and EPA affirm their commitment to an effective partnership and agree to review this MOA from time to time, as necessary.

II. Scope

A. MassDEP will exercise its authority to implement and enforce the CAA section 111(d) and/or section 129 Federal Plans for affected sources in the Commonwealth of Massachusetts through its Title V operating permits as required under Title V of the CAA (Title V operating permit program), as codified in Massachusetts regulations at 310 CMR 7.00: *Appendix C. See* 61 FR 31442 and 66 FR 49541. Tribal lands with affected sources, if any, are not subject to this MOA.

[1] As used in this MOA, the term ''affected source'' refers to a source subject to a Federal Plan promulgated under CAA section 111(d) and/or section 129.

B. This MOA addresses the functions MassDEP will assume, and the authorities EPA will continue to retain, as they pertain to the implementation and enforcement of the CAA section 111(d) and/or section 129 Federal Plans for affected sources.

III. Mechanism

A. As outlined in this MOA, MassDEP will exercise its authority to implement and enforce the emission standards and other applicable requirements contained in the section 111(d) and/or 129 Federal Plans for affected sources through MassDEP's Title V operating permit program, as codified in Massachusetts regulations at 310 CMR 7.00: *Appendix C.*

B. In its Title V operating permit program, MassDEP defines ''applicable requirement'' as:

> ''. . . all of the following as they apply to emissions units or control equipment in a facility subject to the requirements of Massachusetts Code 310 CMR 7.00: *Appendix C* (*Appendix C*). This includes requirements that have been promulgated or approved by EPA through rule making at the time of issuance but have future-effective compliance dates:
>
> * * * * *
>
> [c]Any standard or other requirement under 42 U.S.C. 7401, The Clean Air Act, § 111, including § 111(d) (New Source Performance Standards (NSPS));
>
> * * * * *
>
> [g]Any standard or other requirement governing solid waste incineration, under 42 U.S.C. 7401, The Clean Air Act, § 129;''

See 310 CMR 7.00 *Appendix C* section (1) *Definitions.*

C. In accordance with the language above, MassDEP has the authority to implement and enforce CAA section 111, including CAA section 111(d) and/or section 129 Federal Plan standards, through MassDEP's Title V operating permit program.

D. MassDEP will implement and enforce CAA section 111(d) and/or section 129 Federal Plan standards by including such standards as applicable requirements in affected sources' Title V operating permits when such permits are issued or revised.

E. MassDEP has the following authorities to implement the program:

1. *Requesting information on applicable requirements in affected sources' Title V operating permit applications.* Through 310 CMR 7.00: *Appendix C* (3) and (10)(a), MassDEP is authorized to apply 111(d) and/or 129 Federal Plan requirements by requesting and receiving operating permit applications, as well as records relating to the operating permit or the emission of air contaminants;

2. *Requesting and receiving records relating to the emission of air contaminants.* Through 310 CMR 7.00: *Appendix C* (10)(a), MassDEP is authorized to request and receive records relating to the Title V operating permit or the emission of air contaminants;

3. *Requiring that all applicable State and Federal requirements be included in Title V operating permits.* Specific conditions related to CAA section 111(d) and/or section 129 Federal Plans will be included in an affected source's Title V operating permit by MassDEP through 310 CMR 7.00: *Appendix C*(3)(g)1, which specifies that all applicable requirements must be included in an operating permit;

4. *Enforcing all conditions and requirements of its Title V operating permits.* Enforcement of the CAA section 111(d) and/or section 129 Federal Plans will be exercised by MassDEP through its enforcement provision in 310 CMR 7.00: *Appendix C* (3)(f), which states that an *Appendix C* qualifying facility is subject to enforcement pursuant to the Massachusetts General Laws and regulations thereunder if a violation of *Appendix C* occurs. Penalties for such violations are outlined in M.G.L. c. 111, §§ 142A and B. MassDEP also has authority to issue civil administrative penalties for noncompliance violations pursuant to M.G.L. c. 21A, § 16, and 310 CMR 5.00.

IV. Standards Affected by This MOA and Mechanism for Accepting Future Standards

A. Upon the effective date of this MOA, EPA recognizes MassDEP as having implementation and enforcement authority for Part 62, subpart JJJ (for ''small municipal waste combustors''), subpart LLL (for ''sewage sludge incinerators''), and subpart OOO (for ''municipal solid waste landfills'') upon issuance of a Title V operating permit with applicable requirements for those standards written into the source-specific permit.

B. When EPA establishes future CAA section 111(d) and/or section 129 Federal Plan standards, EPA will notify MassDEP by forwarding a copy of the applicable regulations via a letter asking whether the standard is applicable to sources in Massachusetts and whether MassDEP intends to accept implementation and enforcement authority of the standard through issuance of a Title V operating permit with applicable requirements for those standards written into the source-specific permit. MassDEP will notify EPA by letter whether MassDEP intends to accept implementation and enforcement authority of the standard through issuance of Title V operating permits to applicable sources.

V. Roles and Responsibilities of MassDEP and EPA

A. MassDEP and EPA agree to maintain a high level of communication, coordination, and cooperation between their respective staffs to assure the successful and effective administration and implementation of the CAA section 111(d) and/or section 129 Federal Plans for affected sources.

B. EPA commits to provide MassDEP with technical support and assistance in its implementation of CAA section 111(d) and/or section 129 Federal Plans for affected sources, as necessary.

C. Both parties agree to the following procedures:

1. MassDEP shall exercise its authority for the implementation and enforcement of CAA section 111(d) and/or section 129 Federal Plan standards in Title V operating permits, except for applicable sources, if any, in Tribal lands. Such implementation and enforcement shall include as appropriate:

a. Distribution of informational letters and information to potentially affected sources;

b. Receiving and reviewing notices, reports, and compliance certifications;

c. Conducting compliance inspections;

d. Preparing inspection reports and sharing with EPA those reports which find violations;

e. Requiring submittal of, receiving, and reviewing Title V operating permit applications from affected sources;

f. Expeditiously issuing or revising existing Title V operating permits for affected sources, as needed, to include the CAA section 111(d) and/or section 129 Federal Plan standards;

g. Assuring compliance through implementation and enforcement of the Title V operating permit program for affected sources; and

h. In instances where an affected source is required to develop pollution control parameter operating limits based on periodic testing, ensuring that such parameter operating limits are enforceable after the date of a successful performance test and the parameter operating limits are incorporated into a monitoring plan as expeditiously as possible.

2. EPA retains its implementation and enforcement authorities for CAA section 111(d) and/or section 129 Federal Plans in Massachusetts. EPA retains sole authority for the following functions:

a. Alternative site-specific non-methane organic compounds (NMOC) concentrations or site-specific methane generation rate constant (k) used in calculating the annual NMOC emission rate (for landfills);

b. Alternative emission standards;

c. Major alternatives to test methods;

d. Major alternatives to monitoring;

e. Waivers of record keeping;

f. Alternative monitoring parameters (if applicable);

g. Petitions for alternative control device monitoring parameters (where applicable); and

h. Implementation and enforcement in Tribal lands.

D. Nothing in this MOA shall constrain EPA's authority to fulfill its oversight and enforcement roles under the CAA. This MOA shall not be construed to contravene any provision for any associated CAA section 111(d) and/or section 129 Federal Plan requirements. Furthermore, this MOA is in addition to, and does not affect, other EPA approvals and/or delegations under the CAA, such as New Source Review, the Title V Permitting Program, and the State Implementation Plan.

E. Upon issuance of a Title V operating permit to an affected source, MassDEP will have the authority necessary to enforce the CAA section 111(d) and/or section 129 Federal Plan standards.

VI. Administration of This Agreement

A. This MOA is effective when signed by both parties below and may be modified at any time upon the written agreement of MassDEP and EPA. This MOA may be terminated by either signatory at any time after proper written notice.

1. EPA and MassDEP may execute this MOA by handwritten or electronic signatures.

2. To ensure the validity of any electronic signatures and the legal enforceability of this MOA, EPA electronic signatures will comply with the Agency's 2018 Electronic Signature Policy and Electronic Signature Procedure. MassDEP signatures will comply with all applicable Massachusetts e-signature laws and policies. At a minimum, an electronically signed document must be reproducible in a human-intelligible form and clearly indicate: (1) that the document was electronically signed; (2) the unique identity of the individual who signed the document and their intent to sign; and (3) the date and time it was signed. Once the MOA is signed by a party, the document must be locked to prevent any further alteration of this document. An electronically signed

MOA delivered by email or in hard copy shall be deemed an original document which shall be stored and managed in accordance with State and Federal recordkeeping requirements. EPA and MassDEP acknowledge that electronic signatures carry the legal effect, validity, or enforceability of handwritten signatures. Therefore, the parties shall not deny the legal effect, validity, or enforceability of records containing electronic signatures that they transmit and receive on the ground that such records, including the signature(s), are in electronic form.

B. Nothing in this agreement shall be construed to restrict in any way the authority of either MassDEP or EPA in fulfilling its responsibilities under State or Federal law, respectively.

VII. Signatures

For the United States, Deborah Szaro, Acting Regional Administrator, EPA Region 1, October 15, 2021.

For the Commonwealth of Massachusetts, Martin Suuberg, Commissioner, Massachusetts Department of Environmental Protection, November 9, 2021.

This document informs the public of EPA Region 1 and MassDEP's November 9, 2021 MOA. In addition, a copy of the MOA signed by EPA Region 1 and MassDEP is available in the docket for this action identified in the **ADDRESSES** section above.

List of Subjects in 40 CFR Part 62

Environmental protection, Air pollution control, Administrative practice and procedure, Industrial facilities, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal.

Dated: September 15, 2022.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2022–20381 Filed 9–20–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2021–0153; FRL–10187–01–OCSPP]

Novaluron; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of novaluron in or on multiple crops that are discussed later in this document. Interregional Research Project Number 4 (IR–4) requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 21, 2022. Objections and requests for hearings must be received on or before November 21, 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–2021–0153, 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: Marietta Echeverria, Acting Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@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 an agricultural producer, food manufacturer, or 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 EPA's tolerance regulations at 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 number EPA–HQ–OPP–2021–0153 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 21, 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–2021–0153, 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 Petitioned-For Tolerance

In the **Federal Register** of June 28, 2021 (86 FR 33922) (FRL–10025–08), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C.

346a(d)(3), announcing the filing of a pesticide petition (PP 0E8882) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.598 be amended by establishing tolerances for residues of the insecticide novaluron in or on individual crops of proposed Crop Subgroup 6–XXA: Edible podded bean legume vegetable subgroup at 0.7 parts per million (ppm); individual crops of proposed Crop Subgroup 6–XXB: Edible podded pea legume vegetable subgroup at 2 ppm; individual crops of Proposed Crop Subgroup 6–XXC: Succulent shelled bean subgroup at 0.7 ppm; individual crops of Proposed Crop Subgroup 6–XXD: Succulent shelled pea subgroup at 0.05 ppm; individual crops of Proposed Crop Subgroup 6–XXE: Dried shelled bean, except soybean at 0.3 ppm; individual crops of Proposed Crop Subgroup 6–XXF: Dried shelled pea subgroup at 0.1 ppm; and Pea, forage at 15 ppm. The petition also requested to amend 40 CFR part 180 by removing established tolerances for residues of novaluron, including its metabolites and degradates, in or on Bean, dry, seed at 0.30 ppm, and Bean, succulent at 0.70 ppm. That document referenced a summary of the petition, which is available in the docket, *https://www.regulations.gov.* One comment was received from the United States Department of Agriculture in support of the notice of filing.

In the **Federal Register** of April 28, 2022 (87 FR 25178) (FRL–9410–12–OCSPP) EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8882) by IR–4, North Carolina State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.598 be amended by establishing tolerances for residues of the insecticide novaluron in or on the following raw agricultural commodities: Bean, phaseolus, forage at 15 ppm; Cowpea, forage at 15 ppm; Pea, field, forage at 15 ppm; Bean, phaseolus, hay at 80 ppm; Cowpea, hay at 80 ppm; and Pea, field, hay at 80 ppm. That document referenced a summary of the petition, which is available in the docket, *https://www.regulations.gov.* No substantive comments were received in response to the notice.

Based upon review of the data supporting the petition and in accordance with its authority under FFDCA section 408(d)(4)(A)(i), EPA is modifying many of the commodity definitions to be consistent with Agency terminology. The tolerance levels being established are the same as the petition requested.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish 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(b)(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(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), and the factors specified therein, 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 for novaluron including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with novaluron follows.

In an effort to streamline its publications in the **Federal Register**, EPA is not reprinting sections that repeat what has been previously published for tolerance rulemakings for the same pesticide chemical. Where scientific information concerning a particular chemical remains unchanged, the content of those sections would not vary between tolerance rulemakings, and EPA considers referral back to those sections as sufficient to provide an explanation of the information EPA considered in making its safety determination for the new rulemaking.

EPA has previously published tolerance rulemakings for novaluron in which EPA concluded, based on the available information, that there is a reasonable certainty that no harm would result from aggregate exposure to novaluron and established tolerances for residues of that chemical. EPA is incorporating previously published sections from these rulemakings as described further in this rulemaking, as they remain unchanged.

In addition, EPA has conducted a human health risk assessment in support of registration review for novaluron. That document, ''Novaluron: Draft Human Health Risk Assessment to Support Registration Review'' dated March 24, 2020, along with the Novaluron Interim Registration Review Decision, are available in docket ID number EPA–HQ–OPP–2015–0171 and are referenced below.

Toxicological profile. For a discussion of the Toxicological Profile of novaluron, see Unit III.A. of the novaluron tolerance rulemaking published in the **Federal Register** of July 22, 2015 (80 FR 43329) (FRL–9929–57) as well as the Novaluron: Draft Human Health Risk Assessment to Support Registration Review and Novaluron Interim Registration Review Decision.

Toxicological points of departure/Levels of concern. For a summary of the Toxicological Points of Departure/Levels of Concern for novaluron used for human health risk assessment, please reference Unit III.B. of the July 22, 2015, rulemaking as well as the Novaluron: Draft Human Health Risk Assessment to Support Registration Review and Novaluron Interim Registration Review Decision.

Exposure assessment. EPA's dietary exposure assessments have been updated to include the additional exposure from the proposed new uses of novaluron on the commodities identified in this action. An acute dietary exposure assessment was not performed as there are no toxicological effects attributable to a single exposure (dose). A partially refined chronic dietary (food and drinking water) exposure and risk assessment was conducted that incorporated tolerance-level residues for the proposed new uses. The chronic dietary exposure and risk assessment also incorporated average percent crop treated (PCT) data for several registered commodities as well as projected PCT data for the proposed Field Pea and Cowpea feed commodities. For the remaining commodities, 100 PCT was assumed. Anticipated residues for meat, milk, hog, and poultry commodities were incorporated as well. A cancer dietary assessment was not conducted because novaluron is classified as ''not likely to be carcinogenic to humans.''

Anticipated residue and PCT information. Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information,

EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

Updated average percent crop treated values were used for the following crops that are currently registered for novaluron: apples (10%), broccoli (1%), cabbage (5%), cantaloupe (1%), cauliflower (1%), cherries (1%), cotton (5%), dry beans/peas (1%), peaches (1%), peanuts (5%), pears (25%), peppers (5%), plums/prunes (1%), potatoes (5%), pumpkins (1%), sorghum (1%), squash (1%), strawberries (45%), sugarcane (1%), sweet corn (1%), tomatoes (2.5%), and watermelons (1%).

In most cases, EPA uses available data from the United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5% as the average PCT value, respectively. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the most recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5%, except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

Projected PCT was used for Field Pea and Cowpea feed commodities (10%). EPA estimates the projected PCT, also known as the percent crop treated of a new use (PCTn), based on the PCT of the dominant pesticide (*i.e.,* the one with the greatest PCT) used on that crop over the three most recent years of available data. Comparisons are only made among pesticides of the same pesticide types (*e.g.,* the dominant insecticide on the crop is selected for comparison with a new insecticide). The PCTs included in the analysis may be for the same pesticide or for different pesticides since the same or different pesticides may dominate for each year. Typically, EPA uses USDA NASS as the source for raw PCT data because it is publicly available and does not have to be calculated from available data sources. When a specific use site is not surveyed by USDA NASS, EPA uses other appropriate public data or private market research to calculate the PCTn.

The average PCT of the market leader(s) is appropriate for use in the chronic dietary risk assessment. This method of estimating a PCT for a new use of a registered pesticide or a new pesticide produces a high-end estimate that is unlikely, in most cases, to be exceeded during the initial five years of actual use. The predominant factors that bear on whether the estimated PCTn could be exceeded are (1) the extent of pest pressure on the crops in question; (2) the pest spectrum of the new pesticide in comparison with the market; and (3) resistance concerns with the market leaders. EPA has examined the relevant data and concludes that it is unlikely that the actual PCT with novaluron on the Field Pea and Cowpea feed commodities will exceed the PCTn within the next 5 years.

The Agency believes that Conditions a, b, and c discussed above have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which novaluron may be applied in a particular area.

Drinking water and non-occupational exposures. The previously recommended estimated drinking water concentrations (EDWCs) remain current and are considered protective potential drinking water residue levels anticipated from the proposed tolerances. As stated in Unit III of the novaluron tolerance rulemaking published in the **Federal Register** of August 13, 2020 (85 FR 49261) (FRL–10011–78), the chronic dietary exposure and risk assessment incorporate the highest total estimated drinking water concentration (EDWC) of 8.4 parts per billion directly into this dietary assessment. The residential exposure assessment has not changed since the July 22, 2015, rulemaking because there are no proposed new residential uses. For a summary of the residential exposure analysis for novaluron used for the human health risk assessment, please reference Unit III.C.3. of the July 22, 2015, rulemaking.

Cumulative exposure. Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.'' Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to novaluron and any other substances and novaluron does not appear to produce a toxic metabolite produced by other substances. For the purposes of this action, therefore, EPA has not assumed that novaluron has a common

mechanism of toxicity with other substances.

Safety factor for infants and children. EPA continues to conclude that there are reliable data to support the reduction of the Food Quality Protection Act (FQPA) safety factor from 10X to 1X. See Unit III.D. of the July 22, 2015, rulemaking for a discussion of the Agency's rationale for that determination.

Aggregate risks and determination of safety. EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute population-adjusted dose (aPAD) and chronic population-adjusted dose (cPAD). Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate points of departure to ensure that an adequate margin of exposure (MOE) exists. For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure.

An acute dietary exposure assessment was not performed as there were no toxicological effects attributable to a single exposure (dose) observed in available oral toxicity studies, including maternal toxicity in the developmental toxicity studies. Chronic dietary risks are below the Agency's level of concern of 100% of the cPAD; they are 29% of the cPAD for children 1 to 2 years old, the group with the highest exposure. The combined short- and intermediate-term food, water, and residential exposures result in aggregate margins of exposures of 3,800 for adults and 280 for children 1 to 2 years old. These MOEs are greater than the level of concern of 100 and are therefore not of concern. Novaluron is classified as ''Not Likely to Be Carcinogenic to Humans''; therefore, EPA does not expect novaluron exposures to pose an aggregate cancer risk.

Therefore, based on the risk assessments and information described above, EPA concludes there is a reasonable certainty that no harm will result to the general population, or to infants and children, from aggregate exposure to novaluron residues. More detailed information on this action can be found in the document titled ''Novaluron. Human Health Risk Assessment for Petition for Individual Commodities of Proposed Crop Subgroup 6–XXA: Vegetable, legume, bean, edible podded, subgroup 6–xxA; Proposed Crop Subgroup 6–XXB: Vegetable, legume, pea, edible podded, subgroup 6–xxB; Proposed Crop Subgroup 6–XXC: Vegetable, legume, bean, succulent shelled, subgroup 6–xxC; Proposed Crop Subgroup 6–XXD: Vegetable, legume, pea, succulent shelled, subgroup 6–xxD; Proposed Crop Subgroup 6–XXE: Vegetable, legume, bean, dried shelled, subgroup 6–xxE; Proposed Crop Subgroup 6–XXF: Vegetable, legume, pea, dried shelled, subgroup 6–xxF; Proposed Crop Subgroup 7–XXA: Vegetable, legume, forage and hay, except soybean group 7–xxA, forage; and Proposed Crop Subgroup 7–XXA: Vegetable, legume, forage and hay, except soybean group 7–xxA, hay'' in docket ID EPA–HQ–OPP–2021–0153.

IV. Other Considerations

A. Analytical Enforcement Methodology

For a discussion of the available analytical enforcement method, see Unit IV.A. of the July 22, 2015, rulemaking.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4).

The U.S. and Codex levels are harmonized for edible-podded and succulent shelled beans at 0.7 ppm. Using the Organization for Economic Cooperation and Development (OECD) calculator for the dried shelled beans, except soybean, subgroup gives a recommended tolerance level of 0.3 ppm, which is higher than the established Codex MRL of 0.1 ppm for ''beans (dry).'' The Agency is not lowering the tolerance level to harmonize with Codex because doing so could cause U.S. growers to have violative residues despite legal use of novaluron according to the label. There are no Codex MRLs for any of the other commodities identified in this action.

V. Conclusion

Therefore, tolerances are established for residues of novaluron in or on Bean, adzuki, dry seed at 0.3 ppm; Bean, African yam, dry seed at 0.3 ppm; Bean, American potato, dry seed at 0.3 ppm; Bean, asparagus, dry seed at 0.3 ppm; Bean, asparagus edible podded at 0.7 ppm; Bean, black, dry seed at 0.3 ppm; Bean, broad, dry seed at 0.3 ppm; Bean, broad, succulent shelled at 0.7 ppm; Bean, catjang, dry seed at 0.3 ppm; Bean, catjang edible podded at 0.7 ppm; Bean, catjang, succulent shelled at 0.7 ppm; Bean, cranberry, dry seed at 0.3 ppm; Bean, dry bean, dry seed at 0.3 ppm; Bean, field, dry seed at 0.3 ppm; Bean, French, dry seed at 0.3 ppm; Bean, French, edible podded at 0.7 ppm; Bean, garden, dry seed at 0.3 ppm; Bean, garden, edible podded at 0.7 ppm; Bean, goa, dry seed at 0.3 ppm; Bean, goa, edible podded at 0.7 ppm; Bean, goa, succulent shelled at 0.7 ppm; Bean, great northern, dry seed at 0.3 ppm; Bean, green, dry seed at 0.3 ppm; Bean, green, edible podded at 0.7 ppm; Bean, guar, dry seed at 0.3 ppm; Bean, guar, edible podded at 0.7 ppm; Bean, horse gram, dry seed at 0.3 ppm; Bean, kidney, dry seed at 0.3 ppm; Bean, kidney, edible podded at 0.7 ppm; Bean, lablab, dry seed at 0.3 ppm; Bean, lablab, edible podded at 0.7 ppm; Bean, lablab, succulent shelled at 0.7 ppm; Bean, lima, dry seed at 0.3 ppm; Bean, lima, succulent shelled at 0.7 ppm; Bean, morama, dry seed at 0.3 ppm; Bean, moth, dry seed at 0.3 ppm; Bean, moth, edible podded at 0.7 ppm; Bean, moth, succulent shelled at 0.7 ppm; Bean, mung, dry seed at 0.3 ppm; Bean, mung, edible podded at 0.7 ppm; Bean, navy, dry seed at 0.3 ppm; Bean, navy, edible podded at 0.7 ppm; Bean, phaseolus, forage at 15 ppm; Bean, phaseolus, hay at 80 ppm; Bean, pink, dry seed at 0.3 ppm; Bean, pinto, dry seed at 0.3 ppm; Bean, red, dry seed at 0.3 ppm; Bean, rice, dry seed at 0.3 ppm; Bean, rice, edible podded at 0.7 ppm; Bean, scarlet runner, dry seed at 0.3 ppm; Bean, scarlet runner, edible podded at 0.7 ppm; Bean, scarlet runner, succulent shelled at 0.7 ppm; Bean, snap, edible podded at 0.7 ppm; Bean, sword, dry seed at 0.3 ppm; Bean, sword, edible podded at 0.7 ppm; Bean, tepary, dry seed at 0.3 ppm; Bean, urd, dry seed at 0.3 ppm; Bean, urd, edible podded at 0.7 ppm; Bean, wax, edible podded at 0.7 ppm; Bean, wax, succulent shelled at 0.7 ppm; Bean, yardlong, dry seed at 0.3 ppm; Bean, yardlong, edible podded at 0.7 ppm; Bean, yellow, dry seed at 0.3 ppm; Chickpea, dry seed at 0.1 ppm; Chickpea, edible podded at 2 ppm; Chickpea, succulent shelled at 0.05 ppm; Cowpea, dry seed at 0.3 ppm; Cowpea, edible podded at 0.7 ppm; Cowpea, forage at 15 ppm; Cowpea, hay at 80 ppm; Cowpea, succulent shelled at 0.7 ppm; Jackbean, dry seed at 0.3 ppm; Jackbean, edible podded at 0.7 ppm; Jackbean, succulent shelled at 0.7 ppm; Lentil, dry seed at 0.1 ppm; Lentil, edible podded at 2 ppm; Lentil, succulent shelled at 0.05 ppm; Longbean, Chinese, dry seed at 0.3 ppm; Longbean, Chinese, edible podded at 0.7 ppm; Lupin, Andean, dry seed at 0.3 ppm; Lupin, Andean, succulent shelled

at 0.7 ppm; Lupin, blue, dry seed at 0.3 ppm; Lupin, blue, succulent shelled at 0.7 ppm; Lupin, grain, dry seed at 0.3 ppm; Lupin, grain, succulent shelled at 0.7 ppm; Lupin, sweet, dry seed at 0.3 ppm; Lupin, sweet, succulent shelled at 0.7 ppm; Lupin, white sweet, dry seed at 0.3 ppm; Lupin, white sweet, succulent shelled at 0.7 ppm; Lupin, white, dry seed at 0.3 ppm; Lupin, white, succulent shelled at 0.7 ppm; Lupin, yellow, dry seed at 0.3 ppm; Lupin, yellow, succulent shelled at 0.7 ppm; Pea, blackeyed, dry seed at 0.3 ppm; Pea, blackeyed, succulent shelled at 0.7 ppm; Pea, crowder, dry seed at 0.3 ppm; Pea, crowder, succulent shelled at 0.7 ppm; Pea, dry, dry seed at 0.1 ppm; Pea, dwarf, edible podded at 2 ppm; Pea, English, succulent shelled at 0.05 ppm; Pea, field, dry seed at 0.1 ppm; Pea, field, forage at 15 ppm; Pea, field, hay at 80 ppm; Pea, garden, dry seed at 0.1 ppm; Pea, garden, succulent shelled at 0.05 ppm; Pea, grass, dry seed at 0.1 ppm; Pea, grass, edible podded at 2 ppm; Pea, green, dry seed at 0.1 ppm; Pea, green, edible podded at 2 ppm; Pea, green, succulent shelled at 0.05 ppm; Pea, pigeon, dry seed at 0.1 ppm; Pea, pigeon, edible podded at 2 ppm; Pea, pigeon, succulent shelled at 0.05 ppm; Pea, snap, edible podded at 2 ppm; Pea, snow, edible podded at 2 ppm; Pea, southern, dry seed at 0.3 ppm; Pea, southern, succulent shelled at 0.7 ppm; Pea, sugar snap, edible podded at 2 ppm; Pea, winged, dry seed at 0.3 ppm; Pea, winged, edible podded at 0.7 ppm; Soybean, vegetable, dry seed at 0.3 ppm; Soybean, vegetable, edible podded at 0.7 ppm; Soybean, vegetable, succulent shelled at 0.7 ppm; Velvetbean, dry seed at 0.3 ppm; Velvetbean, edible podded at 0.7 ppm; Velvetbean, succulent shelled at 0.7 ppm.

Additionally, the established tolerances on Bean, dry, seed and Bean, succulent are removed as unnecessary.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. 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, 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), or to Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not 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.*).

This action does not involve any technical standards that would require Agency 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 Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 15, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter 1 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. In § 180.598, amend the Table 1 to Paragraph (a) by:

■ a. Adding in alphabetical order the entries ''Bean, adzuki, dry seed''; ''Bean, African yam, dry seed''; ''Bean, American potato, dry seed''; ''Bean, asparagus, dry seed''; ''Bean, asparagus, edible podded''; ''Bean, black, dry seed''; ''Bean, broad, dry seed''; ''Bean, broad, succulent shelled''; ''Bean, catjang, dry seed''; ''Bean, catjang edible podded''; ''Bean, catjang, succulent shelled''; ''Bean, cranberry, dry seed''; and ''Bean, dry bean, dry seed''.

■ b. Removing the entry for ''Bean, dry, seed''.

■ c. Adding in alphabetical order the entries ''Bean, field, dry seed''; ''Bean, French, dry seed''; ''Bean, French, edible podded''; ''Bean, garden, dry seed''; ''Bean, garden, edible podded''; ''Bean, goa, dry seed''; ''Bean, goa, edible podded''; ''Bean, goa, succulent shelled''; ''Bean, great northern, dry seed''; ''Bean, green, dry seed''; ''Bean, green, edible podded''; ''Bean, guar, dry seed''; ''Bean, guar, edible podded''; ''Bean, horse gram, dry seed''; ''Bean, kidney, dry seed''; ''Bean, kidney, edible podded''; ''Bean, lablab, dry seed''; ''Bean, lablab, edible podded''; ''Bean, lablab, succulent shelled''; ''Bean, lima, dry seed''; ''Bean, lima, succulent shelled''; ''Bean, morama, dry seed''; ''Bean, moth, dry seed''; ''Bean, moth, edible podded''; ''Bean, moth, succulent shelled''; ''Bean, mung, dry seed''; ''Bean, mung, edible podded''; ''Bean, navy, dry seed''; ''Bean, navy, edible podded''; ''Bean, phaseolus, forage''; ''Bean, phaseolus, hay''; ''Bean, pink, dry seed''; ''Bean, pinto, dry seed''; ''Bean, red, dry seed''; ''Bean, rice, dry

seed''; ''Bean, rice, edible podded''; ''Bean, scarlet runner, dry seed''; ''Bean, scarlet runner, edible podded''; ''Bean, scarlet runner, succulent shelled''; and ''Bean, snap, edible podded''.

■ d. Removing the entry for ''Bean, succulent''.

■ e. Adding in alphabetical order the entries ''Bean, sword, dry seed''; ''Bean, sword, edible podded''; ''Bean, tepary, dry seed''; ''Bean, urd, dry seed''; ''Bean, urd, edible podded''; ''Bean, wax, edible podded''; ''Bean, wax, succulent shelled''; ''Bean, yardlong, dry seed''; ''Bean, yardlong, edible podded''; ''Bean, yellow, dry seed''; ''Chickpea, dry seed''; ''Chickpea, edible podded''; ''Chickpea, succulent shelled''; ''Cowpea, dry seed''; ''Cowpea, edible podded''; ''Cowpea, forage''; ''Cowpea, hay''; ''Cowpea, succulent shelled''; ''Jackbean, dry seed''; ''Jackbean, edible podded''; ''Jackbean, succulent shelled''; ''Lentil, dry seed''; ''Lentil, edible podded''; ''Lentil, succulent shelled''; ''Longbean, Chinese, dry seed''; ''Longbean, Chinese, edible podded''; ''Lupin, Andean, dry seed''; ''Lupin, Andean, succulent shelled''; ''Lupin, blue, dry seed''; ''Lupin, blue, succulent shelled''; ''Lupin, grain, dry seed''; ''Lupin, grain, succulent shelled''; ''Lupin, sweet, dry seed''; ''Lupin, sweet, succulent shelled''; ''Lupin, white sweet, dry seed''; ''Lupin, white sweet, succulent shelled''; ''Lupin, white, dry seed''; ''Lupin, white, succulent shelled''; ''Lupin, yellow, dry seed''; ''Lupin, yellow, succulent shelled''; ''Pea, blackeyed, dry seed''; ''Pea, blackeyed, succulent shelled''; ''Pea, crowder, dry seed''; ''Pea, crowder, succulent shelled''; ''Pea, dry, dry seed''; ''Pea, dwarf, edible podded''; ''Pea, English, succulent shelled''; ''Pea, field, dry seed''; ''Pea, field, forage''; ''Pea, field, hay''; ''Pea, garden, dry seed''; ''Pea, garden, succulent shelled''; ''Pea, grass, dry seed''; ''Pea, grass, edible podded''; ''Pea, green, dry seed''; ''Pea, green, edible podded''; ''Pea, green, succulent shelled''; ''Pea, pigeon, dry seed''; ''Pea, pigeon, edible podded''; ''Pea, pigeon, succulent shelled''; ''Pea, snap, edible podded''; ''Pea, snow, edible podded''; ''Pea, southern, dry seed''; ''Pea, southern, succulent shelled''; ''Pea, sugar snap, edible podded''; ''Pea, winged, dry seed''; ''Pea, winged, edible podded''; ''Soybean, vegetable, dry seed''; ''Soybean, vegetable, edible podded''; ''Soybean, vegetable, succulent shelled''; ''Velvetbean, dry seed''; ''Velvetbean, edible podded''; and ''Velvetbean, succulent shelled''.

The additions read as follows:

§ 180.598 Novaluron; tolerances for residues.

(a) * * *

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Bean, adzuki, dry seed	0.3
Bean, African yam, dry seed	0.3
Bean, American potato, dry seed	0.3
Bean, asparagus, dry seed	0.3
Bean, asparagus, edible podded	0.7
Bean, black, dry seed	0.3
Bean, broad, dry seed	0.3
Bean, broad, succulent shelled	0.7
Bean, catjang, dry seed	0.3
Bean, catjang edible podded	0.7
Bean, catjang, succulent shelled	0.7
Bean, cranberry, dry seed	0.3
Bean, dry bean, dry seed	0.3
Bean, field, dry seed	0.3
Bean, French, dry seed	0.3
Bean, French, edible podded	0.7
Bean, garden, dry seed	0.3
Bean, garden, edible podded	0.7
Bean, goa, dry seed	0.3
Bean, goa, edible podded	0.7
Bean, goa, succulent shelled	0.7
Bean, great northern, dry seed	0.3
Bean, green, dry seed	0.3
Bean, green, edible podded	0.7
Bean, guar, dry seed	0.3
Bean, guar, edible podded	0.7
Bean, horse gram, dry seed	0.3
Bean, kidney, dry seed	0.3
Bean, kidney, edible podded	0.7
Bean, lablab, dry seed	0.3
Bean, lablab, edible podded	0.7
Bean, lablab, succulent shelled	0.7
Bean, lima, dry seed	0.3
Bean, lima, succulent shelled	0.7
Bean, morama, dry seed	0.3
Bean, moth, dry seed	0.3
Bean, moth, edible podded	0.7
Bean, moth, succulent shelled	0.7
Bean, mung, dry seed	0.3
Bean, mung, edible podded	0.7
Bean, navy, dry seed	0.3
Bean, navy, edible podded	0.7
Bean, phaseolus, forage	15
Bean, phaseolus, hay	80
Bean, pink, dry seed	0.3
Bean, pinto, dry seed	0.3
Bean, red, dry seed	0.3
Bean, rice, dry seed	0.3
Bean, rice, edible podded	0.7
Bean, scarlet runner, dry seed	0.3
Bean, scarlet runner, edible podded	0.7
Bean, scarlet runner, succulent shelled	0.7
Bean, snap, edible podded	0.7
Bean, sword, dry seed	0.3
Bean, sword, edible podded	0.7
Bean, tepary, dry seed	0.3
Bean, urd, dry seed	0.3
Bean, urd, edible podded	0.7
Bean, wax, edible podded	0.7
Bean, wax, succulent shelled	0.7
Bean, yardlong, dry seed	0.3
Bean, yardlong, edible podded	0.7
Bean, yellow, dry seed	0.3
* * * * *	
Chickpea, dry seed	0.1
Chickpea, edible podded	2
Chickpea, succulent shelled	0.05
* * * * *	
Cowpea, dry seed	0.3
Cowpea, edible podded	0.7
Cowpea, forage	15
Cowpea, hay	80
Cowpea, succulent shelled	0.7
* * * * *	
Jackbean, dry seed	0.3
Jackbean, edible podded	0.7
Jackbean, succulent shelled	0.7
* * * * *	
Lentil, dry seed	0.1
Lentil, edible podded	2
Lentil, succulent shelled	0.05
Longbean, Chinese, dry seed	0.3
Longbean, Chinese, edible podded	0.7
Lupin, Andean, dry seed	0.3
Lupin, Andean, succulent shelled	0.7
Lupin, blue, dry seed	0.3
Lupin, blue, succulent shelled	0.7
Lupin, grain, dry seed	0.3
Lupin, grain, succulent shelled	0.7
Lupin, sweet, dry seed	0.3
Lupin, sweet, succulent shelled	0.7
Lupin, white sweet, dry seed	0.3
Lupin, white sweet, succulent shelled	0.7
Lupin, white, dry seed	0.3
Lupin, white, succulent shelled	0.7
Lupin, yellow, dry seed	0.3
Lupin, yellow, succulent shelled	0.7
* * * * *	
Pea, blackeyed, dry seed	0.3
Pea, blackeyed, succulent shelled	0.7
Pea, crowder, dry seed	0.3
Pea, crowder, succulent shelled	0.7
Pea, dry, dry seed	0.1
Pea, dwarf, edible podded	2
Pea, English, succulent shelled	0.05
Pea, field, dry seed	0.1
Pea, field, forage	15
Pea, field, hay	80
Pea, garden, dry seed	0.1
Pea, garden, succulent shelled	0.05
Pea, grass, dry seed	0.1
Pea, grass, edible podded	2
Pea, green, dry seed	0.1
Pea, green, edible podded	2
Pea, green, succulent shelled	0.05
Pea, pigeon, dry seed	0.1
Pea, pigeon, edible podded	2
Pea, pigeon, succulent shelled	0.05
Pea, snap, edible podded	2
Pea, snow, edible podded	2
Pea, southern, dry seed	0.3
Pea, southern, succulent shelled	0.7
Pea, sugar snap, edible podded	2
Pea, winged, dry seed	0.3
Pea, winged, edible podded	0.7
* * * * *	
Soybean, vegetable, dry seed	0.3
Soybean, vegetable, edible podded	0.7
Soybean, vegetable, succulent shelled	0.7
* * * * *	
Velvetbean, dry seed	0.3
Velvetbean, edible podded	0.7
Velvetbean, succulent shelled	0.7

* * * * *

[FR Doc. 2022–20332 Filed 9–20–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2020–0498; FRL–9521–01–OCSPP]

Glufosinate; Pesticide Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for residues of glufosinate in or on multiple commodities that are identified and discussed later in this document. Interregional Project Number 4 (IR–4) and BASF Corporation requested these tolerances under the Federal Food, Drug, and Cosmetic Act (FFDCA).

DATES: This regulation is effective September 21, 2022. Objections and requests for hearings must be received on or before November 21, 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–2020–0498, is available online at *https://www.regulations.gov* or in-person 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: Marietta Echeverria, Acting Director, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@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 an agricultural producer, food manufacturer, or 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 EPA's tolerance regulations at 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, 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 number EPA–HQ–OPP–2020–0498 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 21, 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–2020–0498, 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.*

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 Petitioned-For Tolerance

In the **Federal Register** of December 21, 2020 (85 FR 82998) (FRL–10016–93), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0E8859) by IR–4, NC State University, 1730 Varsity Drive, Venture IV, Suite 210, Raleigh, NC 27606. The petition requested that 40 CFR 180.473 be amended to establish tolerances for residues of the herbicide glufosinate-ammonium, determined by measuring the sum of glufosinate-ammonium, butanoic acid, 2-amino-4-(hydroxymethylphosphinyl) monoammonium salt, and its metabolites, 2-(acetylamino)-4-(hydroxymethyl phosphinyl)butanoic acid, and 3-(hydroxymethylphosphinyl)propanoic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on avocado at 0.03 parts per million (ppm); bushberry subgroup 13–07B at 0.15 ppm; cottonseed subgroup 20C at 4 ppm; fig at 0.07 ppm; fig, dried at 0.2 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.05 ppm; hop, dried cones at 0.9 ppm; melon subgroup 9A at 0.08 ppm; pepper/eggplant subgroup 8–10B at 0.08 ppm; rapeseed, subgroup 20A at 0.4 ppm; squash/cucumber subgroup 9B at 0.15 ppm; tomato, paste at 0.11 ppm; tomato, subgroup 8–10A at 0.06 ppm; tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.5 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.8 ppm. Upon the establishment of those tolerances, the petition also requested that EPA remove the following tolerances from 40 CFR 180.473: apple at 0.05 ppm; bushberry subgroup 13B at 0.15 ppm; canola, seed at 0.40 ppm; cotton, undelinted seed at 4.0 ppm; grape at 0.05 ppm; juneberry at 0.10 ppm; lingonberry at 0.10 ppm; olive at 0.50 ppm; pistachio at 0.10 ppm; potato at 0.80 ppm; and salal at 0.10 ppm. That document referenced a summary of the petition prepared by IR–4, the petitioner, and is available in the docket, *https://www.regulations.gov.*

Two comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

In the **Federal Register** of August 24, 2021 (86 FR 47275) (FRL–8792–02–OCSPP), EPA issued a document pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide petition (PP 0F8865) by BASF Corporation, 26 Davis Drive, Research Triangle Park, NC 27709. The petition requested that 40 CFR 180.473 be amended to establish or revise tolerances for residues of the herbicide glufosinate-ammonium, determined by measuring the sum of glufosinate-ammonium, butanoic acid, 2-amino-4-(hydroxymethylphosphinyl) monoammonium salt, and its metabolites, 2-(acetylamino)-4-(hydroxymethyl phosphinyl)butanoic acid, and 3-(hydroxymethylphosphinyl)propanoic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents in or on oilseed, cottonseed subgroup 20C at 15 ppm and cotton gin byproducts at 50 ppm. That document referenced a summary of the petition prepared by BASF, the registrant, and is available in the docket, *https://www.regulations.gov.* Comments were received on the notice of filing. EPA's response to these comments is discussed in Unit IV.C.

Based upon review of the data supporting the petition, EPA is establishing some tolerances at different levels than the petitioner requested. The reasons for these changes are explained in Unit IV.D.

III. Aggregate Risk Assessment and Determination of Safety

Section 408(b)(2)(A)(i) of FFDCA allows EPA to establish 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(b)(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(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), and the factors specified in 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 for glufosinate including exposure resulting from the tolerances established by this action. EPA's assessment of exposures and risks associated with glufosinate follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children.

The toxicology database for glufosinate is complete. A primary effect associated with glufosinate is inhibition of glutamine synthetase in the brain, which may be of significant concern for possible neurotoxicity and/or expression of clinical signs. Clinical signs of neurotoxicity were seen in several studies, including the subchronic, developmental, and chronic studies in rats and dogs. In addition to a variety of clinical signs, retinal atrophy was also observed in the subchronic and chronic rat studies. The rat developmental neurotoxicity (DNT) study demonstrated altered brain morphometrics.

There was evidence of both qualitative (rabbit developmental study) and quantitative (rat reproductive toxicity study; DNT study) susceptibility following glufosinate exposure. A 28-day inhalation toxicity study demonstrated toxicity at the lowest dose tested as indicated by lung and bronchial congestion. Glufosinate ammonium is classified as Toxicity Category III or IV for acute oral, dermal, and inhalation toxicity; and is not a dermal or eye irritant, nor a dermal sensitizer. Glufosinate was classified as ''not likely to be a human carcinogen.'' There was no evidence of a treatment-related increase in tumors in either rats or mice.

Specific information on the studies received and the nature of the adverse effects caused by glufosinate as well as the no-observed-adverse-effect-level (NOAEL) and the lowest-observed-adverse-effect-level (LOAEL) from the toxicity studies can be found at *https://www.regulations.gov* in the document titled ''Glufosinate. Human Health Risk Assessment for the Proposed Use of Glufosinate on tomato subgroup 8–10A; pepper/eggplant subgroup 8–10B; melon subgroup 9A; squash/cucumber subgroup 9B; fig; avocado; hops: and crop group expansions for rapeseed subgroup 20A; cottonseed subgroup 20C; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F; tropical and subtropical, small fruit, edible peel, subgroup 23A; vegetable, tuberous and corm, subgroup 1C; and a crop group conversion for bushberry subgroup 13–07B: an amended application rate for cotton: and revised restricted entry intervals for cotton, field corn, sweet corn, soybean, and canola'' (hereinafter ''Glufosinate Human Health Risk Assessment'') on pages 43–52 in docket ID number EPA–HQ–OPP–2020–0498.

B. Toxicological Points of Departure/Levels of Concern

Once a pesticide's toxicological profile is determined, EPA identifies toxicological points of departure (POD) and levels of concern to use in evaluating the risk posed by human exposure to the pesticide. For hazards that have a threshold below which there is no appreciable risk, the toxicological POD is used as the basis for derivation of reference values for risk assessment. PODs are developed based on a careful analysis of the doses in each toxicological study to determine the dose at which no adverse effects are observed (the NOAEL) and the lowest dose at which adverse effects of concern are identified (the LOAEL). Uncertainty/safety factors are used in conjunction with the POD to calculate a safe exposure level—generally referred to as a population-adjusted dose (PAD) or a reference dose (RfD)—and a safe margin of exposure (MOE). For non-threshold risks, the Agency assumes that any amount of exposure will lead to some degree of risk. Thus, the Agency estimates risk in terms of the probability of an occurrence of the adverse effect expected in a lifetime. For more information on the general principles EPA uses in risk characterization and a complete description of the risk assessment process, see *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

A summary of the toxicological endpoints for glufosinate used for human risk assessment can be found in the Glufosinate Human Health Risk Assessment on page 23–26.

C. Exposure Assessment

1. *Dietary exposure from food and feed uses.* In evaluating dietary

exposure to glufosinate, EPA considered exposure under the petitioned-for tolerances as well as all existing glufosinate tolerances in 40 CFR 180.473. EPA assessed dietary exposures from glufosinate in food as follows:

i. *Acute exposure.* Quantitative acute dietary exposure and risk assessments are performed for a food-use pesticide, if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1-day or single exposure. Such effects were identified for glufosinate.

In conducting the acute dietary exposure assessment, EPA used the 2003–2008 food consumption data from the U.S. Department of Agriculture's (USDA's) National Health and Nutrition Examination Survey, What We Eat in America (NHANES/WWEIA). The acute dietary exposure assessment is unrefined, assuming tolerance level residues and 100% crop treated (100 PCT) for all crop and livestock commodities.

ii. *Chronic exposure.* In conducting the chronic dietary exposure assessment, EPA used the 2003–2008 food consumption data from the NHANES/WWEIA. EPA used anticipated residues based on average field trial residue levels for plant raw agricultural commodities, PCT information where available, and experimentally-determined processing factors where available. Anticipated residues for livestock commodities were also calculated and incorporated into the assessment.

iii. *Cancer.* EPA has concluded that glufosinate does not pose a cancer risk to humans. Therefore, a dietary exposure assessment for the purpose of assessing cancer risk is unnecessary.

iv. *Anticipated residue and PCT information.* Section 408(b)(2)(E) of FFDCA authorizes EPA to use available data and information on the anticipated residue levels of pesticide residues in food and the actual levels of pesticide residues that have been measured in food. If EPA relies on such information, EPA must require pursuant to FFDCA section 408(f)(1) that data be provided 5 years after the tolerance is established, modified, or left in effect, demonstrating that the levels in food are not above the levels anticipated. For the present action, EPA will issue such data call-ins as are required by FFDCA section 408(b)(2)(E) and authorized under FFDCA section 408(f)(1). Data will be required to be submitted no later than 5 years from the date of issuance of these tolerances.

Section 408(b)(2)(F) of FFDCA states that the Agency may use data on the actual percent of food treated for assessing chronic dietary risk only if:

- *Condition a:* The data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain the pesticide residue.
- *Condition b:* The exposure estimate does not underestimate exposure for any significant subpopulation group.
- *Condition c:* Data are available on pesticide use and food consumption in a particular area, and the exposure estimate does not understate exposure for the population in such area.

In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by FFDCA section 408(b)(2)(F), EPA may require registrants to submit data on PCT.

For the chronic dietary assessment, the following PCT assumptions were made: almonds: 25%; apples: 5%; apricots: 15%; blueberries: 20%; canola: 55%; cherries: 5%; corn: 2.5%; cotton: 20%; grapes: 20%; hazelnuts: 40%; peaches:10%; pears: 10%; pecans: 1%; pistachios: 35%; plums/prunes: 15%; potatoes: 15%; rice: 1%; soybeans: 10%; sweet corn: 1%; and walnuts: 20%. In the acute analysis, the Agency made the conservative assumption of 100 PCT.

In most cases, EPA uses available data from United States Department of Agriculture/National Agricultural Statistics Service (USDA/NASS), proprietary market surveys, and California Department of Pesticide Regulation (CalDPR) Pesticide Use Reporting (PUR) for the chemical/crop combination for the most recent 10 years. EPA uses an average PCT for chronic dietary risk analysis and a maximum PCT for acute dietary risk analysis. The average PCT figure for each existing use is derived by combining available public and private market survey data for that use, averaging across all observations, and rounding to the nearest 5%, except for those situations in which the average PCT is less than 1% or less than 2.5%. In those cases, the Agency would use less than 1% or less than 2.5% as the average PCT value, respectively. The maximum PCT figure is the highest observed maximum value reported within the recent 10 years of available public and private market survey data for the existing use and rounded up to the nearest multiple of 5% except where the maximum PCT is less than 2.5%, in which case, the Agency uses less than 2.5% as the maximum PCT.

The Agency believes that the three conditions discussed in Unit III.C.1.iv. have been met. With respect to Condition a, PCT estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Conditions b and c, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available reliable information on the regional consumption of food to which glufosinate may be applied in a particular area.

2. *Dietary exposure from drinking water.* The Agency used screening level water exposure models in the dietary exposure analysis and risk assessment for glufosinate in drinking water. These simulation models take into account data on the physical, chemical, and fate/transport characteristics of glufosinate. Further information regarding EPA drinking water models used in pesticide exposure assessment can be found at *https://www.epa.gov/science-and-assessing-pesticide-risks/pesticide-risk-assessment.*

Based on the Pesticides in Water Calculator (PWC; version 1.52), the estimated drinking water concentrations (EDWCs) of glufosinate are estimated to be 201 ppb for acute dietary exposures and 24.4 ppb parts per billion (ppb) for chronic dietary exposures. Surface water simulations resulted in the highest EDWCs.

3. *From non-dietary exposure.* The term ''residential exposure'' is used in this document to refer to non-occupational, non-dietary exposure (*e.g.,* for lawn and garden pest control, indoor pest control, termiticides, and flea and tick control on pets). Glufosinate is currently registered for uses that could result in residential handler and post-application exposures including use on lawn and turf as well as recreational sites such as golf courses. The current action does not add any new uses with residential exposures.

For assessing aggregate exposure to adults, the Agency used exposures from the dermal exposure scenario from high

contact lawn activity on treated lawns and turf. For assessing aggregate exposure to children 1 to less than 2 years old, the conservative exposure assessment for dermal plus incidental oral (hand-to-mouth and object-to-mouth) exposure from high contact lawn activity on lawns and turf treated with glufosinate was assumed. Further information regarding EPA standard assumptions and generic inputs for residential exposures may be found at *https://www.epa.gov/science-and-assessing-pesticide-risks/standard-operating-procedures-residential-pesticide.*

4. *Cumulative effects from substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider ''available information'' concerning the cumulative effects of a particular pesticide's residues and ''other substances that have a common mechanism of toxicity.''

Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, EPA has not made a common mechanism of toxicity finding as to glufosinate and any other substances, and glufosinate does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that glufosinate has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see EPA's website at *https://www.epa.gov/pesticide-science-and-assessing-pesticide-risks/cumulative-assessment-risk-pesticides.*

D. Safety Factor for Infants and Children

1. *In general.* Section 408(b)(2)(C) of FFDCA provides that EPA shall apply an additional tenfold (10X) margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the database on toxicity and exposure unless EPA determines based on reliable data that a different margin of safety will be safe for infants and children. This additional margin of safety is commonly referred to as the Food Quality Protection Act (FQPA) Safety Factor (SF). In applying this provision, EPA either retains the default value of 10X, or uses a different additional safety factor when reliable data are available to EPA support the choice of a different factor.

2. *Prenatal and postnatal sensitivity.* Quantitative susceptibility was seen in the rat developmental neurotoxicity (DNT) study for glufosinate which demonstrated alterations in brain morphometrics in the adult offspring exposed *in utero* and/or during lactation at dose levels not associated with maternal toxicity. The reproductive toxicity study in rats also showed evidence of quantitative susceptibility indicated by an increase in pup mortality in the absence of parental toxicity. In rabbits, decreased fetal body weight and increased mortality were observed. Since increased fetal mortality was observed in the presence of less severe maternal toxicity (decreased food consumption, body weight, and body weight gain), there is evidence of qualitative susceptibility in the fetuses. The developmental toxicity study in the rat revealed dilated renal pelvis and/or hydroureter in the fetuses at the same dose level that produced significant increases in hyperactivity and vaginal bleeding in the dams indicating no qualitative or quantitative sensitivity.

3. *Conclusion.* EPA has determined that reliable data show the safety of infants and children would be adequately protected if the FQPA SF were reduced to 1X for acute dietary exposure. For all other exposure scenarios where the DNT study or the 28-day inhalation study is used as an endpoint for risk assessment (*i.e.,* short-term incidental oral, short- and intermediate-term dermal, and chronic dietary), EPA is retaining a 10X FQPA SF as a LOAEL to NOAEL extrapolation factor since NOAELs were not observed in those studies. The decision to reduce the FQPA SF to 1X for acute dietary exposure is based on the following findings:

i. The toxicity database for glufosinate is complete.

ii. A number of clinical signs indicative of neurotoxicity were noted in rat and dog studies. A critical indication of neurotoxicity was also evident in the DNT study where alterations in brain morphometrics in the adult offspring were demonstrated. However, concern is low since the selected points of departure are protective of observed neurotoxic effects.

iii. Quantitative evidence of increased *in utero* and post-natal susceptibility was identified in rats. However, concern for the observed susceptibility is low as all selected endpoints are protective of these effects.

iv. There are no residual uncertainties identified in the exposure databases. The acute dietary food exposure assessment was performed based on 100 PCT and tolerance-level residues for all crops and livestock commodities. With limited monitoring data available, upper-bound assumptions were used to determine exposure through drinking water sources. These assessments will not underestimate the exposure and risks posed by glufosinate.

E. Aggregate Risks and Determination of Safety

EPA determines whether acute and chronic dietary pesticide exposures are safe by comparing aggregate exposure estimates to the acute PAD (aPAD) and chronic PAD (cPAD). For linear cancer risks, EPA calculates the lifetime probability of acquiring cancer given the estimated aggregate exposure. Short-, intermediate-, and chronic-term risks are evaluated by comparing the estimated aggregate food, water, and residential exposure to the appropriate PODs to ensure that an adequate MOE exists.

1. *Acute risk.* An acute aggregate risk assessment takes into account acute exposure estimates from dietary consumption of food and drinking water. Using the exposure assumptions described in this unit for acute exposure, EPA has concluded that acute exposure to glufosinate from food and water will utilize 27% of the aPAD with the females 13 to 49 years old population subgroup, the only population group of concern because no appropriate toxicological effect attributable to a single dose was observed for the general U.S. population or any other population subgroup.

2. *Chronic risk.* Using the exposure assumptions described in this unit for chronic exposure, EPA has concluded that chronic exposure to glufosinate from food and water will utilize 37% of the cPAD for children 1 to 2 years old, the population group receiving the greatest exposure. Chronic residential exposure to residues of glufosinate is not expected.

3. *Short-term risk.* Short-term aggregate exposure takes into account short-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). Glufosinate is registered for uses that could result in short-term residential exposure, and the Agency has determined that it is appropriate to aggregate chronic exposure through food and water with short-term residential exposures to glufosinate.

Using the exposure assumptions described in this unit for short-term exposures, EPA has concluded the combined short-term food, water, and

residential exposures result in a short-term aggregate MOE 5,100 for adults. Likewise, for children 1 to less than 2 years old, the short-term aggregate risk estimates are not of concern. The short-term aggregate MOE is 1,100 and the Agency's level of concern is 1,000 for the particular exposures discussed in this section. Because EPA's level of concern for glufosinate is 1,000 or below, these risks are not of concern.

4. *Intermediate-term risk.* Intermediate-term aggregate exposure takes into account intermediate-term residential exposure plus chronic exposure to food and water (considered to be a background exposure level). An intermediate-term adverse effect was identified; however, glufosinate is not registered for any use patterns that would result in intermediate-term residential exposure. Intermediate-term risk is assessed based on intermediate-term residential exposure plus chronic dietary exposure. Because there is no intermediate-term residential exposure and chronic dietary exposure has already been assessed under the appropriately-protective cPAD (which is at least as protective as the POD used to assess intermediate-term risk), no further assessment of intermediate-term risk is necessary, and EPA relies on the chronic dietary risk assessment for evaluating intermediate-term risk for glufosinate.

5. *Aggregate cancer risk for U.S. population.* Based on the lack of evidence of carcinogenicity in two adequate rodent carcinogenicity studies, glufosinate is not expected to pose a cancer risk to humans.

6. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to the general population, or to infants and children from aggregate exposure to glufosinate residues.

IV. Other Considerations

A. Analytical Enforcement Methodology

Two analytical methods have been validated by EPA for enforcement of the currently established tolerances: (1) Method HRAV–5A for the determination of glufosinate and glufosinate propanoic acid in/on almond, apple, corn forage, corn grain, grape, and soybean seed; and, (2) Method BK/01/99 used for the determination of glufosinate, N-acetyl-glufosinate, and glufosinate propanoic acid in/on canola seed and sugar beet root.

Based on the results of the crop field trials validating a method similar to Method BK/01/99, EPA concludes that Method BK/01/99 is a suitable method for enforcement of tolerances on avocado, fig, hops, melon, pepper, squash/cucumber and tomato.

B. International Residue Limits

In making its tolerance decisions, EPA seeks to harmonize U.S. tolerances with international standards whenever possible, consistent with U.S. food safety standards and agricultural practices. EPA considers the international maximum residue limits (MRLs) established by the Codex Alimentarius Commission (Codex), as required by FFDCA section 408(b)(4). EPA may establish a tolerance that is different from a Codex MRL; however, FFDCA section 408(b)(4) requires that EPA explain the reasons for departing from the Codex level.

Codex has not established MRLs for glufosinate in/on cotton, gin byproducts; fig, dried; hop, dried cones; melon, subgroup 9A; pepper/eggplant 8–10B; squash/cucumber subgroup 9B; or tomato, paste.

The U.S. tolerances for avocado and fig are harmonized with the Codex MRLs of 0.1 ppm for avocado and 0.1 ppm for fig. The U.S. tolerance for tomato subgroup 8–10A is harmonized with Codex MRLs of 0.1 ppm on naranjilla and tree tomato.

Tolerances for bushberry subgroup 13–07B; tropical and subtropical, small fruit, edible peel, subgroup 23A; vegetable, tuberous and corm, subgroup 1C; and cottonseed subgroup 20C are not harmonized with the corresponding Codex MRLs because the residue data based on approved application rates indicates that residues of glufosinate would be higher than the Codex MRL. Decreasing the U.S. tolerances would put U.S. growers at risk of having violative residues despite legal use of glufosinate according to the label. The tolerance for rapeseed subgroup 20A at 0.4 ppm is not harmonized with the Codex MRL on rapeseed at 1.5 ppm because the Codex MRL is based on an obsolete use and because available data indicate that 0.4 ppm is sufficient for glufosinate residues from use on rapeseed subgroup 20A. EPA is not harmonizing the U.S. tolerance for fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.05 ppm with the Codex MRLs of 0.15 ppm for table and wine grape because the Codex MRLs are based on obsolete data and there are no registered uses in the European Union.

C. Response to Comments

The same two comments were received to both the registrant's and IR–4's notice of filing. Both comments stated in part that the Agency should ''deny this profiteering exemption for rutgers.'' Although the Agency recognizes that some individuals believe that pesticides should be banned on agricultural crops, the existing legal framework provided by section 408 of the FFDCA authorizes EPA to establish tolerances when it determines that the tolerances are safe. Upon consideration of the validity, completeness, and reliability of the available data as well as other factors the FFDCA requires EPA to consider, EPA has determined that the glufosinate tolerances are safe. The commenter has provided no information indicating that a safety determination cannot be supported.

D. Revisions to Petitioned-for Tolerances

EPA is establishing the tolerances for avocado, fig, and tomato subgroup 8–10A at different levels than requested to harmonize with the Codex MRL.

For cottonseed, subgroup 20C, IR–4 requested a tolerance of 4 ppm based on the existing tolerance of 4 ppm on cotton, undelinted seed; however, BASF also petitioned for a new tolerance on cottonseed subgroup 20C at 15 ppm. EPA is establishing the tolerance at 15 ppm based on the new cotton field trial data. For cotton, gin byproducts, the already established tolerance of 15 ppm is being changed to 30 ppm rather than 50 ppm requested by BASF based on the new field trial data provided for cotton gin byproducts. The tolerance of 30 ppm for cotton gin byproducts is based on the field trials most reflective of the label use pattern on cotton (2 applications of ~0.8 lb ai/A), rather than using field trials that exceed the maximum single application rate.

IR–4 requested a tolerance of 0.2 ppm for fig, dried. EPA is establishing the tolerance for fig, dried at 0.15 ppm to reflect the correct theoretical processing factor. The tolerance level for fig, dried was derived using the combined glufosinate, 3-(hydroxymethylphosphinyl) propanoic acid (MPP), and 2-(acetylamino)-4-(hydroxymethyl phosphinyl) butanoic acid (NAG) highest average field trials (HAFTs) of the fig field trials in combination with the theoretical processing factor of 3.5X rather than 4.8X.

EPA is establishing the tolerance for pepper/eggplant subgroup 8–10B at 0.15 ppm rather than at 0.08 ppm as requested by IR–4. As the representative crops for the subgroup, the field trial data for bell and nonbell peppers were analyzed separately, which resulted in a higher tolerance of 0.15 ppm for nonbell

pepper. EPA is using that value to establish the tolerance for the subgroup.

IR–4 requested a tolerance of 0.11 ppm for tomato, paste but EPA is establishing the tolerance at 0.15 ppm. The tolerance level of 0.15 ppm was derived using the glufosinate and 3-(hydroxymethylphosphinyl) propanoic acid HAFTs from the tomato field trials in combination with the empirically-determined processing factors for glufosinate and 3-(hydroxymethylphosphinyl) propanoic acid.

V. Conclusion

Therefore, tolerances are established for residues of glufosinate, including its metabolites and degradates, in or on avocado at 0.1 ppm; bushberry subgroup 13–07B at 0.15 ppm; cottonseed subgroup 20C at 15 ppm; fig at 0.1 ppm; fig, dried at 0.15 ppm; fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F at 0.05 ppm; hop, dried cones at 0.9 ppm; melon subgroup 9A at 0.08 ppm; pepper/eggplant subgroup 8–10B at 0.15 ppm; rapeseed subgroup 20A at 0.4 ppm; squash/cucumber subgroup 9B at 0.15 ppm; tomato, paste at 0.15 ppm; tomato subgroup 8–10A at 0.1 ppm; tropical and subtropical, small fruit, edible peel, subgroup 23A at 0.5 ppm; and vegetable, tuberous and corm, subgroup 1C at 0.8 ppm. EPA is also revising the tolerance for cotton, gin byproducts from 15 ppm to 30 ppm.

Tolerances are also removed for the following commodities due to the establishment of tolerances for the above commodities or previously established tolerances: apple at 0.05 ppm; bushberry subgroup 13B at 0.15 ppm; canola, seed at 0.40 ppm; cotton, undelinted seed at 4.0 ppm; grape at 0.05 ppm; juneberry at 0.10 ppm; lingonberry at 0.10 ppm; olive at 0.50 ppm; pistachio at 0.10 ppm; potato at 0.80 ppm; and salal at 0.10 ppm.

Finally, EPA is revising the title of § 180.473 from ''Glufosinate Ammonium; tolerances for residues'' to ''Glufosinate; tolerances for residues'' and revising the tolerance expression for glufosinate in 40 CFR 180.473(a) and (d) to clarify that the tolerance for the active ingredient will be referred to as glufosinate (*i.e.,* the racemic mixture). Glufosinate is a racemic mixture of the D- and L-enantiomers; with the L-enantiomer being responsible for its herbicidal activity. Glufosinate can exist in multiple forms, including the acid, ammonium, and sodium forms; other salt forms of glufosinate may be possible as well. While there are presently only registrations for the ammonium form of glufosinate, future registration requests may be submitted for the acid, sodium, or other forms. This change to the tolerance expression will cover the particular form (*e.g.,* acid or ammonium) that may be in any particular pesticide product in the future. EPA has determined that it is reasonable to make this change final without prior proposal and opportunity for comment, because public comment is not necessary, in that the change has no substantive effect on the tolerance because ammonium is the only form currently registered.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. 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, 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), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the Agency has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not 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.*).

This action does not involve any technical standards that would require Agency 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 Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule 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**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

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 15, 2022.

Marietta Echeverria,

Acting Director, Registration 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 § 180.473 by:
■ a. Revising the section heading.
■ b. In paragraph (a):
■ i. Revising the introductory text.
■ ii. Adding a table heading;
■ iii. Removing the entry for ''Apple'';
■ iv. Adding in alphabetical order the entry ''Avocado'';

■ v. Removing the entry for ''Bushberry subgroup 13B'';
■ vi. Adding in alphabetical order the entry ''Bushberry subgroup 13–07B'';
■ vii. Removing the entry for ''Canola, seed'';
■ viii. Revising the entry for ''Cotton, gin byproducts'';
■ ix. Removing the entry for ''Cotton, undelinted seed'';
■ x. Adding in alphabetical order the entries ''Cottonseed subgroup 20C''; ''Fig''; ''Fig, dried''; and ''Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F'';
■ xi. Removing the entry for ''Grape'';
■ xii. Adding in alphabetical order the entry ''Hop, dried cones'';
■ xiii. Removing the entries for ''Juneberry'' and ''Lingonberry'';
■ xiv. Adding in alphabetical order the entry ''Melon subgroup 9A'';
■ xv. Removing the entry for ''Olive'';
■ xvi. Adding in alphabetical order the entry ''Pepper/eggplant subgroup 8–10B'';
■ xvii. Removing the entries for ''Pistachio'' and ''Potato'';
■ xviii. Adding in alphabetical order the entry ''Rapeseed subgroup 20A'';
■ xix. Removing the entry for ''Salal''; and
■ xx. Adding in alphabetical order the entries ''Squash/cucumber subgroup 9B''; ''Tomato, paste''; ''Tomato subgroup 8–10A''; ''Tropical and subtropical, small fruit, edible peel, subgroup 23A''; and ''Vegetable, tuberous and corm, subgroup 1C''.
■ c. In paragraph (d):
■ i. Revising the introductory text; and
■ ii. Adding a table heading.

The additions and revisions read as follows:

§ 180.473 Glufosinate; tolerances for residues.

(a) *General.* Tolerances are established for residues of glufosinate, including its metabolites and degradates, in or on the commodities in the following table. Compliance with the tolerance levels specified in the following table is to be determined by measuring the sum of glufosinate (2-amino-4-(hydroxymethylphosphinyl)butanoic acid) and its metabolites, 2-(acetylamino)-4-(hydroxymethyl phosphinyl) butanoic acid, and 3-(hydroxymethylphosphinyl) propanoic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents.

TABLE 1 TO PARAGRAPH (a)

Commodity	Parts per million
* * * * *	
Avocado	0.1
* * * * *	
Bushberry subgroup 13–07B	0.15
* * * * *	
Cotton, gin byproducts	30
Cottonseed subgroup 20C	15
* * * * *	
Fig	0.1
Fig, dried	0.15
* * * * *	
Fruit, small, vine climbing, except fuzzy kiwifruit, subgroup 13–07F	0.05
* * * * *	
Hop, dried cones	0.9
* * * * *	
Melon subgroup 9A	0.08
* * * * *	
Pepper/eggplant subgroup 8–10B	0.15
* * * * *	
Rapeseed subgroup 20A	0.4
* * * * *	
Squash/cucumber subgroup 9B	0.15
Tomato, paste	0.15
Tomato subgroup 8–10A	0.1
Tropical and subtropical, small fruit, edible peel, subgroup 23A	0.5
Vegetable, tuberous and corm, subgroup 1C	0.8

* * * * *

(d) *Indirect or inadvertent residues.* Tolerances are established for indirect or inadvertent residues of glufosinate, including its metabolites and degradates, in or on the commodities in the following table, as a result of the application of glufosinate to crops listed in paragraph (a) of this section. Compliance with the tolerance levels specified in the following table is to be determined by measuring the sum of glufosinate (2-amino-4-(hydroxymethylphosphinyl) butanoic acid) and its metabolite, 3-(hydroxymethylphosphinyl) propanoic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl)butanoic acid equivalents.

Table 2 to Paragraph (d)

* * * * *

[FR Doc. 2022–20438 Filed 9–20–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[EPA–HQ–OPP–2006–0766; FRL–5031–13–OCSPP]

RIN 2070–AJ28

Pesticides; Expansion of Crop Grouping Program VI

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing revisions to its pesticide tolerance crop grouping regulations, which allow the establishment of tolerances for multiple related crops based on data from a representative set of crops. EPA is finalizing amendments to Crop Group 6: Legume Vegetables; Crop Group 7: Foliage of Legume Vegetables; Crop Group 15: Cereal Grains; and Crop Group 16: Forage, Fodder and Straw of Cereal Grains. EPA is also finalizing amendments to the associated commodity definitions. This is the sixth in a series of planned crop group updates expected to be prepared over the next several years.

DATES: This final rule is effective on November 21, 2022.

ADDRESSES: The EPA has established a docket for this action under docket identification (ID) number EPA–HQ–OPP–2006–0766. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the internet and will be publicly available only in hard copy form. Publicly available docket materials are available electronically through *https://www.regulations.gov.* For the latest status information on EPA/DC services and docket access, visit *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Sara Kemme, Mission Support Division (7101M), Office of Program Support, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (202) 566–1217; email address: *kemme.sara@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Executive Summary

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural

producer, pesticide manufacturer, or food 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. What is the Agency's authority for taking this action?

The EPA is promulgating this rulemaking to amend the existing crop grouping regulations under section 408(e)(1)(C) of the Federal Food, Drug, and Cosmetic Act (FFDCA), which authorizes EPA to establish ''general procedures and requirements to implement [section 408].'' 21 U.S.C. 346a(e)(1)(C). Under FFDCA section 408, EPA is authorized to establish tolerances for pesticide chemical residues in food. EPA establishes tolerances for each pesticide based on data on the pesticide residues and the potential risks to human health posed by that pesticide. A tolerance is the maximum permissible residue level established for a pesticide in raw agricultural commodities and processed foods. The crop group regulations currently in 40 CFR 180.40 and 180.41 enable the establishment of tolerances for a group of crops based on residue data for certain crops that are representative of the group.

C. What action is the Agency taking?

This final rule is the sixth in an ongoing series of crop group updates, including an additional update expected to be promulgated in the next several years. EPA is finalizing revisions to EPA's regulations governing crop group tolerances for pesticides. Specifically, this rule is finalizing revisions to Crop Group 6: Legume Vegetables (Succulent or Dried) Group; Crop Group 7: Foliage of Legume Vegetables Group; Crop Group 15: Cereal Grains Group; and Crop Group 16: Forage, Fodder, and Straw of Cereal Grains Group. The changes include changes to the terminology in the names of Crop Groups 6, 7, 15, and 16, the addition of commodities, and changes that advance international harmonization. In addition, the final changes include revisions to the subgroups for Crop Group 6 and the addition of subgroups for Crop Group 15. EPA is also finalizing additions and revisions to associated commodity definitions at 40 CFR 180.1(g). Unit III. of the proposed rule includes a detailed description of the provisions that EPA proposed and which the Agency is now finalizing (87 FR 1091, January 10, 2022 (FRL–5032–12–OSCPP)). The changes made in response to public comments are described in greater detail in Unit III. of this final rule.

D. Why is the Agency taking this action?

EPA sets tolerances, which are the maximum amount of a pesticide allowed to remain in or on a food, as part of the process of regulating pesticides that may leave residues in food. Crop groups are established when residue data for certain representative crops are used to establish pesticide tolerances for a group of crops that are botanically or taxonomically related. Representative crops of a crop group or subgroup are those crops whose residue data can be used to establish a tolerance for the entire group or subgroup.

With the establishment of crop groups such as the ones being revised in this final rule, EPA seeks to:

- Enhance our ability to conduct food safety evaluations on crops for tolerance-setting purposes;
- Promote global harmonization of food safety standards;
- Reduce regulatory burden; and
- Ensure food safety for agricultural goods.

E. What are the estimated incremental economic impacts of this action?

This is a burden-reducing regulation because crop grouping allows the results of pesticide residue studies for some crops, called representative crops, to be applied to other, similar crops in the group. EPA prepared an Economic Analysis for this rulemaking (Ref. 1), a copy of which is in the docket for this rule and is summarized here.

1. *Costs.* The Agency anticipates that the revisions to the crop grouping program finalized in this rulemaking will result in no appreciable costs or negative impacts to consumers, specialty crop producers, pesticide registrants, the environment, or human health. In particular, specialty crop producers may gain access to pesticides that are registered on the crop group that would not have been available when the crop was not part of the group. Although this rule may make it possible to get a pesticide tolerance on a larger number of crops within a group, it will not necessarily increase the amount of pesticides released into the environment and will expand the choice of pesticides for crop producers, which may result in the use of less risky pesticides.

2. *Benefits.* This final rule will promote greater use of crop groupings for tolerance-setting purposes, both domestically and in countries that export food to the U.S. and is anticipated to benefit pesticide registrants, minor crop growers, and the Agency. While the Agency has not attempted to quantify the benefits at the final rule stage, the qualitative Economic Analysis finds that legume vegetable growers, cereal grain growers, and pesticide registrants are anticipated to be the biggest beneficiaries of this rulemaking. EPA estimates the average cost savings resulting from an avoided residue field trial per crop commodity to be $101,700. Growers, particularly minor crop growers, will benefit from this rule through the availability of more registered pesticide products for small scale commodities, and registrants will benefit as expanded markets for pesticide products will lead to increased sales.

II. Background

A. Tolerance-Setting Requirements and Petitions From the Interregional Research Project Number 4 (IR–4) To Expand the Existing Crop Grouping System

As discussed in greater detail in Unit II. of the proposed rule (87 FR 1091, January 10, 2022 (FRL–5032–12–OSCPP)), EPA is authorized to establish tolerances under FFDCA section 408 (21 U.S.C. 346a). EPA establishes pesticide tolerances only after determining that they are safe, *i.e.,* that there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide. The U.S. Food and Drug Administration (FDA) and the U.S. Department of Agriculture (USDA) enforce compliance with tolerance limits.

Traditionally, tolerances are established for a specific pesticide and commodity combination. However, under EPA's crop grouping regulations (40 CFR 180.40 and 180.41), a single tolerance may be established that applies to a group of related commodities. For example, with these revisions, Crop Group 15–22: Cereal Grain Group will include 60 commodities. Crop group tolerances may be established based on residue data from designated representative commodities within the group. Representative commodities are selected based on EPA's determination that they are likely to bear the maximum level of residue that could occur on any crop within the group. The representative

commodities for Crop Group 15–22 are wheat, barley, field corn, sweet corn, rice, and either grain sorghum or proso millet. Once a crop group tolerance is established, the tolerance level applies to all commodities within the group.

The changes identified in this action have been informed by petitions developed by the International Crop Grouping Consulting Committee (ICGCC) workgroup and submitted to EPA by a nation-wide cooperative project, IR–4 (Refs. 2 and 3). The petitions and the supporting monographs, as well as EPA's analyses of the petitions (Refs. 4–11), are included in the docket for this action.

B. Regulatory Burden Reductions and Cost Savings Achieved Through the Expansion of the Existing Crop Grouping System

In 2007, EPA prepared an Economic Analysis (EA) of the potential costs and benefits associated with the first proposed rule issued in this series of updates, entitled ''Economic Analysis Proposed Expansion of Crop Grouping Program'' (Ref. 12). EPA considers the findings of the 2007 EA to apply to each subsequent crop group rulemaking, including this final rule, due to the similarity in purpose and scope of each of those rulemakings. As discussed in the 2007 EA, EPA has determined that the crop grouping rulemakings are burden-reducing and cost-saving regulations.

The primary beneficiaries are minor crop producers and pesticide registrants. Minor crop producers benefit because lower registration costs will encourage more products to be registered on minor crops, providing additional tools (*i.e.,* pesticides) for pest control. Pesticide registrants are expected to benefit as expanded markets for pesticide products will lead to increased sales. Additionally, the IR–4, which is publicly funded, is also expected to benefit from this rule as it will help IR–4 use its resources more efficiently in its efforts to ensure that minor or specialty crop growers have access to legal, registered uses of essential pest management tools such as pesticides and biopesticides. The Agency is also expected to benefit from broader operational efficiency gains.

C. Scheme for Organization of Revised and Pre-Existing Crop Groups

The generic crop group regulations include an explicit scheme for how revised crop groups will be organized in the regulations. In brief, the regulations at 40 CFR 180.40(j) specify that when a crop group is amended in a manner that expands or contracts its coverage of commodities, EPA will retain the pre-existing crop group in 40 CFR 180.41 and insert the new, related crop group immediately after the pre-existing crop group in the CFR. Although EPA will initially retain pre-existing crop groups that have been superseded by new crop groups, 40 CFR 180.40(j) states that EPA will not establish new tolerances under the pre-existing groups and that, at appropriate times, EPA will convert tolerances for pre-existing crop groups to tolerances with the coverage of the new crop group. Conversions to revised crop groups are mainly implemented through petitions submitted by IR–4 and registrants and can also be made through the registration review process.

III. Response to Public Comments

This unit provides a summary of the public comments on the proposed rule (87 FR 1091, January 10, 2022 (FRL–5032–12–OSCPP)), EPA's responses to those comments, and any resulting revisions to the regulatory text.

EPA received several comments that generally supported the proposed regulations and the Crop Group Program. EPA also received comments on general pesticide use, the overall need for continued regulation of pesticides, organic labeling practices, the importance of biodiversity, and on EPA's relationship to the farming community. One commenter noted that the revised regulations will not necessarily increase the amount of pesticides being used, but rather extend the options of pesticides that can be used on specific crop groups. Another commenter expressed a concern that the revised regulations would limit the pesticides that farmers could use on their crops and thus become a burden.

EPA maintains that these crop group revisions will not result in a decrease in available pesticide options. On the contrary, the Agency anticipates that revisions to the crop groups will result in no appreciable costs or negative impacts to consumers, specialty crop producers, pesticide registrants, the environment, or human health. As discussed in Unit I. of this final rule, specialty crop producers may gain access to pesticides that are registered on the crop group that would not have been available when a crop was not part of the group. Crop groups, such as the ones being revised in this final rule, allow EPA to enhance the Agency's ability to conduct food safety evaluations on crops for tolerance-setting purposes, promote global harmonization of food safety standards, reduce regulatory burden; and ensure food safety for agricultural goods. Comments related to organic labeling, use of specific pesticides, and promotion of biodiversity are outside the scope of this final rule.

A. Comments on the Amendments to Crop Group 6: Legume Vegetable Group and Crop Group 7: Forage and Hay of Legume Vegetables Group

EPA proposed to amend ''Crop Group 6: Legume Vegetables (Succulent or Dried)'' to update the commodity listings in the group. EPA proposed to name the new crop group ''Crop Group 6–22 Legume Vegetable Group.'' EPA also proposed to revise the subgroups to include 6 subgroups (the original three subgroups divided into their respective bean and pea subgroups):

- Crop Subgroup 6–22A, Edible podded bean subgroup;
- Crop Subgroup 6–22B, Edible podded pea subgroup;
- Crop Subgroup 6–22C, Succulent shelled bean subgroup;
- Crop Subgroup 6–22D, Succulent shelled pea subgroup;
- Crop Subgroup 6–22E, Dried shelled bean, except soybean, subgroup; and
- Crop Subgroup 6–22F, Dried shelled pea subgroup.

To ensure commodities are clearly defined and specific to which part of the plant the commodity covers, EPA proposed to modify and add several definitions to 40 CFR 180.1(g) that are relevant to Crop Groups 6 and 7. In addition to revisions to the name of Crop Group 7–22 and its subgroups, EPA proposed to change the description of the commodities from ''Plant parts of any legume vegetable included in the legume vegetables that will be used as animal feed'' to ''Plant parts of any legume vegetable listed in crop group 6–22 that will be used as animal feed.'' EPA also proposed several revisions to the crop subgroups to parallel the changes that were proposed for the commodities and representative commodities of Crop Group 6–22. A more detailed description of the proposed changes to Crop Groups 6 and 7, and the rationale behind those changes can be found in Unit III. of the proposed rule (87 FR 1091, January 19, 2022 (FRL–5032–12–OSCPP)).

EPA received one comment on the specifics of the proposed changes to Crop Group 6 and no comments on the specifics of the proposed changes to Crop Group 7–22: Forage and Hay of Legume Vegetables Group. EPA is finalizing the changes to Crop Group 7–22: Forage and Hay of Legume Vegetables Group as proposed.

The commenter was strongly supportive of the revisions to these crop groups but suggested some discrete

changes. The commenter notes that the varieties listed for dry peas do not include yellow peas, wrinkled peas, or marrowfat peas. The commenter suggests including yellow peas, wrinkled peas, and marrowfat peas as additional examples of *Pisum* spp. in subgroup 6–22F (dry seed peas). According to U.S. Federal Grain Inspection Service (FGIS) Grading Standards, Smooth Dry Peas include yellow types, green types, mottled types, and others. Commercially, most of the dried pea acres planted are yellow peas or green peas. Wrinkled peas are the mature seed peas raised to support the succulent peas in subgroup 6–22B and 6–22D. The mature seed would fall under the definition of dried peas, subgroup 6–22F. Marrowfat peas are not widely raised in the U.S. but they fit in the subgroup of dried peas. The commenter believes the list of commodities under dry peas should include these three categories.

In the proposed rule, EPA requested comment on whether EPA should include additional examples of *Pisum* spp. EPA agrees with the commenter that yellow peas, wrinkled peas, and marrowfat peas are additional examples of *Pisum* spp. and accordingly EPA is including these as examples of *Pisum* spp. in group 6–22 and subgroup 6–22F (dry seed peas) and in the definition of pea in 40 CFR 180.1(g).

The commenter noted that the new standard clearly defines chickpeas as a pea. The previous standard included chickpeas as a dry bean and a dry pea. The commenter asks whether products currently in use based on only the dry bean as the representative crop will be required to be re-evaluated for dry peas. The commenter is in favor of keeping chickpeas as both a dry bean and a dry pea commodity.

EPA acknowledges that chickpea has previously been classified as a pea and a bean for pesticide tolerance purposes (see 40 CFR 180.1(g)). However, to facilitate international pesticide tolerance harmonization (*e.g.,* Codex classifies chickpea as a pea) and avoid confusion when interpreting multiple potential tolerance levels for the same commodity, chickpea will be included within the pea subgroups in the revised Crop Group 6. This approach will not result in the removal of any existing chickpea tolerances or changes in registration for use on chickpea. For example, an existing tolerance on subgroup 6C (dried peas and beans)—which includes chickpea—would have been supported by field trials on both a pea and a bean. That same data could, in turn, support a tolerance petition for subgroups 6–22E (dry beans) and 6–22F (dry peas), with 6–22F covering chickpeas. Also, tolerance petitions regarding existing ''bean'' tolerances (per 40 CFR 180.1(g)) would convert to both the new bean subgroups (6–22A, C, and/or E) as well as separate applicable chickpea tolerances (*e.g.,* ''chickpea, dry seed''). Again, the revisions to old crop group 6 and the related definitions in 40 CFR 180.1 will not result in removal of pesticide tolerances. Furthermore, EPA notes that establishing the new group/subgroups does not automatically result in changes to existing tolerances; such an update requires a tolerance petition or will be implemented through the registration review process. Overall, the separation into further subgroups delineating peas and beans is anticipated to facilitate pesticide tolerances and their data requirements where only pea or only bean registrations are desired.

The commenter recommends that the subgroups 6–22E and 6–22F use the term ''Pulse'' in the title/description. The commenter notes that recent papers published in the scientific journal, *Nutrients,* describe the need to standardize scientific references to the dried seeds of legumes as pulses. Pulse is a term used in many MRL standards worldwide and the commenter believes that EPA should use the term to further harmonize U.S. standards and help facilitate trade.

EPA agrees with the commenter's suggested terminology addition and is adding the term ''Pulse'' in the title/description of subgroups 6–22E and 6–22F (Crop Subgroup 6–22F: Pulses, dried shelled pea subgroup). At one point the comment also refers to adding the term ''Pulse'' to subgroup 6–22D (the succulent shelled pea subgroup). Based on the entirety of the comment and the specific suggested revisions, EPA believes the reference to subgroup 6–22D was a typographical error. In any event, EPA is not adding the term ''Pulse'' to subgroup 6–22D because it refers to dried seeds of legume, not succulent shelled peas.

The commenter recommends adding fava (also referred to as ''faba'') where broad bean is listed. The commenter states that faba beans are increasingly important as an alternative pulse crop because of their ability to fix atmospheric Nitrogen, their importance to sustainability and their high protein content. EPA agrees fava bean is a synonym for broad bean and had, in some instances, included ''fava bean'' parenthetically along with broad bean, but has made further edits to address this comment.

The commenter recommends removal of ''vegetable soybean (edamame)'' from subgroup 6–22E. Subgroup 6–22E is for bean pulses. The commenter explains that edamame is, by definition, the succulent seed of soy and thus states that edamame fits in the category for garden peas, snap beans, and edible podded peas. The dried seeds of edamame would be classified as soy beans or soya beans. The commenter believes that they should be classified separately from pulses because these seeds have an oil component and are traded as oilseeds.

EPA agrees with the commenter and is removing edamame from subgroup 6–22E. EPA notes that the IR–4 petition also did not include edamame in their proposal for the dried seed bean group.

Other than these adjustments, EPA is finalizing the changes to Crop Group 6–22: Legume Vegetable Group as proposed.

B. Comments on the Amendments to Crop Group 15: Cereal Grain Group and Crop Group 16: Forage, Fodder and Straw of Cereal Grains Group

EPA proposed to add additional commodities to the revised Group 15–22: Cereal Grain Group. These include twenty-one listings that simply reflect specific terms for commodities already included in the preexisting crop group (*i.e.,* baby corn and the different varieties of oat and wheat) and twenty-four new commodities: amaranth, purple amaranth, tartary buckwheat, annual canarygrass, cañihua, chia, cram cram, black fonio, white fonio, huauzontle, Inca wheat, Job's tears, barnyard millet, finger millet, foxtail millet, little millet, prince's feather, psyllium, blond psyllium, quinoa, African rice, teff, intermediate wheatgrass, and eastern wild rice. EPA proposed to create 6 subgroups: Crop Subgroup 15–22A, Wheat subgroup; Crop Subgroup 15–22B, Barley subgroup; Crop Subgroup 15–22C, Field corn subgroup; Crop Subgroup 15–22D, Sweet corn subgroup; Crop Subgroup 15–22E, Grain sorghum and millet subgroup; and Crop Subgroup 15–22F, Rice subgroup. In addition to adding subgroups, EPA proposed changes to the representative commodities. EPA proposed to keep the preexisting representative commodities for Crop Group 15, add barley as a representative crop to accommodate the new Barley Subgroup (15–22B), and add proso millet as an alternative representative commodity for better international harmonization of the Grain Sorghum and Millet Subgroup (15–22D). EPA proposed to rename the revised crop group ''Crop Group 16–22: Forage, Hay, Stover, and Straw of Cereal Grain Group.'' Consistent with the changes

proposed for Crop Group 15–22, EPA proposed to add the same additional commodities to Crop Group 16–22. A more detailed description of the proposed changes to Crop Groups 15 and 16, and the rationale behind those changes can be found in Unit III. of the proposed rule (87 FR 1091, January 10, 2022 (FRL–5032–12–OSCPP)).

EPA received one comment on the specifics of the proposed changes to Crop Group 15 and no comments on the specifics of the proposed changes to Crop Group 16. EPA is finalizing the changes to Crop Group 16–22: Forage, Hay, Stover, and Straw of Cereal Grain Group as proposed. In the final regulatory text EPA is correcting a typographical error that appeared in the proposed regulatory text for Crop Group 15. EPA proposed the inclusion of ''Princess feather, *Amaranthus hypochondriacus* L.'' This has been changed to ''Prince's feather'' because this is the correct name for this commodity.

One commenter states it is unclear whether benefits or negatives exist with revising the cereal grains crop group to create a rice subgroup. The commenter states that it is difficult for the industry to support a rice subgroup without knowledge of the benefits or risks. The commenter fully supports changes where rice, as a representative crop, would receive a pesticide tolerance or maximum residue limit (MRL). The commenter notes that current pesticide registrations for the cereal grains crop group often exclude rice. A cereal grain tolerance that includes rice would be of benefit for U.S. tolerances and resulting pesticide registrations. However, rice receiving a pesticide tolerance as part of the crop group could be problematic for foreign MRLs. Harmonization of rice specific tolerances and MRLs have become more important as countries receiving California rice are in the early stages of developing regulation for residue limits on imports. The commenter states that countries with high rice consumption do not accept MRLs for cereal grains because the residue data must be specific to rice. Pesticide registrants have become reluctant to submit the necessary data to countries establishing the positive list for MRLs. Harmonization is important with more countries establishing positive lists.

The commenter states that there are additional barriers involved with registering pesticides for use on rice in California. The rationale to not register pesticides on California rice relates to the expense and time commitment for developing aquatic dissipation studies even though the data is a requirement in all states receiving a pesticide registration on the commodity.

EPA acknowledges the issues related to pesticide registrations and data requirements with respect to rice and how those issues have resulted in pesticide tolerances with rice ''exceptions''. The proposed revisions do not change data requirements related to pesticide registrations that can, in turn, affect tolerances on rice (*e.g.,* the example issue mentioned by the commenter related to the aquatic dissipation studies will remain). Additionally, a tolerance for the entire crop group will still require field trial residue data on rice. However, when a registration on rice is not desired, a benefit of the change will be the clarity resulting from tolerances being established on subgroups A through E (*i.e.,* the ''non-rice'' subgroups) instead of using the ''except rice'' convention. Furthermore, EPA anticipates better harmonization internationally as a result of the adoption of the subgroups, including the rice subgroup in particular (*e.g.,* EPA is essentially adopting the same 6 cereal grain subgroups as Codex). Finally, as is the case when any crop group or subgroup is established, there is the benefit to minor crop growers who are provided with additional crop protection tools by way of field trials conducted on ''representative commodities''. Whereas, previously, crop-specific field trial data might have been required to establish tolerances on African rice, wild rice or Eastern wild rice, field trial data on rice will now formally cover those other minor crops as it is the only data required to establish a rice subgroup tolerance.

Other than correcting the name of Prince's feather, EPA is finalizing the changes to Crop Group 15–22: Cereal Grain Group as proposed.

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

1. U.S. EPA, ''Burden Reduction from the Expansion of Crop Group Program,'' August 5, 2022.
2. USDA IR–4 Petition. William P. Barney. Proposed revisions to Legume Vegetables (Succulent or Dried), Crop Group 6 and Foliage of Legume Vegetables, Crop Group 7, Technical Amendment to 40 CFR 180.41(c)(6) and (c) IR–4 PR #11237 (Legume Vegetable) and PR #11238 (Foliage of Legume Vegetables). Volumes 1–4. July 9, 2013.
3. USDA IR–4 Petition. William P. Barney. Proposed revisions to Cereal Grains, Crop Group 15 and Forage, Fodder and Straw of Cereal Grains Crop Group 16, Technical Amendment to 40 CFR 180.41(c)(9); IR–4 PR #11394. Volumes 1–3. February 18, 2014.
4. Schneider, Bernard A. Recommendations for Amending Crop Group 15 Cereal Grains and Crop Group 16 Forage, Fodder and Straw of Cereal Grains to Approve Its Members, Representative Commodities, Crop Subgroups, and Commodity Definitions Including Grasses for Sugar and Syrup Production September 6, 2018, Updated April 29, 2020.
5. Schneider, Bernard A. EPA Memorandum: Crop Grouping—Part 22: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41 (c) (22) and Commodity Definitions [40 CFR 180.1 (g)] Related to the Crop Group 15: Cereal Grains and the Forage, Fodder and Straw of Cereal Grains Group 16 [40 CFR 180.41 (c) (23)], and Commodity Definition ''Grasses for Sugar and Syrup Production. June 8, 2018, updated April 29, 2020, Updated October 19, 2021.
6. U.S. EPA. Chemistry Science Advisory Council (ChemSAC) Minutes. Response to Questions by the Crop Group Implementation Focus Group (CGIFG) on Amending the Cereal Grain Crop Group 15 and the Forage, Fodder, and Straw of the Cereal Grain Crop Group 16. April 8, 2020.
7. Schneider, Bernard A. EPA Memorandum: Response to Questions by the Crop Group Implementation Focus Group (CGIFG) on Amending the Cereal Grain Crop Group 15 and the Forage, Fodder and Straw of Cereal Grain Crop Group 16. November 18, 2019, Updated December 11, 2019 and April 8, 2020.
8. U.S. EPA. Chemistry Science Advisory Council (ChemSAC) Minutes. Recommendations to the HED Chemistry Science Advisory Council Regarding Updates to Crop Groups 6 (Legume Vegetables) and 7 (Foliage of Legume Vegetables). October 25, 2017.
9. Schneider, Bernard A. EPA Memorandum. Crop Grouping Part XVII: Analysis of the USDA IR–4 Petition to Amend the Crop Group Regulation 40 CFR 180.41 (c)(7) and Commodity Definitions (40 CFR 180.1(g)) Related to the Crop Group 6 Legume Vegetables. September 27, 2016, updated February 7, 2017.
10. Schneider, Bernard A. Recommendations for Amending Crop Group 6 Legume Vegetable to Approve Its Members, Representative Commodities, Crop Subgroups, and Associated Commodity Definitions. February 8, 2017.
11. Schneider, Bernard A. Recommendations for Amending Crop Group 7 Foliage of Legume Vegetable to Approve Its Members, Representative Commodities,

Crop Subgroups, and Associated Commodity definitions. September 29, 2016.
12. U.S. EPA, ''Economic Analysis of the Proposed Expansion of the Crop Group Program,'' February 12, 2007.

V. Statutory and Executive Order Reviews

Additional information about these statutes and Executive Orders can be found at *https://www.epa.gov/laws-regulations/laws-and-executive-orders.*

A. Executive Order 12866: Regulatory Planning and Review and Executive Order 13563: Improving Regulation and Regulatory Review

This action is not a significant regulatory action and was therefore not submitted to the Office of Management and Budget (OMB) for review under Executive Orders 12866 (58 FR 51735; October 4, 1993) and 13563 (76 FR 3821, January 21, 2011).

B. Paperwork Reduction Act (PRA)

This action does not impose any new information collection requirements that would require additional review or approval by OMB under the provisions of the PRA, 44 U.S.C. 3501 *et seq.* Because this action expands the number of crops in the affected crop groups, if tolerances are established for those crop groups, they will have broader applicability. Crop groupings enhance our ability to conduct food safety evaluations on crops for tolerance-setting purpose; allowing for tolerances to be established for the defined crop groups rather than individually for each crop. For future tolerance actions, petitioners will be able to submit the same number of residue field trial studies and, using the updated crop groups, obtain tolerances that cover more crops. This action does not impose any new information collection burden under the PRA. OMB has previously approved the information collection activities contained in the existing regulations related to tolerance petitions for food/feed crops under OMB control number 2070–0024.

C. Regulatory Flexibility Act (RFA)

I certify that this action will not have a significant economic impact on a substantial number of small entities under the RFA, 5 U.S.C. 601 *et seq.* In making this determination, EPA concludes that the impact of concern for this rule is any significant adverse economic impact on small entities, and the Agency is certifying that this rule will not have a significant economic impact on a substantial number of small entities because the rule relieves regulatory burden (Ref. 1).

This action provides regulatory relief and regulatory flexibility. The new crop groups ease the process for pesticide manufacturers to obtain pesticide tolerances on greater numbers of crops. Pesticides will be more widely available to growers for use on crops, particularly specialty crops. Rather than having any adverse impact on small businesses, this rule will relieve regulatory burden for all directly regulated small entities. We have therefore concluded that this action will relieve regulatory burden for all directly regulated small entities.

D. Unfunded Mandates Reform Act (UMRA)

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

E. Executive Order 13132: Federalism

This action does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 4, 1999). It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this action.

F. Executive Order 13175; Consultation and 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 will not have any effect on tribal governments, 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. Thus, Executive Order 13175 does not apply to this action.

G. Executive Order 13045; Protection of Children From Environmental Health Risks and Safety Risks

The EPA interprets Executive Order 13045 (62 FR 19885, April 23, 1997) as applying only to those regulatory actions that concern environmental health or safety risks that the EPA has reason to believe may disproportionately affect children, per the definition of ''covered regulatory action'' in section 2–202 of the Executive Order. This action is not subject to Executive Order 13045 because it does not concern an environmental health risk or safety risk.

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

This action is not subject to Executive Order 13211 (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

I. National Technology Transfer and Advancement Act (NTTAA)

This action does not involve technical standards as specified in NTTAA section 12(d), 15 U.S.C. 272 note.

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

EPA believes that this action is not subject to Executive Order 12898 (59 FR 7629, February 16, 1994) because it does not establish an environmental health or safety standard. This action is a procedural change and does not have any impact on human health or the environment. As previously discussed, crop groups are established when residue data for certain representative crops are used to establish pesticide tolerances for a group of crops that are botanically or taxonomically related. Representative crops of a crop group or subgroup are those crops whose residue data can be used to establish a tolerance for the entire group or subgroup.

K. Congressional Review Act (CRA)

This action is subject to the CRA, 5 U.S.C. 801 *et seq.,* and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Commodities, Environmental protection, Pesticides and pests.

Dated: August 29, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

Therefore, for the reasons stated in the preamble, EPA is amending 40 CFR chapter I to read 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. In § 180.1, amend the table to paragraph (g) by:
■ a. Revising the entry of ''Bean'';
■ b. Removing the entry of ''Bean, dry'';
■ c. Adding in alphabetical order entries for ''Bean, dry, seed'' and ''Bean, edible podded'';
■ d. Revising the entry of ''Bean, succulent'';
■ e. Adding in alphabetical order an entry for ''Bean, succulent shelled'';
■ f. Revising the entry of ''Pea'';
■ g. Removing the entry of ''Pea, dry'';
■ h. Adding in alphabetical order entries for ''Pea, dry, seed'' and ''Pea, edible podded'';
■ i. Revising the entry of ''Pea, succulent''; and
■ j. Adding in alphabetical order an entry for ''Pea, succulent shelled''.

The additions and revisions read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(g) * * *

A	B
* * * * * * *	
Bean	*Cicer arietinum* (chickpea, garbanzo bean); *Lupinus* spp. (including, but not limited to, Andean lupin, blue lupin, grain lupin, sweet lupin, white sweet lupin, white lupin, and yellow lupin). *Phaseolus* spp. (including, but not limited to, black bean, cranberry bean, dry bean, field bean, French bean, garden bean, great northern bean, green bean, kidney bean, lima bean, navy bean, pink bean, pinto bean, red bean, scarlet runner bean, snap bean, tepary bean, yellow bean, and wax bean); Broad bean (fava bean, faba bean); Goa bean (asparagus pea and winged bean); *Vigna* spp. (including adzuki bean, asparagus bean, blackeyed pea, catjang bean, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, and yardlong bean); Guar bean; Horse gram; Jackbean; Lablab bean (hyacinth bean); Morama bean; African yam bean; American potato bean; Vegetable soybean (edamame); Sword bean; Velvetbean; Winged pea; cultivars, varieties and/or hybrids of these commodities. [Note: A variety of pesticide tolerances have been previously established for pea and/or bean. Chickpea/garbanzo bean is also listed in the definition for ''pea''. For garbanzo bean/chickpea only, the highest established pea or bean tolerance will apply to pesticide residues found in this commodity].
Bean, dry, seed	All beans in the entry ''Bean'' in dry seed form.
Bean, edible podded	All beans in the entry ''Bean'' in edible podded form.
Bean, succulent	All beans in the entry ''Bean'' in edible podded or succulent shelled form.
Bean, succulent shelled	All beans in the entry ''Bean'' in succulent shelled form.
* * * * * * *	
Pea	*Cajanus cajan* (pigeon pea); *Cicer arietinum* (chickpea, garbanzo bean); *Lens culinaris* (lentil); Grass pea; *Pisum* spp. (including, but not limited to dry pea, dwarf pea, English pea, field pea, garden pea, green pea, marrowfat pea, snap pea, snow pea, sugar snap pea, wrinkled pea and yellow pea); cultivars, varieties and/or hybrids of these commodities. [Note: A variety of pesticide tolerances have been previously established for pea and/or bean. Chickpea/garbanzo bean is also listed in the definition for ''bean''. For garbanzo bean/chickpea only, the highest established pea or bean tolerance will apply to pesticide residues found in this commodity].
Pea, dry, seed	All peas in the entry ''Pea'' in dry seed form.
Pea, edible podded	All peas in the entry ''Pea'' in edible podded form.
Pea, succulent	All peas in the entry ''Pea'' in edible podded or succulent shelled form.
Pea, succulent shelled	All peas in the entry ''Pea'' in succulent shelled form.
* * * * * * *	

* * * * *

■ 3. Amend § 180.41 paragraph (c) by:
■ a. Redesignating paragraphs (c)(30) through (35) as paragraphs (c)(34) through (39) respectively;
■ b. In newly redesignated paragraph (c)(39)(ii), removing ''Table 3'' and adding ''table'' in its place;
■ c. Redesignating paragraph (c)(29) as paragraph (c)(33) and adding a new paragraph (c)(29);
■ d. Redesignating paragraph (c)(28) as paragraph (c)(32);
■ e. In newly redesignated paragraph (c)(32)(iv), adding a heading to read ''*Tolerances established after November 6, 2020.*''
■ f. Redesignating paragraph (c)(27) as paragraph (c)(31) and adding a new paragraph (c)(27);
■ g. Redesignating paragraph (c)(26) as paragraph (c)(30);
■ h. Redesignating paragraph (c)(25) as paragraph (c)(28);
■ i. Redesignating paragraphs (c)(14) through (24) as paragraphs (c)(16) through (26) respectively;
■ j. Redesignating paragraph (c)(13) as paragraph (c)(15);
■ k. Redesignating paragraph (c)(12) as paragraph (c)(14) and adding a new paragraph (c)(12);
■ l. Redesignating paragraph (c)(11) as paragraph (c)(13); and
■ m. Redesignating paragraph (c)(10) as paragraph (c)(11) and adding a new paragraph (c)(10).

The additions read as follows.

§ 180.41 Crop group tables.

* * * * *

(c) * * *

(10) *Crop Group 6–22.* Legume Vegetable Group.

(i) *Representative commodities.* Bean (Phaseolus spp. or Vigna spp.; one edible podded cultivar, one succulent shelled cultivar, and one dried seed); Pea (Pisum spp; one edible podded cultivar, one succulent shelled cultivar, and one dried seed); and Soybean, seed.

(ii) *Commodities.* The following table is a list of all commodities included in Crop Group 6–22 and includes cultivars, varieties and/or hybrids of these commodities.

TABLE 1 TO PARAGRAPH (c)(10)—CROP GROUP 6–22: LEGUME VEGETABLE GROUP:

Commodities	Related crop subgroups
African yam bean, dry seed, *Sphenostylis stenocarpa* (Hochst. ex A. Rich.) Harms	6–22E
American potato bean, dry seed, *Apios americana* Medik	6–22E
Bean (*Lupinus* spp.), succulent shelled (including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin)	6–22C
Bean (*Lupinus* spp.), dry seed (including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin)	6–22E
Bean (*Phaseolus* spp.), edible podded (including, but not limited to French bean, garden bean, green bean, kidney bean, navy bean, scarlet runner bean, snap bean, and wax bean)	6–22A
Bean (*Phaseolus* spp.), succulent shelled (including, but not limited to lima bean, scarlet runner bean, and wax bean)	6–22C
Bean (*Phaseolus* spp.), dry seed (including, but not limited to black bean, cranberry bean, dry bean, field bean, French bean, garden bean, great northern bean, green bean, kidney bean, lima bean, navy bean, pink bean, pinto bean, red bean, scarlet runner bean, tepary bean, and yellow bean)	6–22E
Bean (*Vigna* spp.), edible podded (including, but not limited to asparagus bean, catjang bean, Chinese longbean, cowpea, moth bean, mung bean, rice bean, urd bean, and yardlong bean)	6–22A
Bean (*Vigna* spp.), succulent shelled (including, but not limited to blackeyed pea, catjang bean, cowpea, crowder pea, moth bean, and southern pea)	6–22C
Bean (*Vigna* spp.), dry seed (including, but not limited to adzuki bean, asparagus bean, blackeyed pea, catjang bean, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, and yardlong bean)	6–22E
Broad bean (fava bean), succulent shelled, *Vicia faba* L. subsp. *faba* var. *faba*	6–22C
Broad bean (fava bean), dry seed, *Vicia faba* L. subsp. *faba* var. *faba*	6–22E
Chickpea (garbanzo), edible podded, *Cicer arietinum* L	6–22B
Chickpea (garbanzo), succulent shelled, *Cicer arietinum* L	6–22D
Chickpea (garbanzo), dry seed, *Cicer arietinum* L	6–22F
Goa bean, edible podded (asparagus pea and winged bean), *Psophocarpus tetragonolobus* (L.) DC	6–22A
Goa bean, succulent shelled (asparagus pea and winged bean), *Psophocarpus tetragonolobus* (L.) DC	6–22C
Goa bean, dry seed (asparagus pea and winged bean), *Psophocarpus tetragonolobus* (L.) DC	6–22E
Grass pea, edible podded, *Lathyrus sativus L*	6–22B
Grass pea, dry seed, *Lathyrus sativus L*	6–22F
Guar bean, edible podded, *Cyamopsis tetragonoloba* (L.) Taub	6–22A
Guar bean, dry seed, *Cyamopsis tetragonoloba* (L.) Taub	6–22E
Horse gram, dry seed, *Macrotyloma uniflorum* (Lam.) Verdc	6–22E
Jackbean, edible podded, *Canavalia ensiformis* (L.) DC	6–22A
Jackbean, succulent shelled, *Canavalia ensiformis* (L.) DC	6–22C
Jackbean, dry seed, *Canavalia ensiformis* (L.) DC	6–22E
Lablab bean (hyacinth bean), edible podded, Lablab *purpureus* (L.) Sweet subsp. *purpureus*	6–22A
Lablab bean (hyacinth bean), succulent shelled, Lablab *purpureus* (L.) Sweet subsp. *purpureus*	6–22C
Lablab bean (hyacinth bean), dry seed, Lablab *purpureus* (L.) Sweet subsp. *Purpureus*	6–22E
Lentil, edible podded, *Lens culinaris* Medik. subsp. *culinaris*	6–22B
Lentil, succulent shelled, *Lens culinaris* Medik. subsp. *culinaris*	6–22D
Lentil, dry seed, *Lens culinaris* Medik. subsp. *culinaris*	6–22F
Morama bean, dry seed, *Tylosema esculentum* (Burch.) A. Schreib	6–22E
Pea (*Pisum* spp.), edible podded (including, but not limited to dwarf pea, green pea, snap pea, snow pea, and sugar snap pea)	6–22B
Pea (*Pisum* spp.), succulent shelled (including, but not limited to, English pea, garden pea, and green pea)	6–22D
Pea (*Pisum* spp.), dry seed (including, but not limited to dry pea, field pea, garden pea, yellow pea, wrinkled pea, marrowfat pea, and green pea)	6–22F
Pigeon pea, edible podded, *Cajanus cajan* (L.) Huth	6–22B
Pigeon pea, succulent shelled, *Cajanus cajan* (L.) Huth	6–22D
Pigeon pea, dry seed, *Cajanus cajan* (L.) Huth	6–22F
Soybean, seed, *Glycine max* (L.) Merr	N/A
Sword bean, edible podded, *Canavalia gladiata* (Jacq.) DC	6–22A
Sword bean, dry seed, *Canavalia gladiata* (Jacq.) DC	6–22E
Vegetable soybean, edible podded (edamame), *Glycine max* (L.) Merr	6–22A
Vegetable soybean, succulent shelled (edamame), *Glycine max* (L.) Merr	6–22C
Velvetbean, edible podded, *Mucuna pruriens* (L.) DC	6–22A
Velvetbean, succulent shelled, *Mucuna pruriens* (L.) DC	6–22C
Velvetbean, dry seed, *Mucuna pruriens* (L.) DC	6–22E
Winged pea, edible podded, *Lotus tetragonolobus* L	6–22A
Winged pea, dry seed, *Lotus tetragonolobus* L	6–22E
Cultivars, varieties, and/or hybrids of these commodities.	

(iii) *Crop subgroups.* The following table identifies the crop subgroups for Crop Group 6–22, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2 TO PARAGRAPH (c)(10)—CROP GROUP 6–22: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 6–22A: Edible podded bean subgroup	
Any cultivar of edible podded bean *Phaseolus* spp. or *Vigna* spp.	Bean (*Phaseolus* spp.; including, but not limited to French bean, garden bean, green bean, kidney bean, navy bean, scarlet runner bean, snap bean, and wax bean); Bean (*Vigna* spp.; including, but not limited to asparagus bean, catjang bean; Chinese longbean, cowpea, moth bean, mung bean, rice bean, urd bean, and yardlong bean); goa bean; guar bean; jackbean; lablab bean; vegetable soybean (edamame); sword bean; winged pea; velvetbean; cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–22B: Edible podded pea subgroup	
Any cultivar of edible podded pea, *Pisum* spp.	Pea (*Pisum* spp.; including, but not limited to dwarf pea, green pea, snap pea, snow pea, and sugar snap pea); grass pea; lentil; pigeon pea; chickpea; cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–22C: Succulent shelled bean subgroup	
Any succulent shelled cultivar of bean, *Phaseolus* spp., or *Vigna* spp.	Bean (*Phaseolus* spp.; including, but not limited to lima bean, scarlet runner bean, and wax bean); Bean (*Vigna* spp.; including, but not limited to blackeyed pea, catjang bean, cowpea, crowder pea, moth bean, and southern pea); Bean (*Lupinus* spp.; including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin); broad bean (fava bean); jackbean; goa bean; lablab bean; vegetable soybean (edamame); velvetbean; cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–22D: Succulent shelled pea subgroup	
Any succulent shelled cultivar of garden pea, *Pisum* spp.	Chickpea; lentil; Pea (*Pisum* spp.; including, but not limited to English pea, garden pea, and green pea); pigeon pea; cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–22E: Pulses, dried shelled bean, except soybean, subgroup	
Any one dried seed of bean, *Phaseolus* spp., or *Vigna* spp.	African yam bean; American potato bean; Bean (*Lupinus* spp.; including, but not limited to Andean lupin, blue lupin, grain lupin, sweet lupin, white lupin, white sweet lupin, and yellow lupin); Bean (*Phaseolus* spp.; including, but not limited to black bean, cranberry bean, dry bean, field bean, French bean, garden bean, great northern bean, green bean, kidney bean, lima bean, navy bean, pink bean, pinto bean, red bean, scarlet runner bean, tepary bean, and yellow bean); Bean (*Vigna* spp.; including, but not limited to adzuki bean, asparagus bean, blackeyed pea, catjang bean, Chinese longbean, cowpea, crowder pea, moth bean, mung bean, rice bean, southern pea, urd bean, and yardlong bean); broad bean (fava bean); guar bean; goa bean; horse gram; jackbean; lablab bean; morama bean; sword bean; winged pea; velvetbean; cultivars, varieties, and/or hybrids of these commodities.
Crop Subgroup 6–22F: Pulses, dried shelled pea subgroup	
Any one dried seed of pea, *Pisum* spp.	Pea (*Pisum* spp.; including, but not limited to dry pea, field pea, green pea, yellow pea, wrinkled pea, marrowfat pea, and garden pea); chickpea; grass pea; lentil; pigeon pea; cultivars, varieties, and/or hybrids of these commodities.

* * * * *

(12) *Crop Group 7–22.* Forage and Hay Legume Vegetable Group.

(i) *Representative commodities.* Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.); and soybean (*Glycine max* (L.) Merr.).

(ii) *Commodities.* The following table lists the commodities included in Crop Group 7–22.

TABLE 1 TO PARAGRAPH (c)(12)—CROP GROUP 7–22: FORAGE AND HAY FOR LEGUME VEGETABLE GROUP

Representative commodities	Commodities
Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.); and soybean (*Glycine max* (L.) Merr.).	Plant parts of any legume vegetable listed in crop group 6–22 that will be used as animal feed.

(iii) *Crop subgroup.* The following table identifies the crop subgroup for Crop Group 7–22 and specifies the representative commodities for the subgroup, and lists all the commodities included in the subgroup.

TABLE 2 TO PARAGRAPH (c)(12)—CROP GROUP 7–22 SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 7–22A. Forage and hay of legume vegetables (except soybeans) subgroup	
Any cultivar of bean (*Phaseolus* spp. or cowpea (*Vigna unguiculata* (L.) Walp)); field pea (*Pisum sativum* L. subsp. *sativum* var. *arvense* (L.) Poir.).	Plant parts of any legume vegetable listed in crop group 6–22 (except soybeans) that will be used as animal feed.

* * * * *

(27) *Crop Group 15–22.* Cereal Grain Group.

(i) *Representative commodities.* Wheat, barley, field corn, sweet corn, rice and either grain sorghum or proso millet.

(ii) *Commodities.* The following table is a list of all commodities included in Crop Group 15–22 and includes cultivars, varieties and/or hybrids of these commodities.

TABLE 1 TO PARAGRAPH (c)(27)—CROP GROUP 15–22: CEREAL GRAIN GROUP

Commodities	Related crop subgroups
Amaranth, grain, *Amaranthus* spp	15–22A
Amaranth, purple, *Amaranthus cruentus* L	15–22A
Baby corn, *Zea mays* L. subsp. *mays*	15–22D
Barley, *Hordeum vulgare* L. subsp. *vulgare*	15–22B
Buckwheat, *Fagopyrum esculentum* Moench	15–22B
Buckwheat, tartary, *Fagopyrum tataricum* (L.) Gaertn	15–22B
Canarygrass, annual, *Phalaris canariensis* L	15–22B
Cañihua, *Chenopodium pallidicaule* Aellen	15–22A
Chia, *Salvia hispanica* L	15–22A
Corn, field, *Zea mays* L. subsp. *mays*	15–22C
Corn, sweet, *Zea mays* L. subsp. *mays*	15–22D
Cram cram, *Cenchrus biflorus* Roxb	15–22A
Fonio, black, *Digitaria iburua* Stapf	15–22E
Fonio, white, *Digitaria exilis* (Kippist) Stapf	15–22E
Grain sorghum, *Sorghum bicolor* (L.) Moench	15–22E
Huauzontle grain, *Chenopodium berlandieri* Moq. subsp. *nuttalliae* (Saff.) H. D. Wilson & Heiser and *Chenopodium berlandieri* Moq	15–22A
Inca wheat, *Amaranthus caudatus* L	15–22A
Job's tears, *Coix lacryma-jobi* L., *Coix lacryma-jobi* L. var. ma-yun (Rom. Caill.) Stapf	15–22E
Millet, barnyard, *Echinochloa frumentacea* Link	15–22E
Millet, finger, *Eleusine coracana* (L.) Gaertn. subsp. *coracana*	15–22E
Millet, foxtail, *Setaria italica* (L.) P. Beauv. subsp. *italic*	15–22E
Millet, little, *Panicum sumatrense* Roth	15–22E
Millet, pearl, *Pennisetum glaucum* (L.) R. B. r	15–22E
Millet, proso, *Panicum miliaceum* L. subsp. *miliaceum*	15–22E
Oat, *Avena spp*	15–22B
Oat, Abyssinian, *Avena abyssinica* Hochst. ex A. Rich	15–22B
Oat, common, *Avena sativa* L	15–22B
Oat, naked, *Avena nuda* L	15–22B
Oat, sand, *Avena strigosa* Schreb	15–22B
Popcorn, *Zea mays* L. subsp. *mays*	15–22C
Prince's feather, *Amaranthus hypochondriacus* L	15–22A
Psyllium, *Plantago arenaria* Waldst. & Kit	15–22A
Psyllium, blond, *Plantago ovata* Forssk	15–22A
Quinoa, *Chenopodium quinoa* Willd. subsp. *quinoa*	15–22A
Rice, *Oryza sativa* L	15–22F
Rice, African, *Oryza glaberrima* Steud	15–22F
Rye, *Secale cereale* L. subsp. *cereale*	15–22A
Teff, *Eragrostis tef* (Zuccagni) Trotter	15–22E
Teosinte, *Zea mays* L. subsp. *mexicana* (Schrad.) H. H. Iltis	15–22C
Triticale, X *Triticosecale* spp	15–22A
Wheat, *Triticum* spp	15–22A
Wheat, club, *Triticum aestivum* L. subsp. *compactum* (Host) Mackey	15–22A
Wheat, common, *Triticum aestivum* L. subsp. *aestivum*	15–22A
Wheat, durum, *Triticum turgidum* L. subsp. *durum* (Desf.) van Slageren	15–22A
Wheat, einkorn, *Triticum monococcum* L. subsp. *monococcum*	15–22A
Wheat, emmer, *Triticum turgidum* L. subsp. *dicoccon* (Schrank) Thell	15–22A
Wheat, macha, *Triticum aestivum* L. subsp. *macha* (Dekapr. & Menabde) Mackey	15–22A
Wheat, oriental, *Triticum turgidum* L. subsp. *turanicum* (Jakubz.) Á. Löve & D. Löve	15–22A
Wheat, Persian, *Triticum turgidum* L. subsp. *carthlicum* (Nevski) Á. Löve & D. Löve	15–22A
Wheat, Polish, *Triticum turgidum* L. subsp. *polonicum* (L.) Thell	15–22A
Wheat, poulard, *Triticum turgidum* L. subsp. *turgidum*	15–22A

TABLE 1 TO PARAGRAPH (c)(27)—CROP GROUP 15–22: CEREAL GRAIN GROUP—Continued

Commodities	Related crop subgroups
Wheat, shot, *Triticum aestivum* L. subsp. *sphaerococcum* (Percival) Mackey	15–22A
Wheat, spelt, *Triticum aestivum* L. subsp. *spelta* (L.) Thell	15–22A
Wheat, timopheevi, *Triticum timopheevii* (Zhuk.) Zhuk. subsp. *timopheevii*	15–22A
Wheat, vavilovi, *Triticum vavilovii* Jakubz.	15–22A
Wheat, wild einkorn, *Triticum monococcum* L. subsp. *aegilopoides* (Link) Thell	15–22A
Wheat, wild emmer, *Triticum turgidum* L. subsp. *dicoccoides* (Körn. ex Asch. & Graebn.) Thell	15–22A
Wheatgrass, intermediate, *Iseilema prostratum* (L.) Andersson	15–22A
Wild rice, *Zizania palustris* L	15–22F
Wild rice, eastern, *Zizania aquatica* L	15–22F
Cultivars, varieties, and hybrids of these commodities.	

(iii) *Crop subgroups.* The following table identifies the crop subgroups for Crop Group 15–22, specifies the representative commodities for each subgroup and lists all the commodities included in each subgroup.

TABLE 2 TO PARAGRAPH (c)(27)—CROP GROUP 15–22: SUBGROUP LISTING

Representative commodities	Commodities
Crop Subgroup 15–22A: Wheat subgroup	
Wheat	Amaranth, grain; Amaranth, purple; Cañihua; Chia; Cram cram; Huauzontle grain; Inca wheat; Prince's feather; Psyllium; Psyllium, blond; Quinoa; Rye; Triticale; Wheat; Wheat, club; Wheat, common; Wheat, durum; Wheat, einkorn; Wheat, emmer; Wheat, macha; Wheat, oriental; Wheat, Persian; Wheat, Polish; Wheat, poulard; Wheat, shot; Wheat, spelt; Wheat, timopheevi; Wheat, vavilovi; Wheat, wild einkorn; Wheat, wild emmer; Wheatgrass, intermediate; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–22B: Barley subgroup	
Barley	Barley; Buckwheat; Buckwheat, tartary; Canarygrass, annual; Oat; Oat, Abyssinian; Oat, common; Oat, naked; Oat, sand; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–22C: Field corn subgroup	
Field corn	Corn, field; Popcorn; Teosinte; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–22D: Sweet corn subgroup	
Sweet corn	Baby corn; Corn, sweet; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–22E: Grain sorghum and millet subgroup	
Grain sorghum or Proso millet	Fonio, black; Fonio, white; Grain sorghum; Job's tears; Millet, barnyard; Millet, finger; Millet, foxtail; Millet, little; Millet, pearl; Millet, proso; Teff; cultivars, varieties, and hybrids of these commodities.
Crop Subgroup 15–22F: Rice subgroup	
Rice	Rice; Rice, African; Wild rice; Wild rice, eastern; cultivars, varieties, and hybrids of these commodities.

* * * * *

(29) *Crop Group 16–22.* Forage, Hay, Stover, and Straw of Cereal Grain Group.

(i) *Representative commodities.* Corn, wheat, and any other cereal grain crop.

(ii) *Commodities.* Crop Group 16–22 includes the forage, hay, stover and straw of the commodities in Crop Group 15–22, including cultivars, varieties and/or hybrids of these commodities.

* * * * *

[FR Doc. 2022–19022 Filed 9–20–22; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3000

[223.LLHQ300000.L13100000.PP0000]

RIN 1004–AE86

Minerals Management: Adjustment of Cost Recovery Fees

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule updates the fees set forth in the Department of the Interior's onshore mineral resources regulations for the processing of certain minerals program-related actions. It also adjusts certain filing fees for minerals-related documents. These updated fees include those for actions such as lease renewals, mineral patent adjudications, and Applications for Permits to Drill (APDs).

DATES: This final rule is effective on October 1, 2022.

ADDRESSES: You may send inquiries or suggestions to Director (630), Bureau of

Land Management, 1849 C St. NW, Room 5646, Washington, DC 20240; Attention: RIN 1004–AE86.

FOR FURTHER INFORMATION CONTACT: Lonny R. Bagley, Acting Chief, Division of Fluid Minerals, 307–622–6956, *lbagley@blm.gov;* Lindsey Curnutt, Chief, Division of Solid Minerals, 775–824–2910, *lcurnutt@blm.gov;* or Faith Bremner, Regulatory Analyst, Division of Regulatory Affairs, *fbremner@blm.gov.* Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services for contacting Mr. Bagley. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

I. Background

The Bureau of Land Management (BLM) has authority to charge fees for processing applications and other documents relating to public lands under section 304 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. 1734. In 2005, the BLM published a final cost recovery rule (70 FR 58854) that established new fees or revised fees and service charges for processing documents related to its minerals programs (''2005 Cost Recovery Rule''). In addition, the 2005 Cost Recovery Rule also established the method that the BLM would use to adjust those fees and service charges for inflation on an annual basis.

The regulations at 43 CFR 3000.12(a) provide that the BLM will annually adjust fees established in Subchapter C (43 CFR parts 3000–3900) according to changes in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP), which is published quarterly by the U.S. Department of Commerce. See also 43 CFR 3000.10. This final rule updates those fees and service charges consistent with that direction. The fee adjustments in this final rule are based on the mathematical formula set forth in the 2005 Cost Recovery Rule. The public had an opportunity to comment on that adjustment procedure as part of the 2005 rulemaking. Accordingly, the Department of the Interior for good cause finds under 5 U.S.C. 553(b)(B) and (d)(3) that notice and public comment procedures are unnecessary and that the fee adjustments in this final rule may be effective less than 30 days after publication. See 43 CFR 3000.10(c).

For the first time, this year's annual cost recovery rule includes an inflation adjustment to the BLM's APD fee. Between 2016 and 2020, the BLM adjusted the APD fee through a series of annual instruction memoranda. In 2021, the BLM issued a Federal Register Notice to increase the APD fee. In an effort to be more transparent, the BLM last year adjusted the fee through publication of a notice in the **Federal Register** (86 FR 58095, October 20, 2021). In order to reduce the BLM's publication burden and make it easier for the public to locate the fees, the BLM is now including the annual APD fee adjustment in this final rule, along with the other minerals-program-related fees that the BLM adjusts each year. The BLM plans to include the APD adjustment in its annual minerals cost recovery final rule going forward.

Section 3021(b) of the National Defense Authorization Act of 2015 (Pub. L. 113–291; 30 U.S.C. 191(d)) (the Act) directs the BLM to collect a fee for each new APD submitted to the BLM for fiscal years (FY) 2016 through 2026 and requires the fee amount to be adjusted annually for inflation. The Act set the initial fee amount at $9,500 as of October 1, 2015, with updated annual fee amounts to be indexed for United States dollar inflation from that date as measured by the Consumer Price Index (CPI). 30 U.S.C. 191(d)(2). The CPI is used only for the APD fee inflation adjustment while the IPD–GDP is used for all the other fees that are being adjusted for inflation. Public comment procedures are unnecessary for this adjustment as the authorizing statute does not give the BLM the discretion to vary the amount of the inflation adjustment for the APD to reflect any views or suggestions provided by commenters.

II. Discussion of Final Rule

As set forth in the 2005 Cost Recovery Rule, the updates for 48 of the fees covered by this rule are based on the change in the IPD–GDP. The BLM's minerals program publishes the updated cost recovery fees annually, at the start of each fiscal year.

This final rule updates the current (FY 2022) cost recovery fees for use in FY 2023. The current fees were set by the cost recovery fee rule published on October 4, 2021 (86 FR 54636), effective October 4, 2021. The update in this final rule adjusts the FY 2022 fees based on the change in the IPD–GDP from the 4th Quarter of 2020 to the 4th Quarter of 2021.

As required by the Act, the BLM is updating the APD fee based on the percentage change in the U.S. Bureau of Labor Statistics' Consumer Price Index for all goods and all urban consumers (CPI–U). Between 2016 and 2021, the BLM adjusted the APD fee based on CPI–U data from August of the previous calendar year to August of the current calendar year. This year, in order to accommodate the publishing schedule of this final rule, the BLM is adjusting the APD fee based on CPI–U data from August 2021 to June 2022. In future years, the APD fee adjustment will be based on data from June of the previous calendar year to June of the current calendar year. This change will allow the BLM to publish its annual cost recovery rule, which will include the APD fee increase, in time to start collecting the adjusted fee at the start of each fiscal year.

Under this final rule, 15 fees will remain the same and 33 fees will increase. The filing fees are not adjusted if the change is less than $5. For example, if inflation adjusted a fee from $14.10 to $17.24, the filing fee would remain at $15. Of the 33 fees that are being increased by this final rule, 13 fees will increase by $5 each, and six fees will increase by $10. Two fees will increase by $15, two fees by $20, three fees by $25, and three fees by $30. The largest increase, $905, will be applied to the APD fee, which will increase from $10,900 to $11,805. The fee for adjudicating a patent application containing more than 10 claims will increase by $200—from $3,385 to $3,585. The fee for adjudicating a patent application containing 10 or fewer claims will increase by $100. The smallest increase—1 cent—will be added to the per-acre cost of nominating lands for geothermal leasing, which will rise from 12 cents per acre to 13 cents per acre. It is important to note that the ''real'' values of the fees are not actually increasing, since real values account for the effect of inflation. In real terms, the values of the fees are simply being adjusted to account for the changes in the prices of goods and services produced in the United States.

The calculations that resulted in the new fees are included in the table below:

Fixed cost recovery fees	Existing fee [1] (FY 2022)	Existing value [2]	IPD–GDP increase [3]	New value [4]	New fee [5] (FY 2023)
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):					
Competitive lease application	$175	$174.603	$10.301	$184.904	$185
Assignment and transfer of record title or operating rights	100	100.723	5.942	106.665	105
Overriding royalty transfer, payment out of production	15	13.427	0.792	14.219	15
Name change, corporate merger or transfer to heir/devisee	235	235.020	13.866	248.886	250
Lease consolidation	495	496.909	29.317	526.226	525
Lease renewal or exchange	450	449.919	26.545	476.464	475
Lease reinstatement, Class I	85	87.283	5.149	92.432	90
Leasing under right-of-way	450	449.919	26.545	476.464	475
Geophysical exploration permit application—Alaska	25	27.483	1.621	29.104	30
Renewal of exploration permit—Alaska	25	27.483	1.621	29.104	30
Geothermal (part 3200):					
Noncompetitive lease application	450	449.919	26.545	476.464	475
Competitive lease application	175	174.603	10.301	184.904	185
Assignment and transfer of record title or operating right	100	100.723	5.942	106.665	105
Name change, corporate merger or transfer to heir/devisee	235	235.020	13.866	248.886	250
Lease consolidation	495	496.909	29.317	526.226	525
Lease reinstatement	85	87.283	5.149	92.432	90
Nomination of lands	125	125.707	7.416	133.123	135
Plus per acre nomination fee	0.12	0.123	0.007	0.130	0.13
Site license application	65	67.148	3.961	71.109	70
Assignment or transfer of site license	65	67.148	3.961	71.109	70
Coal (parts 3400, 3470):					
License to mine application	15	13.427	0.792	14.219	15
Exploration license application	370	369.330	21.790	391.120	390
Lease or lease interest transfer	75	73.879	4.358	78.237	80
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):					
Applications other than those listed below	40	40.293	2.377	42.670	45
Prospecting permit amendment	75	73.879	4.358	78.237	80
Extension of prospecting permit	120	120.870	7.131	128.001	130
Lease modification or fringe acreage lease	35	33.584	1.981	35.565	35
Lease renewal	580	577.509	34.073	611.582	610
Assignment, sublease, or transfer of operating rights	35	33.585	1.981	35.566	35
Transfer of overriding royalty	35	33.585	1.981	35.566	35
Use permit	35	33.585	1.981	35.566	35
Shasta and Trinity hardrock mineral lease	35	33.585	1.981	35.566	35
Renewal of existing sand and gravel lease in Nevada	35	33.585	1.981	35.566	35
Multiple Use; Mining (Group 3700):					
Notice of protest of placer mining operations	15	13.427	0.792	14.219	15
Mining Law Administration (parts 3800, 3810, 3830, 3850, 3860, 3870):					
Application to open lands to location	15	13.427	0.792	14.219	15
Notice of location	20	20.134	1.187	21.321	20
Amendment of location	15	13.427	0.792	14.219	15
Transfer of mining claim/site	15	13.427	0.792	14.219	15
Recording an annual FLPMA filing	15	13.427	0.792	14.219	15
Deferment of assessment work	120	120.870	7.131	128.001	130
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	35	33.585	1.981	35.566	35
Mineral patent adjudication (more than ten claims)	3,385	3,384.464	199.683	3,584.147	3,585
(ten or fewer claims)	1,690	1,692.214	99.840	1,792.054	1,790
Adverse claim	120	120.870	7.131	128.001	130
Protest	75	73.879	4.358	78.237	80
Oil Shale Management (parts 3900, 3910, 3930):	.....	.....	.....	.....	.....
Exploration license application	355	354.244	20.900	375.144	375
Assignment or sublease of record title or overriding royalty	70	72.055	4.251	76.306	75
	Existing fee (FY 2022) [6]	Existing value [7]	CPI–U increase [8]	New value [9]	New fee (FY 2023) [10]
Oil and Gas Operations/Production (parts 3160, 3170):					
Application for Permit to Drill	10,900	10,900.000	905.790	11,805.790	11,805

[1] The Existing Fee was established by the 2021 (FY 2022) cost recovery fee update rule published on October 4, 2021 (86 FR 54636), effective October 4, 2021.

[2] The Existing Value is the figure from the New Value column in the previous year's rule.

[3] From 4th Quarter 2020 (114.438) to 4th Quarter 2021 (121.188), the IPD–GDP increased by 5.9 percent. The value in the IPD–GDP Increase column is 5.9 percent of the ''Existing Value.''

[4] The sum of the ''Existing Value'' and the ''IPD–GDP Increase'' is the ''New Value.''

[5] The ''New Fee'' for FY 2023 is the ''New Value'' rounded to the nearest $5 for values equal to or greater than $1 or rounded to the nearest penny for values under $1.

[6] The Existing Fee was established via a notice published in the FEDERAL REGISTER on October 20, 2021 (87 FR 58095), effective October 20, 2021.

[7] The existing value is the adjusted CPI–U for August 2020 to August 2021. The statute requires that the APD calculation be based on CPI–U and in the past was calculated August to August. This year, it is calculated on an August to June timeframe. It will be calculated June to June in upcoming years.
[8] From August 2021 to June 2022, the adjusted CPI–U increased by 8.31%.
[9] The sum of the ''Existing Value'' and the ''CPI–U Increase'' is the ''New Value.''
[10] The new APD fee for FY 2023 is the ''New Value'' rounded to the nearest $10.

III. How Fees Are Adjusted

The BLM took the base values (or ''existing values'') upon which it derived the FY 2022 cost recovery fees (or ''existing fees'') and multiplied them by the percent change in the IPD–GDP (5.9 percent for this update) to generate the ''IPD–GDP increases'' (in dollars). The BLM then added the ''IPD–GDP increases'' to the ''existing values'' to generate the ''new values.'' The BLM then calculated the ''new fees'' by rounding the ''new values'' to the closest multiple of $5 for fees equal to or greater than $1, or to the nearest cent for fees under $1. The ''new fees'' are the updated cost recovery fees for FY 2023.

The source for IDP–GDP data is the U.S. Department of Commerce, Bureau of Economic Analysis, specifically, ''Table 1.1.9. Implicit Price Deflators for Gross Domestic Product,'' which the BLM accessed on July 14, 2022, on the web at *https://apps.bea.gov/iTable/iTable.cfm?reqid=19&step=2#reqid=19&step=3&isuri=1&1921=survey&1903=13.*

The updated APD fee amount reflects an adjustment to the current fee of $10,900 based on the percentage change in the CPI–U from the end of August 2021 to the end of June 2022. The CPI–U for June 2022 is 8.3 percent higher than the CPI–U for August 2021. Increasing the 2022 fee of $10,900 by 8.3 percent and rounding the product to the nearest $10 produces a 2023 fee of $11,805.

The source for CPI–U data is the BLS, U.S. Bureau of Labor Statistics, Consumer Price Index for All Urban Consumers: All Items in U.S. City Average [CPIAUCSL], retrieved from FRED, Federal Reserve Bank of St. Louis; *https://fred.stlouisfed.org/series/CPIAUCSL,* accessed on July 14, 2022.

IV. Procedural Matters

Regulatory Planning and Review (Executive Order 12866)

This document is not a significant rule, and the Office of Management and Budget has not reviewed this final rule under Executive Order 12866.

The BLM has determined that this final rule will not have an annual effect on the economy of $100 million or more. It will not 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. The changes in today's rule are much smaller than those in the 2005 Cost Recovery Rule, which did not approach the threshold in Executive Order 12866.

This final rule will not create inconsistencies or otherwise interfere with an action taken or planned by another agency. This rule does not change the relationships of the onshore minerals programs with other agencies' actions. These relationships are included in agreements and memoranda of understanding that will not change with this rule.

In addition, this final rule does not materially affect the budgetary impact of entitlements, grants, or loan programs, or the rights and obligations of their recipients. This rule applies an inflationary adjustment factor to existing user fees for processing certain actions associated with the onshore minerals programs.

Finally, this final rule will not raise novel legal or policy issues. As explained earlier, this rule simply implements an annual process to account for inflation that was adopted by and explained in the 2005 Cost Recovery Rule.

The Regulatory Flexibility Act

This final rule will not have a significant economic effect on a substantial number of small entities as defined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). As a result, a Regulatory Flexibility Analysis is not required. The Small Business Administration defines small entities as individual, limited partnerships, or small companies considered to be at arm's length from the control of any parent companies if they meet the following size requirements as established for each North American Industry Classification System (NAICS) code:

- Iron ore mining (NAICS code 212210): 750 or fewer employees
- Gold ore mining (NAICS code 212221): 1,500 or fewer employees
- Silver ore mining (NAICS code 212222): 250 or fewer employees
- Uranium-Radium-Vanadium ore mining (NAICS code 212291): 250 or fewer employees
- All Other Metal ore mining (NAICS code 212299): 750 or fewer employees
- Bituminous Coal and Lignite Surface Mining (NAICS code 212111): 1,250 or fewer employees
- Bituminous Coal Underground Mining (NAICS code 212112): 1,500 or fewer employees
- Crude Petroleum Extraction (NAICS code 211120): 1,250 or fewer employees
- Natural Gas Extraction (NAICS code 211130): 1,250 or fewer employees
- All Other Non-Metallic Mineral Mining (NAICS code 212399): 500 or fewer employees

The SBA would consider many, if not most, of the operators with whom the BLM works in the onshore minerals programs to be small entities. The BLM notes that this final rule does not affect service industries, for which the SBA has a different definition of ''small entity.''

The final rule may affect a large number of small entities because 33 fees for activities on public lands will be increased. The adjustments result in no increase in the fees for processing 15 actions relating to the BLM's minerals programs. The highest adjustment, in dollar terms, is for the APD fee. That fee will increase by $905, from $10,900 to $11,805. It is important to note that the ''real'' values of the fees are not actually increasing, since real values account for the effect of inflation. In real terms, the values of the fees are simply being adjusted to account for the changes in the prices of goods and services produced in the United States. Accordingly, the BLM has concluded that the economic effect of the rule's changes will not be significant, even for small entities.

For the 2005 Cost Recovery Rule, the BLM completed a Regulatory Flexibility Act threshold analysis. That analysis concluded that the fees would not have a significant economic effect on a substantial number of small entities. The fee increases implemented in this rule are substantially smaller than those provided for in the 2005 Cost Recovery Rule.

The APD fee increase is mandated by Section 3021(b) of the National Defense Authorization Act of 2015 (Pub. L. 113–291; 30 U.S.C. 191(d)) (the Act). The Act directs the BLM to collect a fee for each new APD submitted to the BLM for

fiscal years (FY) 2016 through 2026 and requires the fee amount to be adjusted for inflation.

The Small Business Regulatory Enforcement Fairness Act

This final rule is not a ''major rule'' as defined at 5 U.S.C. 804(2). The final rule will not have an annual effect on the economy greater than $100 million; it will not result in major cost or price increases for consumers, industries, government agencies, or regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. Accordingly, a Small Entity Compliance Guide is not required.

Executive Order 13132, Federalism

This final rule 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. In accordance with Executive Order 13132, the BLM therefore finds that the final rule does not have federalism implications, and a federalism assessment is not required.

The Paperwork Reduction Act of 1995

This final rule does not contain information-collection requirements that require a control number from the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521). After the effective date of this rule, the new fees may affect the non-hour burdens associated with the following control numbers:

Oil and Gas

(1) 1004–0034, which expires September 30, 2024;

(2) 1004–0137, which expires January 31, 2025;

(3) 1004–0162, which expires December 31, 2024;

(4) 1004–0185, which expired December 31, 2021; [11]

Geothermal

(5) 1004–0132, which expires July 31, 2023;

Coal

(6) 1004–0073, which expires April 30, 2023;

Mining Claims

(7) 1004–0025, which expires July 31, 2025;

(8) 1004–0114, which expires April 30, 2023; and

Leasing of Solid Minerals Other Than Oil Shale

(9) 1004–0121, which expires October 31, 2022.

Takings Implication Assessment (Executive Order 12630)

As required by Executive Order 12630, the BLM has determined that this final rule will not cause a taking of private property. No private property rights will be affected by a rule that merely updates fees. The BLM therefore certifies that this final rule does not represent a governmental action capable of interference with constitutionally protected property rights.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the BLM finds that this final rule will not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Executive Order.

The National Environmental Policy Act (NEPA)

The BLM has determined that this final rule qualifies as a routine financial transaction and a regulation of an administrative, financial, legal, or procedural nature that is categorically excluded from environmental review under NEPA pursuant to 43 CFR 46.205 and 46.210(c) and (i). The final rule does not meet any of the 12 criteria for exceptions to categorical exclusions listed at 43 CFR 46.215. Therefore, neither an environmental assessment nor an environmental impact statement is required in connection with the rule (40 CFR 1508.4).

The Unfunded Mandates Reform Act of 1995

The BLM has determined that this final rule is not significant under the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*, because it will not result in State, local, private sector, or tribal government expenditures of $100 million or more in any one year, 2 U.S.C. 1532. This rule will not significantly or uniquely affect small governments. Therefore, the BLM is not required to prepare a statement containing the information required by the Unfunded Mandates Reform Act.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

In accordance with Executive Order 13175, the BLM has determined that this final rule does not include policies that have tribal implications. Specifically, the rule would not have substantial direct effects on one or more Indian Tribes. Consequently, the BLM did not use the consultation process set forth in Section 5 of the Executive Order.

Information Quality Act

In developing this final rule, the BLM did not conduct or use a study, experiment, or survey requiring peer review under the Information Quality Act (Pub. L. 106–554).

Effects on the Nation's Energy Supply (Executive Order 13211)

In accordance with Executive Order 13211, the BLM has determined that this final rule is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It merely adjusts certain administrative cost recovery fees to account for inflation.

Author

The principal author of this final rule is Faith Bremner of the Division of Regulatory Affairs, Bureau of Land Management.

List of Subjects in 43 CFR Part 3000

Public lands—mineral resources, Reporting and recordkeeping requirements.

For reasons stated in the preamble, the Bureau of Land Management amends 43 CFR part 3000 as follows:

PART 3000—MINERALS MANAGEMENT: GENERAL

■ 1. The authority citation for part 3000 continues to read as follows:

Authority: 16 U.S.C. 3101 *et seq.*; 30 U.S.C. 181 *et seq.*, 301–306, 351–359, and 601 *et seq.*; 31 U.S.C. 9701; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 6508; 43 U.S.C. 1701 *et seq.*; and Pub. L. 97–35, 95 Stat. 357.

Subpart 3000—General

■ 2. Amend § 3000.12 by revising paragraph (a) to read as follows:

§ 3000.12 What is the fee schedule for fixed fees?

(a) The table in this section shows the fixed fees that must be paid to the BLM for the services listed for Fiscal Year (FY) 2023. These fees are nonrefundable and must be included with documents filed under this chapter. Fees will be adjusted annually according to the

[11] A renewal request for control number 1004–0185 was submitted to the Office of Management and Budget on November 22, 2021.

change in the Implicit Price Deflator for Gross Domestic Product (IPD–GDP) and the change in the Consumer Price Index for all goods and all urban consumers (CPI–U) by way of publication of a final rule in the **Federal Register** and will subsequently be posted on the BLM website (*http://www.blm.gov*) before October 1 each year. Revised fees are effective each year on October 1.

TABLE 1 TO PARAGRAPH (a)—FY 2023 PROCESSING AND FILING FEE TABLE

Document/action	FY 2023 fee
Oil & Gas (parts 3100, 3110, 3120, 3130, 3150):	
Competitive lease application	$185.
Assignment and transfer of record title or operating rights	105.
Overriding royalty transfer, payment out of production	15.
Name change, corporate merger or transfer to heir/devisee	250.
Lease consolidation	525.
Lease renewal or exchange	475.
Lease reinstatement, Class I	90.
Leasing under right-of-way	475.
Geophysical exploration permit application—Alaska	30.
Renewal of exploration permit—Alaska	30.
Geothermal (part 3200):	
Noncompetitive lease application	475.
Competitive lease application	185.
Assignment and transfer of record title or operating rights	105.
Name change, corporate merger or transfer to heir/devisee	250.
Lease consolidation	525.
Lease reinstatement	90.
Nomination of lands	135.
plus per acre nomination fee	0.13.
Site license application	70.
Assignment or transfer of site license	70.
Coal (parts 3400, 3470):	
License to mine application	15.
Exploration license application	390.
Lease or lease interest transfer	80.
Leasing of Solid Minerals Other Than Coal and Oil Shale (parts 3500, 3580):	
Applications other than those listed below	45.
Prospecting permit application amendment	80.
Extension of prospecting permit	130.
Lease modification or fringe acreage lease	35.
Lease renewal	610.
Assignment, sublease, or transfer of operating rights	35.
Transfer of overriding royalty	35.
Use permit	35.
Shasta and Trinity hardrock mineral lease	35.
Renewal of existing sand and gravel lease in Nevada	35.
Public Law 359; Mining in Powersite Withdrawals: General (part 3730):	
Notice of protest of placer mining operations	15.
Mining Law Administration (parts 3800, 3810, 3830, 3860, 3870):	
Application to open lands to location	15.
Notice of location *	20.
Amendment of location	15.
Transfer of mining claim/site	15.
Recording an annual FLPMA filing	15.
Deferment of assessment work	130.
Recording a notice of intent to locate mining claims on Stockraising Homestead Act lands	35.
Mineral patent adjudication	3,585 (more than 10 claims). 1,790 (10 or fewer claims).
Adverse claim	130.
Protest	80.
Oil Shale Management (parts 3900, 3910, 3930):	
Exploration license application	375.
Application for assignment or sublease of record title or overriding royalty	75.
Onshore Oil and Gas Operations and Production (parts 3160, 3170):	
Application for Permit to Drill	11,805.

* To record a mining claim or site location, this processing fee along with the initial maintenance fee and the one-time location fee required by statute (43 CFR part 3833) must be paid.

* * * * *

Laura Daniel-Davis,

Principal Deputy Assistant Secretary, Land and Minerals Management.

[FR Doc. 2022–20337 Filed 9–20–22; 8:45 am]

BILLING CODE 4310–84–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2507

RIN 3045–AA59

Procedures for Disclosure of Records Under the Freedom of Information Act; Correction

AGENCY: Corporation for National and Community Service.

ACTION: Final rule; correction.

SUMMARY: The Corporation for National and Community Service (operating as AmeriCorps) is correcting a final rule that appeared in the **Federal Register** on September 9, 2022. The document finalized updates to AmeriCorps regulations for processing requests for records under the Freedom of Information Act (FOIA) to reflect changes made in the FOIA Improvement Act of 2016 and to make the regulations more user friendly through plain language.

DATES: Effective October 11, 2022.

FOR FURTHER INFORMATION CONTACT: Stephanie Soper, AmeriCorps FOIA Officer, at 202–606–6747 or *ssoper@cns.gov.*

SUPPLEMENTARY INFORMATION: In FR Doc. 2022–19185 appearing on page 55305 in the **Federal Register** of Friday, September 9, 2022, the following correction is made:

§ 2507.14 [Corrected]

■ 1. On page 55314, in the second column, in § 2507.14, the second paragraph (f) is redesignated as paragraph (g).

Fernando Laguarda,

General Counsel.

[FR Doc. 2022–20387 Filed 9–20–22; 8:45 am]

BILLING CODE 6050–28–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 18–89; FCC 20–176; FR ID 104232]

Protecting National Security Threats to the Communications Supply Chain Through FCC Programs

AGENCY: Federal Communications Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: In this document, the Federal Communications Commission (Commission) announces that the Office of Management and Budget (OMB) has approved, for a period of three years, an information collection associated with the rules for the Secure and Trusted Communications Networks Act of 2019 contained in the Commission's *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs Order,* FCC 20–176. This document is consistent with the *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs Order,* which stated that the Commission would publish a document in the **Federal Register** announcing the effective date of the new information collection requirements.

DATES: The addition of § 54.11 published at 86 FR 2904, January 13, 2021, is effective September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Jesse Jachman, Wireline Competition Bureau at (202) 418–7400 or TTY (202) 418–0484. For additional information concerning the Paperwork Reduction Act information collection requirements contact Nicole Ongele at (202) 418–2991 or via email: *Nicole.Ongele@fcc.gov.*

SUPPLEMENTARY INFORMATION: The Commission submitted revised information collection requirements for review and approval by OMB, as required by the Paperwork Reduction Act (PRA) of 1995, on June 1, 2022, which were approved by OMB on July 5, 2022. The information collection requirements are contained in the Commission's *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs Order,* FCC 20–176 published at 86 FR 2904, January 13, 2021. The OMB Control Number is 3060–0986. If you have any comments on the burden estimates listed in the following, or how the Commission can improve the collections and reduce any burdens caused thereby, please contact Nicole Ongele, Federal Communications Commission, 45 L Street NE, Washington, DC 20554. Please include the OMB Control Number, 3060–0986, in your correspondence. The Commission will also accept your comments via email at *PRA@fcc.gov.*

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

Synopsis

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), the Commission is notifying the public that it received OMB approval on July 5, 2022, for the information collection requirements contained in 47 CFR 54.11 published at 86 FR 2904, January 13, 2021. Under 5 CFR part 1320, an agency may not conduct or sponsor a collection of information unless it displays a current, valid OMB Control Number.

No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act that does not display a current, valid OMB Control Number. The OMB Control Number is 3060–0986.

The foregoing notice is required by the Paperwork Reduction Act of 1995, Public Law 104–13, October 1, 1995, and 44 U.S.C. 3507.

The total annual reporting burdens and costs for the respondents are as follows:

OMB Control Number: 3060–0986.

OMB Approval Date: July 5, 2022.

OMB Expiration Date: July 31, 2025.

Title: High-Cost Universal Service Support.

Form Number: FCC Form 481 and FCC Form 525.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit, Not-for-profit institutions and State, Local or Tribal Government.

Number of Respondents and Responses: 2,229 respondents; 13,804 responses.

Estimated Time per Response: 0.1–15 hours.

Frequency of Response: On occasion, quarterly and annual reporting requirements, recordkeeping requirement and third party disclosure requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this information collection is contained in 47 U.S.C. 151–154, 155, 201–206, 214, 218–220, 251, 252, 254,

256, 303(r), 332, 403, 405, 410, and 1302.

Total Annual Burden: 50,857 hours.

Total Annual Cost: No Cost.

Privacy Act Impact Assessment: No impact(s).

Nature and Extent of Confidentiality: The Federal Communications Commission (Commission) notes that the Universal Service Administrative Company (USAC or Administrator) must preserve the confidentiality of all data obtained from respondents and contributors to the universal service support program mechanism; must not use the data except for purposes of administering the universal service program; and must not disclose data in company-specific form unless directed to do so by the Commission. Parties may submit confidential information in relation pursuant to a protective order. Also, respondents may request materials or information submitted to the Commission or to the Administrator believed confidential to be withheld from public inspection under 47 CFR 0.459 of the FCC's rules.

Needs and Uses: On November 18, 2011, the Commission adopted an order reforming its high-cost universal service support mechanisms. *Connect America Fund; A National Broadband Plan for Our Future; Establish Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform—Mobility Fund,* WC Docket Nos. 10–90, 07–135, 05–337, 03–109; GN Docket No. 09–51; CC Docket Nos. 01–92, 96–45; WT Docket No. 10–208, Order (76 FR 73830 (Nov. 29, 2011)) and Further Notice of Proposed Rulemaking (76 FR 78384 (Dec. 16, 2011)), 26 FCC Rcd 17663 (2011) (*USF/ICC Transformation Order*). The Commission and Wireline Competition Bureau have since adopted a number of orders that implement the *USF/ICC Transformation Order; see also Connect America Fund et al.,* WC Docket No. 10–90 et al., Third Order on Reconsideration (77 FR 30904 (May 24, 2012)), 27 FCC Rcd 5622 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order (77 FR 14297 (March 9, 2012)), 27 FCC Rcd 605 (Wireline Comp. Bur. 2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Fifth Order on Reconsideration (78 FR 3837 (Jan. 17, 2013)), 27 FCC Rcd 14549 (2012); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order (78 FR 22198 (April 15, 2013)), 28 FCC Rcd 2051 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Order, 28 FCC Rcd 7227 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order (78 FR 38227 (June 26, 2013)), 28 FCC Rcd 7766 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order (78 FR 32991 (June 3, 2013)), 28 FCC Rcd 7211 (Wireline Comp. Bur. 2013); *Connect America Fund,* WC Docket No. 10–90, Report and Order (78 FR 48622 (Aug. 9, 2013)), 28 FCC Rcd 10488 (Wireline Comp. Bur. 2013); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order, Order and Order on Reconsideration (81 FR 24282 (April 25, 2016)) and Further Notice of Proposed Rulemaking (81 FR 21511 (April 12, 2016)), 31 FCC Rcd 3087 (2016); *Connect America Fund, et al.,* WC Docket No. 10–90, et al., Report and Order (81 FR 44414 (July 7, 2016)) and Further Notice of Proposed Rulemaking (81 FR 40235 (June 21, 2016)), 31 FCC Rcd 5949 (2016); *Connect America Fund et al.,* WC Docket Nos. 10–90, 16–271; WT Docket No. 10–208, Report and Order (81 FR 69696 (Oct. 7, 2016)) and Further Notice of Proposed Rulemaking (81 FR 69772 (Oct. 7, 2016)), 31 FCC Rcd 10139 (2016); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Order, 32 FCC Rcd 968 (2017); *Connect America Fund et al.,* WC Docket No. 10–90 et al., Report and Order (84 FR 4711 (Feb. 19, 2019)), Further Notice of Proposed Rulemaking (84 FR 2132 (Feb. 6, 2019)), and Order on Reconsideration (84 FR 4711 (Feb. 19, 2019)), 33 FCC Rcd 11893 (2018); *Connect America Fund; ETC Annual Reports and Certifications,* WC Docket Nos. 10–90, 14–58, Report and Order (82 FR 39966 (Aug. 23, 2017)), 32 FCC Rcd 5944 (2017).

In 2019, the Commission adopted an order establishing a separate, parallel high-cost program for the U.S. territories suffering extensive infrastructure damage due to Hurricanes Irma and Maria. *The Uniendo a Puerto Rico Fund and the Connect USVI Fund, et al.,* WC Docket No. 18–143, et al., Report and Order and Order on Reconsideration (84 FR 59937 (Nov. 7, 2019)), 34 FCC Rcd 9109 (2019) (*Puerto Rico and USVI Stage 2 Order).* Also, in the *2019 Supply Chain Order* (85 FR 230 (Jan. 3, 2020)), the Commission adopted a rule prohibiting the use of Universal Service Fund (USF) support, including high-cost universal service support, to purchase or obtain any equipment or services produced or provided by a covered company posing a national security threat to the integrity of communications networks or the communications supply chain. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Report and Order (85 FR 230 (Jan. 3, 2020)), Further Notice of Proposed Rulemaking (85 FR 277 (Jan. 3, 2020), and Order (85 FR 230 (Jan. 3, 2020)), 34 FCC Rcd 11423, 11433, para. 26. *See also* 47 CFR 54.9.

Through several orders, the Commission has changed, modified, and eliminated certain reporting obligations for high-cost support. These changes are outlined in the following:

On January 30, 2020, the Commission adopted an order establishing the framework for the Rural Digital Opportunity Fund (RDOF), building on the successful Connect America Fund (CAF) Phase II auction. *Rural Digital Opportunity Fund; Connect America Fund,* WC Docket Nos. 19–126 and 10–90, Report and Order (85 FR 13773 (March 10, 2020)), 35 FCC Rcd 686 (2020) (*RDOF Order*). The RDOF represents the Commission's single biggest step to close the digital divide by providing up to $20.4 billion to connect millions more rural homes and small businesses to high-speed broadband networks. In the *RDOF Order,* ''[t]o ensure that support recipients are meeting their deployment obligations,'' the Commission ''adopt[ed] essentially the same reporting requirements for the RDOF that the Commission adopted for the CAF Phase II auction.'' *Id.* at 712, para. 56.

In the *2020 Supply Chain Order,* the Commission adopted two additional supply chain rules associated with newly required certifications. *Protecting Against National Security Threats to the Communications Supply Chain Through FCC Programs,* WC Docket No. 18–89, Second Report and Order (86 FR 2904 (Jan. 13, 2021)), 35 FCC Rcd 14284 (2020) (*2020 Supply Chain Order*). First, the Commission adopted a rule, 47 CFR 54.10, prohibiting the use of a Federal subsidy made available through a program administered by the Commission that provides funds to be used for the capital expenditures necessary for the provision of advanced communications services to purchase, rent, lease, or otherwise obtain, any covered communications equipment or service, or maintain any covered communications equipment or service previously purchased, rented, leased, or otherwise obtained. Second, the Commission adopted a rule, 47 CFR 54.11, which requires each eligible telecommunications carrier receiving universal service fund support to remove and replace all covered

communications equipment and services from their networks, and subsequently certify prior to receiving a funding commitment or support that it does not use covered communications equipment or services. The Commission also adopted procedures, consistent with the Secure and Trusted Communications Networks Act of 2019 (Pub. L. 116–124), to identify such covered equipment and services and publish a Covered List. That list was published March 12, 2021 and will be updated as needed.

In the *Rate Floor Repeal Order,* the Commission decided to ''eliminate the rate floor and, following a one-year period of monitoring residential retail rates, eliminate the accompanying reporting obligations after July 1, 2020.'' *Connect America Fund,* WC Docket No. 10–90, Order (84 FR 19874 (May 7, 2019)), 34 FCC Rcd 2621, 2621 para. 2 (2019) (*Rate Floor Repeal Order*); *see also* 47 CFR 54.313(h). As explained in the *Order,* the rate floor was ''[i]ntended to guard against artificial subsidization of rural end user rates significantly below the national urban average'' but, practically speaking, ''increase[d] the telephone rates of rural subscribers . . . and individuals living on Tribal lands.'' *Rate Floor Repeal Order,* 34 FCC Rcd at 2621 para. 1.

The Commission therefore revises this information collection, as well as the Form 481 and its accompanying instructions, to reflect these modified and eliminated requirements. Finally, the Commission increases the respondents associated with existing reporting requirements to account for additional carriers that will be subject to those requirements.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

[FR Doc. 2022–20069 Filed 9–20–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CG Docket Nos. 03–123, 10–51, 13–24; FCC 22–51; FR ID 104192]

VRS and IP CTS—Commencement of Service Pending User Registration

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (FCC or Commission) adopts a two-week ''grace period'' to allow Video Relay Service (VRS) and Internet Protocol Captioned Telephone Service (IP CTS) providers to commence service to new or porting-in users while the user's identity is verified by the Telecommunications Relay Services (TRS) User Registration Database. These actions will increase the efficiency of the registration process, avoid unnecessary service delays, and ensure that TRS users' experience in ordering new service or porting service to a new TRS provider is comparable to that of voice telephone service users.

DATES: The rules are effective October 21, 2022, except for the amendments to §§ 64.611 (amendatory instruction 3) and 64.615 (amendatory instruction 4), which are delayed. The Commission will publish a document in the **Federal Register** announcing the effective dates.

FOR FURTHER INFORMATION CONTACT: William Wallace, Disability Rights Office, Consumer and Governmental Affairs Bureau, at 202–418–2716, or *William.Wallace@fcc.gov.*

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, document FCC 22–51, adopted June 28, 2022, released June 30, 2022, in CG Docket Nos. 03–123, 10–51, and 13–24. The Commission sought comment on the two-week grace period issue in *Misuse of Internet Protocol (IP) Captioned Telephone Service; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket Nos. 13–24 and 03–123, published at 84 FR 9276, March 14, 2019 (*2019 IP CTS Further Notice of Proposed Rulemaking (FNPRM)*) and in *Structure and Practices of the Video Relay Service Program; Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, Further Notice of Proposed Rulemaking, CG Docket Nos. 10–51 and 03–123, published at 84 FR 26379, June 6, 2019 (*2019 VRS FNPRM*).

The full text of document FCC 22–51 can be accessed electronically via the FCC's Electronic Document Management System (EDOCS) website at *www.fcc.gov/edocs* or via the FCC's Electronic Comment Filing System (ECFS) website at *www.fcc.gov/ecfs*. To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an email to *fcc504@fcc.gov*, or call the Consumer and Governmental Affairs Bureau at (202) 418–0530 (voice) or (202) 418–0432 (TTY).

Synopsis

1. *User Registration and Verification.* TRS are telephone transmission services that enable people with speech or hearing disabilities to communicate by wire or radio in a manner that is functionally equivalent to communication using voice services. Under section 225 of the Communications Act of 1934, as amended (the Act), 47 U.S.C. 225, the Commission must ensure that TRS are available ''to the extent possible and in the most efficient manner'' to persons ''in the United States'' who are deaf, hard of hearing, or deafblind or who have speech disabilities, so that they can communicate by telephone in a manner that is functionally equivalent to voice communication service. VRS, a form of TRS, enables people with hearing or speech disabilities who use sign language to make telephone calls over a broadband connection using a video communication device. The video link allows a communications assistant (CA) to view and interpret the party's signed conversation and relay the conversation back and forth with a voice caller. IP CTS, another form of TRS, permits a person with hearing loss to have a telephone conversation while reading captions of what the other party is saying on an internet-connected device.

2. Before commencing service to a subscriber, a VRS or IP CTS provider must register the user by collecting certain identifying information, as well as a signed self-certification of eligibility for TRS. In addition, registration data for VRS users must be submitted to the Commission's centralized TRS User Registration Database (User Database or Database). IP CTS user registration data also will be submitted and maintained in the Database once it is activated for that purpose. Upon receiving the registration data for a newly registered TRS user, the Database administrator verifies the user's identity. Providers are prohibited from seeking compensation for service to users who do not pass this identity verification check.

3. Although User Database registration is usually completed within hours of data submission, it may take longer if the administrator's initial attempt to verify a registrant's identity is unsuccessful, requiring the provider to obtain corrected information or additional documentation from the registrant. The two-week ''grace period'' will allow VRS and IP CTS providers to immediately begin serving new or porting-in users without waiting for the verification process to complete, thereby promoting the availability and

efficiency of TRS. Moreover, by allowing customers to make and receive TRS calls during the grace period, those users are better able to obtain the documentation and information needed to verify their identities. Because providers will not be compensated for calls made during the two-week grace period unless and until the customer is successfully entered into the Database, this rule change will not increase any risk of TRS Fund payment for ineligible calls or otherwise contribute to waste, fraud, or abuse of TRS Fund resources.

4. *Alternative Proposals.* The Commission rejects proposals to extend the grace period beyond two weeks as unnecessary. Moreover, extending the grace period for individuals who are deafblind or who are deaf with additional disabilities would increase the complexity of administering the registration process as a whole and is unwarranted in the absence of actual evidence of a need for additional time.

5. *Limitations on Number Reassignments.* In the case of VRS, and in the event verification of registration data for a newly assigned TRS telephone number is not completed within two weeks, the telephone number should not be immediately reassigned. Under the current as well as the newly adopted rules, a new number is not entered in the Database until such time as the user's identity is verified. Therefore, if registration data for a new telephone number is submitted to the Database, and the user's identity has not been verified within the two-week grace period, then the number shall not be entered in the Database, and no provider may request compensation for compensable calls from that number after expiration of the two-week period. Similarly, the new telephone number and associated routing information, which were entered in the Telephone Numbering Directory to allow calls to be made to and from the new number on a provisional basis, shall be removed from the Directory. As a result, upon expiration of the two-week period, the number will not be usable until such time as the user's identity is verified or the number is reassigned to a different customer. Because the consumer has already begun using the submitted number, he or she should not be automatically deprived of the opportunity to recommence service with the same number, if verification is successfully completed within a reasonable period after the two weeks expires. Therefore, even if verification cannot be completed within the two-week grace period, the submitting provider shall retain that number in inactive status, for an additional period of 30 days or the pendency of any appeal, whichever is later, before reassigning it to a new user or otherwise making it available for re-use. If the user's identity is later verified, the telephone number may be entered in the Database at that time and calls made to or from the number from that time forward may be submitted for compensation.

6. When an existing TRS telephone number has been *ported,* a failure to verify the number within the two-week grace period will have somewhat different consequences. Under the current rules, when a number is being ported, the Database registration of that number is not changed to designate the porting-in VRS provider until the registration data collected by the porting-in provider has been verified. By adopting the grace period, the Commission permits a port to be completed on a provisional basis, pending verification of the registration data submitted by the porting-in provider. Therefore, the porting-in provider's routing information shall be entered in the TRS Numbering Directory, so that during the two-week grace period, calls to and from the ported number are handled by the porting-in VRS provider. However, the number will continue to be registered in the User Database under the name of the porting-out VRS provider until the registration data submitted by the porting-in provider has been verified. If such verification is not completed within the two-week grace period, then the port will be reversed, and the porting-out provider's routing information will be re-entered in the TRS Numbering Directory. In the event that verification of a ported number is not completed within the grace period, neither the porting-out nor porting-in provider may seek compensation for calls placed to or from the ported number during those two weeks.

7. *Technical Corrections to TRS Rules.* This document amends § 64.604(d) of the Commission's rules to delete an obsolete cross-reference. Section 64.604(d) of the Commission's rules provides that the applicable requirements of certain provisions of the Commission's rules are to be considered mandatory minimum standards for TRS. Among the listed provisions is § 64.617 of the Commission's rules, which was repealed in 2017. The cross-reference to that provision in § 64.604(d) of the Commission's rules was not deleted.

8. Good cause exists to make this correction without prior notice and comment. The cross-reference is clearly incorrect and without any substantive effect, now that § 64.617 of the Commission's rules has been deleted. The correction is therefore simply a conforming change to the Commission's rules.

9. The Commission also makes a technical correction to § 64.604(c)(5)(iii)(D)(*1*) of its rules, which addresses data reporting requirements. The four bold, italicized words below were inadvertently deleted from the following excerpt from the previous version of that provision: ''TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, *total operating expenses and* total TRS investment in general in accordance with part 32 of this chapter . . .'' The correction restores the inadvertently deleted text.

Final Regulatory Flexibility Analysis

10. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission incorporated an Initial Regulatory Flexibility Analysis (IRFA) into both the *2019 VRS FNPRM* and the *2019 IP CTS FNPRM.* The Commission sought written public comment on the proposals in both *FNPRMs,* including comment on the IRFAs. No comments were received in response to the IRFAs.

11. *Need for, and Objectives of, the Rules.* This document addresses the procedures for registering users of certain forms of TRS and verifying their identities in the User Database. The purpose of these rules is to ensure that only persons with hearing and speech disabilities who are eligible to use TRS can make calls that are compensated from the Interstate TRS Fund. Providers of VRS and IP CTS cannot receive compensation from the Fund unless the caller is registered in, and has had his or her identity verified, in the User Database.

12. The Commission adopts a two-week grace period during which VRS and IP CTS providers can handle calls for new and porting-in customers after submitting the user's registration information while identity verification is pending and receive compensation for the calls as long as the user's identity is ultimately verified in the User Database as eligible for TRS within the same two-week period from the initial submission of the user's registration information. The Commission concludes that the grace period will improve functional equivalency for individuals with hearing and speech disabilities because it will allow them to start making calls immediately with their TRS provider, just as most voice customers of landline and mobile services can start using the service when they sign up for service.

13. The Commission finds that the two-week grace period will not contribute to waste, fraud, and abuse of the TRS Fund. If the user is verified, then his or her calls during the two-week period are eligible for compensation. If the user is not verified, then the VRS or IP CTS provider will not be compensated for the calls. Accordingly, the TRS Fund will not be paying for ineligible calls.

14. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* No comments were filed in response to either IRFA.

15. *Response to Comments by the Chief Counsel for Advocacy of the Small Business Administration.* The Chief Counsel did not file any comments in response to the proposed rules in this proceeding.

16. *Description and Estimate of the Number of Small Entities to which the Rules will Apply.* The amendments to rules adopted in this document will affect the obligations of VRS and IP CTS providers. These services can be included within the broad economic category of All Other Telecommunications.

17. *Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements.* In allowing VRS and IP CTS providers to receive compensation for up to two weeks while the identity verification is pending for new users and users changing providers for calls by or to such users, the Commission retains the reporting, recordkeeping, and other compliance requirements currently applicable to VRS and IP CTS providers and adopts minor modified reporting requirements related to the timing for requesting compensation for calls by and to such users.

18. For new users and users changing providers, VRS and IP CTS providers must track what calls are made by and to such users while their identity verification remains pending and only seek compensation from the Interstate TRS Fund for those call minutes within the two-week grace period if the user's identity is verified by the User Database administrator before the end of that period. For users whose identify cannot be verified within the two-week period, VRS and IP CTS providers can only seek compensation for calls by and to the user if and when the user's identity has been verified.

19. These modified requirements are no more burdensome than those currently applicable to VRS and IP CTS providers and are needed to ensure compliance with the Commission's rules and protect against waste, fraud, and abuse of the TRS program.

20. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* The new rule does not impose any modified requirements that would increase regulatory burdens beyond those that are already required. The modified requirements apply equally to all VRS and IP CTS providers and are necessary to prevent waste, fraud, and abuse of the TRS Fund by ensuring that providers are not compensated for service provided to users who do not satisfy the verification requirements.

Ordering Clauses

21. Pursuant to sections 1, 2, and 225 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 152, and 225, document FCC 22–51 is adopted, and the Commission's rules are hereby amended.

22. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, shall send a copy of document FCC 22–51, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Congressional Review Act

The Commission sent a copy of document FCC 22–51 to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. 801(a)(1)(A).

Final Paperwork Reduction Act of 1995 Analysis

This document contains modified information collection requirements, which are not effective until approval is obtained from the Office of Management and Budget (OMB). As part of its continuing effort to reduce paperwork burdens, the Commission will invite the general public to comment on the information collection requirements as required by the PRA of 1995, Public Law 104–13. The Commission will publish a separate document in the **Federal Register** announcing approval of the information collection requirements. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, 44 U.S.C. 3506(c)(4), the Commission previously sought comment on how the Commission might ''further reduce the information burden for small business concerns with fewer than 25 employees.'' 84 FR 9276, March 14, 2019; 84 FR 26379, June 6, 2019.

List of Subjects in 47 CFR Part 64

Individuals with disabilities, Telecommunications, Telephone.

Federal Communications Commission.

Marlene Dortch,

Secretary, Office of the Secretary.

Final Regulations

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 64 as follows:

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

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

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

■ 2. Amend § 64.604 by revising paragraphs (c)(5)(iii)(D)(*1*) and (d) to read as follows:

§ 64.604 Mandatory minimum standards.

* * * * *

(c) * * *

(5) * * *

(iii) * * *

(D) * * *

(*1*) *Cost and demand data.* TRS providers seeking compensation from the TRS Fund shall provide the administrator with true and adequate data, and other historical, projected and state rate related information reasonably requested to determine the TRS Fund revenue requirements and payments. TRS providers shall provide the administrator with the following: total TRS minutes of use, total interstate TRS minutes of use, total operating expenses and total TRS investment in general in accordance with part 32 of this chapter, and other historical or projected information reasonably requested by the administrator for purposes of computing payments and revenue requirements. In annual cost data filings and supplementary information provided to the administrator regarding such cost data, IP CTS providers that contract for the supply of services used in the provision of TRS shall include information about payments under such contracts, classified according to the substantive cost categories specified by the administrator. To the extent that a third party's provision of services covers more than one cost category, the resubmitted cost reports must provide an explanation of how the provider determined or calculated the portion of contractual payments attributable to each cost category. To the extent that the administrator reasonably deems necessary, providers shall submit additional detail on such contractor

expenses, including but not limited to complete copies of such contracts and related correspondence or other records and information relevant to determining the nature of the services provided and the allocation of the costs of such services to cost categories.

* * * * *

(d) *Other standards.* The applicable requirements of § 9.14 of this chapter and §§ 64.611, 64.615, 64.621, 64.631, 64.632, 64.5105, 64.5107, 64.5108, 64.5109, and 64.5110 are to be considered mandatory minimum standards.

■ 3. Delayed indefinitely, amend § 64.611 by:

■ a. Revising paragraph (a)(4)(iii);

■ b. Adding paragraph (a)(4)(iv);

■ c. Redesignating paragraph (j)(2)(v) as paragraph (j)(2)(vi); and

■ d. Adding a new paragraph (j)(2)(v).

The revision and additions read as follows:

§ 64.611 Internet-based TRS registration.

(a) * * *

(4) * * *

(iii) VRS providers must submit the information in the introductory text of paragraph (a)(4) of this section upon initiation of service for users registered after 60 days of notice from the Commission that the TRS User Registration Database is ready to accept such information. VRS providers may provide service to such users for up to two weeks after the user's registration information has been submitted to the TRS User Registration Database pending verification of the user's identity. After the user's identity is verified by the Database administrator, VRS providers may seek TRS Fund compensation for calls handled during such pre-verification period of up to two weeks.

(iv) If a VRS user's registration data submitted pursuant to paragraph (a)(4)(iii) of this section is not verified by the TRS User Registration Database administrator within two weeks after submission, the VRS provider shall hold the assigned number for up to 30 days or the pendency of an appeal, whichever is later, pending the outcome of any further efforts to complete verification, before returning the number to inactive status or assigning it to another user. If a VRS user's identity is verified within such 30-day period, or during the pendency of an appeal, whichever is later, the administrator may enter the number into the Database (and the TRS Numbering Directory) as assigned to that user.

* * * * *

(j) * * *

(2) * * *

(v) IP CTS providers may provide service to new users for up to two weeks after the user's registration information has been submitted to the TRS User Registration Database pending verification of the user's identity. After a user's identity is verified by the Database administrator, IP CTS providers may seek TRS Fund compensation for calls handled during such pre-verification period.

* * * * *

■ 4. Delayed indefinitely, amend § 64.615 by adding paragraphs (a)(6)(v) and (vi) to read as follows:

§ 64.615 TRS User Registration Database and administrator.

(a) * * *

(6) * * *

(v) Notwithstanding paragraphs (a)(6)(ii) through (iv) of this section, VRS and IP CTS providers may provide service to a new or porting user for up to two weeks after the user's registration information has been submitted to the TRS User Registration Database, pending verification of the user's identity. After such user's identity is verified by the Database administrator, a TRS provider may seek TRS Fund compensation for calls handled during such pre-verification period.

(vi) If a VRS provider submits registration information for a TRS telephone number that is being ported from another VRS provider, and user's identity cannot be immediately verified, then the porting-in provider's routing information for that telephone number shall be provisionally entered in the TRS Numbering Directory for up to two weeks to allow the routing of calls to the porting-in VRS provider pursuant to paragraph (a)(6)(v) of this section. If the user's identity is not verified by the TRS User Registration Database administrator within the allowed two-week period, the porting-out provider's routing information shall be re-entered in the TRS Number Directory.

* * * * *

[FR Doc. 2022–20106 Filed 9–20–22; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[Docket No. 220523–0119; RTID 0648–XC331]

Atlantic Highly Migratory Species; Atlantic Bluefin Tuna Fisheries; Closure of the General Category September Fishery for 2022

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

ACTION: Temporary rule; closure.

SUMMARY: NMFS closes the General category fishery for large medium and giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) Atlantic bluefin tuna (BFT) for the September subquota time period. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT. This action also waives the previously-scheduled restricted fishing days (RFDs) for the remainder of the September subquota time period. With the RFDs waived during the closure, fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs. On October 1, 2022, the fishery will reopen automatically and previously scheduled RFDs for the October through November subquota time period will resume.

DATES: Effective 11:30 p.m., local time, September 19, 2022, through September 30, 2022.

FOR FURTHER INFORMATION CONTACT: Erianna Hammond, *erianna.hammond@noaa.gov,* 301–427–8503, Larry Redd, Jr., *larry.redd@noaa.gov,* 301–427–8503, or Nicholas Velseboer, *nicholas.velseboer@noaa.gov,* 978–281–9260.

SUPPLEMENTARY INFORMATION: Atlantic HMS fisheries, including BFT fisheries, are managed under the authority of the Atlantic Tunas Convention Act (ATCA; 16 U.S.C. 971 *et seq.*) and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act; 16 U.S.C. 1801 *et seq.*). The 2006 Consolidated Atlantic HMS Fishery Management Plan (FMP) and its amendments are implemented

by regulations at 50 CFR part 635. Section 635.27 divides the U.S. BFT quota recommended by the International Commission for the Conservation of Atlantic Tunas (ICCAT) and as implemented by the United States among the various domestic fishing categories, per the allocations established in the 2006 Consolidated HMS FMP and its amendments. NMFS is required under the Magnuson-Stevens Act to provide U.S. fishing vessels with a reasonable opportunity to harvest quotas under relevant international fishery agreements such as the ICCAT Convention, which is implemented domestically pursuant to ATCA.

Under § 635.28(a)(1), NMFS files a closure action with the Office of the Federal Register for publication when a BFT quota (or subquota) is reached or is projected to be reached. Retaining, possessing, or landing BFT under that quota category is prohibited on or after the effective date and time of a closure notice for that category until the opening of the relevant subsequent quota period or until such date as specified.

The baseline U.S. BFT quota is 1,316.14 metric tons (mt) (§ 635.27(a)). The current baseline quota for the General category is 587.9 mt and the baseline subquota for the September time period is 155.8 mt. Effective September 7, 2022, NMFS increased the September subquota to 225.5 mt through an inseason quota transfer (87 FR 54910, September 8, 2022). Within that transfer notice, NMFS made an inadvertent error in calculating the adjusted September subquota. Through this action, NMFS corrects the adjusted September subquota to 225.8 mt (155.8 mt baseline subquota + 70 mt transferred). This transfer provided additional quota for the September time period and also addressed a 20.5 mt overharvest from previous time period subquotas.

Closure of the September 2022 General Category Fishery

As of September 15, 2022, reported landings for the General category September subquota time-period total approximately 181.6 mt. Based on these landings data, as well as average catch rates and anticipated fishing conditions, NMFS projects the adjusted September 2022 subquota of 225.8 mt will be reached shortly. Therefore, retaining, possessing, or landing large medium or giant (*i.e.,* measuring 73 inches (185 cm) curved fork length or greater) BFT by persons aboard vessels permitted in the Atlantic Tunas General category and HMS Charter/Headboat permitted vessels (while fishing commercially) must cease at 11:30 p.m. local time on September 19, 2022. This action applies to Atlantic Tunas General category (commercial) permitted vessels and HMS Charter/Headboat permitted vessels with a commercial sale endorsement when fishing commercially for BFT, and is taken consistent with the regulations at § 635.28(a)(1). The intent of this closure is to prevent overharvest of the available September subquota. The General category will automatically reopen October 1, 2022, for the October through November 2022 subquota time-period.

Adjustment of the Daily Retention Limit for Selected Dates

On June 1, 2022 (87 FR 33056), NMFS published a final rule implementing RFDs every Tuesday, Friday, and Saturday through November 30, 2022. Because the fishery will be closed for the remainder of the September subquota time period, NMFS has decided to waive the previously-scheduled RFDs for the remainder of that period. Previously scheduled RFDs will resume on October 1, 2022.

With the RFDs waived during the closure, consistent with § 635.23(a)(4), fishermen aboard General category permitted vessels and HMS Charter/Headboat permitted vessels may tag and release BFT of all sizes, subject to the requirements of the catch-and-release and tag-and-release programs at § 635.26. All BFT that are released must be handled in a manner that will maximize their survival, and without removing the fish from the water, consistent with requirements at § 635.21(a)(1). For additional information on safe handling, see the ''Careful Catch and Release'' brochure available at *https://www.fisheries.noaa.gov/resource/outreach-and-education/careful-catch-and-release-brochure/.*

Monitoring and Reporting

NMFS will continue to monitor the BFT fisheries closely. Dealers are required to submit landing reports within 24 hours of a dealer receiving BFT. Late reporting by dealers compromises NMFS' ability to timely implement actions such as quota and retention limit adjustment, as well as closures, and may result in enforcement actions. Additionally, and separate from the dealer reporting requirement, General category and HMS Charter/Headboat permitted vessel owners are required to report the catch of all BFT retained or discarded dead within 24 hours of the landing(s) or end of each trip, by accessing *www.hmspermits.noaa.gov,* using the HMS Catch Reporting app, or calling (888) 872–8862 (Monday through Friday from 8 a.m. until 4:30 p.m.).

After the fishery reopens on October 1, depending on the level of fishing effort and catch rates of BFT, NMFS may determine that additional adjustments are necessary to ensure available subquotas are not exceeded or to enhance scientific data collection from, and fishing opportunities in, all geographic areas. If needed, subsequent adjustments will be published in the **Federal Register**. In addition, fishermen may call the Atlantic Tunas Information Line at (978) 281–9260, or access *www.hmspermits.noaa.gov,* for updates on quota monitoring and inseason adjustments.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act and regulations at 50 CFR part 635 and is exempt from review under Executive Order 12866.

The Assistant Administrator for NMFS (AA) finds that pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice of, and an opportunity for public comment on, this action for the following reasons. Specifically, the regulations implementing the 2006 Consolidated HMS FMP and amendments provide for inseason retention limit adjustments and fishery closures to respond to the unpredictable nature of BFT availability on the fishing grounds, the migratory nature of this species, and the regional variations in the BFT fishery. Providing for prior notice and an opportunity to comment is impracticable and contrary to the public interest. This fishery is currently underway and, based on landings information, delaying this action could result in BFT landings exceeding the adjusted September 2022 General category subquota. Taking this action does not raise conservation and management concerns. NMFS notes that the public had an opportunity to comment on the underlying rulemakings that established the U.S. BFT quota and the inseason adjustment criteria.

For all of the above reasons, the AA also finds that pursuant to 5 U.S.C. 553(d), there is good cause to waive the 30-day delay in effectiveness.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: September 15, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–20386 Filed 9–16–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 182
Wednesday, September 21, 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.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AO40

General Schedule Locality Pay Areas

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: On behalf of the President's Pay Agent, the Office of Personnel Management is proposing regulations to establish Carroll County, IL, as an area of application to the Davenport-Moline, IA-IL locality pay area and Brooks County, TX, as an area of application to the Corpus Christi-Kingsville-Alice, TX, locality pay area. The proposed changes in the geographic definitions of those locality pay areas would be applicable on the first day of the first applicable pay period beginning on or after January 1, 2023, subject to issuance of final regulations.

DATES: We must receive comments on or before October 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and/or Regulation Identifier Number (RIN) and title, by the following method:

- *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Joe Ratcliffe by email at *pay-leave-policy@opm.gov* or phone at 202–936–3081.

SUPPLEMENTARY INFORMATION: Section 5304 of title 5, United States Code (U.S.C.), authorizes locality pay for General Schedule (GS) employees with duty stations in the United States and its territories and possessions. Section 5304(f) of title 5, United States Code, authorizes the President's Pay Agent (the Secretary of Labor, the Director of the Office of Management and Budget (OMB), and the Director of the Office of Personnel Management (OPM)) to determine locality pay areas. The boundaries of locality pay areas are based on appropriate factors, which may include local labor market patterns, commuting patterns, and the practices of other employers. The Pay Agent considers the views and recommendations of the Federal Salary Council, a body composed of experts in the fields of labor relations and pay policy and representatives of Federal employee organizations. The President appoints the members of the Council, which submits annual recommendations to the Pay Agent about the administration of the locality pay program, including the geographic boundaries of locality pay areas. (The Federal Salary Council's recommendations are posted on the OPM website at *https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/#url=Federal-Salary-Council.*) The establishment or modification of pay area boundaries conforms to the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553).

This proposal provides notice and requests comments on proposed regulations to implement the Pay Agent's plan to establish Carroll County, IL, as an area of application to the Davenport-Moline, IA-IL locality pay area and Brooks County, TX, as an area of application to the Corpus Christi-Kingsville-Alice, TX, locality pay area. The change to establish Carroll County, IL, as an area of application to the Davenport-Moline, IA-IL locality pay area was tentatively approved, pending appropriate rulemaking, in the December 15, 2021, report of the President's Pay Agent. (Annual Pay Agent reports on locality pay are posted on the OPM website at *https://www.opm.gov/policy-data-oversight/pay-leave/pay-systems/general-schedule/#url=Pay-Agent-Reports.*) Also, in considering the Federal Salary Council's recommendation to make that change, the Pay Agent reviewed updated GS employment data for other locations and found that recent increases in GS employment for Brooks County, TX, have resulted in the county now meeting the GS employment criterion for establishment as an area of application to the Corpus Christi locality pay area. More detail is provided below.

Criteria for Areas of Application

Locality pay areas consist of (1) the metropolitan statistical area or combined statistical area (MSA or CSA) comprising the basic locality pay area and, where criteria recommended by the Federal Salary Council and approved by the Pay Agent are met, (2) areas of application. Areas of application are locations that are adjacent to the basic locality pay area and meet approved criteria for inclusion in the locality pay area. Those criteria are explained below.

The Pay Agent's current criteria for evaluating locations adjacent to a basic locality pay area for possible inclusion in the locality pay area as areas of application are as follows: For adjacent CSAs and adjacent multi-county MSAs the criteria are 1,500 or more GS employees and an employment interchange rate of at least 7.5 percent. For adjacent single counties, the criteria are 400 or more GS employees and an employment interchange rate of at least 7.5 percent. The employment interchange rate is defined as the sum of the percentage of employed residents of the area under consideration who work in the basic locality pay area and the percentage of the employment in the area under consideration that is accounted for by workers who reside in the basic locality pay area. (The employment interchange rate is calculated by including all workers in assessed locations, not just Federal employees.)

The Pay Agent also has criteria for evaluating Federal facilities that cross county lines into a separate locality pay area. To be included in an adjacent locality pay area, the whole facility must have at least 500 GS employees, with the majority of those employees in the higher-paying locality pay area, or that portion of a Federal facility outside of a higher-paying locality pay area must have at least 750 GS employees, the duty stations of the majority of those employees must be within 10 miles of the separate locality pay area, and a significant number of those employees

must commute to work from the higher-paying locality pay area.

Carroll County, IL

In the Federal Salary Council meeting on October 21, 2020, the Council heard testimony regarding Carroll County, IL, currently considered a ''Rest of U.S.'' location that is adjacent to the Davenport locality pay area. At that time, Carroll County met the employment interchange criterion but not the GS employment criterion to be included in the Davenport locality pay area as an area of application. Since that time and as noted in the Pay Agent's December 2021 report, Carroll County now meets the GS employment criterion for establishment as an area of application to the Davenport locality pay area.

The applicable criteria for Carroll County are those applied for locations evaluated as single counties. To meet those criteria, Carroll County would need 400 or more GS employees and an employment interchange rate of 7.5 percent or more with the Davenport basic locality pay area. Carroll County meets these criteria with approximately 420 GS employees and an employment interchange rate of 18.14 percent with the Davenport basic locality pay area. Accordingly, we propose that Carrol County, IL, be established as an area of application to the Davenport locality pay area.

Brooks County, TX

In reviewing updated GS employment data, the Pay Agent has identified Brooks County as meeting the applicable criteria applied for locations evaluated as single counties. To meet these criteria, Brooks County needed both 400 or more GS employees and an employment interchange rate of 7.5 percent or more with the Corpus Christi basic locality pay area. Brooks County now meets these criteria, with approximately 420 GS employees and an interchange rate of 42.64 percent with the Corpus Christi basic locality pay area. Accordingly, we propose that Brooks County, TX, be established as an area of application to the Corpus Christi locality pay area.

Regulatory Impact Analysis

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which 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). This rule is not a ''significant regulatory action,'' under Executive Order 12866.

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities as this rule only applies to Federal agencies and employees.

Federalism

OPM has examined this rule in accordance with Executive Order 13132, Federalism, and has determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates 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 year 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.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM proposes to amend 5 CFR part 531 as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

■ 1. The authority citation for part 531 continues to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Public Law 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316; Subpart B also issued under 5 U.S.C. 5303(g), 5305, 5333, 5334(a) and (b), and 7701(b)(2); Subpart D also issued under 5 U.S.C. 5335 and 7701(b)(2); Subpart E also issued under 5 U.S.C. 5336; Subpart F also issued under 5 U.S.C. 5304, 5305, and 5941(a); E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart F—Locality-Based Comparability Payments

■ 2. In § 531.603, revise paragraphs (b)(16) and (18) to read as follows:

§ 531.603 Locality pay areas.

* * * * *

(b) * * *

(16) Corpus Christi-Kingsville-Alice, TX—consisting of the Corpus Christi-Kingsville-Alice, TX CSA and also including Brooks County, TX;

(18) Davenport-Moline, IA-IL—consisting of the Davenport-Moline, IA-IL CSA and also including Carroll County, IL;

* * * * *

[FR Doc. 2022–20247 Filed 9–20–22; 8:45 am]

BILLING CODE 6325–39–P

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AO46

Prevailing Rate Systems; Definition of San Mateo County, California, to a Nonappropriated Fund Federal Wage System Wage Area

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing a rule to define San Mateo County, California, as an area of application county to the Monterey, CA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change is necessary because there are three NAF FWS employees working in San Mateo County, and the county is not currently defined to a NAF wage area.

DATES: Send comments on or before October 21, 2022.

ADDRESSES: You may submit comments, identified by docket number and/or Regulatory Information Number (RIN) and title, by the following method:

• *Federal Rulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

All submissions received must include the agency name and docket number or RIN for this document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Ana Paunoiu, by telephone at (202) 606–2858 or by email at *pay-leave-policy@opm.gov.*

SUPPLEMENTARY INFORMATION: OPM is proposing a rule to would define San Mateo County, CA, as an area of application to the Monterey, CA, NAF FWS wage area. The Department of Defense, on behalf of the Department of Veterans Affairs, notified OPM the Veterans Canteen Service now has three NAF FWS employees in San Mateo County.

Under section 532.219 of title 5, Code of Federal Regulations, each NAF wage area ''shall consist of one or more survey areas, along with nonsurvey areas, if any, having nonappropriated fund employees.'' San Mateo County does not meet the regulatory criteria under 5 CFR 532.219 to be established as a separate NAF wage area; however, nonsurvey counties may be combined with a survey area to form a wage area. Section 532.219 lists the regulatory criteria OPM considers when defining FWS wage area boundaries. This regulation allows consideration of the following criteria: proximity of largest activity in each county, transportation facilities and commuting patterns, and similarities of the counties in overall population, private employment in major industry categories, and kinds and sizes of private industrial establishments.

San Mateo, CA, would be defined as an area of application to the Monterey, CA, NAF FWS wage area. The proximity criterion favors the Monterey wage area. The transportation facilities and commuting patterns criterion does not favor one wage area more than another. The overall population, employment sizes, and kinds and sizes of private industrial establishments criterion does not favor one wage area more than another. While a standard review of regulatory criteria shows mixed results, the proximity criterion favors the Monterey wage area. Based on this analysis, we propose that San Mateo County be defined to the Monterey NAF wage area.

With the definition of San Mateo County to the Monterey NAF wage area, the Monterey wage area would consist of one survey county (Monterey County, CA) and two area of application counties (San Mateo and Santa Clara Counties, CA). The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended this change by consensus. This change would be effective on the first day of the first applicable pay period beginning on or after 30 days following publication of the final regulations.

Regulatory Impact Analysis

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

Regulatory Flexibility Act

OPM certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Federalism

We have examined this rule in accordance with Executive Order 13132, Federalism, and have determined that this rule will not have any negative impact on the rights, roles and responsibilities of State, local, or tribal Governments.

Civil Justice Reform

This regulation meets the applicable standard set forth in Executive Order 12988.

Unfunded Mandates 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 year 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.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Stephen Hickman,

Federal Register Liaison.

Accordingly, OPM is proposing to amend 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

■ 1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

■ 2. In Appendix D to subpart B, amend the table in paragraph (3) by revising the wage area listing for CALIFORNIA, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Definitions of Wage Areas and Wage Area Survey Areas

* * * * *

CALIFORNIA

Kern
Survey Area
California:
Kern
Area of Application. Survey area plus:
California:
Fresno
Kings

Los Angeles
Survey Area
California:
Los Angeles
Area of Application. Survey area.

Monterey
Survey Area
California:
Monterey
Area of Application. Survey area plus:
California:
San Mateo
Santa Clara

Orange
Survey Area
California:
Orange
Area of Application. Survey area.

Riverside
Survey Area
California:
Riverside
Area of Application. Survey area.

Sacramento
Survey Area
California:
Sacramento
Area of Application. Survey area plus:
California:
Yuba
Oregon:
Jackson
Klamath

San Bernadino
Survey Area
California:
San Bernadino
Area of Application. Survey area.

San Diego
Survey Area
California:
San Diego
Area of Application. Survey area.

San Joaquin
Survey Area
California:

San Joaquin

Area of Application. Survey area.

Santa Barbara

Survey Area

California:
Santa Barbara

Area of Application. Survey area plus:

California:
San Luis Obispo

Solano

Survey Area

California:
Solano

Area of Application. Survey area plus:

California:
Alameda
Contra Costa
Marin
Napa
San Francisco
Sonoma

Ventura

Survey Area

California:
Ventura

Area of Application. Survey area.

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[FR Doc. 2022–20248 Filed 9–20–22; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2022–0889; Project Identifier AD–2021–00614–T]

RIN 2120–AA64

Airworthiness Directives; The Boeing Company Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes. This proposed AD was prompted by reports of ram air turbine (RAT) pump barrel assembly failures, which caused the RAT to fail to provide hydraulic power. The failures were determined to be caused by variations in the bronze metal used during manufacturing, which can result in varying fatigue properties. This proposed AD would require an inspection or records review to determine the part number of the RAT pump and control module (PCM) and of the RAT assembly, and replacement of any RAT PCM or any RAT assembly having certain part numbers. This proposed AD would also prohibit the installation of affected parts. The FAA is proposing this AD to address the unsafe condition on these products.

DATES: The FAA must receive comments on this proposed AD by November 7, 2022.

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

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

For service information identified in this NPRM, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0889.

Examining the AD Docket

You may examine the AD docket at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0889; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

FOR FURTHER INFORMATION CONTACT: Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: *douglas.tsuji@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–2022–0889; Project Identifier AD–2021–00614–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

Confidential Business Information

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: *douglas.tsuji@faa.gov.* Any commentary that the FAA receives which is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that RAT pump barrel assembly failures during production flights have caused the RAT to fail to provide hydraulic power. An investigation by the manufacturer determined that the failures are caused by variations in the bronze material used during the manufacturing process, which can result in varying fatigue properties. The varying fatigue properties of the RAT pump cylinder

block, along with fatigue cracks, can result in failure of the RAT pump, which is a component within the RAT PCM and the larger RAT assembly. This condition, if not addressed, could cause fatigue or cracking of the hydraulic pump bronze cylinder block and lead to failures of the RAT pump and subsequent loss of backup hydraulic power for the flight controls, which can result in loss of continued safe flight and landing.

FAA's Determination

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

Related Service Information Under 1 CFR Part 51

The FAA reviewed Boeing Alert Requirements Bulletin B787–81205–SB290039–00 RB, Issue 002, dated October 26, 2021. This service information specifies procedures for replacing any RAT PCM having part number (P/N) 7001267H06 with P/N 7001267H07, and replacing any RAT assembly having P/N 7000011H08 with P/N 7000011H09.

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

Proposed AD Requirements in This NPRM

This proposed AD would require an inspection or records review to determine the part number of each RAT PCM and RAT assembly. This proposed AD would also require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. This proposed AD would also prohibit the installation of affected parts. For information on the procedures and compliance times, see this service information at *https://www.regulations.gov* by searching for and locating Docket No. FAA–2022–0889.

Differences Between This Proposed AD and the Service Information

The effectivity of Boeing Alert Requirements Bulletin B787–81205–SB290039–00 RB, Issue 002, dated October 26, 2021, is limited to Model 787–8, 787–9, and 787–10 airplanes, having certain line numbers between 6 and 1048. However, the applicability of this proposed AD includes all Boeing Model 787–8, 787–9, and 787–10 airplanes. Because the affected RAT PCMs and RAT assemblies are rotable parts, the FAA has determined that these parts could later be installed on airplanes that were initially delivered with acceptable RAT PCMs and RAT assemblies, thereby subjecting those airplanes to the unsafe condition.

Costs of Compliance

The FAA estimates that this AD, if adopted as proposed, would affect 148 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection or records review	1 work-hour × $85 per hour = $85	$0	$85	$12,580

ESTIMATED COSTS FOR OPTIONAL ACTIONS

Action	Labor cost	Parts cost	Cost per product
Replace RAT PCM	5 work-hours × $85 per hour = $425	Up to $95,210	Up to $95,635.
Replace RAT assembly	5 work-hours × $85 per hour = $425	Up to $680,912	Up to $681,337.

Authority for This Rulemaking

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

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

Regulatory Findings

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

For the reasons discussed above, I certify this proposed regulation:

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

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

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

List of Subjects in 14 CFR Part 39

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

The Proposed Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

The Boeing Company: Docket No. FAA–2022–0889; Project Identifier AD–2021–00614–T.

(a) Comments Due Date

The FAA must receive comments on this airworthiness directive (AD) by November 7, 2022.

(b) Affected ADs

None.

(c) Applicability

This AD applies to all The Boeing Company Model 787–8, 787–9, and 787–10 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 29, Hydraulic power.

(e) Unsafe Condition

This AD was prompted by reports of ram air turbine (RAT) assembly failures, which caused the RAT to fail to provide hydraulic power. The failures were determined to be caused by variations in the bronze metal used during manufacturing, which can result in varying fatigue properties. The FAA is issuing this AD to address fatigue or cracking of the RAT hydraulic pump bronze cylinder block. This condition, if not addressed, could cause failure of the RAT pump and subsequent loss of backup hydraulic power for the flight controls, which can result in loss of continued safe flight and landing.

(f) Compliance

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

(g) Inspection

For airplanes with an original airworthiness certificate or original certificate of airworthiness issued on or before the effective date of this AD: Within 60 months after the effective date of this AD, inspect the RAT pump and control module (PCM) and the RAT assembly to determine the part number. A review of airplane maintenance records is acceptable in lieu of this inspection if the RAT PCM and the RAT assembly part numbers can be conclusively determined from that review.

(h) Replacements

If, during the inspection required by paragraph (g) of this AD, any RAT PCM having part number (P/N) 7001267H06 or any RAT assembly having P/N 7000011H08 is found: Except as specified by paragraph (i) of this AD, at the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin B787–81205–SB290039–00 RB, Issue 002, dated October 26, 2021, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin B787–81205–SB290039–00 RB, Issue 002, dated October 26, 2021.

Note 1 to paragraph (h): Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin B787–81205–SB290039–00, Issue 002, dated October 26, 2021, which is referred to in Boeing Alert Requirements Bulletin B787–81205–SB290039–00 RB, Issue 002, dated October 26, 2021.

(i) Exception to Service Information Specifications

Where Boeing Alert Requirements Bulletin B787–81205–SB290039–00 RB, Issue 002, dated October 26, 2021, uses the phrase ''the Issue 001 date of Requirements Bulletin B787–81205–SB290039–00 RB,'' this AD requires using ''the effective date of this AD.''

(j) Parts Installation Prohibition

(1) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued after the effective date of this AD: Installation of a RAT PCM, part number (P/N) 7001267H06, or RAT assembly, P/N 700011H08, is prohibited as of the effective date of this AD.

(2) For airplanes with an original airworthiness certificate or original export certificate of airworthiness issued on or before the effective date of this AD, installation of a RAT PCM, P/N 7001267H06, or RAT assembly, P/N 700011H08, is allowed until the actions required by paragraph (h) of this AD are accomplished.

(k) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (h) of this AD, if those actions were performed before the effective date of this AD using Boeing Alert Requirements Bulletin B787–81205–SB290039–00 RB, Issue 001, dated November 3, 2020.

(l) Alternative Methods of Compliance (AMOCs)

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

(2) Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

(3) An AMOC that provides an acceptable level of safety may be used for any repair, modification, or alteration required by this AD if it is approved by The Boeing Company Organization Designation Authorization (ODA) that has been authorized by the Manager, Seattle ACO Branch, FAA, to make those findings. To be approved, the repair method, modification deviation, or alteration deviation must meet the certification basis of the airplane, and the approval must specifically refer to this AD.

(m) Related Information

(1) For more information about this AD, contact Douglas Tsuji, Senior Aerospace Engineer, Systems and Equipment Section, FAA, Seattle ACO Branch, 2200 South 216th St., Des Moines, WA 98198; phone and fax: 206–231–3548; email: *douglas.tsuji@faa.gov.*

(2) For service information identified in this AD, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; internet *https://www.myboeingfleet.com.* You may view this referenced service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195.

Issued on July 18, 2022.

Christina Underwood,

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

[FR Doc. 2022–20444 Filed 9–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 28, 30, 87, 180, and 3282

[Docket No. FR–6346–N–01]

Adjustment of Civil Monetary Penalty Amounts: Request for Comments

AGENCY: Office of the General Counsel, HUD.

ACTION: Request for comments.

SUMMARY: Consistent with the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (''2015 Act''), HUD annually publishes a final rule adjusting its civil money penalty amounts for inflation according to the formula provided by the 2015 Act. In these rules, HUD does not apply the adjustments retroactively and provides that the inflation-adjusted penalty amounts apply to violations occurring on or after the rule's effective date. HUD is considering revising this approach, however, and annually applying inflation-adjusted penalty amounts to violations assessed after the date of inflation, if the violation occurred after the enactment of the 2015 Act. Through this request for comments, HUD seeks public input on the impact of applying inflation-adjusted penalty amounts on the date the penalty is assessed rather than the date of the violation.

DATES: Comments are due on or before: November 21, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding

this request. All submissions must refer to the above docket number and title. There are two methods for submitting public comments:

1. Electronic Submission of Comments. Interested persons may submit comments electronically through the Federal eRulemaking Portal at *https://www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the author maximum time to prepare and submit a comment, ensures timely receipt by HUD, and enables HUD to make them immediately available to the public. Comments submitted electronically through the *https://www.regulations.gov* website can be viewed by other submitters and interested members of the public. Commenters should follow instructions provided on that site to submit comments electronically.

2. Submission of Comments by Mail. Members of the public may submit comments by mail to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Due to security measures at all federal agencies, however, submission of comments by standard mail often results in delayed delivery. To ensure timely receipt of comments, HUD recommends that comments submitted by standard mail be submitted at least two weeks in advance of the deadline. HUD will make all comments received by mail available to the public at *https://www.regulations.gov.*

No Facsimile Comments. Facsimile (FAX) comments will not be accepted.

Public Inspection of Public Comments. All properly submitted comments and communications regarding this document submitted to HUD are available for public inspection and copying between 8 a.m. and 5 p.m. weekdays at the above address. Due to security measures at the HUD Headquarters building, an advance appointment to review the public comments must be scheduled by calling the Regulations Division at 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals can dial 7–1–1 to access the Telecommunications Relay Service (TRS), which permits users to make text-based calls, including Text Telephone (TTY) and Speech to Speech (STS) calls. Copies of all comments submitted are available for inspection and downloading at *http://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Associate General Counsel for Legislation and Regulations, Office of the General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20024; telephone number 202–708–3055 (this is not a toll-free number). Hearing- or speech-impaired individuals can dial 7–1–1 to access the Telecommunications Relay Service (TRS), which permits users to make text-based calls, including Text Telephone (TTY) and Speech to Speech (STS) calls.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act) (Pub. L. 114–74, sec. 701, 129 Stat. 599), amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101–410, 104 Stat. 890), to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. Specifically, the 2015 Act, codified at 28 U.S.C. 2461, note, requires agencies with statutory authority to assess civil money penalties (CMPs) and publish annual adjustments for inflation. Section 5 of the 2015 Act establishes the formula for calculating annual adjustments and is tied to the Consumer Price Index for all Urban Consumers (CPI–U). In accordance with the 2015 Act, annual adjustments after the initial ''catch-up'' adjustment may be issued ''notwithstanding section 553 of Title 5, United States Code'', the notice and comment requirements of the Administrative Procedure Act.

On June 15, 2016, HUD issued for public comment an interim rule, pursuant to the 2015 Act, to amend CMP regulations (81 FR 38931). HUD finalized the interim rule the following year in the Inflation Catch-up Adjustment of Civil Monetary Penalty Amounts Final Rule and Adjustment of Civil Monetary Penalty Amounts for 2017 (82 FR 24521). HUD's 2017 final rule stated that ''Since HUD is not applying these adjustments retroactively, the 2016 increases being finalized apply to violations occurring prior to the effective date of this final rule (and on and after the effective date of the 2016 interim rule) and the 2017 increases apply to violations occurring on or after this rule's effective date.''

Since the publication of the 2017 final rule, HUD has continued to apply inflation-adjusted penalty amounts to violations occurring on or after the rule's effective date each year.[1] In addition, HUD has implemented its adjusted penalty amounts uniformly across the several programs for which it has authority to assess penalties.

HUD Statutory and Regulatory Authority for Imposition of Civil Money Penalties

Description	Statutory citation	Regulatory citation (24 CFR)
False Claims	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802(a)(1)).	§ 28.10(a).
False Statements	Omnibus Budget Reconciliation Act of 1986 (31 U.S.C. 3802 (a)(2)).	§ 28.10(b).
Advance Disclosure of Funding	Department of Housing and Urban Development Act (42 U.S.C. 3537a(c)).	§ 30.20.
Disclosure of Subsidy Layering	Department of Housing and Urban Development Act (42 U.S.C. 3545(f)).	§ 30.25.
FHA Mortgagees and Lenders Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2))	§ 30.35.
Other FHA Participants Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f–14(a)(2))	§ 30.36.
Indian Home Loan Guarantee Lender or Holder Violations	Housing Community Development Act of 1992 (12 U.S.C. 1715z–13a(g)(2)).	§ 30.40.
Multifamily & Section 202 or 811 Owners Violations	HUD Reform Act of 1989 (12 U.S.C. 1735f–15(c)(2))	§ 30.45.

[1] *See* Adjustment of Civil Monetary Penalty Amounts for 2018–2022 at 83 FR 32790; 84 FR 9451; 85 FR 13041; 86 FR 14370; and 87 FR 24418.

HUD STATUTORY AND REGULATORY AUTHORITY FOR IMPOSITION OF CIVIL MONEY PENALTIES—Continued

Description	Statutory citation	Regulatory citation (24 CFR)
Ginnie Mae Issuers & Custodians Violations	HUD Reform Act of 1989 (12 U.S.C. 1723i(a))	§ 30.50.
Title I Broker & Dealers Violations	HUD Reform Act of 1989 (12 U.S.C. 1703)	§ 30.60.
Lead Disclosure Violation	Title X—Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4852d(b)(1)).	§ 30.65.
Section 8 Owners Violations	Multifamily Assisted Housing Reform and Affordability Act of 1997 (42 U.S.C. 1437z–1(b)(2)).	§ 30.68.
Lobbying Violation	The Lobbying Disclosure Act of 1995 (31 U.S.C. 1352)	§ 87.400.
Fair Housing Act Civil Penalties	Fair Housing Act (42 U.S.C. 3612(g)(3))	§ 180.671(a).
Manufactured Housing Regulations Violation	Housing Community Development Act of 1974 (42 U.S.C. 5410).	§ 3282.10.

II. This Document

This document announces that HUD is considering revising its implementation of the 2015 Act by providing that the adjusted penalty amounts would apply to penalties assessed after the publication of the adjustment, rather than to violations occurring after publication of the adjustment, as long as the violation occurred after the enactment of the 2015 Act. HUD is considering applying the inflation-adjusted penalty amounts in this manner after revisiting Section 6 of the 2015 Act which provides that an ''increase under this Act in a civil monetary penalty shall apply only to civil monetary penalties, including those whose associated violation predate such increase, which are assessed after the date the increase takes effect.'' 28 U.S.C. 2461, note. The Office of Management and Budget (''OMB'') guidance (M–22–07) which provides the 2022 inflation multiplier also provides that the adjusted penalty applies to ''penalties assessed after the effective date of the applicable adjustment''.[2] Finally, a review of the penalty adjustments published by other federal agencies suggests that they apply the inflation-adjusted penalty amounts to penalties assessed after the date of the increase as long as the violation occurred after the enactment of the 2015 Act.

III. Request for Public Comments

In considering the forthcoming 2023 fiscal year, HUD is considering whether to revise its implementation of the 2015 Act to apply inflation-adjusted penalty amounts on the date the penalty is assessed, rather than the earlier date of the violation, and is requesting public comment. HUD is interested in the impact of such a change, as well as the impact of applying the inflation-adjusted penalty to the date of assessment for some, but not all, programs.

Damon Smith,

General Counsel.

[FR Doc. 2022–20311 Filed 9–20–22; 8:45 am]

BILLING CODE 4210–67–P

[2] December 15, 2021, Memorandum for the Heads of Executive Departments and Agencies (M–22–07) from Shalanda D. Young, Acting Director, Office of Management and Budget, Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (OMB Memorandum), at 4.

DEPARTMENT OF THE TREASURY

Alcohol and Tobacco Tax and Trade Bureau

27 CFR Part 9

[Docket No. TTB–2022–0008; Notice No. 214]

RIN 1513–AC85

Proposed Establishment of the Yucaipa Valley Viticultural Area

AGENCY: Alcohol and Tobacco Tax and Trade Bureau, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Alcohol and Tobacco Tax and Trade Bureau (TTB) proposes to establish the 36,467-acre ''Yucaipa Valley'' viticultural area in San Bernardino County, in California. The proposed viticultural area is not within any other established viticultural area. TTB designates viticultural areas to allow vintners to better describe the origin of their wines and to allow consumers to better identify wines they may purchase. TTB invites comments on this proposed addition to its regulations.

DATES: Comments must be received by November 21, 2022.

ADDRESSES: You may electronically submit comments to TTB on this proposal using the comment form for this document posted within Docket No. TTB–2022–0008 on the *Regulations.gov* website at *https://www.regulations.gov.* At the same location, you also may view copies of this document, the related petition and selected supporting materials, and any comments TTB receives on this proposal. A direct link to that docket is available on the TTB website at *https://www.ttb.gov/wine/notices-of-proposed-rulemaking* under Notice No. 214. Alternatively, you may submit comments via postal mail to the Director, Regulations and Ruling Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005. Please see the Public Participation section of this document for further information on the comments requested on this proposal and on the submission, confidentiality, and public disclosure of comments.

FOR FURTHER INFORMATION CONTACT: Karen A. Thornton, Regulations and Rulings Division, Alcohol and Tobacco Tax and Trade Bureau, 1310 G Street NW, Box 12, Washington, DC 20005; phone 202–453–1039, ext. 175.

SUPPLEMENTARY INFORMATION:

Background on Viticultural Areas

TTB Authority

Section 105(e) of the Federal Alcohol Administration Act (FAA Act), 27 U.S.C. 205(e), authorizes the Secretary of the Treasury to prescribe regulations for the labeling of wine, distilled spirits, and malt beverages. The FAA Act provides that these regulations should, among other things, prohibit consumer deception and the use of misleading statements on labels and ensure that labels provide the consumer with adequate information as to the identity and quality of the product. The Alcohol and Tobacco Tax and Trade Bureau (TTB) administers the FAA Act pursuant to section 1111(d) of the Homeland Security Act of 2002, codified at 6 U.S.C. 531(d). In addition, the Secretary of the Treasury has delegated certain administrative and

enforcement authorities to TTB through Treasury Order 120–01.

Part 4 of the TTB regulations (27 CFR part 4) authorizes TTB to establish definitive viticultural areas and regulate the use of their names as appellations of origin on wine labels and in wine advertisements. Part 9 of the TTB regulations (27 CFR part 9) sets forth standards for the preparation and submission of petitions for the establishment or modification of American viticultural areas (AVAs) and lists the approved AVAs.

Definition

Section 4.25(e)(1)(i) of the TTB regulations (27 CFR 4.25(e)(1)(i)) defines a viticultural area for American wine as a delimited grape-growing region having distinguishing features as described in part 9 of the regulations and, once approved, a name and a delineated boundary codified in part 9 of the regulations. These designations allow vintners and consumers to attribute a given quality, reputation, or other characteristic of a wine made from grapes grown in an area to the wine's geographic origin. The establishment of AVAs allows vintners to describe more accurately the origin of their wines to consumers and helps consumers to identify wines they may purchase. Establishment of an AVA is neither an approval nor an endorsement by TTB of the wine produced in that area.

Requirements

Section 4.25(e)(2) of the TTB regulations (27 CFR 4.25(e)(2)) outlines the procedure for proposing an AVA and allows any interested party to petition TTB to establish a grape-growing region as an AVA. Section 9.12 of the TTB regulations (27 CFR 9.12) prescribes standards for petitions to establish or modify AVAs. Petitions to establish an AVA must include the following:

- Evidence that the area within the proposed AVA boundary is nationally or locally known by the AVA name specified in the petition;
- An explanation of the basis for defining the boundary of the proposed AVA;
- A narrative description of the features of the proposed AVA affecting viticulture, such as climate, geology, soils, physical features, and elevation, that make the proposed AVA distinctive and distinguish it from adjacent areas outside the proposed AVA;
- The appropriate United States Geological Survey (USGS) map(s) showing the location of the proposed AVA, with the boundary of the proposed AVA clearly drawn thereon; and
- A detailed narrative description of the proposed AVA boundary based on USGS map markings.

Yucaipa Valley Petition

TTB received a petition from the Yucaipa Valley Wine Alliance, proposing the establishment of the ''Yucaipa Valley'' AVA. The proposed Yucaipa Valley AVA is located in San Bernardino County, California. The proposed AVA contains 36,467 acres, with approximately 23 vineyards and 2 wineries. Grape varietals grown within the proposed AVA include Cabernet Sauvignon, Merlot, Zinfandel, Syrah, Malbec, Nebbiolo, Barbera, and Petite Sirah.

According to the petition, the distinguishing features of the proposed Yucaipa Valley AVA include its elevation and climate. Although the petition also included information about the soils of the proposed AVA, TTB has not included soils in the discussion of distinguishing features. The petition states that areas to the west, northwest, south, southeast and east have soils similar to those of the proposed AVA, and the petition does not include an adequate comparison of soils in the proposed AVA with soils in areas to the north, northeast, and southwest. Unless otherwise noted, all information and data pertaining to the proposed AVA contained in this document are from the petition for the proposed Yucaipa Valley AVA and its supporting exhibits.

Name Evidence

The petition notes that, although the town of Yucaipa is located within the proposed Yucaipa Valley AVA, the region was known as the ''Yucaipa Valley'' long before the town's incorporation in 1989. As evidence of the long-term use of the name, the petition included a copy of an advertisement from 1910 announcing prime agricultural land for sale in the region of the proposed AVA. The advertisement claims, ''There is no better apple country than the Yucaipa Valley.'' [1] The petition also included a 1920 article titled ''Yucaipa Valley Scores as Apple Producer.'' [2] A 1925 article about the Yucaipa Apple Festival notes that President William Taft thanked the festival organizers for a box of ''Yucaipa Valley'' apples they sent to him.[3] By the 1950s, the region was promoting itself to visitors with a billboard proclaiming ''Welcome to Yucaipa Valley.'' [4]

The petition included information regarding the current use of the name ''Yucaipa Valley'' to describe the region of the proposed AVA. For example, sports organizations and facilities serving the region include the Yucaipa Valley Golf Club, Yucaipa Valley Youth Soccer Organization, and the Yucaipa Valley National League and Yucaipa Valley American League divisions of Little League Baseball. Organizations within the region include the Yucaipa Valley Historical Society, Yucaipa Valley Lions Club, Yucaipa Valley Amateur Radio Club, and the Yucaipa Valley Spanish Church. Other businesses include the Yucaipa Valley Center shopping center, Yucaipa Valley Optometry, and the Yucaipa Valley Manufactured Home Community.

Boundary Evidence

The proposed Yucaipa Valley AVA is a region of rolling hills in the foothills of the San Bernardino Mountains. The petition states that the boundaries of the region known historically as the Yucaipa Valley are clearly delineated by the Yucaipa Valley Historical Society to mean the boundaries of Yucaipa, Oak Glen, and Calimesa.[5] The proposed AVA includes the incorporated municipalities of Yucaipa and Calimesa and unincorporated areas of Oak Glen, as well as surrounding county areas with natural borders. The proposed northern boundary follows a series of section lines on the USGS maps, as well as elevation contours, to separate the proposed AVA from the steeper slopes of the Yucaipa Ridge mountain range. The proposed eastern boundary largely follows Little San Gorgonio Creek to separate the proposed AVA from regions that traditionally have not been associated with the region known as the ''Yucaipa Valley.'' The southern boundary follows a series of roads to separate the proposed AVA from the towns of Cherry Valley and Beaumont, while the proposed western boundary generally follows land tract boundaries.

Distinguishing Features

The distinguishing features of the proposed Yucaipa Valley AVA include its elevation and climate.

[1] Sunset Homeseeker's Bureau of Information, 1910, volume 24, page 871.

[2] Killingsworth, K.S. ''Yucaipa Valley Scores as Apple Producer.'' Pacific Rural Press, April 16, 1920: page 592.

[3] Sanders, J.R. Images of America: Oak Glen Los Rios Ranchos. Arcadia Publishing, 2006.

[4] City of Yucaipa Hazard Mitigation Plan, August 8, 2016, page 7.

[5] *www.yucaipahistory.org.*

Elevation

Elevations within the proposed Yucaipa Valley AVA range from 2,000 to 4,600 feet. According to the petition, the high elevations affect viticulture. At high elevations, sunlight becomes more concentrated. As a result, grapes receive a ''tan,'' which results in thicker skin than the same varietals grown at lower elevations would have. The petition states that thick skins contribute to the color and tannin levels of the resulting wine and protect developing grapes from the dramatic climate shifts that can occur in high altitude vineyards.

To the immediate north and northeast of the proposed AVA is the mountain range known as the Yucaipa Ridge, which has steep slopes that generate elevations up to 2,000 feet higher than the northern boundary of the proposed AVA at each point. The region east of the proposed AVA has elevations similar to those within the proposed AVA. However, the petition states that the region to the east is not included in the proposed AVA because it is largely uninhabited and undeveloped, has few roads, and does not have historical ties to the region known as the Yucaipa Valley. Furthermore, according to the USGS maps included in the petition, the region to the east of the proposed AVA is largely covered by the San Bernardino National Forest, which is not available for commercial viticulture due to its status as a National Forest. Cherry Valley and Beaumont to the south and southeast have elevations similar to those in the lower portions of the proposed AVA. To the south and southwest of the proposed AVA, in San Timoteo Canyon, elevations are lower, ranging from 1,600 to 2,000 feet. To the west of the proposed AVA is the Redlands Valley, which also has lower elevations ranging from 1,100 to 2,000 feet.

Climate

According to the petition, the proposed Yucaipa Valley AVA has a hot, dry climate suitable for growing grape varietals such as Cabernet Sauvignon, Merlot, Zinfandel, Syrah, Malbec, Nebbiolo, Barbera, and Petite Sirah. The petition included information on the average monthly high, average monthly low, monthly record high, and monthly record low temperatures from the city of Yucaipa, as well as from the region to the west and the region to the north-northeast of the proposed AVA. Within the city of Yucaipa, the average high temperature is 78.3 degrees Fahrenheit (F), and the average low temperature is 48.7 degrees F. August is typically the warmest month, with an average high of 97 degrees F, and December is typically the coolest month, with an average minimum temperature of 40 degrees F. The record high temperature in the city of Yucaipa is 114 degrees F, while the record low temperature is 11 degrees F.

The city of Redlands, to the west of the proposed AVA, has slightly higher average high and low temperatures than the proposed AVA. The average high temperature is 79.6 degrees F, and the average low temperature is 50.5 degrees F. August is typically the warmest month in Redlands, with an average high of 96 degrees F, and December is typically the coolest month, with an average minimum temperature of 40 degrees F. The record high temperature in Redlands is 118 degrees F, and the record low temperature is 18 degrees F.

To the north and northeast of the proposed AVA, the community of Forest Falls is typically cooler than the proposed AVA. The average high temperature is 61.5 degrees F, and the average low temperature is 40.9 degrees F. August is typically the warmest month, with an average high of 81 degrees F. The record high temperature is 106 degrees F, and the record low temperature is 5 degrees F.

The petition also included information about precipitation amounts within the proposed Yucaipa Valley AVA and the surrounding regions. The city of Yucaipa receives an average cumulative rainfall of 4.14 inches during the growing season of April through October. The average precipitation amount for the city of Yucaipa during the winter months, November through March, is substantially greater, 15.35 inches, with an average of 1 inch being snow. Accumulations of snow accrue at higher elevations within the proposed AVA. According to the petition, the amount of snowfall and winter precipitation within the proposed AVA affects viticulture, even though the vines are dormant. First, the snow helps ensure continued vine dormancy and provides a ''necessary rest'' from continual growth. The precipitation also creates hydric reserves that are beneficial during the hot, dry summer months. Finally, the snow protects vines against fungi and pests that hide within the bark when temperatures become colder.

To the west of the proposed AVA, the town of Redlands receives an average of 10.86 inches of winter precipitation. To the south of the proposed AVA, the city of Beaumont receives an average winter precipitation amount very similar to that of the proposed AVA. However, the petition states that because of the lower elevations, temperatures in Beaumont and Redlands seldom drop low enough for the precipitation to fall as snow. Although the region to the east of the proposed AVA has a winter climate similar to that of the proposed AVA, that region is outside of what has historically been called the Yucaipa Valley and is thus not included in the proposed AVA.

Summary of Distinguishing Features

In summary, the elevation and climate of the proposed Yucaipa Valley AVA distinguish it from the surrounding regions. The following table shows the characteristics of the proposed AVA compared to the features of the surrounding regions.

TABLE—FEATURES OF PROPOSED AVA AND SURROUNDING REGIONS

Region	Features	
	Elevation	Climate
Proposed Yucaipa Valley AVA	2,000 to 4,600 feet	Average monthly high temperature of 78.3 degrees F; average monthly low temperature of 48.7 degrees F; record maximum temperature of 114 degrees F; record low temperature of 11 degrees F; dry growing season with average rainfall of 4.14 inches per growing season; higher winter rainfall with averages of 15.35 inches per winter, including average of 1 inch of snow.
North, Northeast	Higher, mountainous elevations, up to 2,000 feet higher than the northern boundary of the proposed AVA.	Average monthly high of 61.5 degrees F; average monthly low of 40.9 degrees F; record high of 106 degrees F; record low of 5 degrees F.

TABLE—FEATURES OF PROPOSED AVA AND SURROUNDING REGIONS—Continued

Region	Features	
	Elevation	Climate
East	Similar to proposed AVA, but not within the region traditionally known as Yucaipa Valley.	Similar to proposed AVA, but not within the region traditionally known as Yucaipa Valley.
South, Southwest	1,600 to 2,000 feet	Seldom receives snow.
West	1,100 to 2,000 feet	Average monthly high of 79.6 degrees F; average monthly low of 50.5 degrees F; record high of 118 degrees F; record low of 18 degrees F; average winter rainfall of 10.86 inches annually.

TTB Determination

TTB concludes that the petition to establish the proposed Yucaipa Valley AVA merits consideration and public comment, as invited in this notice of proposed rulemaking.

Boundary Description

See the narrative description of the boundary of the petitioned-for AVA in the proposed regulatory text published at the end of this proposed rule.

Maps

The petitioner provided the required maps, and TTB lists them below in the proposed regulatory text. You may also view the proposed Yucaipa Valley AVA boundary on the AVA Map Explorer on the TTB website, at *https://www.ttb.gov/wine/ava-map-explorer.*

Impact on Current Wine Labels

Part 4 of the TTB regulations prohibits any label reference on a wine that indicates or implies an origin other than the wine's true place of origin. For a wine to be labeled with an AVA name, at least 85 percent of the wine must be derived from grapes grown within the area represented by that name, and the wine must meet the other conditions listed in § 4.25(e)(3) of the TTB regulations (27 CFR 4.25(e)(3)). If the wine is not eligible for labeling with an AVA name and that name appears in the brand name, then the label is not in compliance and the bottler must change the brand name and obtain approval of a new label. Similarly, if the AVA name appears in another reference on the label in a misleading manner, the bottler would have to obtain approval of a new label. Different rules apply if a wine has a brand name containing an AVA name that was used as a brand name on a label approved before July 7, 1986. See § 4.39(i)(2) of the TTB regulations (27 CFR 4.39(i)(2)) for details.

If TTB establishes this proposed AVA, its name, ''Yucaipa Valley,'' will be recognized as a name of viticultural significance under § 4.39(i)(3) of the TTB regulations (27 CFR 4.39(i)(3)). The text of the proposed regulation clarifies this point. Consequently, wine bottlers using the name ''Yucaipa Valley'' in a brand name, including a trademark, or in another label reference as to the origin of the wine, would have to ensure that the product is eligible to use the AVA name as an appellation of origin if TTB adopts this proposed rule as a final rule.

Public Participation

Comments Invited

TTB invites comments from interested members of the public on whether it should establish the proposed Yucaipa Valley AVA. TTB is also interested in receiving comments on the sufficiency and accuracy of required information submitted in support of the petition. Please provide specific information in support of your comments.

Because of the potential impact of the establishment of the proposed Yucaipa Valley AVA on wine labels that include the term ''Yucaipa Valley'' as discussed above under Impact on Current Wine Labels, TTB is particularly interested in comments regarding whether there will be a conflict between the proposed AVA name and currently used brand names. If a commenter believes that a conflict will arise, the comment should describe the nature of that conflict, including any anticipated negative economic impact that approval of the proposed AVA will have on an existing viticultural enterprise. TTB is also interested in receiving suggestions for ways to avoid conflicts, for example, by adopting a modified or different name for the proposed AVA.

Submitting Comments

You may submit comments on this proposal as an individual or on behalf of a business or other organization via the *Regulations.gov* website or via postal mail, as described in the **ADDRESSES** section of this document. Your comment must reference Notice No. 214 and must be submitted or postmarked by the closing date shown in the **DATES** section of this document. You may upload or include attachments with your comment. You also may request a public hearing on this proposal. The TTB Administrator reserves the right to determine whether to hold a public hearing.

Confidentiality and Disclosure of Comments

All submitted comments and attachments are part of the rulemaking record and are subject to public disclosure. Do not enclose any material in your comments that you consider confidential or that is inappropriate for disclosure.

TTB will post, and you may view, copies of this document, the related petition and selected supporting materials, and any comments TTB receives about this proposal within the related *Regulations.gov* docket. In general, TTB will post comments as submitted, and it will not redact any identifying or contact information from the body of a comment or attachment.

Please contact TTB's Regulations and Rulings Division by email using the web form available at *https://www.ttb.gov/contact-rrd,* or by telephone at 202–453–2265, if you have any questions about commenting on this proposal or to request copies of this document, the related petition and its supporting materials, or any comments received.

Regulatory Flexibility Act

TTB certifies that this proposed regulation, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed regulation imposes no new reporting, recordkeeping, or other administrative requirement. Any benefit derived from the use of a viticultural area name would be the result of a proprietor's efforts and consumer acceptance of wines from that area. Therefore, no regulatory flexibility analysis is required.

Executive Order 12866

It has been determined that this proposed rule is not a significant regulatory action as defined by

Executive Order 12866 of September 30, 1993. Therefore, no regulatory assessment is required.

List of Subjects in 27 CFR Part 9

Wine.

Proposed Regulatory Amendment

For the reasons discussed in the preamble, TTB proposes to amend title 27, chapter I, part 9, Code of Federal Regulations, as follows:

PART 9—AMERICAN VITICULTURAL AREAS

■ 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Subpart C—Approved American Viticultural Areas

■ 2. Add § 9.____ to subpart C to read as follows:

§ 9.____ Yucaipa Valley.

(a) *Name.* The name of the viticultural area described in this section is ''Yucaipa Valley''. For purposes of part 4 of this chapter, ''Yucaipa Valley'' is a term of viticultural significance.

(b) *Approved maps.* The 4 United States Geological Survey (USGS) 1:24,000 scale topographic maps used to determine the boundary of the Yucaipa Valley viticultural area are:

(1) Yucaipa, CA, 1996;

(2) Forest Falls, CA, 1996;

(3) Beaumont, CA, 1996; and

(4) El Casco, CA, 1967; photorevised 1979.

(c) *Boundary.* The Yucaipa Valley viticultural area is located in San Bernardino County, California. The boundary of the Yucaipa Valley viticultural area is as described as follows:

(1) The boundary begins on the Yucaipa map at the intersection of Highway 38/Mill Creek Road and the western boundary of section 13, T1S/R2W. From the beginning point, proceed northeast along Highway 38/Mill Creek Road to the 2,924-foot benchmark in section 13; then

(2) Proceed east in a straight line to the 3,800-foot elevation contour in section 18, T1S/R1W; then

(3) Proceed east-southeasterly along the 3,800-foot elevation contour, crossing onto the Forest Falls map, and continuing along the 3,800-foot elevation contour to its intersection with Wilson Creek along the eastern boundary of section 21, T1S/R1W; then

(4) Proceed northerly along Wilson Creek to its intersection with the 4,400-foot elevation contour in section 22, T1S/R1W; then

(5) Proceed south-southeasterly along the 4,400-foot elevation contour to its intersection with Birch Creek in section 26, T1S/RR1W; then

(6) Proceed northeasterly along Birch Creek to its intersection with the 5,200-foot elevation contour in section 23, T1S/R1W; then

(7) Proceed south-southeasterly along the 5,200-foot elevation contour to its intersection with the eastern branch of Little San Gorgonio Creek along the San Bernardino National Forest boundary in section 31, T1S/R1E; then

(8) Proceed southwesterly along the eastern branch of Little San Gorgonio Creek to its confluence with the main channel of Little San Gorgonio Creek near the gaging station in section 1, R1W/T2S; then

(9) Proceed southwesterly along the main channel of Little San Gorgonio Creek, crossing onto the Beaumont map, and continuing along the creek to its intersection with Orchard Avenue in section 22, T2S/R1W; then

(10) Proceed west along Orchard Street to the point where the road makes a sharp turn south and becomes locally known as Taylor Street along the western boundary of section 28, T2S/R1W; then

(11) Proceed south along Taylor Street to its intersection with Vineland Avenue in section 28, T2S/R1W; then

(12) Proceed west along Vineland Avenue to its intersection with an unnamed road known locally as Union Street along the western edge of the Beaumont map in section 29, T2S/R1W; then

(13) Proceed south along Union Street to its intersection with Woodland Avenue in section 29, T2S/R1W; then

(14) Proceed west along Woodland Avenue, crossing onto the El Casco map, where the road becomes known as Cherry Valley Boulevard, and continue west along Cherry Valley Boulevard to its intersection with Interstate 10 in the Tract Between San Jacinto and San Gorgonio, T2S/R2W; then

(15) Proceed southeasterly along Interstate 10 to its intersection with the first unnamed, intermittent stream in section 32, T2S/R1W; then

(16) Proceed west in a straight line to the western boundary of section 31, T2S/R1W; then

(17) Proceed north along the western boundary of section 31 to the southernmost transmission line at the northwest corner of section 31, T2S/R1W; then

(18) Proceed northwesterly along the transmission line to its intersection with San Timoteo Canyon Road in the Tract Between San Jacinto and San Gorgonio, T2S/R2W; then

(19) Proceed northwesterly along San Timoteo Canyon Road to its intersection with the western boundary of the Tract Between San Jacinto and San Gorgonio, T2S/R2W; then

(20) Proceed north, then northeasterly along the boundary of the tract to its intersection with the southwestern corner of section 22, T2S/R2W; then

(21) Proceed north along the western boundary of section 22 to its intersection with the southeastern corner of section 16, T2S/R2W; then

(22) Proceed west along the southern boundaries of sections 16 and 17 to the southwestern corner of section 17, T2S/R2W; then

(23) Proceed north along the western boundary of section 17, crossing onto the Yucaipa map and continuing along the western boundary of section 17 to its intersection with the Riverside–San Bernardino County line along the northern boundary of section 17, T2S/R2W; then

(24) Proceed east along the Riverside–San Bernardino County line to its intersection with the eastern boundary of section 17, T2S/R2W; then

(25) Proceed north in a straight line to the boundary of the San Bernardino Land Grant, T2S/R2W; then

(26) Proceed west along the land grant boundary to its intersection with the eastern boundary of section 8, T2S/R2W; then

(27) Proceed north along the eastern boundaries of sections 8 and 5 to the intersection of the northeast corner of section 5 and an unnamed road known locally as Highview Drive, T2S/R2W; then

(28) Proceed northwest in a straight line to its intersection with Interstate 10 west of an unnamed light-duty road known locally as Knoll Road in the San Bernardino Land Grant, T2S/R2W; then

(29) Proceed northeast in a straight line to the northeast corner of section 32, T1S/R2W; then

(30) Proceed east along the northern boundaries of sections 33, 34, and 35 to the southwestern corner of section 25, T1S/R2W; then

(31) Proceed north along the western boundaries of sections 25, 24, and 13 to the intersection of the western boundary of section 13 and Highway 38/Mill Creek Road, T1S/R2W, which is the beginning point.

Signed: September 8, 2022.

Mary G. Ryan,

Administrator.

Approved: September 8, 2022.

Thomas C. West, Jr.,

Assistant Secretary, (Tax Policy).

[FR Doc. 2022–20404 Filed 9–20–22; 8:45 am]

BILLING CODE 4810–31–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1191

[Docket No. ATBCB–2022–0004]

RIN 3014–AA44

Americans With Disabilities Act Accessibility Guidelines for Buildings and Facilities; Architectural Barriers Act Accessibility Guidelines; Self-Service Transaction Machines and Self-Service Kiosks

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (''Access Board'' or ''Board'') is issuing this Advance Notice of Proposed Rulemaking (ANPRM) to begin the process of supplementing its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 and the Architectural Barriers Act of 1968 to address access to various types of self-service transaction machines (SSTMs), including electronic self-service kiosks, for persons with disabilities. By this ANPRM, the Access Board invites public comment on the planned approach to supplementing its ADA Accessibility Guidelines and ABA Accessibility Guidelines with new scoping and technical provisions for SSTMs and self-service kiosks. The Board will consider comments received in response to this ANPRM in its development of these guidelines for SSTMs and self-service kiosks in a future rulemaking.

DATES: Submit comments by November 21, 2022.

ADDRESSES: You may submit comments, identified by docket number (ATBCB–2022–0004), by any of the following methods:

- *Federal eRulemaking Portal: https://regulations.gov.* Follow the instructions for submitting comments.
- *Email: docket@access-board.gov.* Include docket number ATBCB–2022–0004 in the subject line of the message.
- *Mail:* Office of Technical and Information Services, U.S. Access Board, 1331 F Street NW, Suite 1000, Washington, DC 20004–1111.

Instructions: All submissions must include the docket number (ATBCB–2022–0004) for this regulatory action. All comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket, to read background documents or public comments received, go to: *https://www.regulations.gov/docket/ATBCB-2022-0004.*

FOR FURTHER INFORMATION CONTACT:

Technical information: Bruce Bailey, (202) 272–0024, *bailey@access-board.gov. Legal information:* Wendy Marshall, (202) 272–0043, *marshall@access-board.gov.*

SUPPLEMENTARY INFORMATION:

I. Legal Authority

The Americans with Disabilities Act (ADA) of 1990 charges the Access Board with developing and maintaining minimum guidelines to ensure the accessibility and usability of the built environment in new construction, alterations, and additions. *See* 42 U.S.C. 12101 *et seq.; see also* 29 U.S.C. 792(b)(3)(B) & (b)(10). The Access Board's ADA Accessibility Guidelines (ADAAG) address buildings and facilities covered under Title II of the ADA (state and local government facilities) and Title III of the ADA (places of public accommodation and commercial facilities). The ADAAG serve as the basis for legally enforceable accessibility standards issued by the Department of Justice (DOJ) and the Department of Transportation (DOT), which are the federal entities responsible for implementing and enforcing the ADA's non-discrimination provisions related to buildings and facilities in new construction, alterations, and additions.

The Access Board has a similar responsibility under the Architectural Barriers Act (ABA) of 1968, which requires that buildings and facilities designed, built, or altered with certain federal funds or leased by federal agencies be accessible to people with disabilities. *See* 42 U.S.C. 4151 *et seq.* The ABA charges the Access Board with developing and maintaining minimum guidelines for covered buildings and facilities. The Board's ABA Accessibility Guidelines (ABAAG) serve as the basis for enforceable standards issued by four standard-setting agencies: the Department of Defense, the General Services Administration, the Department of Housing and Urban Development, and the U.S. Postal Service.

II. Need for Accessibility Guidelines for SSTMs

Kiosks and other types of SSTMs are now a common feature in places of public accommodation, government offices, and other facilities. They allow users to conduct an expanding range of transactions and functions independently. SSTMs serve as point-of-sales machines for self-checkout in a growing number of retail facilities, grocery stores, and drug stores. Self-service kiosks at airports and hotels provide check-in services. Restaurants are providing touchscreens for customers to place orders, and health care providers, including doctors' offices and hospitals, allow patients to check-in at kiosks. SSTMs and self-service kiosks are also found at state and local government facilities, such as motor vehicle departments.

SSTMs and self-service kiosks have long posed accessibility barriers to people with disabilities, particularly those who are blind or have low vision. Robust speech output is necessary to provide access for users unable to see display screens. It is increasingly common for information and communication technology (ICT), including kiosks, to have touchscreens without a physical keypad or other tactile controls. This results in the screen being an obstacle for the user to both receive information, if the information is not provided audibly, and to enter information, as the input ''buttons'' are the flat touchscreen which have no tactile markers. In addition, SSTMs and self-service kiosks frequently pose barriers for users who are deaf or hard of hearing by failing to provide captioning and text equivalents for audible information.

These devices also must be accessible to people with physical impairments, including those who use wheelchairs and other mobility devices, have limited dexterity, or who are of short stature. Sufficient clear floor space at the device is necessary to accommodate wheeled mobility aids. For usability, controls and keys must be within accessible reach ranges and screens or other displays must be viewable from a seated position. Controls and features must not require delicate motor movements or fine dexterity.

On May 19, 2021, the Access Board conducted a virtual public forum on the accessibility of SSTMs that featured panel presentations by invited speakers. One panel addressed usability issues and barriers that people with sensory, cognitive, physical, or multiple disabilities encounter using kiosks, point-of-sales machines, and other SSTMs. Speakers included representatives from the Blinded Veterans Association, the Coleman Institute for Cognitive Disabilities, the Deaf and Hard of Hearing Consumer Advocacy Network, and the United

Spinal Association. They called attention to common access barriers, such as the lack of speech output and tactilely discernable input keys and controls for users who are blind or who have low vision. People who use wheelchairs and scooters encounter display screens that are difficult to see and controls that are out of reach. Further, correction and time-out features can impact usability for persons with cognitive disabilities. (*See* ''Panel Discussions on Inclusive Interfaces: Accessibility to Self-Service Transaction Machines'' available at: *https://www.access-board.gov/news/2021/05/24/u-s-access-board-conducts-panel-discussions-on-self-service-transaction-machines*.)

A second panel discussed efforts by research and industry to improve access to SSTMs. Panelists included representatives from the Kiosk Manufacturer Association (KMA) and the Trace Research and Development Center who addressed the need for accessibility standards for SSTMs, provided an overview of relevant requirements and resources, and discussed strategies for accessibility. They were joined by representatives from software and hardware developer NCR, which has created a Universal Navigator interface for SSTMs, and Vispero, a company that has created a kiosk interface that integrates screen-reading software. *Id.*

According to the KMA, the lack of accessibility to kiosks is due in large part to the absence of complete and uniform standards. The lack of detailed requirements has led to a common misconception that physical accessibility or an audio jack alone is sufficient. In addition, some states have implemented their own unique requirements for SSTMs, which led to complications in ensuring compliance with varying standards. Some kiosk manufactures serve global markets, and they have stressed the importance of consistency of U.S. standards with requirements issued by other countries and international organizations. *Id.*

III. Existing Guidelines

A. The ADA and ABA Accessibility Guidelines

The Access Board has issued accessibility guidelines for the built environment. The Access Board's ADA and ABA Accessibility Guidelines, which were jointly updated in 2004, require only ATMs and fare machines to provide speech output so that displayed information is communicated to users who are blind or who have low vision. The guidelines also address braille instructions, privacy, input controls, display screens, operable parts, and clear floor space. *See* 36 CFR part 1191, 69 FR 44084.

When the Board promulgated the ADA and ABA Accessibility Guidelines in 2004, it noted in the preamble that it had chosen to not broaden the application of the guidelines to address other types of SSTMs such as point-of-sale machines and information kiosks. However, the Board noted that it intended to consider a future update to these guidelines after monitoring the application of accessibility standards it had issued under Section 508 of the Rehabilitation Act (36 CFR part 1194) in 2000 for information and communication technology (ICT), including electronic kiosks, in the federal sector. *See* 69 FR 44083, 44455 (July 23, 2004).

In March of 2010, the Board issued an Advanced Notice of Proposed Rulemaking (ANPRM) indicating that it was considering a supplemental rulemaking to address in ADAAG access to SSTMs used for ticketing, check-in or check-out, seat selection, boarding passes, or ordering food in restaurants and cafeterias. *See* Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities; Telecommunications Act Accessibility Guidelines; Electronic and Information Technology Standards, ANPRM, 75 FR 13457 (Mar. 22, 2010). However, the Board later postponed this effort due to rulemaking it was conducting on information and communication technology in the federal sector under the Rehabilitation Act. *See* Electronic and Information Technology Accessibility Standards, ANPRM, 76 FR 76640 (Dec. 8, 2011).

B. Section 508 Accessibility Standards

Section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 794d (hereafter, ''Section 508'') requires access to ICT in the Federal sector. The law applies to ICT developed, procured, maintained, or used by federal agencies, including SSTMs and self-service kiosks, as well as computers, telecommunications equipment, software, websites, and electronic documents. The Board is responsible for issuing accessibility standards for ICT covered by Section 508. The Board published its original Section 508 Standards in 2000 (65 FR 80499) and updated them with the Revised 508 Standards in January 2017 (82 FR 5790). The Federal Acquisition Regulatory Council and federal agencies incorporate these standards into their respective acquisition regulations and procurement policies and directives. *See* 86 FR 44229 (Aug. 11, 2021).

The Revised 508 Standards apply to hardware in the federal sector that transmits information or has a user interface, such as self-service kiosks provided by federal agencies for use by customers in post offices and social security field offices. *See* 36 CFR part 1194, App. A, E206. The Section 508 Standards address biometrics, privacy, operable parts, data connections, display screens, status indicators, color coding, audible signals, two-way voice communication, closed captioning, and audio description. *Id.* at App. C, Ch. 4.

C. DOT Regulations for Self-Service Kiosks in Airports

In 2013 the Department of Transportation (DOT) supplemented its regulations under the Air Carrier Access Act (ACAA) of 1986, as amended, and the Rehabilitation Act to address access to airport self-service kiosks used for checking in, printing boarding passes, and other passenger services. 78 FR 67882 (Nov. 12, 2013). DOT's rule applies requirements based on the provisions for ATMs and fare machines in the ADA Standards and provisions for self-contained closed products in the Board's Original Section 508 Standards. *Id.* New airport kiosks must meet the DOT standards until at least a quarter of all kiosks at each airport location are accessible. The rule applies to U.S. and foreign air carriers that own, lease, or control automated airport kiosks at U.S. airports with at least 10,000 enplanements a year. *Id.*

III. Planned Approach to the NPRM and Questions for Public Comment

The Access Board intends to propose supplementary provisions for SSTMs and self-service kiosks in a future rulemaking that are based on both the technical requirements for ATMs and fare machines in the ADA and ABA Accessibility Guidelines (36 CFR part 1191) as well as relevant provisions for hardware in the Revised Section 508 Standards (36 CFR part 1194). In addition, the Board intends to address the types of SSTMs and self-service kiosks to be covered under both the ADA and the ABA and the number or percentage required to comply. The Board invites public comment on this planned approach for this rulemaking generally, and on the specific questions posed below.

Application

The Access Board's authority under the ADA and ABA to set minimum guidelines for buildings and facilities is limited to those elements that are built-

in or that are fixed to buildings and sites. DOJ and other agencies have authority to regulate moveable furniture and equipment under the ADA or ABA. Thus, the Board's ADA and ABA Accessibility Guidelines apply only to ATMs and fare machines that are fixed or built-in, but not to those that are moveable. Similarly, the Board intends that only SSTMs and self-service kiosks that are fixed or built-in will be covered by this supplementary rule.

SSTMs and self-service kiosks are now commonplace in many different types of businesses and establishments and are used to conduct a growing range of transactions and services. One of the most common types of SSTMs that people encounter on a routine basis are self-checkout kiosks in grocery stores, drug stores, and retail chains. SSTMs and self-service kiosks are also being provided in settings where only information is being exchanged, such as unattended checking in for an appointment, checking out of a hotel, or ordering food in a restaurant. Touchscreens and tablets are now being incorporated into many different types of SSTMs and self-service kiosks. For example, some SSTMs and self-service kiosks use touchscreen interfaces for delivery of goods and services, such as pairing online ordering with pickup from an automated electronic locker at a local retail location. The customer does not interact directly with any employees of the retail store.

Additionally, many vending machines are now essentially SSTMs, offering a wide-array of choices via a video display, and utilizing touch-screen input to navigate those choices. The current ADA and ABA Accessibility Guidelines address physical access to vending machines by requiring at least one of each type to comply with criteria for operable parts, but the guidelines do not address access for users who are blind or who have low vision. 36 CFR part 1191, App. D, 228 and 309.

Question 1. In this rulemaking, the Board intends to cover fixed or built-in electronic devices that are designed for unattended operation by customers (*i.e.,* ''self-service'') to conduct a transaction. It also intends to address fixed or built-in self-service kiosks, including those used to check-in, place an order, obtain a product, or retrieve information. Are there capabilities, functions, or other objective criteria that should define the types of devices covered as SSTMs or self-service kiosks?

Question 2. Are there other types of electronic devices providing unattended interaction that should be addressed by this rulemaking? If so, what are they?

Question 3. Are there types of self-service electronic devices that should not be covered by this rulemaking? If so, why not?

Minimum Number

In its rulemaking, the Board intends to address the minimum number of SSTMs and self-service kiosks required to be accessible. Currently, the ADA and ABA Accessibility Guidelines require at least one of each type of ATM or fare machine provided at each location to comply. See 36 CFR part 1191, App. B 220 and App. C F220. This may be insufficient in high traffic locations where many SSTMs or self-service kiosks of the same type are provided such as self-checkout devices in grocery stores and big-box retailers. Further, it can be difficult for users who are blind or who have low vision to locate which self-service devices are accessible, especially in areas where many devices are provided. DOT's airport kiosk rule requires compliance for all new kiosks until at least 25% of all kiosks at each airport location are accessible. The 508 Standards require that all SSTMs and self-service kiosks be accessible.

Question 4. Should the Board's rule require all fixed or built-in SSTMs and self-service kiosks in each location to be accessible? If not, why, and what should the number be? Are there some facilities or locations that should have a higher number of accessible devices than others?

Technical Requirements

ADA and ABA Accessibility Guidelines

The Board intends to apply the technical requirements from the ADA and ABA Accessibility Guidelines for ATMs and fare machines to SSTMs and self-service kiosks. Currently, these Guidelines address clear floor or ground space, operable parts, speech output, input controls, and display screens.

Clear floor or ground space is required so that people with disabilities, including those who use wheeled mobility aids, can approach and position at ATMs or fare machines in a forward or parallel direction. 36 CFR part 1191, App. D 707.2 and 305.5. This clear space generally must be at least 30 inches wide and at least 48 inches deep. *Id.* at 305.3. Additional space is required for maneuvering where this clear space is obstructed on both sides for more than half the depth. *Id.* at 305.7.

Operable parts for ATMs and fare machines must be located within accessible reach ranges. *Id.* at 707.3, 309.3, 308. They must be usable with one hand, and not require tight grasping, pinching, or twisting of the wrist, or more than 5 pounds force to operate. *Id.* at 707.3, 309.4. Users must be able to differentiate each operable part by sound or touch without activation; touch activation is permitted if a key to clear or correct input is provided. *Id.* at 707.3.

ATMs and fare machines must provide speech output (recorded or digitized human or synthesized) through a mechanism that is readily available to all users, such as an industry standard connector or telephone handset. *Id.* at 707.5. The speech function must have volume control and allow users to repeat or interrupt output. Braille instructions for initiating the speech are required *Id.* at 707.8. ATM speech output must provide an equal degree of privacy. *Id.* at 707.4.

Additionally, ATM and fare machines must provide tactilely discernible input controls for each function. *Id.* at 707.6. Numeric keys must be arranged in a 12-key ascending or descending telephone keypad layout, and the number five key shall be tactilely distinct from the other keys. Key surfaces not on active areas of display screens must be raised above surrounding surfaces. Where membrane keys are the only method of input, each shall be tactilely discernable from surrounding surfaces and adjacent keys. Visual contrast (either light-on-dark or dark-on-light) is required between function keys and background surfaces and between function key characters and symbols and key surfaces. Tactile symbols are required for certain function keys including enter or proceed, clear or correct, cancel, add value, and decrease value. *Id.*

The Guidelines also require that display screens be visible from a point located 40 inches above the center of the clear floor space in front of the machine. *Id* at 707.7. Display screen characters must have a cap height of at least 3/16 inch, be in a sans serif font, and contrast from the background either light-on-dark or dark-on-light.

Section 508 Standards

The Board is also considering incorporating into the proposed rule certain requirements in the Revised 508 Standards for hardware that transmits information or has a user interface. 36 CFR part 1194, App. C, Ch. 4. In particular, the Board is considering including those requirements that specifically pertain to hardware that by its design does not support a user's assistive technology other than personal headsets or other audio couplers. Such hardware is referred to as having ''closed functionality.'' The Revised 508 Standards require hardware with closed

functionality to provide speech output for all information displayed on-screen or needed to verify transactions. *Id.* at 402. Like the requirements in the ADA and ABA Accessibility Guidelines, speech output must be delivered through a mechanism readily available to all users, such as an industry standard headphone jack or telephone handset, and the interface must allow users to repeat or pause output. Other specifications in this section of the 508 Standards which are harmonized with those in the ADA and ABA Guidelines address braille instructions for activating speech and volume control, privacy, operable parts, including input controls, and the visibility of display screens. *Id.* at 402.2.5, 402.3, 405, 407, and 408. Display screen characters must have a cap height of at least 3/16 inch unless there is a screen enlargement feature, be in a sans serif font, and contrast from the background either light-on-dark or dark-on-light. *Id.* at 402.4.

The Revised 508 Standards, which are much more recent than the ADA and ABA Accessibility Guidelines, contain additional specifications including provisions that address biometrics, use of color and non-speech audio to convey information, status indicators, and captioning. *Id.* at 403, 409, 410, 411, and 413. The Revised 508 Standards also provide specifications for volume control for private listening (*e.g.,* through a headphone jack) and non-private audio (*i.e.,* speakers) and require tickets and farecards used with kiosks to have an orientation that is tactilely discernable if a particular orientation is needed for use. *Id.* at 402.3 and 407. Other unique provisions in the Revised 508 Standards address the display screen not blanking automatically when the speech-output mode is activated, alphabetic keys, timed responses, and flashing elements that can trigger photosensitive seizures. *Id.* at (405.1, 407.3.2, 407.5, and 408.3.

The Board intends to propose provisions for SSTMs and self-service kiosks based on those for ATMs and fare machines in the ADA and ABA Accessibility Guidelines and additional criteria relevant to SSTMs and self-service kiosks from the Revised 508 Standards. This approach is similar to that taken by DOT in its rule on airport self-service kiosks.

The Board has prepared a side-by-side comparison of these requirements in the ADA and ABA Guidelines, the Revised 508 Standards, and the DOT rule on airport kiosks. This matrix is available in the rulemaking docket at *www.regulations.gov/docket/ATBCB-2022-0004.*

Question 5. The Board seeks comment on this planned approach for the proposed supplementary guidelines for SSTMs and self-service kiosks outlined in this ANPRM.

The Revised 508 Standards contain requirements not included in the ADA and ABA Accessibility Guidelines that may pertain to ATMs or fare machines. These include a provision that biometrics, where provided, not be the only means of user identification or control. They also require that tickets, fare cards, or keycards, where provided, have an orientation that is tactilely discernible when necessary for use.

Question 6. Should requirements for ATMs and fare machines in the current ADA and ABA Accessibility Guidelines be updated as part of this rulemaking to address additional features covered in the Revised 508 Standards and the DOT rule pertinent to the accessibility of ATMs and fare machines?

Question 7. The Board seeks comment from users and manufacturers of self-service transaction machines and self-service kiosks on their experiences in using or designing accessible machines and the benefits and costs associated with the proposed requirements.

Question 8. The Board seeks comments on the numbers of small entities that may be affected by this rulemaking and the potential economic impact to these entities; these include small businesses, small non-profits and governmental entities with a population of fewer than 50,000. The Board also seeks feedback on any regulatory alternatives that may minimize significant economic impacts on small entities.

Question 9. Should SSTM and self-service kiosk which accept credit and debit cards be required to accept contactless payment systems?

Approved by notational vote of the Access Board on June 10, 2022.

Christopher Kuczynski,

General Counsel.

[FR Doc. 2022–20470 Filed 9–20–22; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[EPA–HQ–OPPT–2022–0593; FRL–9987–01–OCSPP]

Toxic Substances Control Act (TSCA) Section 21 Petition for Rulemaking Under TSCA Section 6; Reasons for Agency Response; Denial of Requested Rulemaking

AGENCY: Environmental Protection Agency (EPA).

ACTION: Petition; reasons for Agency response.

SUMMARY: This action announces the availability of EPA's response to a petition received on June 16, 2022, from Daniel M. Galpern on behalf of Donn J. Viviani, John Birks, Richard Heede, Lise Van Susteren, James E. Hansen, Climate Science, Awareness and Solutions, and Climate Protection and Restoration Initiative (the petitioners). The petitioners request that EPA in general phase out the anthropogenic manufacture, processing, distribution, use, and disposal of greenhouse gas (GHG) emissions, fossil fuels, and fossil fuel emissions. They also request multiple actions under TSCA, and actions pursuant to the Clean Air Act (CAA), the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and the Independent Offices Appropriations Act (IOAA). EPA has determined that the request for risk management rulemaking under TSCA is within the ambit of a petition under TSCA's provision for a citizen petition. EPA is treating the other actions requested as petitions under the Administrative Procedure Act (APA), which this notice does not address. EPA shares the petitioners' concerns regarding the threat posed by climate change, and the Biden Administration will continue to combat the climate crisis with a whole of government approach. Nonetheless, after careful consideration, EPA has denied the petition for the reasons set forth in this notice.

DATES: EPA's response to this TSCA section 21 petition was signed September 14, 2022.

ADDRESSES: EPA has established a docket for this TSCA section 21 petition under docket identification (ID) number EPA–HQ–OPPT–2022–0593 and available online at *https://www.regulations.gov.* Additional instructions on visiting the docket, along with more information about

dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554–1404; email address: *TSCA-Hotline@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

This action is directed to the public in general. This action may, however, be of interest to those persons who manufacture (including import), process, distribute in commerce, use, or dispose of fossil fuels or greenhouse gases. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action.

B. What is EPA's authority for taking this action?

Under TSCA section 21 (15 U.S.C. 2620), any person can petition EPA to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA sections 4, 6, or 8, or to issue an order under TSCA sections 4, 5(e), or 5(f). A TSCA section 21 petition must set forth the facts which it is claimed establish that it is necessary to initiate the action requested. EPA is required to grant or deny the petition within 90 days of its filing. If EPA grants the petition, the Agency must promptly commence an appropriate proceeding. If EPA denies the petition, the Agency must publish its reasons for the denial in the **Federal Register**. A petitioner may commence a civil action in a U.S. district court seeking to compel initiation of the requested proceeding within 60 days of a denial or, if EPA does not issue a decision, within 60 days of the expiration of the 90-day period.

C. What criteria apply to a decision on this TSCA section 21 petition?

1. Legal Standard Regarding TSCA Section 21 Petitions

TSCA section 21(b)(1) requires that the petition ''set forth the facts which it is claimed establish that it is necessary'' to initiate the proceeding requested. 15 U.S.C. 2620(b)(1). Thus, in addition to petitioners' burden under TSCA section 21 itself, TSCA section 21 implicitly incorporates the statutory standards that apply to the requested actions. Accordingly, EPA has reviewed this TSCA section 21 petition by considering the standards in TSCA section 21 and in the provisions under which actions have been requested.

2. Legal Standard Regarding TSCA Section 6(a).

Under TSCA section 6(a), if EPA determines that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or that any combination of such activities, presents an unreasonable risk of injury to health or the environment, EPA conducts a rulemaking to apply one or more of TSCA section 6(a) requirements to the extent necessary so that the chemical substance or mixture no longer presents such risk. In proposing and promulgating rules under TSCA section 6(a), EPA considers, among other things, the provisions of TSCA sections 6(c)(2), 6(d), 6(g), and 9. In addition, to the extent that EPA makes a decision based on science, TSCA section 26(h) requires EPA, in carrying out TSCA sections 4, 5, and 6, to use ''scientific information, technical procedures, measures, methods, protocols, methodologies, or models, employed in a manner consistent with the best available science,'' while also taking into account other considerations, including the relevance of information and any uncertainties. 15 U.S.C. 2625(h). TSCA section 26(i) requires that decisions under TSCA sections 4, 5, and 6 be ''based on the weight of scientific evidence.'' 15 U.S.C. 2625(i). TSCA section 26(k) requires that EPA consider information that is reasonably available in carrying out TSCA sections 4, 5, and 6. 15 U.S.C. 2625(k).

II. Summary of the TSCA Section 21 Petition

A. What action was requested?

On June 16, 2022, EPA received a TSCA section 21 petition from Daniel M. Galpern on behalf of Donn J. Viviani, John Birks, Richard Heede, Lise Van Susteren, James E. Hansen, Climate Science, Awareness and Solutions, and Climate Protection and Restoration Initiative (Ref. 1). The petition requests EPA determine that the manufacture, processing, distribution in commerce, use, or disposal of greenhouse gas emissions, fossil fuels, and fossil fuel emissions present an unreasonable risk of injury to health or the environment and initiate a proceeding for the issuance of a rule under TSCA section 6(a) to: (1) Phase out the manufacture (including import), processing, distribution in commerce, use, or disposal of ''subject chemical substances and mixtures''; and (2) Remove and sequester, or—in the alternative—establish a pay-in fund for the purpose of removing, such ''subject chemicals substances and mixtures'' from the environment (Ref. 1, pp. 7–8, 35). The petition seeks action regarding ''subject chemical substances and mixtures,'' by which the petition collectively refers to ''the GHG emissions from all anthropogenic sources, the fossil fuels, and those emissions associated with fossil fuels (GHGs and otherwise)'' (Ref. 1, p.7). The chemical substances or mixtures implicated by these groups, according to the petition, include: ''carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O) and the Halocarbons—chlorofluorocarbons (CFCs), hydrochlorofluorocarbons (HCFCs) and halons (HFCs)) from all sources''; ''[c]ertain fossil fuels'' that meet the TSCA definition of chemical substance or chemical mixture; and both GHGs and ''other pollutants released or emitted during'' the manufacture, processing, distribution in commerce, use and disposal of fossil fuels, ''including particulate matter and sulfur and nitrogen dioxides.'' (Ref. 1, p.7 (footnotes 7–8) and p.19).

The petition requests that EPA also take actions under TSCA sections 7 and 9. In addition, the petition requests actions under the CAA (CAA sections 108–110, 115), CERCLA (CERCLA sections 101, 102, 104–108), and the IOAA (31 U.S.C. 9701).

This **Federal Register** document specifically addresses the petitioners' TSCA section 21 petition requesting EPA to issue rules under TSCA section 6(a). This **Federal Register** document does not address the TSCA-requested actions which cannot be addressed under TSCA section 21 (*i.e.,* TSCA sections 6(b), 7 and 9), nor does it address the petitioners' requests under the CAA, CERCLA, and the IOAA. EPA will consider those requests separately, as appropriate, under the APA.

1. Request for Rulemaking Under TSCA Section 6(a)

The petition requests that EPA undertake rulemaking under TSCA section 6(a) to ''phase out [the] production and importation and, as warranted, [the] processing, distribution, use or atmospheric disposal of subject chemicals substances and mixtures, as required to secure the elimination of associated emissions and legacy GHG emissions, on a timetable that is consistent with both the overarching need to protect and restore a habitable climate system and with the demands of national and international security'' and ''remove and securely sequester from the environment excess

atmospheric greenhouse gases including, at minimum, surfeit atmospheric carbon dioxide (CO_2) and methane (CH_4) or, in the alternative, to pay into an Atmospheric Carbon Abatement Fund that EPA will establish for the purpose of removing such subject chemicals and mixtures in an amount and pursuant to a timetable consistent with protection and restoration of a habitable climate system'' (Ref. 1, pp. 7–8). TSCA section 21 provides for the submission of a petition to initiate a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 4, 6, or 8, or to issue an order under TSCA section 4, 5(e), or 5(f). As the petitioners are seeking issuance of a rule under TSCA section 6(a), this **Federal Register** document addresses this request.

2. Request for Standalone Finding of Unreasonable Risk of Injury to Health and the Environment

The petition requests that EPA ''render a determination that 'the manufacture, processing, distribution in commerce, use, or disposal' of the subject chemical substances and mixtures present an unreasonable risk of injury to health or the environment'' (Ref. 1, p. 7). With respect to actions under TSCA section 6, TSCA section 21 provides only for the submission of a petition seeking the initiation of a proceeding for the issuance, amendment, or repeal of a rule under TSCA section 6. Citizens may not petition under TSCA section 21 for a stand-alone risk determination (*i.e.,* one that is independent from and not solely underlying and inherent to a request for a specific rulemaking under TSCA section 6(a)) or an Agency risk evaluation pursuant to TSCA section 6(b). To the extent that the petition seeks a stand-alone risk determination, this **Federal Register** document does not address this specific request because TSCA section 21 does not provide an avenue for the petitioners to request a stand-alone risk determination or the initiation of the TSCA section 6(b) prioritization (and potential risk evaluation) process. However, in reviewing the request for rulemaking under TSCA section 6(a) (see Unit II.A.1.), the Agency considered the information set forth in the petition that petitioners claim establishes that it is necessary to initiate the proceeding requested, including the information presented by the petitioners regarding whether the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture, or any combination of such activities, presents an unreasonable risk of injury to health or the environment.

3. Request for Actions Under Other Sections of TSCA, the CAA, CERCLA, and the IOAA

TSCA section 21 does not provide for the submission of a petition seeking action under TSCA section 7 or 9, the CAA, CERCLA, or the IOAA. Therefore, this **Federal Register** document does not address those portions of the petitioners' filing.

EPA notes that the petition includes one qualified sentence mentioning TSCA section 4: ''If information on the efficacy of removal and sequestration technologies is inadequate, the [p]etitioners recommend that the Agency utilize its authorities under TSCA [section 4].'' The sentence is a recommendation related to a potential lack of information under a potential sequestration requirement, and the petitioners made no attempt to assess the TSCA section 4 standards or set forth facts showing a necessity to act under the TSCA section 4 authorities. For example, in a TSCA section 21 petition seeking the issuance of a test rule or order under TSCA section 4(a)(1)(A)(i), the burden is on the petitioner to demonstrate that the manufacture, distribution in commerce, processing, use, or disposal of a chemical substance or mixture, or that any combination of such activities, may present an unreasonable risk of injury to health or the environment; that information and experience are insufficient to reasonably determine or predict the effects of a chemical substance on health or the environment; and that testing of the chemical substance is necessary to develop the missing information. Moreover, the focus of the recommendation in the petition is on how EPA might deal with a potential lack of information under a potential sequestration requirement under TSCA, but neither point is a live issue. Thus, although TSCA section 21 petitions may petition for action under TSCA section 4, EPA does not consider the quoted sentence to be a facially complete TSCA section 21 petition for action under TSCA section 4 and is not addressing it further in this **Federal Register** document.

B. What support did the petitioners offer?

To support the request for issuance of a rule under TSCA section 6(a), the petitioners provided an appendix to the petition that contains scientific and economic data and literature on climate change (Ref. 1, pp. 38–112 (''Part II: Select Scientific and Economic Considerations'')). The appendix is divided into sections that discuss Earth's energy imbalance; carbon dioxide, methane, and other atmospheric pollutants; risks to land, water, and air biota; risk reduction methods, including GHG emission reduction and sequestration; and risk reduction costs and benefits.

The Agency appreciates the robustness of information provided in the petition toward showing climate risks and finds it generally consistent with decades of peer-reviewed and published data on climate change, including risks to human health and the environment. From a scientific standpoint, and as described further in Unit III.B.1., EPA notes that the information and science provided in the petition is generally consistent with what the Agency used to make the 2009 ''Endangerment Finding'' that elevated atmospheric concentrations of six key well-mixed GHGs taken in combination may reasonably be anticipated to endanger the public health and welfare of current and future generations, and does not appear to present information that would be considered inappropriate or that the Agency would otherwise disagree with related to climate change science.

EPA also received public comments on the petition, which can be viewed via docket ID number EPA–HQ–OPPT–2022–0593, through the Federal eRulemaking Portal at *https://www.regulations.gov.*

III. Disposition of TSCA Section 21 Petition

A. What is EPA's response?

EPA shares the petitioners' concerns regarding the threat posed by climate change, and the Biden Administration will continue to combat the climate crisis with a whole of government approach. Nonetheless, after careful consideration, EPA has denied this TSCA section 21 petition. A copy of the Agency's response, which consists of the letter to the petitioners and this document, is posted on EPA TSCA petition website at *https://www.epa.gov/assessing-and-managing-chemicals-under-tsca/tsca-section-21##greenhouse.* The response, the petition (Ref. 1), and other information is available in the docket for this TSCA section 21 petition (see **ADDRESSES**).

B. What was EPA's reason for this response?

TSCA section 21 provides for the submission of a petition seeking the initiation of a proceeding for the issuance, amendment, or repeal of a rule

under TSCA section 6. The petition must set forth the facts which it is claimed establish that it is necessary to issue the requested rule. 15 U.S.C. 2620(b)(1). When determining whether the petition meets that burden here, EPA considered whether the petition established that it is necessary to issue a TSCA section 6(a) rule to address the manufacture, processing, distribution in commerce, use, or disposal of the petitioned substances, or any combination of such activities, that the petitioners claim present an unreasonable risk of injury to health or the environment within the meaning of TSCA section 6(a), 15 U.S.C. 2605(a). For EPA to be able to conclude within the statutorily-mandated 90 days of receiving the petition that the initiation of a proceeding for the issuance of a TSCA section 6(a) rule is necessary, the petition would need to be sufficiently clear and robust.

EPA evaluated the information presented in the petition and considered that information in the context of the applicable authorities and requirements of TSCA sections 6, 9, 21, and 26. Notwithstanding that the burden is on the petitioners to set forth the facts which it is claimed establish that it is necessary for EPA to issue the rule sought, EPA nonetheless also considered relevant information that was reasonably available to the Agency during the 90-day petition review period. EPA shares the petitioners' concerns about the climate crisis and, as explained in Unit III.B.3.a., the Agency is taking numerous actions to combat climate change. As detailed further in Units III.B.2 and III.B.3., EPA finds that the petition is insufficiently specific and that the petitioners did not meet their burden under TSCA section 21(b)(1) of establishing that it is necessary to issue a rule under TSCA section 6(a). These deficiencies, among other findings, are detailed in this notice.

1. Undeniable Threat Associated With the Climate Crisis.

The petition addresses a unique challenge—the climate crisis, which touches on every facet of commerce and life around the world. EPA shares the petitioners' concerns regarding the threat posed by climate change, and the Biden Administration has approached the climate crisis with a whole of government approach.

Petitioners argue that risks associated with climate change are ''unreasonable risks'' under TSCA. The petitioners' reference four past instances where EPA made an unreasonable risk determination and regulated chemical substances and mixtures under TSCA section 6(a) and state that the ''risk of injury to health and the environment (as well as actual injury) stemming from fossil fuels and other GHG sources is orders of magnitude greater than [such] risks'' (Ref. 1, p. 14). As previously mentioned, the petitioners in an appendix to the petition discuss risks to land, water, and air biota posed by greenhouse gas emissions, fossil fuels, and fossil fuel emissions (Ref. 1). In describing this and other information, the petitioners state, ''That the subject chemical substances and mixtures present not only an unreasonable but also an imminent risk of serious and widespread injury has been exhaustively established in credible reports and documents available to the Agency, including many adopted by the Agency or by other U.S. government units'' (Ref. 1, p. 19).

The Agency agrees that the climate crisis is an undeniable and urgent threat to human health and the environment. Not only is climate change happening now, but it is already affecting human health and well-being, wildlife, and the natural environment. According to the Intergovernmental Panel on Climate Change (IPCC) Sixth Assessment Report, ''[i]t is unequivocal that human influence has warmed the atmosphere, ocean and land. Widespread and rapid changes in the atmosphere, ocean, cryosphere and biosphere have occurred'' (Ref. 2). The IPCC states these changes have led to increases in heat waves and wildfire weather, reductions in air quality, and more intense hurricanes and rainfall events. New records continue to be set for indicators such as global average surface temperatures, GHG concentrations, and sea level. Billion-dollar weather disasters in the United States over the last five years have occurred at more than twice the rate of such disasters over the past 42 years, with 2022 already seeing multiple large tornadoes, hail storms, floods, heat waves, droughts, and wildfire events (Ref. 3). Higher CO_2 concentrations have led to acidification of the surface ocean in recent decades, with negative impacts on marine organisms that use calcium carbonate to build shells or skeletons. The 4th National Climate Assessment (NCA4) found that it is very likely (greater than 90% likelihood) that by mid-century, the Arctic Ocean will be almost entirely free of sea ice by late summer for the first time in about 2 million years. Moreover, heavy precipitation events have increased in the eastern United States while severe drought and outbreaks of insects like the mountain pine beetle have killed hundreds of millions of trees in the western United States. Wildfires have burned more than 3.7 million acres in 14 of the 17 years between 2000 and 2016, and Federal wildfire suppression costs were about a billion dollars annually. The NCA4 also recognized that climate change can increase risks to national security, both through direct impacts on military infrastructure, and also by affecting factors such as food and water availability that can exacerbate conflict outside U.S. borders. The most severe harms from climate change may also fall disproportionately upon underserved communities who are least able to prepare for, and recover from, heat waves, poor air quality, flooding, and other impacts (Ref. 4). As such, understanding and addressing climate change is critical to EPA's mission of protecting human health and the environment.

As set forth in EPA's December 7, 2009, Endangerment Finding under section 202(a) of the CAA, the Administrator found, for the purposes of that particular provision, that six greenhouse gases taken in combination endanger both the public health and the public welfare of current and future generations (74 FR 66496, December 15, 2009, FRL–9091–8). In order to develop this Finding, the Agency held a 60-day public comment period on the proposed Finding, during which it received over 380,000 public comments. EPA carefully reviewed and considered these comments before publishing the final Endangerment and Cause or Contribute Findings. Following publication of these Findings, EPA received 10 petitions to reconsider the findings, which were denied after careful review and consideration. In 2012, the D.C. Circuit in *Coalition for Responsible Regulation, Inc.* v. *EPA* denied all the petitions for review of the 2009 Endangerment and Cause or Contribute Findings. 684 F.3d 102 (D.C. Cir. 2012) (per curiam), reh'g denied 2012 U.S. App. LEXIS 26313, 26315, 25997 (D.C. Cir. 2012). In 2016, EPA issued another set of similar findings for greenhouse gas emissions from aircraft under section 231(a)(2)(A) of the CAA, triggering a requirement for EPA to promulgate standards addressing GHG emissions from engines on covered aircraft. For these 2016 Findings, EPA reviewed major new peer-reviewed scientific assessments that had been released since 2009, finding that ''these new assessments are largely consistent with, and in many cases strengthen and add to, the already compelling and comprehensive scientific evidence detailing the role of the six well-mixed GHGs in driving climate change,

explained in the 2009 Endangerment Finding'' (81 FR. 54421, August 15, 2016, FRL–9950–15–OAR). Finally, EPA received four petitions between 2017 and 2019 for reconsideration, rulemaking, or reopening of the Endangerment and Cause or Contribute Findings. EPA denied these petitions on April 21, 2022 (87 FR. 25412, FRL–9735–01–OAR), though litigation is ongoing. Although EPA does not rely on these findings as a basis for today's action, this history highlights a few instances where EPA has recognized the significant concerns related to climate change. EPA further notes that in describing these prior findings under sections 202(a) and 231(a)(2)(A) of the CAA, it is neither reopening nor revisiting those findings.

Thus, the Agency acknowledges both the urgency and uniqueness of the threat presented by climate change. However, as explained in the following discussion, even assuming EPA were to determine that the petitioners have adequately demonstrated that the manufacture, processing, distribution in commerce, use, or disposal of at least some of ''the subject chemical substances and mixtures'' present an unreasonable risk of injury to health or the environment for purposes of TSCA section 6(a), EPA nonetheless finds that the petition is insufficiently specific and fails to establish that it is necessary to issue a rule under TSCA section 6. EPA makes this latter finding in light of ongoing and expected federal government actions to address these risks, the relative efficiency of TSCA rulemaking, and lack of TSCA authority to regulate historical GHG emissions (as described in detail in Unit III.B.3.).

2. Insufficient Specificity of the Petition

As an initial matter, the petitioners' request for a rule is insufficient because it lacks specificity, especially in comparison to the magnitude of the request. In light of the sprawling nature of the climate problem and its solutions, and the number of federal government activities already ongoing to address the problem (discussed further in Unit III.B.3.a), the petitioners must do more to specify what the petitioners are seeking for EPA to do under TSCA with respect to particular chemical substances or mixtures (*e.g.,* by specifying each chemical substance on the TSCA Inventory implicated by the broad request to regulate, among others, fossil fuels, fossil fuel emissions, and halocarbons as groups) and the activities associated with each chemical substance (including each source of GHG emissions) that the petitioners seek a TSCA rule to address. In other words, while EPA undeniably has authority under TSCA to regulate chemical substances and mixtures (see TSCA sections 3(2), 3(10), 6(a)), including those that may be implicated by the petition, the petitioners must provide more specificity on which chemical substances and which mixtures from which sources and activities the petitioners ask EPA to regulate under TSCA and, to the extent petitioners implicitly seek categorization under TSCA section 26(c), more specificity on the extent of such categorization and the basis to treat any such category as a single chemical substance or a single mixture.

The petitioners assert in their petition that ''it is not Petitioners' burden *here* to propose in detail requirements that EPA should propose following its determination'' (Ref. 1 p. 15). But especially under the unique circumstances presented in this case, where the petitioners identify a wide-ranging global threat associated with innumerable activities and a multitude of chemical substances and mixtures (many of whose emissions are already subject to regulation under other federal authorities or are anticipated to be affected by resources provided under the Inflation Reduction Act of 2022 (IRA), Public Law 117–169 (2022) (see discussion in Unit III.B.3.)), the petitioners did not sufficiently clarify the contours of the ''rule'' under TSCA they assert it is necessary for the Agency to issue. Petitioners' request potentially affects an extraordinary number of industries and activities (*e.g.,* agriculture, transportation, utilities, etc.), including innumerable small sources of emissions (*e.g.,* residential homes). In the context of the massive climate change problem, the petitioners did not provide a sufficiently specific and targeted request addressing particular substances and industries, so that EPA can determine within 90 days whether the petition sets forth the facts which it is claimed establish that it is necessary to issue a TSCA section 6(a) rule, and whether any part of the requested rule (in addition to the requested requirement for removal and sequestration of legacy GHG emissions, which as discussed in Unit III.B.3.c is not authorized under TSCA section 6(a)) falls beyond the outer bounds of EPA's regulatory authority under TSCA section 6(a).

The petitioners attempted to group together very different types of substances under one defined term that the petition labeled as ''subject chemical substances and mixtures.'' The petitioners described these broad groups as ''the GHG emissions from all anthropogenic sources, the fossil fuels, and those emissions associated with fossil fuels (GHGs and otherwise)'' (Ref. 1 p. 7). Yet even within each of these three broad groups, there is a multitude of chemical substances that might fit. Apart from giving examples of some of the substances that the petition envisioned being addressed by EPA regulation (Ref. 1 p. 7 footnotes 7–8, and p. 19), the petition did not specify the extent of the chemical substances or mixtures for which rulemaking action was sought and did not explain the basis or boundary for any categorization.

Moreover, although the petition sought a rule for the ''subject chemical substances and mixtures,'' EPA believes that a rule for GHGs, for example, would look very different than a rule for fossil fuels, for example, in light of differences in TSCA section 6(a) regulatory tools for manufacture, processing, distribution in commerce, use, or disposal and differences in appropriate regulatory approaches for the relevant chemical substance. For example, the TSCA section 6(a) regulatory options for disposal significantly differ from those tools for manufacturing, processing, or distribution. Even within the group of GHGs, a rule addressing carbon dioxide would likely look very different from a rule addressing methane, or nitrous oxide, or any one of various halocarbons, due to the differences in the activities that result in atmospheric releases of these substances. The petition's imprecision about what type of regulation it sought for which chemical substance or mixture under which of its activities is a significant deficiency, especially considering the wide range of substances and activities the petition implicates, as well as the aggressive action already taken or underway across a wide range of statutes for many of these same activities (such as EPA's ongoing actions to implement the mandated reductions in HFC production and consumption within the American Innovation and Manufacturing (AIM) Act, for example).

3. Necessity of Regulation Under TSCA

More broadly, and relatedly, even assuming the petition were sufficiently specific, and that EPA were to determine that an unreasonable risk is presented for purposes of TSCA section 6(a), the petitioners have failed to demonstrate that regulation under TSCA is ''necessary'' under the unique circumstances presented here. TSCA section 21 requires petitioners to set forth the facts which it is claimed establish that it is necessary to issue, amend, or repeal a rule under TSCA section 6. In addition to the scientific

information provided in the appendix to the petition, the petitioners argue that a TSCA section 6(a) rule is necessary because of insufficient domestic action to date, lack of regulation of legacy emissions, and the specific applicability of TSCA to achieve ''deep decarbonization'' (Ref. 1, pp. 22–24).

As discussed in Unit III.B.3.a., the federal government has numerous programs aimed at reducing GHG emissions, and President Biden has committed to a whole of government approach to using federal tools to reduce GHG emissions. Notably, since the petitioners filed their petition, Congress passed the most significant climate legislation ever, the IRA. The IRA marks the largest investment in history to combat climate change ($369 billion) and will focus in part on reducing harmful pollution, building a clean energy economy, and lowering energy costs. Moreover, the IRA ensures efforts to tackle the climate crisis and secure environmental and economic benefits for all people, that investments will reach the communities that need them most, and that EPA will accelerate work on environmental justice and empower community-driven solutions in overburdened neighborhoods (Ref. 5). The petitioners have not demonstrated that all of the existing and anticipated federal programs, including but not limited to those discussed in this notice (as well as efforts by state, local, and tribal governments and private entities), will fail to achieve sufficient progress towards meeting U.S. GHG reduction targets or that, in particular, a TSCA section 6(a) rule requiring the phase-out of manufacturing, processing, distribution in commerce, use, or disposal of the ''subject chemical substances and mixtures,'' is necessary to make sufficient progress towards meeting these targets to address the threat posed by climate change in light of actions under all of the other federal programs. As a result, EPA need not here opine on the outer extent of the Agency's authority under TSCA to phase out greenhouse gases or fossil fuels.

Further, as described in this Unit III.B.3.b., EPA retains discretion in TSCA section 6(a) rulemaking to refer action to other agencies and EPA programs under TSCA section 9 and to grant exemptions from TSCA section 6(a) rule requirements under TSCA section 6(g) as appropriate (such as where compliance with a requirement, as applied with respect to a specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure), and EPA is required to consider reasonably ascertainable economic consequences of the rule, as well as availability of technically and economically feasible safer alternatives, among other requirements. The exercise of these authorities could lead to rulemaking that would not achieve emission reductions more expeditiously or efficiently than those achieved through other nationwide efforts.

Finally, as described in Unit III.B.3.c., EPA lacks authority under TSCA section 6(a) to require removal and sequestration (or pay-in fund for removal) of historical GHG emissions as requested by the petition.

a. Substantial Ongoing and Expected Federal Government Actions

The petitioners assert that efforts to restrict fossil fuel and other GHG emissions ''pursuant to other statutes'' lack a ''fossil fuel phaseout course'' and have not put the United States on track to achieve national GHG emission reduction targets for 2030, 2035, and 2050; and that ''[n]o federal statute, other than TSCA, provides the Agency with the needed comprehensive authority and duty to impose requirements prohibiting or restricting the manufacture, processing, distribution, use or disposal'' of GHG emissions, fossil fuels, and fossil fuel emissions (Ref. 1, pp. 22–24). As such, the petitioners conclude that a TSCA section 6(a) rule is necessary ''because the Agency has declined to date to undertake the requested or equivalent actions on its own'' and that such a rule is the only means to address GHG emissions, fossil fuels, and fossil fuel emissions ''until the point that their unreasonable risk is abated'' (Ref. 1, p. 22–24).

In fact, the U.S. Government has made and will continue to make substantial efforts to reduce future domestic emissions. In 2021, in line with Article 4 of the Paris Agreement, the U.S. Nationally Determined Contribution set a GHG reduction target of 50–52% below 2005 levels by 2030, and net zero emissions by no later than 2050 (Ref. 6 and 7). Meeting these ambitious targets will be achieved through benefits from actions already implemented, as well as future anticipated mitigation efforts. The recently-enacted IRA is expected to help reduce GHG emissions to 40% below 2005 levels by 2030, and ''get the U.S. a significant way towards our overall 2030 climate goals, positioning the [United States] to reach 50–52% GHG emission reductions below 2005 levels in 2030 with continued executive branch, state, local, and private sector actions.'' (Ref. 8). The IRA will help reduce emissions in both the near and long term by creating credits for clean electricity, energy storage, nuclear energy, and electric vehicles. Additionally, it supports agricultural conservation efforts, clean manufacturing, and more efficient buildings. A fee on methane emissions will also create incentives for the oil and gas industry to reduce leakage and waste. The IRA follows on the heels of the Bipartisan Infrastructure Law of 2021 (Infrastructure Investment and Jobs Act), Public Law 117–58, 135 Stat. 429 (2021), which advances a variety of infrastructure investments that will reduce transportation-related GHG emissions, including investing billions of dollars to modernize and expand sustainable public transit infrastructure, build out the first-ever national network of electric vehicle chargers in the United States, and deliver thousands of electric school buses nationwide, among other things, as well as investing in clean energy transmission and the electric grid (Ref. 9 and 10).

The IRA and Bipartisan Infrastructure Law will lead to new GHG emissions reductions on top of already existing government programs, such as the implementation of the AIM Act of 2020 (see *e.g.,* 86 FR 55116, October 5, 2021 (FRL 8458–02–OAR)) which includes measures to reduce HFC production and consumption by 85% over the next 15 years; a series of rules addressing GHG emissions from light duty and heavy duty vehicles (86 FR 74434, December 31, 2021 (FRL–8469–01–OAR); 85 FR 24174, April 30, 2020 (FRL–10000–45–OAR); 81 FR 73478, October 25, 2016 (FRL–9950–25–OAR); 77 FR 62624 October 15, 2012 (FRL–9706–5); 76 FR 57106, September 15, 2011 (FRL–9455–1); 75 FR 25324, May 7, 2010 (FRL–9134–6)), GHG standards for aircraft (86 FR 2136, January 11, 2021 (FRL–10018–45–OAR)), standards for new and existing municipal solid waste landfills to reduce methane emissions (86 FR 27756, May 21, 2021 (FRL–10022–82–OAR); 81 FR 59275, August 29, 2016 (FRL–9949–55–OAR), 81 FR 59331, August 29, 2016 (FRL–9949–51–OAR)), New Source Performance Standards for new, modified, and reconstructed fossil fuel-fired power plants (80 FR 64510, October 23, 2015 (FRL–9930–66–OAR)), standards to reduce methane emissions from the oil and natural gas industry (81 FR 35824, June 3, 2016 (FRL–9944–75–OAR); 85 FR 57398, November 15, 2020 (FRL–10013–60–OAR)), and limitations on GHG emissions from new and modified stationary sources in construction permits under the PSD program, based on the requirement to apply Best Available Control

Technology (BACT) (42 U.S.C. 7475(a)(4); *Utility Air Regulatory Group (UARG)* v. *EPA,* 134 S.Ct. 2427, 2447–49 (2014); 80 FR 50199, 50200, August 19, 2015 (FRL–9932–11–OAR)). Moreover, in 1990, Congress amended the CAA to include Title VI (42 U.S.C. 7671c–7671q), which includes measures that are directed at phasing out production and consumption of listed class I substances, which include CFCs, halons, and carbon tetrachloride, and listed class II substances, which are HCFCs. To implement the phaseout of class I substances, EPA issued a rule in 1992 to limit the production and consumption of class I substances, with production and consumption of most such substances to be phased out by January 1, 2000, and then in 1993 EPA announced the acceleration of the phaseout date for the production of most class I substances from January 1, 2000 to December 31, 1995 (57 FR 33754, July 30, 1992 (FRL–4158–2) and 58 FR 65018, December 10, 1993 (FRL–4810–7)). In 1993, EPA established a phaseout schedule for HCFCs, which focused on certain HCFCs first and will lead to a complete phaseout of the production and consumption of HCFCs by 2030 (see *e.g.,* 58 FR 65018, December 10, 1993 (FRL–4810–7) and 85 FR 15258, March 17, 2020 (FRL–10003–80–OAR)).

Beyond the IRA and the highlighted regulatory programs, EPA's efforts also include coordinating international programs such as the Global Methane Initiative (see *https://www.globalmethane.org/*), domestic labeling and voluntary programs such as ENERGY STAR (see *https://www.energystar.gov/*), Natural Gas Star (see *https://www.epa.gov/natural-gas-star-program*), the Coalbed Methane Outreach Program (see *https://www.epa.gov/cmop*), and the Landfill Methane Outreach Program (see *https://www.epa.gov/lmop*), developing Agency, Regional, and program-office climate adaptation plans, and communication and educational efforts such as the updated Climate Change web page (see *https://www.epa.gov/climate-change*). EPA also partners with states and tribes to assist with adaptation and mitigation through programs such as Creating Resilient Water Utilities (see *https://www.epa.gov/crwu*) and the State and Local Climate and Energy Program (see *https://www.epa.gov/statelocalenergy/local-climate-and-energy-program*).

EPA also is developing new stationary and mobile source standards under the CAA to better control GHG emissions from oil and gas operations, electric generating units (EGUs), and vehicles. Examples include the following:

- Oil and gas methane new source performance standards (RIN 2060–AV16);
- Oil and gas methane emission guidelines (RIN 2060–AV16);
- EGU GHG new source performance standards (RIN 2060–AV09);
- EGU GHG emission guidelines (RIN 2060–AV10);
- Phase 3 GHG standards for heavy-duty engines and vehicles (RIN 2060–AV50); and
- Multi-pollutant emissions standards for model years 2027 and beyond, light duty and medium duty vehicles (RIN 2060–AV49).

These rules under development will build on earlier stationary and mobile source standards. Similarly, EPA is continuing its work to address HFCs through timely and effective implementation of the AIM Act. Those efforts include development of a rule (RIN 2060–AV45) to provide the framework for how the Agency will issue allowances in 2024 and later years for the phasedown of the production and consumption of listed HFCs on the schedule listed in the AIM Act, and a rule (RIN 2060–AV46) under subsection (i) of the AIM Act, which provides EPA authority to restrict, fully, partially, or on a graduated schedule, the use of HFCs in sectors or subsectors in which they are used. The public may track the regulatory plan for these and other actions by searching or browsing the Unified Agenda of Regulatory and Deregulatory Actions, available online at *https://www.reginfo.gov/public/do/eAgendaMain.*

In addition, in combination with state, local, tribal, and international actions, the U.S. federal government is pursuing a whole of government strategy to reduce GHG emissions to protect current and future generations. For example, federal initiatives launched since 2021 from the U.S. Department of Agriculture, the U.S. Department of Energy, the U.S. Department of the Interior, and the U.S. Department of Transportation, include investments to build or improve renewable energy infrastructure in rural communities (Ref. 11); partnerships to finance pilot projects that create market opportunities for U.S. agricultural and forestry products that use climate-smart practices (Ref. 12); efforts to accelerate innovation in carbon dioxide removal and storage (Ref. 13), initiatives to catalyze nationwide development of new and upgraded high-capacity electric transmission lines (Ref. 14); approvals for construction and operation of commercial-scale, offshore wind energy projects (Ref. 15); programs to allow states, tribes, and territories to retrofit low-income homes to increase energy efficiency and lower utility bills (Ref. 16); and grants to transit agencies, territories, and states for bus fleets that use zero-emissions technology and training for transit workers to maintain and operate new clean bus technology (Ref. 17). In addition, the U.S. Securities and Exchange Commission proposed rule changes in Spring 2022 that, if finalized, would require registrants to provide certain climate-related information in their registration statements and periodic reports, including certain information about climate-related financial risks and disclosure of a registrant's GHG emissions, to enable investors to make informed judgments about the impact of climate-related risks on current and potential investments (87 FR 21334, April 11, 2022). At the state level, the U.S. Climate Alliance—including 24 states and 2 U.S. territories—continue to work to combat climate change through policies that encourage investment in clean energy, energy efficiency, and climate resilience. Following the passage of the IRA, this organization published tools and resources to help states better utilize the social cost of greenhouse gases (Ref. 18).

In light of actions taken to date, as well as ongoing and planned actions, and with the recently authorized resources and programs under the IRA, the Agency finds that the petitioners have not met the TSCA section 21(b)(1) burden to establish that it is necessary to initiate a proceeding under TSCA section 6(a) at this time. EPA believes that actions under all of these other authorities and programs are best suited at this time to address the urgent threat of climate change.

b. Relative Efficiency of TSCA Rulemaking

Even if EPA were to initiate a rulemaking proceeding under TSCA section 6(a) to address an unreasonable risk associated with prospective GHG emissions and/or fossil fuels, any final rule under TSCA would be unlikely to achieve emissions reductions more expeditiously or efficiently than those that are already anticipated to be achieved through the IRA and other recent, ongoing, or planned federal actions.

In proposing and promulgating rules under TSCA section 6(a), EPA considers the provisions of TSCA sections 6(c)(2), 6(d), 6(g), and 9. TSCA section 6(c)(2)(A) requires EPA to consider and publish a statement based on reasonably available information with respect to:

the effects of the chemical substance or mixture on health and the environment and magnitude of exposure; the benefits of the chemical substance or mixture for various uses; and reasonably ascertainable economic consequences of the rule (15 U.S.C. 2605(c)(2)(A)). These economic consequences include consideration of the likely effect of the rule on the national economy, small business, technological innovation, the environment, and public health; the costs and benefits of the proposed and final regulatory action and of one or more primary alternative regulatory actions considered by the Administrator; and the cost effectiveness of the proposed regulatory action and of the one or more primary alternative regulatory actions considered by the Administrator (15 U.S.C. 2605(c)(2)(A)(iv)). EPA must factor in these considerations to the extent practicable when selecting among prohibitions and other restrictions in the rulemaking (15 U.S.C. 2605(c)(2)(B)).

In addition, under TSCA section 6(d), any rule under TSCA section 6(a) must provide for a reasonable transition period (15 U.S.C. 2605(d)(1)(E)). Further, in deciding whether to prohibit or restrict in a manner that substantially prevents a specific condition of use of a chemical substance or mixture, and in setting an appropriate transition period for such action, EPA must also consider, to the extent practicable, whether technically and economically feasible alternatives that benefit health or the environment, compared to the use so proposed to be prohibited or restricted, will be reasonably available as a substitute when the proposed prohibition or other restriction takes effect (15 U.S.C. 2605(c)(2)(C)).

TSCA section 6(g) allows EPA to grant an exemption from a requirement of a TSCA section 6(a) rule for a specific condition of use of a chemical substance or mixture, if the Administrator finds that: the specific condition of use is a critical or essential use for which no technically and economically feasible safer alternative is available; compliance with the requirement, as applied with respect to the specific condition of use, would significantly disrupt the national economy, national security, or critical infrastructure; or the specific condition of use of the chemical substance or mixture, as compared to reasonably available alternatives, provides a substantial benefit to health, the environment, or public safety (15 U.S.C. 2605(g)(1)). EPA must establish a time limit on any exemption, to be determined by the Administrator as reasonable on a case-by-case basis, but may extend an exemption where warranted (15 U.S.C. 2605(g)(3)).

Taken together, the TSCA sections 6(c)(2), (d), and (g) considerations regarding economic consequences, reasonable transition periods, technically and economically feasible alternatives, and critical exemptions indicate that a rulemaking proceeding under TSCA section 6(a) at this time would be unlikely to reduce GHG emissions more expeditiously or efficiently than would actions under the IRA, the Bipartisan Infrastructure Law, the CAA and other environmental statutes, and the AIM Act, as well as the other federal government actions described earlier. The historic and transformational climate investments made in the IRA and the Bipartisan Infrastructure Law, and the ongoing regulatory actions under the CAA and other statutes, provide a means for reducing GHG emissions more rapidly and efficiently than would initiating a new rulemaking proceeding under TSCA.

Furthermore, TSCA section 9(b) provides that EPA ''shall coordinate actions taken under [TSCA] with actions taken under other Federal laws administered in whole or in part by [EPA]'' (15 U.S.C. 2608(b)(1)). TSCA section 9(d) further instructs the Administrator to consult and coordinate TSCA activities with other federal agencies for the purpose of achieving the maximum enforcement of TSCA while imposing the least burden of duplicative requirements. TSCA sections 9(a) and (b) each establish mechanisms for referring an unreasonable risk identified under TSCA for risk management action under another federal statute if the Administrator determines that the risk could be eliminated or reduced to a sufficient extent by action taken under that other federal statute. Through TSCA section 9, Congress intended ''to assure that overlapping or duplicative regulation is avoided'' (S. Rep. No. 94–1302, at 84 (1976) (Conf. Rep.)). Given the range of other federal actions either planned or already underway to address risks posed by various GHGs and emissions associated with fossil fuels—including but not limited to those described previously in this notice—other federal authorities clearly play a crucial role in addressing risks from GHG emissions and climate change. Accordingly, even if EPA were to initiate a rulemaking proceeding under TSCA section 6(a), the Agency would retain discretion to refer action under TSCA section 9, and would necessarily consider whether the risks could be better addressed under other federal authorities such as the CAA.

Although not a basis for EPA's denial, the Agency notes that the TSCA program is still relatively nascent following comprehensive amendments to the law in 2016, which significantly expanded the Agency's requirements and responsibilities. In the years that followed the amendments, and despite the substantially increased workload, the program's budget remained essentially flat (Ref 19). As a result, although the program has made continued progress, it continues to struggle to meet statutory deadlines to, for example, review pre-manufacture notices for new chemicals, conduct risk evaluations, and regulate chemicals that the Agency has determined to present unreasonable risks, risks that in many cases only TSCA has the clear federal authority to address.

Because there are numerous other federal, state and local actions already undertaken or underway to address the climate crisis, and because EPA believes that a complete consideration of the costs, critical and military uses, needed transition times, technological feasibility, and other required factors and discretionary considerations under TSCA would be unlikely to lead to a different outcome than these other actions for the activities involving the GHG emissions, fossil fuels, and/or fossil fuel emissions that would be subject to a TSCA rule, EPA believes it is unnecessary and would be an inefficient use of government resources to initiate a new, resource-intensive rulemaking under TSCA at this time.

c. TSCA Authority To Address Legacy Emissions

In regard to legacy emissions, the petitioners argue that EPA ''has not yet imposed any requirement pursuant to any statute upon any fossil fuel company, or indeed, upon any other source of GHG emissions, to remove all, or even a share, of such source's legacy GHG emissions'' and that TSCA is the only federal statute that can compel a party to ''remove and securely sequester their legacy GHG emissions'' (Ref. 1, p. 23). The petitioners advocate for the removal of such legacy emissions because the ''scientific consensus is that humanity has already far overshot the safe level of atmospheric CO_2 and other GHGs so that, even in conjunction with a rapid yet feasible phaseout of additional quantities of the subject chemical substances and mixtures, at least some substantial carbon removal will be necessary to protect and restore a viable climate system'' (Ref. 1, p. 23). To achieve the outcome of removing

and sequestering historical GHG emissions from the atmosphere or undertaking a security and burden sharing agreement (*i.e.,* carbon abatement fund) based on such historical GHG emissions, the petitioners invoke TSCA section 6(a)(6) and 6(a)(7).

EPA does not have legal authority under TSCA to require removal and sequestration of historical GHG emissions from the atmosphere, or to establish an atmospheric GHG abatement fund and require historical GHG emitters to pay into the fund based on such historical GHG emissions. EPA considers such historical GHG emissions to be legacy disposals (*i.e.,* disposals that have already occurred), and EPA has interpreted legacy disposals to be excluded from those ''conditions of use'' that EPA evaluates and regulates under TSCA. See *Safer Chemicals* v. *EPA,* 943 F.3d 397, 425–26 (9th Cir. 2019) (upholding EPA's exclusion of legacy disposals from consideration as conditions of use under the TSCA Risk Evaluation rule); 15 U.S.C. 2602(4). Thus, EPA does not consider historical GHG emissions to be activities subject to regulation under TSCA section 6(a). EPA recognizes that TSCA section 6(a)(6) could be used to address ongoing or prospective disposal by certain entities and that TSCA section 6(a)(7) could be used to require manufacturers or processors to replace or repurchase their substances. However, the petitioners have not demonstrated how either of these tools could—either legally or practically—be used to impose regulatory requirements on entities today based on activities that occurred decades ago.

C. What were EPA's conclusions?

The petitioners' request to initiate a proceeding for the issuance of a rule under TSCA section 6(a) lacks sufficient specificity, especially in comparison to the magnitude of the request. Even assuming that the petition were sufficiently specific in its request for a rule, when the requested actions are considered in the context of the IRA and current actions under the CAA, the Bipartisan Infrastructure Law, the AIM Act, and other statutes, which include programs being implemented by a range of federal agencies, as well as considerations inherent to the promulgation of a TSCA section 6(a) rule, EPA's review of relevant information that was reasonably available to the Agency during the 90-day petition review period does not support a grant of the petition to initiate rulemaking under TSCA section 6(a). The petitioners have not established at this time that it is ''necessary'' to initiate a proceeding for the issuance of a TSCA rule, given the unique challenges of the climate crisis, the multitude of other ongoing federal efforts to address it, and the other considerations discussed in this notice. The Agency does not believe that a rulemaking proceeding under TSCA at this time would likely achieve a different result than aforementioned federal authorities and programs in addressing climate change, greenhouse gas emissions, fossil fuels, and fossil fuel emissions. Accordingly, EPA denied the request to initiate a proceeding for the issuance of a rule under TSCA section 6(a).

IV. References

The following is a listing of the documents that are specifically referenced in this document. The docket includes these documents and other information considered by EPA, including documents that are referenced within the documents that are included in the docket, even if the referenced document is not physically located in the docket. For assistance in locating these other documents, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

1. Daniel M. Galpern. 2022. Petition to Phase Out Greenhouse Gas (GHG) Pollution to Restore a Stable and Healthy Climate.
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3. National Ocean and Atmospheric Administration (NOAA) National Centers for Environmental Information (NCEI). 2022. U.S. Billion-Dollar Weather and Climate Disasters. Available from: *https://www.ncei.noaa.gov/access/billions/.*
4. EPA. 2021. Climate Change and Social Vulnerability in the United States A Focus on Six Impacts. Available from: *https://www.epa.gov/cira/social-vulnerability-report.*
5. EPA. 2022. Press Release: Statement by Administrator Regan on the Passage of the Inflation Reduction Act of 2022. Available from: *https://www.epa.gov/newsreleases/statement-administrator-regan-passage-inflation-reduction-act-2022.*
6. United Nations Framework Convention on Climate Change (UNFCC). 2015. Paris Agreement. Available from: *https://unfccc.int/files/meetings/paris_nov_2015/application/pdf/paris_agreement_english_.pdf.*
7. UNFCC. 2021. United States of America Nationally Determined Contribution Reducing Greenhouse Gases in the United States: A 2030 Emissions Target. Available from: *https://unfccc.int/sites/default/files/NDC/2022-06/United%20States%20NDC%20April%2021%202021%20Final.pdf.*
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9. White House. 2021 FACT SHEET: The Bipartisan Infrastructure Deal Boosts Clean Energy Jobs, Strengthens Resilience, and Advances Environmental Justice. Available from: *https://www.whitehouse.gov/briefing-room/statements-releases/2021/11/08/fact-sheet-the-bipartisan-infrastructure-deal-boosts-clean-energy-jobs-strengthens-resilience-and-advances-environmental-justice.*
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11. United States Department of Agriculture (USDA). 2021. USDA Invests $464 Million in Renewable Energy Infrastructure to Help Rural Communities, Businesses and Ag Producers Build Back Better. Available from: *https://www.usda.gov/media/press-releases/2021/09/09/usda-invests-464-million-renewable-energy-infrastructure-help-rural.*
12. USDA. 2022. USDA to Invest $1 Billion in Climate Smart Commodities, Expanding Markets, Strengthening Rural AmericaAvailable from: *https://www.usda.gov/media/press-releases/2022/02/07/usda-invest-1-billion-climate-smart-commodities-expanding-markets.*
13. DOE. 2022. Carbon Negative Shot. Available from: *https://www.energy.gov/fecm/carbon-negative-shot.*

14. DOE. 2022. DOE Launches New Initiative from President Biden's Bipartisan Infrastructure Law to Modernize National Grid. Available from: *https://www.energy.gov/oe/articles/doe-launches-new-initiative-president-bidens-bipartisan-infrastructure-law-modernize.*

15. Department of Interior. 2021. Interior Department Approves Second Major Offshore Wind Project in U.S. Federal Waters. Available from: *https://www.doi.gov/pressreleases/interior-department-approves-second-major-offshore-wind-project-us-federal-waters.*

16. DOE. 2022. Biden Administration Announces Investments to Make Homes More Energy Efficient and Lower Costs for American Families *https://www.energy.gov/articles/biden-administration-announces-investments-make-homes-more-energy-efficient-and-lower.*

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18. United States Climate Alliance. 2022. US Climate Alliance Releases New Tools to Help States Confront Climate Crisis, Drive Just and Equitable Transition. Available from: *http://www.usclimatealliance.org/publications/2022/8/29/new-tools-scghg-just-transition.*

19. United States Senate Committee on Environment and Public Works. 2022. Hearing on the Toxic Substances Control Act Amendments Implementation. Available from: *https://www.epw.senate.gov/public/index.cfm/2022/6/toxic-substances-control-act-amendments-implementation.*

Authority: 15 U.S.C. 2601 *et seq.*

Dated: September 14, 2022.

Michal Freedhoff,

Assistant Administrator, Office of Chemical Safety and Pollution Prevention.

[FR Doc. 2022–20257 Filed 9–20–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL MARITIME COMMISSION

46 CFR Part 542

[Docket No. 22–24]

RIN: 3072–AC92

Definition of Unreasonable Refusal To Deal or Negotiate With Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier

AGENCY: Federal Maritime Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission (Commission) is seeking public comment on its proposed rule arising from the Ocean Shipping Reform Act of 2022 requirement that prohibits ocean common carriers from unreasonably refusing to deal or negotiate with respect to vessel space accommodations. Specifically, the Commission is proposing to define the elements necessary to establish a violation and the criteria it will consider in assessing reasonableness.

DATES: Submit comments on or before October 21, 2022.

ADDRESSES: You may submit comments, identified by Docket No. 22–24, by sending an email to *secretary@fmc.gov.* For comments, include in the subject line: ''Docket No. 22–24, Definition of Unreasonable Refusal to Deal or Negotiate.'' Comments should be attached to the email as a Microsoft Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email. Comments received by the Commission may be viewed at the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/.*

Instructions: For detailed instructions on submitting comments, including requesting confidential treatment of 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 the Commission's website unless the commenter has requested confidential treatment.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

On June 16, 2022, the President signed the Ocean Shipping Reform Act of 2022 (''OSRA 2022'') into law.[1] OSRA 2022 amended various statutory provisions contained in Part A of Subtitle IV of Title 46, U.S. Code. In Section 7(d) of OSRA 2022, Congress directed the Federal Maritime Commission (Commission), in consultation with the United States Coast Guard (Coast Guard), to initiate a rulemaking to define unreasonable refusal to deal or negotiate with respect to vessel space accommodations provided by an ocean common carrier.[2] This definition would work in conjunction with 46 U.S.C. 41104(a)(10), which was amended by OSRA 2022 to prohibit a common carrier, either alone or in conjunction with any other person, directly or indirectly, from unreasonably refusing to deal or negotiate, including with respect to vessel space accommodations provided by an ocean common carrier.

OSRA 2022 amended Section 41104(a) by replacing ''may not'' with ''shall not'' to highlight the mandatory nature of the entire list of common carrier prohibitions. OSRA 2022 further clarified the specific prohibition in Section 41104(a)(10) on refusal to deal or negotiate, by noting that this prohibition includes dealings and negotiations ''with respect to vessel space accommodations provided by an ocean common carrier.'' The phrase ''ocean common carrier'' is currently defined as a vessel-operating common carrier (VOCC) in the Shipping Act.[3] However, other key terms and phrases in the Shipping Act as amended—''unreasonably,'' ''refuse to deal or negotiate,'' and ''vessel space accommodations''—are not defined.

The common carrier prohibitions in 46 U.S.C. 41104 do not distinguish between U.S. exports or imports. If adopted, this proposed rule would apply to both.[4] One basis, but not the only one, for some of the OSRA 2022 provisions were the challenges expressed by U.S. exporters trying to obtain vessel space to ship their products.[5] This export-focus arguably is also supported by the amendments to the ''Purposes'' section of the

[1] Public Law 117–146.

[2] Codified at 46 U.S.C. 41104(a)(10), as amended.

[3] See 46 U.S.C. 40102(18).

[4] Section 41104 applies generally to both VOCCs and non-vessel-operating common carriers (NVOCCs). However, the specific prohibition that is the subject of this proposed rule applies only to VOCCs.

[5] OSRA 2022 originated as S. 3580 and the bill is partially summarized as: ''This bill revises requirements governing ocean shipping to increase the authority of the Federal Maritime Commission (FMC) to promote the growth and development of U.S. exports through an ocean transportation system that is competitive, efficient, and economical.'' See *Congress.gov* summary for S. 3580 accessed July 10, 2022.

Commission's overall authority contained in 46 U.S.C. 40101. Specifically, Section 40101(4) ratified the purpose to ''promote the growth and development of United States exports through a competitive and efficient system for the carriage of goods by water.'' Congress further highlighted issues related to U.S. exports and imports in Section 9 of OSRA 2022. This section created 46 U.S.C. 41110 and the requirement for ocean common carriers to provide information to the Commission to enable the Commission to publish quarterly statistics on total import and export tonnage and the total loaded and empty 20-foot equivalent units (TEUs) [6] per vessel.

The Commission is also aware of the long-running U.S. trade deficit in goods (approximately $1.1 trillion in 2021) and the imbalance of imports and exports moving through U.S. ports in international trade. VOCCs, particularly those on the major east-west trade lanes between the U.S. and Asia and the U.S. and Europe, make operational decisions regarding the import and export goods they carry based on both economic and engineering considerations.

Export loads are, on average, heavier than import loads. This means that ships that come into U.S. ports largely laden with goods cannot safely load the same number of laden twenty-foot equivalent units (TEUs) when leaving the U.S. for foreign ports. A higher volume of laden exports will result in a lower vessel utilization rate on the outbound voyage from the U.S., resulting in fewer containers returning to where the equipment is in highest demand.

The economics of this trade imbalance results in very different revenue returns for import and export trades. U.S. imports feature higher value items on average and the rates that shippers pay to move these goods are historically higher than the rates paid to move U.S. exports. For example, the average rate of a 20-foot dry container moving from Shanghai to the U.S. West Coast was $1,740 in January 2019, $4,270 in January 2021, and $8,130 in January 2022. The corresponding rate for a 20-foot dry container moving from the U.S. West Coast to Shanghai was $730 in January 2019, $800 in January 2021, and $1,220 in January 2022.[7] Further, the inland destination of import containers is often not located near export customers, which requires equipment repositioning costs as well as the opportunity cost of unused equipment.

Prior to the pandemic, the ratio of import TEUs to export TEUs moving through U.S. ports across all trade lanes was over 50 percent; in April 2019 this ratio was 59 percent.[8] While containerized imports (measured in TEUs) increased steadily from May 2020 through April 2022, containerized exports declined over the same period, leading to an import-export TEU ratio of 39 percent in April 2022. Approximately 2.6 million TEUs of all U.S. imports moved through U.S. ports in April 2022, versus 1.98 million in April 2019. Total U.S. exports fell from 1.2 million TEUs in April 2019 to 950,178 in April 2022.[9]

Trade on some specific lanes is even more imbalanced. Trade from Asia to U.S. ports was characterized by an import/export TEU ratio of 39 percent in 2019, 36 percent in 2020, and 29 percent in 2021. The number dropped further to 26 percent in the first quarter of 2022. There is no homogeneity among carriers, even within trade lanes. On the Asia to U.S. trade lane, among the largest carriers, the ratio of exports to imports ranged from 27 percent to 52 percent in 2019 and ranged from 23 to 44 percent in 2021. Some carriers had very stable export to import ratios throughout the pandemic, though most saw a substantial drop in both the ratio of exports to imports and the absolute number of export containers moved, particularly between 2020 and 2021. This pattern has continued into the first quarter of 2022.

While some export markets have been affected by trade shocks, such as China's ban on solid waste imports and other items, these trade shocks do not fully explain the drop in total exports carried, neither do safety concerns over ship loading. Largely these changes can be explained by carrier operational decisions based on equipment availability and differential revenues from import and export transportation.[10] VOCCs should offer service in both directions within the trade lanes in which they operate in common carriage, regardless of trade lane, length of time active in the trade, or vessel size.

VOCCs typically maintain documented procedures and policies related to their operations. Through its recently revised VOCC audit program, Commission staff reviewed a number of well-documented operating procedures and policies specifically related to export cargo. Ocean common carriers operating in the U.S. trade should have a documented export strategy that enables the efficient movement of export cargo.[11] By way of illustration only, effective export strategies should be tailored to specific categories, such as programs, customers, markets, or commodities, and include documented policies on export business practices, including equipment provisioning, free time, outreach plans for contingencies and instances of imbalance in equipment availability, clearly defined and tracked performance metrics, identification of key export staff, and regular internal review of such policies. The Commission presumes that every ocean carrier operating in the U.S. market will have the ability to transport exports in addition to imports until further information is provided. In other words, an ocean carrier may not categorically exclude U.S. exports from a backhaul trip without showing how this action is reasonable.

Common carriers stated they have seen delays in the movement of export cargo due to a lack of mutual commitment between shippers and common carriers leading to cancellations of vessel space accommodation by either party, sometimes up to the day of sailing. This contributes to uncertainty for both the shippers and common carriers.

In addition to the challenges faced by exporters, there have also been reports of restricted access to equipment and vessel capacity for U.S. importers, particularly in the Trans-Pacific market. Access to import vessel space was impacted by congestion, equipment availability, and VOCC commercial decisions.[12]

Finally, it is the Commission's experience, and as detailed in the Commission's Fact Finding 29 Final Report,[13] that ocean common carriers and those with whom they contract to operate and load/unload their vessels,

[6] ''TEU'' stands for ''twenty-foot equivalent unit'' A standard marine shipping container measures 20′ long, 8′ wide, and 8.6′ tall. It is the standard unit of measurement of the capacity of a container ship. Twenty-Foot Equivalent Unit (TEU) Definition | UPS Supply Chain Solutions—United States.

[7] Data source: Drewry Container Freight Rate Insight, accessed June 21, 2022.

[8] Data source: PIERS, S&P Global Market Intelligence, accessed June 21, 2022.

[9] Data source: PIERS, S&P Global Market Intelligence, accessed June 21, 2022.

[10] *https://www.nytimes.com/2021/11/14/business/economy/farm-exports-supply-chain-ports.html.*

[11] This comports with OSRA 2022 generally, and specifically with the purpose in Section 41104(4) to ''promote the growth and development of United States exports.''

[12] *https://www.nytimes.com/2022/05/04/business/shipping-container-shortage.html.*

[13] *See generally,* Fact Finding Investigation 29 Final Report (F.M.C.), 2022 WL 2063347 at 11, 21–23, 26, 34–35 (noting difficulties experienced by non-carrier entities to obtain information such as earliest return dates and vessel scheduling information held by ocean common carriers).

have the best information on the ability of any particular vessel to accept cargo for import or export. Shippers generally do not have access to this information. Therefore, while the ultimate burden of proving a violation of Section 41104(a)(10) will remain with the complainant or the Commission's Bureau of Enforcement, Investigations, and Compliance (BEIC), this proposed rule includes a mechanism by which, upon a *prima facie* case of a violation of Section 41104(a)(10) being made, the burden shifts from the shipper (or the BEIC) to the ocean common carrier. The ocean common carrier must establish that its refusal to deal or negotiate with regard to vessel space, which in some cases results in a decision not to accept cargo, was reasonable. It is important to clarify that this proposed rule concerns the negotiations or discussions that lead up to a decision about whether an import or export load is accepted for transportation. There will undoubtedly be situations where an ocean common carrier and a shipper engage in good faith negotiations or discussions that do not result in the provision of transportation. However, as mentioned earlier in the preamble, a situation where an ocean common carrier categorically excludes U.S. exports from its backhaul trip will create a presumption of an unreasonable refusal to deal.

The Commission also notes that, consistent with Section 7(d) of OSRA 2022, it has consulted with the Coast Guard regarding the approach taken by the proposal. The Coast Guard offered no objections to the Commission's approach.

II. Summary of the Proposed Rule

This proposed rule describes how the Commission will consider private party and enforcement cases where a violation of 46 U.S.C. 41104(a)(10) is alleged, and relates to vessel space accommodation.[14] This proposed rule considers the common carriage roots of Section 41104(a)(10), as well as the overall competition basis of the Commission's authority.[15] The proposed rule first lists the elements necessary to establish a violation of Section 41104(a)(10), and then lays out the criteria the Commission will consider in evaluating the reasonableness of the refusal, including a burden shifting regime. In proposing this rule, the Commission acknowledges that it is impossible to regulate for every possible scenario and thus, cases that allege a violation of Section 41104(a)(10) will be factually driven and determined on a case-by-case basis.[16]

A. Elements

Pursuant to OSRA 2022 and Commission precedent, complainants must meet three elements to establish a violation for unreasonable refusal to deal or negotiate. The Commission proposes to continue to adhere to those elements, including in cases where the allegation relates to vessel space accommodations by an ocean common carrier. The elements are derived directly from the statutory text established in OSRA 1998 and are: (1) the respondent is a [ocean] common carrier under FMC jurisdiction; (2) the respondent refuses to deal or negotiate [with respect to vessel space accommodations]; and (3) that the refusal is unreasonable.[17]

B. Definitions

Neither the Shipping Act, as amended, nor OSRA 2022 define the phrase ''vessel space accommodations,'' and this phrase has not been interpreted in prior Commission matters. Therefore, the Commission proposes to define ''vessel space accommodations'' generally as space provided aboard a vessel of an ocean common carrier for laden containers being imported to, or exported from, the United States. This proposed definition is based on the common meaning of the words in the phrase as applied in ocean shipping.

The phrase ''refusal to deal or negotiate'' does not lend itself to a general definition and instead must be evaluated on a case-by-case basis. In general, a ''refusal to deal or negotiate'' presumes that in order for there to be a refusal, there first must be something to refuse. In other words, a party has attempted in good faith to engage in discussions with an ocean common carrier for the purposes of obtaining vessel space accommodations.[18] This good faith attempt is something more than one communication with no response or reply. The party must prove an actual refusal to even entertain the proposal or to engage in good faith discussions. Likewise, an ocean common carrier's refusal to deal or negotiate is only a violation if it is unreasonable, and as described below, this analysis will consider whether the ocean common carrier, in turn, gave good faith consideration to a party's efforts at negotiation.[19]

As noted above, reasonableness is necessarily a case-by-case determination, and the Commission will continue to adhere to that principle. However, the Commission believes it is necessary to provide, and OSRA 2022 requires, criteria that it will use to assess whether a refusal to deal or negotiate with respect to vessel space accommodation is reasonable. These criteria will be considered for the reasonableness evaluation for any given case.

Case law indicates that ''reasonableness'' of the refusal to deal or negotiate has historically been interpreted broadly in this context, with courts deferring to the Commission's reading of that term in administering its statutes and regulations.[20] The Commission has previously found reasonable those decisions that are connected to a legitimate business decision or motivated by legitimate transportation factors.[21] ''Reasonableness'' can be given its dictionary definition but is judged on a case-by-case basis, with particular attention paid to the relevant circumstances; the Commission has said that a just and reasonable practice is one otherwise lawful but not excessive and suited to the end in view.[22]

[14] The framework for this proposed rule is taken from Commission precedent on refusal to deal cases generally and could be applicable outside the ''vessel space accommodation'' context. This proposed rule, however, is solely focused on the OSRA 2022 requirements related to vessel space accommodations provided by an ocean common carrier.

[15] *See Orolugbagbe* v. *A.T.I., U.S.A., Inc.,* Informal Docket No. 1943(I) at *31–38.

[16] *See Canaveral Port Authority—Possible Violations of Section 10(b)(10),* 29 S.R.R. 1436, 1449 (FMC 2003). Note that Section 10(b)(10) is the former Shipping Act section for unreasonable refusals to deal or negotiate.

[17] *Id.* at 1448.

[18] *See Canaveral,* supra at 1450; *cf. Chilean Nitrate Sales Corp.* v. *San Diego Unified Port District,* 24 S.R.R. 1314 (1988).

[19] *See Canaveral, id. See also Maher Terminals, LLC* v. *PANYNJ,* 33 S.R.R. 821, 853 (F.M.C. 2014).

[20] In fact, the Commission has observed that ''[s]hipping law terms such as 'unjust,' or 'unreasonable,' are indeed broad and may plausibly admit consideration of a number of competing policies. It is well-established, however, that '[t]he primary objective of the shipping laws administered by the FMC is to protect the shipping industry's customers, not members of the industry.'" *New York Shipping Ass'n, Inc.* v. *Fed. Mar. Comm'n,* 854 F.2d 1338, 1374 (D.C. Cir. 1988) (quoting *Boston Shipping Ass'n* v. *FMC,* 706 F.2d 1231, 1238 (1st Cir.1983)).

[21] *See, e.g., Docking & Lease Agreement By & Between City of Portland, ME & Scotia Princess Cruises, Ltd.,* Order of Investigation & Hearing, 30 S.R.R. 377, 379 (F.M.C. 2004).

[22] In *Investigation of Free Time Practices—Port of San Diego,* 9 F.M.C. 525, 547 (1966), discussing Section 17 of the 1916 Act, the Commission noted:

''Reasonable'' may mean or imply ''just, proper,'' ''ordinary or usual,'' ''not immoderate or excessive,'' ''equitable,'' or ''fit and appropriate to the end in view.'' Black's Law Dictionary, Fourth Edition. It is by application to the particular situation or subject matter that words such as ''reasonable'' take on concrete and specific meaning. As used in Sec. 17 and as applied to terminal practices, we think that ''just and

Transportation-related factors can include, without limitation, the character of the cargo, vessel safety and stability, operational schedules, and the adequacy of facilities.[23] Generally, however, transportation-related factors relate to the characteristics of the cargo or vessel, not the status of the shipper.[24]

The Commission has found various situations that inform what refusal to deal entails. It has found that a common carrier must avoid shutting out any person or party for reasons not connected to legitimate transportation-related factors.[25] A common carrier must therefore give actual consideration to the other party's efforts or attempts at negotiation.[26] For example, a common carrier's repeated refusal to respond to email or telephone requests for negotiations over an extended period of time may be viewed as an unreasonable method of shutting another party out. Similarly, there must be an affirmative act by a party to deal or engage in negotiations with the common carrier. Commercial convenience alone is not a reasonable basis for a common carrier's refusal to deal or negotiate.[27] A common carrier granting special treatment to one party over another because that party is a regular customer is likewise likely to be viewed as unreasonable.[28]

The Commission also has a history of recognizing that it is appropriate to defer to a party's reasonable business decisions and not to substitute its business judgement for that of an entity conducting negotiations.[29] However, this precedent does not eliminate the Commission's responsibility to evaluate whether a party's decision-making practices resulted in a violation of the Shipping Act.[30] The Commission continues to acknowledge that its ''role is not to ensure that all interested parties get the same deal or make a certain profit. Rather, the Commission's role is to ensure that parties are not precluded from obtaining preferential treatment due to unreasonable or unjustly discriminatory reasons.'' [31] The Commission further recognizes that an ocean common carrier does not have a duty to grant a contract to every potential party. However, upon establishing its criteria for granting preferential terms to parties who are able to meet those specified terms, the ocean common carrier then has a duty under the Shipping Act to apply such criteria in a consistent and fair manner without differentiating based on illegitimate transportation factors.[32] An ocean common carrier may be viewed as having acted reasonably in exercising its business discretion to proceed with a certain arrangement over another by taking into account such factors as profitability and compatibility with its business development strategy.[33]

C. Shifting Burden From Complainant to Ocean Common Carrier

This proposed rule also sets forth a framework for an ocean common carrier to establish that its efforts to consider an entity's proposal or efforts at negotiation were done in good faith based on the criteria above. Once a complainant (or the BEIC) has established a *prima facie* case for each of the three elements above, the ocean common carrier will have the burden of production to show or justify why its refusal was reasonable. However, the ultimate burden of persuasion remains with the complainant to show that the refusal to deal or negotiate was unreasonable.[34] Further, the proposed rule includes a rebuttable presumption of unreasonableness for those situations where an ocean common carrier categorically excludes U.S. exports from its backhaul trips from the U.S.

The proposed rule includes a mechanism for an ocean common carrier to justify its actions through means of a certification. Although this proposal does not require a certification for this purpose, the Commission is considering whether to make certification by a U.S.-based compliance officer mandatory. The Commission also notes that, as a preliminary matter, any justification must be directly relevant and specific to the case at hand. Information or data that supports generalized propositions is not helpful in determinations of reasonableness for a specific case. A certification should document the ocean common carrier's decision in a specific matter, the good faith consideration of an entity's proposal or request to negotiate, and the specific criteria considered by the ocean common carrier to reach its decision. Certification in this context means that an appropriate U.S.-based representative of the ocean common carrier attests that the decision and supporting evidence is correct and complete. An appropriate representative can include the ocean common carrier's U.S.-based compliance officer.

As to all of the issues discussed in this document, the Commission seeks comment and supporting information regarding its proposal.

III. Public Participation

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.

You may submit your comments via email to the email address listed above under **ADDRESSES**. Please include the docket number associated with this notice of proposed rulemaking (NPRM) and the subject matter in the subject line of the email. Comments should be attached to the email as a Microsoft

reasonable practice'' most appropriately means a practice, otherwise lawful but not excessive and which is fit and appropriate to the end in view.

The justness or reasonableness of a practice is not necessarily dependent upon the existence of actual preference, prejudice or discrimination. It may cause none of these but still be unreasonable.

[23] For example, in *Dart Containerline Co.* v. *FMC,* 639 F.2d 808, 813 (D.C. App. 1981), in considering whether a diversion of cargo from its naturally tributary port was unreasonable, the Commission considered ''any operational difficulties or other transportation factors that bear upon the carrier's ability to provide direct service (*e.g.,* lack of cargo volume, inadequate facilities)[.]'' *See also Harborlite Corp.* v. *I.C.C.,* 613 F.2d 1088, 1100 (D.C. Cir. 1988), citing to *United States* v. *Illinois Central Railroad,* 263 U.S. 515, 524, 44 S.Ct. 189, 193, 68 L.Ed. 417 (1924), a case involving common-carriage principles, for the proposition that rate disparity is not unlawful if it is ''justified by the cost of the respective services, by their values, or by other transportation conditions''*; Credit Practices of Sea-land Service, Inc., and Nedlloyd Lijnen, B.v.,* 1990 WL 427463, at *8 (''Transportation or wharfage charges are dependent upon the particular commodity involved; the cost for shipping or storing bananas, for example, bears no relation to the fees levied for heavy industrial equipment''); *Grace Line, Inc.* v. *Federal Maritime Board,* 280 F.2d 790 (1960); *Investigation of Free Time Practices—Port of San Diego,* 9 F.M.C. 525, 541 (1966).

[24] *See, e.g., Credit Practices of Sea-land Service, Inc., and Nedlloyd Lijnen, B.v.,* 1990 WL 427463 (F.M.C. 1990); *Department of Defense and Military Sealift Command* v. *Matson Navigation Co.,* 19 F.M.C. 503 (1977).

[25] *New Orleans Stevedoring Co.* v. *Bd. of Commissioners of the Port of New Orleans,* 29 S.R.R. 1066, 1070 (F.M.C. 2002), *aff'd mem.,* 30 S.R.R. 261 (D.C. Cir. 2003).

[26] *Canaveral Port Authority—Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate,* 29 S.R.R. 1436 (F.M.C. 2003).

[27] *Investigation of Free Time Practices—Port of San Diego,* 9 F.M.C. 525, 541 (1966).

[28] *Chr. Salvesen & Co., Ltd.* v. *West Michigan Dock & Market Corp.,* 12 F.M.C. 135, 146 (1968).

[29] *See Seacon Terminals, Inc.* v. *The Port of Seattle,* 26 S.R.R. 886 (F.M.C. 1993); *New Orleans Stevedoring Co.* v. *Bd. of Commissioners of the Port of New Orleans,* 29 S.R.R. 1066 (F.M.C. 2002), aff'd mem., 30 S.R.R. 261 (D.C. Cir. 2003); *Canaveral Port Authority—Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate,* 29 S.R.R. 1436 (F.M.C. 2003); *Maher Terminals, LLC* v. *The Port Authority of New York and New Jersey,* 33 S.R.R. 821 (F.M.C. 2014).

[30] *Seacon Terminals* at 898–899; *New Orleans Stevedoring Co.,* at 1071.

[31] *Ceres Marine Terminals* v. *Maryland Port Administration,* 29 S.R.R. 356, 369 (F.M.C. 2001).

[32] *Id.* at 370.

[33] *Seacon Terminals* at 899.

[34] *Canaveral Port Authority—Possible Violations of Section 10(b)(10), Unreasonable Refusal to Deal or Negotiate,* 29 S.R.R. 1436 (F.M.C. 2003).

Word or text-searchable PDF document. Only non-confidential and public versions of confidential comments should be submitted by email.

You may also submit comments by mail to the address listed above under **ADDRESSES**.

How do I submit confidential business information?

The Commission will provide confidential treatment for identified confidential information to the extent allowed by law. If your comments contain confidential information, you must submit the following by mail to the address listed above under **ADDRESSES**:

- A transmittal letter requesting confidential treatment that identifies the specific information in the comments for which protection is sought and demonstrates that the information is a trade secret or other confidential research, development, or commercial information.
- A confidential copy of your comments, consisting of the complete filing with a cover page marked ''Confidential-Restricted,'' and the confidential material clearly marked on each page. You should submit the confidential copy to the Commission by mail.
- A public version of your comments with the confidential information excluded. The public version must state ''Public Version—confidential materials excluded'' on the cover page and on each affected page and must clearly indicate any information withheld. You may submit the public version to the Commission by email or mail.

Will the Commission consider late comments?

The Commission will consider all comments received before the close of business on the comment closing date indicated above under **DATES**. To the extent possible, we will also consider comments received after that date.

How can I read comments submitted by other people?

You may read the comments received by the Commission at the Commission's Electronic Reading Room or the Docket Activity Library at the addresses listed above under **ADDRESSES**.

IV. Rulemaking Analyses

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, provides that whenever an agency publishes a notice of proposed rulemaking under the Administrative Procedure Act (APA), 5 U.S.C. 553, the agency must prepare and make available for public comment a regulatory flexibility analysis describing the impact of the rule on small entities, unless the head of the agency certifies that the rulemaking will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 603–605. As the head of the agency, the Chairman, by voting to approve this NPRM, is certifying that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

The Commission's regulations categorically exclude certain rulemakings from any requirement to prepare an environmental assessment or an environmental impact statement because they do not increase or decrease air, water or noise pollution or the use of fossil fuels, recyclables, or energy. 46 CFR 504.4. The proposed rule describes the Commission's proposed criteria to determine whether an ocean common carrier has engaged in an unreasonable refusal to deal with respect to vessel space accommodations under 46 U.S.C. 41104(a)(10), and the elements necessary for a successful claim under that section. This rulemaking thus falls within the categorical exclusion for matters related solely to the issue of Commission jurisdiction and the exclusion for investigatory and adjudicatory proceedings to ascertain past violations of the Shipping Act. *See* 46 CFR 504.4(a)(20), (22). Therefore, no environmental assessment or environmental impact statement is required.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This proposed rule does not contain any collections of information as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *https://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 542

Administrative practice and procedure, Non-vessel-operating common carriers, Ocean common carrier, Refusal to deal or negotiate, Vessel-operating common carriers, Vessel space accommodations.

For the reasons set forth in the preamble, the Federal Maritime Commission proposes to add 46 CFR part 542 to read as follows:

PART 542—COMMON CARRIER PROHIBITIONS

Sec.

Authority: 5 U.S.C. 553; 46 U.S.C. 305, 40307, 40501–40503, 41101–41106, and 40901–40904; 46 CFR 515.23.

§ 542.1 Definition of Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier.

(a) *Purpose.* This part establishes the elements and definitions necessary for the Federal Maritime Commission (Commission) to apply 46 U.S.C. 41104(a)(10) with respect to vessel space accommodations provided by an ocean common carrier. This includes complaints brought before the Commission by a private party or enforcement cases brought by the Commission.

(b) *Definitions.* For the purposes of this section:

(1) *Transportation factors* means factors that encompass the genuine operational considerations underlying an ocean common carrier's practical ability to accommodate laden cargo for import or export, which can include, without limitation, vessel safety and stability, scheduling considerations, and the effect of blank sailings.

(2) *Unreasonable* means an ocean common carrier's refusal to deal or negotiate as prohibited under 46 U.S.C. 41104(a)(10). In evaluating an ocean common carrier's actions, the Commission will consider the following factors, without limitation, when deciding whether a refusal to deal or negotiate under paragraph (c)(3) of this section is unreasonable:

(i) Whether the ocean common carrier follows a documented export strategy that enables the efficient movement of export cargo;

(ii) Whether the ocean common carrier engaged in good-faith negotiations, and made business decisions that were subsequently applied in a fair and consistent manner;

(iii) The existence of legitimate transportation factors; and

(iv) Any other factors the Commission deems relevant.

(3) *Vessel space accommodations* means space provided aboard a vessel of an ocean common carrier for laden containers being imported to or exported from the United States.

(c) *Elements.* In order to establish a successful private party or enforcement claim under 46 U.S.C. 41104(a)(10) for refusal to deal or negotiate with respect to vessel space accommodations:

(1) The respondent must be an ocean common carrier as defined in 46 U.S.C. 40102;

(2) The respondent refuses to deal or negotiate, including with respect to vessel space accommodations; and

(3) The refusal is unreasonable.

(d) *Shifting of burden of production.* The burden to establish a violation of this part is with the complainant (or Bureau of Enforcement, Investigations, and Compliance). Once a complainant sets forth a *prima facie* case of a violation, the burden shifts to the ocean common carrier to justify that its actions were reasonable. This justification may take the form of a certification by an appropriate representative of the ocean common carrier to attest that the decision and supporting evidence is correct and complete. An appropriate representative can include the ocean common carrier's compliance officer.

§ 542.2 [Reserved]

By the Commission.

William Cody,

Secretary.

[FR Doc. 2022–20105 Filed 9–20–22; 8:45 am]

BILLING CODE 6730–02–P

Notices

Federal Register
Vol. 87, No. 182
Wednesday, September 21, 2022

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments are requested regarding; whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments regarding this information collection received by October 21, 2022 will be considered. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Agricultural Research Service

Title: Peer Review Related Forms for the Office of Scientific Quality Review.

OMB Control Number: 0518–0028.

Summary of Collection: The Office of Scientific Quality Review (OSQR) oversees peer review of Agricultural Research Service (ARS) research plans in response to Congressional mandate in the Agricultural Research Extension, and Education Reform Act of 1998 (Pub. L. 105–185, section 103d). The ARS peer-review panels are comprised of scientists who review current scientific research projects and who have expert knowledge in the fields being reviewed. The OSQR oversees the process of panel member selection, their personal documentation and certification for review, and the recording, and transmittal of panel reviews.

Need and Use of the Information: ARS will collect the information using the following forms:

ARS–199A, Ad Hoc Peer Review of ARES Research Project.

ARS–200PA, Confidentiality Agreement.

ARS–202P, Chair & Panelist Information Form.

ARS–209P, OSQR Expense Report.

ARS–223P Panel Recommendation on ARS Research Project Plan.

ARS–225P, Panelist Peer Review of ARS Research Project.

ARS–231 Reviewer Comment Form.

The information collected is used to manage the travel and stipend payments to panel reviewers and provide well-organized feedback to ARS's researchers about their projects. If information were not collected, ARS would not meet the administrative or legislative requirements of the Peer Review Process as mandated by Public Law 105–185; section 103(d).

Description of Respondents: Individuals or households.

Number of Respondents: 230.

Frequency of Responses: Reporting: Quarterly; Weekly; Annually.

Total Burden Hours: 2,460.

Ruth Brown,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–20391 Filed 9–20–22; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–20–2022]

Foreign-Trade Zone (FTZ) 46—Cincinnati, Ohio; Authorization of Production Activity; Patheon Pharmaceuticals, Inc. (Pharmaceutical Products); Cincinnati, Ohio

On May 19, 2022, Patheon Pharmaceuticals, Inc. submitted a notification of proposed production activity to the FTZ Board for its facilities within Subzone 46K, in Cincinnati, Ohio.

The notification was processed in accordance with the regulations of the FTZ Board (15 CFR part 400), including notice in the **Federal Register** inviting public comment (87 FR 31982, May 26, 2022). On September 16, 2022, the applicant was notified of the FTZ Board's decision that no further review of the activity is warranted at this time. The production activity described in the notification was authorized, subject to the FTZ Act and the FTZ Board's regulations, including section 400.14.

Dated: September 16, 2022.

Elizabeth Whiteman,

Acting Executive Secretary.

[FR Doc. 2022–20428 Filed 9–20–22; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Supply Chain Competitiveness: Notice of Public Meeting

AGENCY: International Trade Administration, U.S. Department of Commerce.

ACTION: Notice of open meeting.

SUMMARY: This notice sets forth the schedule and proposed topics of discussion for the upcoming public meeting of the Advisory Committee on Supply Chain Competitiveness (Committee).

DATES: The meeting will be held on October 12, 2022, from 11 a.m. to 4 p.m., Eastern Standard Time (EST).

ADDRESSES: The meeting will be held via Zoom.

FOR FURTHER INFORMATION CONTACT: Richard Boll, Office of Supply Chain, Professional & Business Services, International Trade Administration at Email: *richard.boll@trade.gov,* phone 571–331–0098.

SUPPLEMENTARY INFORMATION:

Background: The Committee was established under the discretionary authority of the Secretary of Commerce and in accordance with the Federal Advisory Committee Act (5 U.S.C. App.). It provides advice to the Secretary of Commerce on the necessary elements of a comprehensive policy approach to supply chain competitiveness and on regulatory policies and programs and investment priorities that affect the competitiveness of U.S. supply chains. For more information about the Committee visit: *https://www.trade.gov/acscc.*

Matters To Be Considered: Committee members are expected to continue discussing the major competitiveness-related topics raised at the previous Committee meetings, including supply chain resilience and congestion; trade and competitiveness; freight movement and policy; trade innovation; regulatory issues; finance and infrastructure; and workforce development. The Committee's subcommittees will report on the status of their work regarding these topics. The agenda may change to accommodate other Committee business. The Office of Supply Chain, Professional, and Business Services will post the final detailed agenda on its website, *https://www.trade.gov/acscc.* The transcript of the meeting will also be posted on the Committee website.

The meeting is open to the public and press on a first-come, first-served basis. Space is limited. Please contact Richard Boll, at *richard.boll@trade.gov,* for participation information.

Dated: September 15, 2022.

Heather Sykes,

Acting Executive Director for Services.

[FR Doc. 2022–20352 Filed 9–20–22; 8:45 am]

BILLING CODE 3510–DR–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries From Regional and Third-Country Fabric

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Publishing the new 12-month cap on duty- and quota-free benefits.

DATES: The new limitations become effective October 1, 2022.

FOR FURTHER INFORMATION CONTACT: Thomas Newberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 510–3982.

SUPPLEMENTARY INFORMATION: *Authority:* Title I, section 112(b)(3) of the Trade and Development Act of 2000 (TDA 2000), Public Law (Pub. L.) 106–200, as amended by division B, title XXI, section 3108 of the Trade Act of 2002, Public Law 107–210; section 7(b)(2) of the AGOA Acceleration Act of 2004, Public Law 108–274; division D, title VI, section 6002 of the Tax Relief and Health Care Act of 2006 (TRHCA 2006), Public Law 109–432, and section 1 of The African Growth and Opportunity Amendments (Pub. L. 112–163), August 10, 2012; Presidential Proclamation 7350 of October 2, 2000 (65 FR 59321); Presidential Proclamation 7626 of November 13, 2002 (67 FR 69459); and title I, section 103(b)(2) and (3) of the Trade Preferences Extension Act of 2015, Public Law 114–27, June 29, 2015.

Title I of TDA 2000 provides for duty- and quota-free treatment for certain textile and apparel articles imported from designated beneficiary sub-Saharan African countries. Section 112(b)(3) of TDA 2000 provides duty- and quota-free treatment for apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating in the United States or one or more beneficiary sub-Saharan African countries. This preferential treatment is also available for apparel articles assembled in one or more lesser-developed beneficiary sub-Saharan African countries, regardless of the country of origin of the fabric used to make such articles, subject to quantitative limitation. Public Law 114–27 extended this special rule for lesser-developed countries through September 30, 2025.

The AGOA Acceleration Act of 2004 provides that the quantitative limitation for the 12-month period beginning October 1, 2022 will be an amount not to exceed seven percent of the aggregate square meter equivalents of all apparel articles imported into the United States in the preceding 12-month period for which data are available. *See* section 112(b)(3)(A)(ii)(I) of TDA 2000, as amended by section 7(b)(2)(B) of the AGOA Acceleration Act of 2004. Of this overall amount, apparel imported under the special rule for lesser-developed countries is limited to an amount not to exceed 3.5 percent of all apparel articles imported into the United States in the preceding 12-month period. *See* section 112(b)(3)(B)(ii)(II) of TDA 2000, as amended by section 6002(a)(3) of TRHCA 2006. The Annex to Presidential Proclamation 7350 of October 2, 2000 directed CITA to publish the aggregate quantity of imports allowed during each 12-month period in the **Federal Register**.

For the one-year period, beginning on October 1, 2022, and extending through September 30, 2023, the aggregate quantity of imports eligible for preferential treatment under these provisions is 2,353,677,080 square meters equivalent. Of this amount, 1,176,838,540 square meters equivalent is available to apparel articles imported under the special rule for lesser-developed countries. Apparel articles entered in excess of these quantities will be subject to otherwise applicable tariffs.

These quantities are calculated using the aggregate square meter equivalents of all apparel articles imported into the United States, derived from the set of Harmonized System lines listed in the Annex to the World Trade Organization Agreement on Textiles and Clothing (ATC), and the conversion factors for units of measure into square meter equivalents used by the United States in implementing the ATC.

Jennifer Knight,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 2022–20335 Filed 9–20–22; 8:45 am]

BILLING CODE 3510–DR–P

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA), of the Office of Management and Budget (OMB), for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before October 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR–Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the ''Commission'' or ''CFTC'') by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0017, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx.*

Or by either of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.
- *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Adam Charnisky, Market Analyst, Division of Market Oversight, Commodity Futures Trading Commission, (312) 596–0630; email: *acharnisky@cftc.gov,* and refer to ''OMB Control No. 3038–0017.''

SUPPLEMENTARY INFORMATION:

Title: Market Surveys (OMB Control No. 3038–0017). This is a request for extension of a currently approved information collection.

Abstract: Under Commission Rule 21.02, 17 CFR 21.02, upon call by the Commission, information must be furnished related to futures or options positions held or introduced by futures commission merchants, members of contract markets, introducing brokers, and foreign brokers and, for options positions, by each reporting market. This rule is designed to assist the Commission in prevention of market manipulation and is promulgated pursuant to the Commission's rulemaking authority contained in section 8a of the Commodity Exchange Act, 7 U.S.C. 12a (2010).

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. On July 12, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 41293 (''60-Day Notice''). The Commission did not receive any relevant comments on the 60-Day Notice.

Burden Statement: The Commission is updating its estimate of the burden for this collection for Market Surveys (OMB Control No. 3038–0017). The Commission estimates the burden of this collection of information as follows:

Estimated Number of Respondents: 100.

Estimated Average Burden Hours per Respondent: 1.75 hours.

Estimated Total Annual Burden Hours: 175 hours.

Frequency of Collection: Annually.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September 16, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–20466 Filed 9–20–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

COMMODITY FUTURES TRADING COMMISSION

Agency Information Collection Activities Under OMB Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (PRA), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Information and Regulatory Affairs (OIRA) of the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected costs and burden.

DATES: Comments must be submitted on or before October 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of this notice's publication to OIRA, at *https://www.reginfo.gov/public/do/PRAMain.* Please find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the website's search function. Comments can be entered electronically by clicking on the ''comment'' button next to the information collection on the ''OIRA Information Collections Under Review'' page, or the ''View ICR—Agency Submission'' page. A copy of the supporting statement for the collection of information discussed herein may be obtained by visiting *https://www.reginfo.gov/public/do/PRAMain.*

In addition to the submission of comments to *https://Reginfo.gov* as indicated above, a copy of all comments submitted to OIRA may also be submitted to the Commodity Futures Trading Commission (the Commission or CFTC) by clicking on the ''Submit Comment'' box next to the descriptive entry for OMB Control No. 3038–0099, at *https://comments.cftc.gov/FederalRegister/PublicInfo.aspx,* or by any of the following methods:

- *Mail:* Christopher Kirkpatrick, Secretary of the Commission, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581.

• *Hand Delivery/Courier:* Same as Mail above.

All comments must be submitted in English, or if not, accompanied by an English translation. Comments submitted to the Commission should include only information that you wish to make available publicly. If you wish the Commission to consider information that you believe is exempt from disclosure under the Freedom of Information Act, a petition for confidential treatment of the exempt information may be submitted according to the procedures established in § 145.9 of the Commission's regulations.[1] The Commission reserves the right, but shall have no obligation, to review, pre-screen, filter, redact, refuse or remove any or all of your submission from *https://www.cftc.gov* that it may deem to be inappropriate for publication, such as obscene language. All submissions that have been redacted or removed that contain comments on the merits of the ICR will be retained in the public comment file and will be considered as required under the Administrative Procedure Act and other applicable laws, and may be accessible under the Freedom of Information Act.

FOR FURTHER INFORMATION CONTACT: Roger Smith, Associate Chief Counsel, Division of Market Oversight, Commodity Futures Trading Commission, (202) 418–5344; email: *RSmith@CFTC.gov,* or Rebecca Mersand, Paralegal Specialist, Division of Market Oversight, Commodity Futures Trading Commission, 202–941–8910; email: *RMersand@CFTC.gov,* and refer to OMB Control No. 3038–0099.

SUPPLEMENTARY INFORMATION:

Title: Process for a Swap Execution Facility or Designated Contract Market to Make a Swap Available to Trade (OMB Control No. 3038–0099). This is a request for extension of a currently approved information collection.

Abstract: The collection of information is needed to help determine which swaps should be subject to the trade execution requirement under section 2(h)(8) of the Commodity Exchange Act pursuant to section 723 of the Dodd-Frank Wall Street Reform and Consumer Protection Act. A SEF or DCM that submits a determination that a swap is available to trade must address at least one of several factors to demonstrate that the swap is suitable for trading pursuant to the trade execution requirement. The Commission uses the collection of information to facilitate the application of the trade execution requirement and the requirements associated with methods of execution under parts 37 and 38 of the Commission's regulations.

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. On July 13, 2022, the Commission published in the **Federal Register** notice of the proposed extension of this information collection and provided 60 days for public comment on the proposed extension, 87 FR 41674 (60-Day Notice). The Commission did not receive any substantive comments on the 60-Day Notice.

Burden Statement: The Commission estimates the burden of reviewing the prescribed factors and data to make a determination for this collection to be 16 hours per response.

Respondents/Affected Entities: SEFs, DCMs.

Estimated Number of Respondents: 5.

Estimated Average Burden Hours per Respondent: 16.

Estimated Total Annual Burden Hours: 80.

Frequency of Collection: On occasion.

There are no capital costs or operating and maintenance costs associated with this collection.

(Authority: 44 U.S.C. 3501 *et seq.*)

Dated: September 16, 2022.

Robert Sidman,

Deputy Secretary of the Commission.

[FR Doc. 2022–20465 Filed 9–20–22; 8:45 am]

BILLING CODE 6351–01–P

[1] 17 CFR 145.9.

DEPARTMENT OF DEFENSE

Office of the Secretary

Uniform Formulary Beneficiary Advisory Panel; Notice of Federal Advisory Committee

AGENCY: Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the Uniform Formulary Beneficiary Advisory Panel (UF BAP) will take place.

DATES: Open to the public Thursday, September 29, 2022, 10 a.m.–1 p.m. (eastern standard time).

ADDRESSES: The meeting will be held telephonically or via conference call. The phone number for the remote access on September 29, 2022 is: CONUS: 1–800–369–2046; OCONUS: 1–203–827–7030; Participant Code: 8546285.

These numbers and the dial-in instructions will also be posted on the UF BAP website at: *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Pharmacy-Operations/BAP.*

FOR FURTHER INFORMATION CONTACT: Designated Federal Official (DFO) Colonel Paul J. Hoerner, USAF, 703–681–2890 (voice), *dha.ncr.j-6.mbx.baprequests@mail.mil* (email). Mailing address is 7700 Arlington Boulevard, Suite 5101, Falls Church, VA 22042–5101. Website: *https://www.health.mil/Military-Health-Topics/Access-Cost-Quality-and-Safety/Pharmacy-Operations/BAP.* The most up-to-date changes to the meeting agenda can be found on the website.

SUPPLEMENTARY INFORMATION: This meeting is being held under the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix, as amended), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 CFR 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the Designated Federal Officer, the Uniform Formulary Beneficiary Advisory Panel was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its September 29, 2022 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

Purpose of the Meeting: The Panel will review and comment on recommendations made to the Director, Defense Health Agency, by the Pharmacy and Therapeutics Committee, regarding the Uniform Formulary.

Agenda:

1. 10:00 a.m.–10:10 a.m. Sign In for UF BAP members.

2. 10:10 a.m.–10:40 a.m. Welcome and Opening Remarks.

a. Welcome, Opening Remarks, and Introduction of UF BAP Members by Col Paul J. Hoerner, DFO, UF BAP.

b. Opening Remarks by UF BAP Co-Chair Senior Chief Petty Officer Jon R. Ostrowski, Non-Commissioned Officers Association.

c. Introductory Remarks by Dr Edward Vonberg, Chief, Formulary Management Branch.

d. Public Written Comments by Dr Edward VonBerg, Chief, Formulary Management Branch.

3. 10:40 a.m.–11:45 a.m. Scheduled Therapeutic Class Reviews.

a. Overactive Bladder Agents—Beta 3 Adrenergic Agonists Subclass.

b. Antidepressants and Non-Opioid Pain Syndrome Agents—Selective Serotonin Reuptake Inhibitors (SSRIs), Serotonin-Norepinephrine Reuptake Inhibitors (SNRIs), Norepinephrine-Dopamine Reuptake Inhibitors (NDRIs), and Gamma-Aminobutyric Acid Analogs (GABAs) Subclasses.

4. 11:45 a.m.–12:30 p.m. Newly Approved Drugs Review.

5. 12:30 p.m.–12:45 p.m. Pertinent Utilization Management Issues.

* Note that UF BAP discussion and vote will follow each section.

6. 12:45 p.m.–1:00 p.m. Closing remarks.

a. Closing Remarks by UF BAP Co-Chair Senior Chief Petty Officer Jon R. Ostrowski.

b. Closing Remarks by Col Paul J Hoerner, DFO, UF BAP.

Meeting Accessibility: Pursuant to section 10(a)(1) of the FACA and 41 CFR 102–3.140 through 102–3.165, and subject to the availability of phone lines, this meeting is open to the public. Telephone lines are limited and available to the first 220 people dialing in. There will be 220 lines total: 200 domestic and 20 international, including leader lines.

Written Statements: Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of FACA, interested persons or organizations may submit written statements to the UF BAP about its mission and/or the agenda to be addressed in this public meeting. Written statements should be submitted to the UF BAP's DFO. The DFO's contact information can be found in the **FOR FURTHER INFORMATION CONTACT** section of this notice. Written comments or statements must be received by the UF BAP's DFO at least five (5) calendar days prior to the meeting so they may be made available to the UF BAP for its consideration prior to the meeting. The DFO will review all submitted written statements and provide copies to UF BAP.

Dated: September 16, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–20416 Filed 9–20–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF ENERGY

DOE/Biological and Environmental Research Advisory Committee

AGENCY: Office of Science, Department of Energy.

ACTION: Notice of open virtual meeting.

SUMMARY: This notice announces a meeting of the DOE Biological and Environmental Research Advisory Committee (BERAC). The Federal Advisory Committee Act requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, October 13, 2022; 11 a.m.–5:30 p.m. EDT, Friday, October 14, 2022; 11 a.m.–5:30 p.m. EDT.

ADDRESSES: This meeting will be held digitally via webcast using Zoom. Instructions for Zoom, as well as any updates to meeting times or meeting agenda, can be found on the BERAC meeting website at: *https://science.osti.gov/ber/berac/Meetings.*

FOR FURTHER INFORMATION CONTACT: Dr. Tristram West, Designated Federal Officer, U.S. Department of Energy, Office of Science, Office of Biological and Environmental Research, SC–33/Germantown Building, 1000 Independence Avenue SW, Washington, DC 20585–1290. Telephone: 301–903–5155; fax (301) 903–5051 or email: *tristram.west@science.doe.gov.*

SUPPLEMENTARY INFORMATION:

Purpose of the Committee: To provide advice on a continuing basis to the Director, Office of Science of the Department of Energy, on the many complex scientific and technical issues that arise in the development and implementation of the Biological and Environmental Research Program.

Tentative Agenda:

- News from the Office of Biological and Environmental Research
- News from the Biological Systems Science and Earth and Environmental Systems Sciences Divisions
- Conclusions from the BERAC Subcommittee on International Benchmarking
- Response to the BERAC Committee of Visitors on BSSD funding processes
- Briefings from recent Workshops
- BERAC business and discussion
- Public comment

Public Participation: The two-day meeting is open to the public. If you would like to file a written statement with the Committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of the items on the agenda, please send an email request to both Tristram West at *tristram.west@science.doe.gov* and Andrew Flatness at *andrew.flatness@science.doe.gov.* You must make your request for an oral statement at least five business days before the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The Chairperson of the Committee will conduct the meeting to facilitate the orderly conduct of business. Public comment will be limited to five minutes each.

Minutes: The minutes of this meeting will be available for public review and copying within 45 days at the BERAC website: *https://science.osti.gov/ber/berac/Meetings/BERAC-Minutes.*

Signing Authority

This document of the Department of Energy was signed on September 15, 2022, by Shena Kennerly, Acting Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on September 15, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–20344 Filed 9–20–22; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER21–83–003.

Applicants: Potomac Electric Power Company, PJM Interconnection, L.L.C.

Description: Compliance filing: Potomac Electric Power Company submits tariff filing per 35: Potomac Electric Power Co. submits Compliance Filing in ER21–83 to be effective 1/1/2021.

Filed Date: 9/15/22.

Accession Number: 20220915–5170.

Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: ER22–2393–001.

Applicants: Northern Indiana Public Service Company LLC.

Description: Tariff Amendment: TDSIC WVPA CIAC Agreement to be effective 7/29/2022.

Filed Date: 9/15/22.

Accession Number: 20220915–5105.

Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: ER22–2856–000.

Applicants: Southwest Power Pool, Inc.

Description: § 205(d) Rate Filing: 3215R13 People's Electric Cooperative NITSA NOAs to be effective 10/1/2022.

Filed Date: 9/15/22.

Accession Number: 20220915–5024.

Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: ER22–2857–000.

Applicants: Tampa Electric Company.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule No. 6 with DEF to be effective 11/22/2022.

Filed Date: 9/15/22.

Accession Number: 20220915–5068.

Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: ER22–2858–000.

Applicants: Ball Hill Wind Energy, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate, Waivers and Authority to be effective 10/14/2022.

Filed Date: 9/15/22.

Accession Number: 20220915–5109.

Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: ER22–2859–000.

Applicants: Bluestone Wind, LLC.

Description: Baseline eTariff Filing: Application for Market-Based Rate, Waivers and Authority to be effective 11/18/2022.

Filed Date: 9/15/22.

Accession Number: 20220915–5112.

Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: ER22–2860–000.

Applicants: Central Hudson Gas & Electric Corporation.

Description: Compliance filing: Certificate of Concurrence Filing to be effective 8/22/2022.

Filed Date: 9/15/22.

Accession Number: 20220915–5153.

Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: ER22–2861–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA No. 3752; Queue No. None (consent_amend) to be effective 12/31/2013.

Filed Date: 9/15/22.

Accession Number: 20220915–5160.

Comment Date: 5 p.m. ET 10/6/22.

Docket Numbers: ER22–2862–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Amendment to ISA No. 2987, Queue No. P59 (consent_amend) to be effective 4/4/2018.

Filed Date: 9/15/22.

Accession Number: 20220915–5199.

Comment Date: 5 p.m. ET 10/6/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 15, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20399 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following electric corporate filings:

Docket Numbers: EC22–115–000.

Applicants: MN8 Energy LLC.

Description: MN8 Energy LLC submits supplement to Joint Application for Authorization Under Section 203 of the Federal Power Act.

Filed Date: 9/12/22.

Accession Number: 20220912–5207.

Comment Date: 5 p.m. ET 9/22/22.

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG22–221–000.

Applicants: DLS—Jean Duluth Project Co, LLC.

Description: DLS—Jean Duluth Project Co, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/14/22.

Accession Number: 20220914–5097.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: EG22–222–000.

Applicants: DLS—Laskin Project Co, LLC.

Description: DLS—Laskin Project Co, LLC submits Notice Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/14/22.

Accession Number: 20220914–5098.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: EG22–223–000.

Applicants: DLS—Sylvan Project Co, LLC.

Description: DLS—Sylvan Project Co, LLC submits Notice of Self-Certification of Exempt Wholesale Generator Status.

Filed Date: 9/14/22.

Accession Number: 20220914–5101.

Comment Date: 5 p.m. ET 10/5/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER22–2443–001.

Applicants: Virginia Electric and Power Company, PJM Interconnection, L.L.C.

Description: Tariff Amendment: Virginia Electric and Power Company submits tariff filing per 35.17(b): Dominion submits Ministerial Amendment to Effective Date in ER22–2443 to be effective 1/1/2021.

Filed Date: 9/14/22.

Accession Number: 20220914–5056.

Comment Date: 5 p.m. ET 9/26/22.

Docket Numbers: ER22–2703–000.

Applicants: Pattern Energy Management Services LLC.

Description: Supplement to August 23, 2022, tariff filing per 35.12: Application for MBR Authorization and Waivers to be effective 8/24/2022 of Pattern Energy Management Services LLC.

Filed Date: 9/7/22.

Accession Number: 20220907–5118.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2845–000.

Applicants: New York Independent System Operator, Inc., Central Hudson Gas & Electric Corporation.

Description: § 205(d) Rate Filing: New York Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: NYISO-Central Hudson Joint 205 of Amended & Restated TPIA2605—CEII to be effective 9/1/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5032.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2846–000.

Applicants: PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Original Upgrade CSA, SA No. 6596; Queue No. MISO J878 to be effective 8/15/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5048.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2847–000.

Applicants: NextEra Energy Transmission MidAtlantic Indiana, Inc., Northern Indiana Public Service Company LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: NextEra Energy Transmission MidAtlantic Indiana, Inc. submits tariff filing per 35.13(a)(2)(iii: NEET MidAtlantic and NIPSCO submit SA No. 6598 CAA to be effective 8/25/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5050.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2848–000.

Applicants: Nevada Power Company.

Description: § 205(d) Rate Filing: Service Agreement No. 20–00037, Amended Restated EPC Agmt NPC and 302PN 8me LLC to be effective 11/14/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5062.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2849–000.

Applicants: Mid-Atlantic Interstate Transmission, LLC, PJM Interconnection, L.L.C.

Description: § 205(d) Rate Filing: Mid-Atlantic Interstate Transmission, LLC submits tariff filing per 35.13(a)(2)(iii: Mid-Atlantic Interstate Transmission submits Revised IA SA No. 4577 to be effective 11/14/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5063.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2850–000.

Applicants: Fall River Solar, LLC.

Description: Baseline eTariff Filing: Fall River Solar MBR Application Filing to be effective 9/15/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5074.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2851–000.

Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.

Description: Tariff Amendment: Alabama Power Company submits tariff filing per 35.15: Happy Hollow Solar Center LGIA Termination Filing to be effective 9/14/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5083.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2852–000.

Applicants: Tri-State Generation and Transmission Association, Inc.

Description: § 205(d) Rate Filing: Amendment to Rate Schedule FERC No. 45 to be effective 11/14/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5087.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2853–000.

Applicants: International Transmission Company.

Description: § 205(d) Rate Filing: Filing of a CIAC Agreement with DTE to be effective 11/14/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5092.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2854–000.

Applicants: Basin Electric Power Cooperative.

Description: Tariff Amendment: Basin Electric Notice of Cancellation of Service Agreement Nos. 5, 21, 46 & 47 to be effective 8/17/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5102.

Comment Date: 5 p.m. ET 10/5/22.

Docket Numbers: ER22–2855–000.

Applicants: Public Service Company of Oklahoma.

Description: § 205(d) Rate Filing: PSO–AEPOTC–WFEC Doxey Delivery Point Agreement to be effective 8/19/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5114.

Comment Date: 5 p.m. ET 10/5/22.

Take notice that the Commission received the following electric securities filings:

Docket Numbers: ES22–69–000.

Applicants: GridLiance High Plains LLC.

Description: Application Under Section 204 of the Federal Power Act for Authorization to Issue Securities of GridLiance High Plains LLC.

Filed Date: 9/13/22.

Accession Number: 20220913–5150.

Comment Date: 5 p.m. ET 10/4/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20355 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC22–28–000]

Commission Information Collection Activities (FERC–511); Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collection and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collection FERC–511 (Transfer of Hydropower License).

DATES: Comments on the collection of information are due November 21, 2022.

ADDRESSES: You may submit your comments (identified by Docket No. IC22–28–000) by one of the following methods:

Electronic filing through *https://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:

○ *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.

○ *Hand (including courier) delivery:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission,12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *https://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *https://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Ellen Brown may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–8663.

SUPPLEMENTARY INFORMATION:

Title: FERC–511, Transfer of Hydropower License.[1]

OMB Control No.: 1902–0069.

Type of Request: Three-year extension of the FERC–511 information collection requirements with no changes to the current reporting and recordkeeping requirements.

Abstract: The purpose of FERC–511 is to implement the information collections pursuant to section 8 of the Federal Power Act (FPA) and Code of Federal Regulations (CFR) under title 18 CFR part 9 (Transfer of License) sections 9.1 through 9.3 and section 131.20 of the 18 CFR. Section 8 of the FPA stipulates that no voluntary transfer of any license, or the rights thereunder granted, shall be made without the written approval of the Commission. Sections 9.1 through 9.3 of the 18 CFR states that any licensee (transferor) desiring to transfer a license and the person, association, corporation, State, or municipality (transferee) desiring to acquire the same must jointly file an application for Commission's approval of such transfer.

The application must show that the transfer is in the public interest and provide the qualifications of the transferee to hold such license and to operate the property under the license. Approval of the transfer is contingent upon the transfer of title to the properties under the license, transfer of all project files including all dam safety related documents, and delivery of all license instruments. The application for approval of transfer of license must conform to the requirements of sections 131.20 of the 18 CFR, which must include the following: application statement by all parties; verification statement; proof of citizenship; evidence of compliance by the transferor with all applicable state laws or how the transferee proposes to comply; and qualifications of the transferee to hold the license and operate the project.

The Commission uses the information collected under the requirements of FERC–511 to implement the statutory provisions of sections 8 of the Federal Power Act (FPA) and 18 CFR part 9 and 18 CFR 131.20 of the Commission's regulations. The information filed with the Commission is in the format of a written application for transfer of license, executed jointly by the parties of the proposed transfer. The Commission uses the information collected to determine the qualifications of the proposed transferee to hold the license and to prepare the transfer of the license order to make its determination.

Type of Respondent: Existing Hydropower Project Licensees and those entities wishing to have a Hydropower Project License transferred to them.

Estimate of Annual Burden:[2] The Commission estimates the annual burden and cost[3] for the information collection as follows.

FERC–511—TRANSFER OF HYDROPOWER LICENSE

	Number of respondents	Annual number of responses per respondent	Total number of responses	Average burden hrs. & cost per response	Total annual burden hours & total annual cost	Cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1)
Hydropower Project Licensees.	[4] 13	1	13	40 hrs.; $3,640	520 hrs.; $47,320	[5] $3,640

Comments: Commentsare invited on: (1) whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: September 15, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–20411 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meetings

The following notice of meeting is published pursuant to section 3(a) of the government in the Sunshine Act (Pub. L. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: September 22, 2022, 10:00 a.m.

PLACE: Room 2C, 888 First Street NE, Washington, DC 20426.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: Agenda.

* *Note*—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Kimberly D. Bose, Secretary, Telephone (202) 502–8400.

For a recorded message listing items struck from or added to the meeting, call (202) 502–8627.

This is a list of matters to be considered by the Commission. It does not include a listing of all documents relevant to the items on the agenda. All public documents, however, may be viewed on line at the Commission's website at *https://elibrary.ferc.gov/eLibrary/search* using the eLibrary link.

[1] The title is being updated to Transfer of Hydropower License (rather than Transfer of Electric License).

[2] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a federal agency. See 5 CFR 1320 for additional information on the definition of information collection burden.

[3] The FERC 2022 average salary plus benefits for one FERC full-time equivalent (FTE) is $188,922/year (or $91.00/hour). Commission staff estimates that the industry's skill set (wages and benefits) for completing and filing FERC–511 is comparable to the Commission's skill set.

[4] The number of respondents has been reduced from 46 to 13 for this renewal; this is based on the average number of filings made in the past three years.

[5] The cost per respondent has not actually increased between this renewal and the previous renewal, but a mathematical error has been corrected. We estimate the cost per response to be the same: $3,640.

1093RD—MEETING, OPEN MEETING

[September 22, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
		ADMINISTRATIVE
A–1	AD22–1–000	Agency Administrative Matters.
A–2	AD22–2–000	Customer Matters, Reliability, Security and Market Operations.
		ELECTRIC
E–1	RM22–19–000	Incentives for Advanced Cybersecurity Investment.
	RM21–3–000	Cybersecurity Incentives.
E–2	RM16–17–001	Data Collection for Analytics and Surveillance and Market-Based Rate Purposes.
	ER16–775–000	3 Phases Renewables Inc.
	ER11–2649–000	3C Solar LLC.
	ER10–269–000	3Degrees Group, Inc.
	ER20–1477–000	3PR Trading, Inc.
	ER13–2260–000	ABC Energy, LLC.
	ER17–1151–000	ADG Group Inc.
	ER06–743–000	Air Liquide.
	ER12–2600–000	American Illuminating Company, LLC.
	ER03–769–000	American PowerNet Management, LP.
	ER13–415–000	Anahau Energy, LLC.
	ER04–226–000	APN Starfirst, LP.
	ER07–1287–001	Apple Group.
	ER17–1594–002	Archer Energy, LLC.
	ER17–923–001	Ashley Energy LLC.
	ER09–1689–000	Backyard Farms Energy LLC.
	ER15–2693–002	Baltimore Power Company LLC.
	ER12–2233–000	Berry Petroleum Company, LLC.
	ER16–371–000	BioUrja Power, LLC.
	ER13–48–000	BITH Energy, Inc.
	ER13–29–000	BITH Solar 1, LLC.
	ER15–1687–001	Blue Cube Operations LLC.
	ER19–1826–001	Bolt Energy, LLC.
	ER18–1977–001	Brantley Farm Solar, LLC.
	ER13–1403–000	Bridgeport Fuel Cell, LLC.
	ER18–2217–000	Buckleberry Solar, LLC.
	ER15–2541–000	Burgess Capital LLC.
	ER20–711–000	Cambria Wind, LLC.
	ER14–407–001	Capacity Markets Partners, LLC.
	ER97–4273–000	Cargill Power Markets, LLC.
	ER19–288–000	Carson Hybrid Energy Storage LLC.
	ER97–2872–000	Central Hudson Gas & Electric Corporation.
	ER10–636–000	Centre Lane Trading Ltd.
	ER98–3774–000	Choctaw Generation Limited Partnership.
	ER13–357–001	Cirrus Wind 1, LLC.
	ER20–2654–000	Clear Power LLC.
	ER17–808–001	Clearview Electric, Inc.
	ER11–3336–000	Command Power Corp.
	ER12–1472–000	Conch Energy Trading, LLC.
	ER14–1858–000	Consolidated Power Co., LLC.
	ER08–371–000	Cooperative Energy Incorporated (An Electric Membership Corporation).
	ER09–560–000	Covanta Maine, LLC.
	ER15–631–000	Crawfordsville Energy, LLC.
	ER16–722–000	Current Power & Gas Inc.
	ER21–251–001	Degrees3 Transportation Solutions, LLC.
	ER09–1645–000	Devonshire Energy LLC.
	ER21–2535–000	Dichotomy Power Maine, LLC.
	ER15–1810–000	Dillon Power, LLC.
	ER11–2021–001	Domtar A.W. LLC.
	ER11–2020–000	Domtar Paper Company, LLC.
	ER17–2475–000	Durgin and Crowell Lumber Company, Inc.
	ER13–797–000	EBRFUEL, LLC.
	ER95–428–000	El Paso Marketing Company, L.L.C.
	ER13–1646–001	Electron Hydro, LLC.
	ER10–2891–000	Elektrisola, Inc.
	ER17–21–000	Elevation Energy Group, LLC.
	ER99–3411–000	Energy Cooperative of New York, Inc.
	ER08–425–000	Energy Exchange Direct, LLC.
	ER11–2730–000	Energy Exchange International, LLC.
	ER18–155–000	EnPowered.
	ER91–569–000	Entergy Arkansas, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc.
		EONY Generation Limited.

1093RD—MEETING, OPEN MEETING—Continued

[September 22, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
	ER00–136–000	ExxonMobil Baton Rouge Complex.
	ER06–771–000	ExxonMobil Beaumont Complex.
	ER06–772–000	ExxonMobil LaBarge Shute Creek Treating Facility.
	ER06–773–000	Falcon Energy, LLC.
		FC Energy Services Company, LLC.
	ER09–1075–000	FOREST INVESTMENT GROUP, LLC.
	ER07–1247–002	Fox Creek Farm Solar, LLC.
	ER05–1079–000	Fred Meyer Stores, Inc.
	ER18–2194–001	Full Circle Renewables, LLC.
	ER11–3615–000	Garland Power Company.
	ER11–4536–000	Gateway Energy Marketing.
	ER10–2954–000	GBC Metals LLC.
	ER11–4718–001	Gichi Noodin Wind Farm, LLC.
	ER11–2825–000	Global Energy, LLC.
	ER20–2087–000	Griffiss Utility Services Corporation.
	ER12–346–000	GUSC Energy Inc.
	ER11–4672–000	Hammond Belgrade Energy, LLC.
	ER12–2203–001	Harvard Dedicated Energy Limited.
	ER10–2890–000	Hawkeye Energy Greenport, LLC.
	ER05–658–000	Helvetia Solar, LLC.
	ER03–833–000	High Liner Foods Incorporated.
	ER12–2405–001	High Lonesome Mesa, LLC.
	ER12–795–001	Hill Energy Resource & Services, LLC.
	ER09–712–000	Holcim (US) Inc.
	ER12–1613–001	Homer City Generation, L.P.
	ER11–3053–001	Hoopeston Wind, LLC.
	ER13–55–000	ICC Energy Corporation.
	ER14–2956–004	IEP Power Marketing LLC.
	ER11–4489–000	Industrial Assets, Inc.
	ER06–1007–000	Innovative Solar 54, LLC.
	ER18–1289–000	Innovative Solar 67, LLC.
	ER19–117–001	Jether Energy Research, LTD.
	ER19–118–001	Keni Energy LLC.
	ER16–89–000	KEPCO Solar of Alamosa LLC.
	ER17–1578–000	Kingfisher Wind, LLC.
	ER11–4050–000	Kiyoshi Technologies, LLC.
	ER15–1308–000	Kleantricity, Inc.
	ER15–1609–000	KODA Energy, LLC.
	ER12–1524–000	Lazarus Energy Holdings, LLC.
	ER09–107–000	LE Energy, LLC.
	ER08–848–000	Light Power & Gas LLC.
	ER16–1788–002	Lockport Energy Associates, L.P.
	ER21–1768–000	Long Island Solar Farm, LLC.
	ER07–1249–002	Longreach Energy, LLC.
	ER11–3589–000	Major Lending, LLC.
	ER15–2470–000	Manifold Energy Inc.
	ER05–744–000	Mansfield Power and Gas, LLC.
	ER18–1549–000	Maple Analytics, LLC.
	ER13–2255–000	Marengo Battery Storage, LLC.
	ER10–2541–000	Massie Power LLC.
	ER19–610–000	Mega Energy Holdings LLC.
	ER08–23–001.	
	ER13–1298–001	Mitsui & Co. Energy Marketing and Services (USA), Inc.
		MMP SCO, L L C.
	ER19–2425–001	Mobile Energy LLC.
		Monterey Consulting Associates, Inc.
	ER16–1254–002	Moore Energy, LLC.
	ER01–480–000	Myotis Power Marketing LLC.
	ER11–4603–000	National Gas & Electric, LLC.
	ER15–612–000	Nevada Gold Energy LLC.
	ER13–1249–002	New England Wire Technologies, Corp.
	ER15–2704–000	New Hope Power Partnership.
	ER06–1055–000	New York Industrial Energy Buyers, LLC.
	ER10–2754–000	NFI Solar, LLC.
	ER06–1286–000	North Branch Resources, LLC.
	ER05–1225–000	Novo BioPower, LLC.
	ER10–904–000	NTE Southeast Electric Company, LLC.
	ER03–293–000	Nylon Corporation of America.
	ER13–1665–000	One Nation Energy Solutions, LLC.
	ER19–302–001	PACE RENEWABLE ENERGY 1 LLC.
	ER18–3–000	PGPV, LLC.

1093RD—MEETING, OPEN MEETING—Continued

[September 22, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
	ER03–821–000	Phibro Americas LLC.
	ER19–178–001	Piedmont Energy Fund, LP.
	ER12–1603–001	Planet Energy (Maryland) Corp.
	ER18–296–000	Planet Energy (New York) Corp.
	ER13–1135–001	Planet Energy (Pennsylvania) Corp.
	ER11–2168–000	Planet Energy (USA) Corp.
	ER11–2179–000	Power Choice, Inc.
	ER11–2167–000	Precept Power LLC.
	ER11–2166–000	Premier Empire Energy, LLC.
	ER10–812–000	Quantum Power Corp.
	ER19–1405–000	Raider Dog LLC.
	ER13–2230–001	RDAF Energy Solutions, LLC.
	ER17–204–001	Renaissance Power, L.L.C.
	ER08–631–000	Renewable Power Direct, LLC.
	ER16–895–002	Renewable Power Strategies, LLC.
	ER01–3109–000	ResCom Energy LLC.
	ER14–1135–000	Reuel Energy LLC.
	ER12–1751–000	Rigby Energy Resources, LP.
	ER09–1739–000	RJUMR ENERGY PARTNERS CORP.
	ER17–1577–000	RLD Resources, LLC.
	ER14–166–000	Roseburg Forest Products.
	ER14–2013–000	Sage Solar I LLC.
	ER12–1244–001	Sage Solar II LLC.
	ER01–2830–000	Sage Solar III LLC.
	ER19–1240–000	Saint Anselm College.
	ER19–1241–000	Samchully Power & Utilities 1 LLC.
	ER19–1242–000	Santanna Natural Gas Corporation.
	ER10–2750–000	SBR Energy, LLC.
	ER15–359–001	Seguro Energy Partners, LLC.
	ER11–4453–000	Shipyard Energy, LLC.
	ER11–3187–001	Silver Bear Power, LLC.
	ER18–1548–000	Smith Creek Hydro, LLC.
	ER10–2951–000	Southard Energy Partners, LLC.
	ER13–733–000	Southern California Telephone Company.
	ER16–904–001	Southern Energy Solution Group, LLC.
	ER13–698–000	Spruance Genco, LLC.
	ER11–3186–000	Stand Energy Corporation.
	ER12–1775–000	Sunbury Energy, LLC.
	ER06–634–000	Sustainable Star.
	ER95–362–000	Texzon Utilities, Ltd.
	ER13–113–002	The Energy Group of America, Inc.
	ER11–2354–000	The Highlands Energy Group.
	ER03–1150–000	The Legacy Energy Group, LLC.
	ER16–1202–001	Thicksten Grimm Burgum, Inc.
	ER06–464–000	Thordin ApS.
	ER99–3571–000	Titan Gas and Power.
	ER11–4604–000	Town of Hanover.
	ER20–2618–000	Trane Grid Services LLC.
	ER14–1767–000	Tropicana Manufacturing Company Inc.
	ER14–2597–001	TrueLight Commodities, LLC.
	ER13–1107–000	TrueLight Energy, LLC.
	ER11–2962–001	UBS AG.
	ER11–3724–000	US Borax, Inc.
	ER11–3723–000	V3 Commodities Group, LLC.
	ER02–973–000	Viridity Energy, Inc.
	ER15–1630–001	Vista Energy Marketing, L.P.
	ER16–1610–001	Volunteer Energy Services, Inc.
	ER11–4706–001	Western Aeon Energy Trading LLC.
	ER16–2307–001	Western Reserve Energy Services, LLC.
	ER04–937–000	White Pine Electric Power L.L.C.
	ER21–908–000	Windy Flats Partners, LLC.
	ER11–3263–000	Wolverine Holdings, L.P.
	ER04–262–000	Woodland Pulp LLC.
	ER09–750–000	Woomera Energy, LLC.
	ER06–1273–000	Z&Y Energy Trading LLC.
	ER10–2345–000	Zone One Energy, LLC.
	ER18–624–000.	
	ER18–2031–000.	
	ER15–820–001.	
E–3	EL21–7–000	Cricket Valley Energy Center, LLC and Empire Generating Company, LLC v. New York Independent System Operator, Inc.

1093RD—MEETING, OPEN MEETING—Continued

[September 22, 2022, 10:00 a.m.]

Item No.	Docket No.	Company
E–4	ER22–2044–000 ER22–2044–001.	Just Energy Limited.
E–5	Omitted.	
E–6	ER22–2380–000	Virginia Electric and Power Company.
E–7	NJ22–11–000	Orlando Utilities Commission.
E–8	ER19–1428–005	ISO New England Inc.
E–9	ER21–1816–001	KES Kingsburg, L.P.
E–10	ER20–681–005 ER20–681–006. EL22–28–000.	Tri-State Generation and Transmission Association, Inc.
E–11	ER21–57–002	Shell Energy North America (US), L.P.
E–12	ER21–42–001	Tenaska Power Services Co.
E–13	ER21–46–001	Mercuria Energy America, LLC.
E–14	ER18–2358–001	Southwest Power Pool, Inc.
	ER19–1357–000	GridLiance High Plains LLC.
	ER20–1313–000 (consolidated).	
E–15	ER22–1353–000	GridLiance High Plains LLC.
E–16	ER21–1438–000	GridLiance High Plains LLC.
	GAS	
G–1	RP22–1118–000	MountainWest Overthrust Pipeline, LLC.
G–2	RP22–1121–000	Stagecoach Pipeline & Storage Company LLC.
	HYDRO	
H–1	P–3777–013	The Town of Rollinsford, New Hampshire.
H–2	P–619–174	Pacific Gas and Electric Company and City of Santa Clara.
H–3	P–2530–057	Brookfield White Pine Hydro LLC.
	CERTIFICATES	
C–1	CP20–527–001	Columbia Gulf Transmission, LLC.
C–2	CP20–50–001	Tennessee Gas Pipeline Company, L.L.C.
	CP20–51–001	Southern Natural Gas Company, L.L.C.
C–3	CP21–463–000	Texas Eastern Transmission, LP.
C–4	CP22–479–000	ETC Texas Pipeline, Ltd.
C–5	CP22–451–000	Owen Stanley Parker v. Permain Highway Pipeline LLC, et al.
C–6	RP22–678–000	Hummel Generation, LLC v. UGI Sunbury, LLC.
C–7	CP21–44–000	LA Storage, LLC.
C–8	CP22–474–000	West Texas Gas, Inc. and West Texas Gas Utility, LLC.
C–9	CP22–475–000	West Texas Gas, Inc. and West Texas Gas Utility, LLC.
C–10	CP22–476–000	West Texas Gas, Inc. and West Texas Gas Utility, LLC.

A free webcast of this event is available through *http://ferc.capitolconnection.org/.* Anyone with internet access who desires to view this event can do so by navigating to *www.ferc.gov*'s Calendar of Events and locating this event in the Calendar. The event will contain a link to its webcast. The Capitol Connection provides technical support for the free webcasts. It also offers access to this event via television in the DC area and via phone bridge for a fee. If you have any questions, visit *http://ferc.capitolconnection.org/* or contact Shirley Al-Jarani at 703–993–3104.

Immediately following the conclusion of the Commission Meeting, a press briefing will be held in the Commission Meeting Room. Members of the public may view this briefing in the designated overflow room. This statement is intended to notify the public that the press briefings that follow Commission meetings may now be viewed remotely at Commission headquarters, but will not be telecast through the Capitol Connection service.

Issued: September 15, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–20493 Filed 9–19–22; 4:15 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP22–1213–000.

Applicants: ABCGrande, LLC v. Northern Border Pipeline Company.

Description: Complaint of ABCGrande, LLC v. Northern Border Pipeline Company.

Filed Date: 9/13/22.

Accession Number: 20220913–5127.

Comment Date: 5 p.m. ET 10/3/22.

Docket Numbers: RP22–1214–000.

Applicants: Eastern Shore Natural Gas Company.

Description: § 4(d) Rate Filing: Capital Cost Surcharge #2 True-Up to be effective 10/15/2022.

Filed Date: 9/14/22.

Accession Number: 20220914–5029.

Comment Date: 5 p.m. ET 9/26/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211

and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5 p.m. eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: September 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20354 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER22–2850–000]

Fall River Solar, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of Fall River Solar, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is October 4, 2022.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Dated: September 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20353 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–113–000]

Alliance Pipeline, L.P.; Notice Suspending Environmental Review Schedule of the Proposed Three Rivers Interconnection Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) is suspending the environmental review schedule of the Three Rivers Interconnection Project (Project) involving construction and operation of facilities by Alliance Pipeline, L.P. (Alliance) in Grundy County, Illinois. The *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Three Rivers Interconnection Project, Request for Comments on Environmental Issues, and Schedule for Environmental Review,* issued on February 10, 2022, identified a September 16, 2022 final Environmental Impact Statement (EIS) issuance date. As stated in the notice, the Project would be located in the vicinity of a facility regulated by the Nuclear Regulatory Commission which could require the completion of a safety analysis, and additional time may be necessary to consider the results of that analysis.

In its most recent response to FERC staff's request concerning the status of this safety analysis, Alliance stated that it anticipated that the operator of the nearby nuclear facility (Constellation Energy Generation, LLC) would finalize the required safety analysis by the end of August 2022. However, to date, the safety analysis remains outstanding.

Therefore, the Commission will suspend the environmental review schedule for the Project. Once Alliance provides the outstanding information, the Commission will issue a revised schedule for the final EIS. This is not a suspension of the Commission staff's review of the Project. Staff will continue to process Alliance's proposal to the extent possible based upon the information filed to date while awaiting the remaining information.

Additional Information

Additional information about the Project are available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the eLibrary link. Click on the eLibrary link, click on ''General Search'' and enter the docket number in the ''Docket Number'' field (*i.e.,* CP21–113–000). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or (866) 208–3676, or for TTY, contact (202) 502–8659. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

Public sessions or site visits will be posted on the Commission's calendar located at *https://www.ferc.gov/news-events/events* along with other related information.

Dated: September 15, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–20409 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Records Governing Off-The-Record Communications; Public Notice

This constitutes notice, in accordance with 18 CFR 385.2201(b), of the receipt of prohibited and exempt off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive a prohibited or exempt off-the-record communication relevant to the merits of a contested proceeding, to deliver to the Secretary of the Commission, a copy of the communication, if written, or a summary of the substance of any oral communication.

Prohibited communications are included in a public, non-decisional file associated with, but not a part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become a part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such a request only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication shall serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications are included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of off-the-record communications recently received by the Secretary of the Commission. The communications listed are grouped by docket numbers in ascending order. These filings are available for electronic review at the Commission in the Public Reference Room or may be viewed on the Commission's website at *http://www.ferc.gov* using the eLibrary link. Enter the docket number, excluding the last three digits, in the docket number field to access the document. For assistance, please contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

Docket Nos.	File date	Presenter or requester
Prohibited: 1. P–12514–000. *Exempt:* NONE.	9/6/2022	FERC Staff [1].

[1] Emailed comments dated 8/29/2022 from Jason Johnson.

Dated: September 14, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–20356 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP17–458–000, CP19–17–000]

Midship Pipeline Company, LLC; Notice of Request for Extension of Time

Take notice that on September 13, 2022, Midship Pipeline Company, LLC (Midship) requested that the Federal Energy Regulatory Commission (Commission) grant an extension of time, until December 31, 2024, to complete their Midcontinent Supply Header Interstate Pipeline Project, as authorized in the August 13, 2018 Order Issuing Certificate Under Section 7 of the Natural Gas Act (August 13 Order).[1] Midship states that the original purpose of the project was to provide a total of 1,440 million cubic feet per day (MMcf/d) of year-round firm transportation capacity from Oklahoma to existing natural gas pipelines near Bennington, Oklahoma for transport to growing Gulf Coast and Southeast markets. Ordering Paragraph (B)(1) of the August 13 Order, as amended, provided a deadline of August 13, 2020 to make their facilities available for service.

On August 10, 2020, as supplemented on August 12, 2020, Midship filed a request for an extension of time, until December 31, 2022, to complete construction of the project and place the remaining facilities—three compression units—into service. The Commission granted that requested extension of time on December 17, 2020.[2] That Order recognized that Midship had placed all other facilities into service and its pipeline system was capable of providing up to 1,100 MMcf/d of firm transportation service.

Midship now states that, due to adverse economic and logistical conditions induced by the COVID–19 pandemic, commercial progress was slowed. Midship now states that these unforeseen circumstances precluded the project from reaching full commercialization, and that additional time is now required to complete the construction and place into service the certain remaining facilities, namely those three compression units.

This notice establishes a 15-calendar day intervention and comment period deadline. Any person wishing to comment on the applicant's request for an extension of time may do so. No reply comments or answers will be considered. If you wish to obtain legal status by becoming a party to the proceedings for this request, you should, on or before the comment date stated below, file a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10).[3]

As a matter of practice, the Commission itself generally acts on requests for extensions of time to complete construction for Natural Gas Act facilities when such requests are contested before order issuance. For those extension requests that are contested,[4] the Commission will aim to issue an order acting on the request within 45 days.[5] The Commission will address all arguments relating to whether the applicant has demonstrated there is good cause to grant the extension.[6] The Commission will not consider arguments that re-litigate the issuance of the certificate order, including whether the Commission properly found the project to be in the public convenience and necessity and whether the Commission's environmental analysis for the

[1] *See Midship Pipeline Company, LLC,* 164 FERC ¶ 61,103 (2018) (August 13 Order), *order amending certificate, Midship Pipeline Company, LLC,* 166 FERC ¶ 62,039 (2019).

[2] *Midship Pipeline Company, LLC,* 173 FERC ¶ 61,255 (2020).

[3] Only motions to intervene from entities that were party to the underlying proceeding will be accepted. *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 39 (2020).

[4] Contested proceedings are those where an intervenor disputes any material issue of the filing. 18 CFR 385.2201(c)(1) (2019).

[5] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

[6] *Id.* at P 40.

certificate complied with the National Environmental Policy Act.[7] At the time a pipeline requests an extension of time, orders on certificates of public convenience and necessity are final and the Commission will not re-litigate their issuance.[8] The OEP Director, or his or her designee, will act on all of those extension requests that are uncontested.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

The Commission strongly encourages electronic filings of comments in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

Comment Date: 5 p.m. eastern time on September 30, 2022.

Dated: September 15, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–20410 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

[7] Similarly, the Commission will not re-litigate the issuance of an NGA section 3 authorization, including whether a proposed project is not inconsistent with the public interest and whether the Commission's environmental analysis for the permit order complied with NEPA.

[8] *Algonquin Gas Transmission, LLC,* 170 FERC ¶ 61,144, at P 40 (2020).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP21–465–000, CP21–465–001, CP21–465–002]

Driftwood Pipeline LLC; Notice of Availability of the Final Environmental Impact Statement for the Proposed Line 200 and Line 300 Project

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared a final environmental impact statement (EIS) for the Line 200 and Line 300 Project (Project), proposed by Driftwood Pipeline LLC (Driftwood) in the above-referenced docket. Driftwood proposes to construct and operate dual 42-inch-diameter natural gas pipelines originating near Ragley in Beauregard Parish, Louisiana southward to a proposed receiver facility near Carlyss in Calcasieu Parish, Louisiana. Additional facilities include one new compressor station, eleven meter stations, six mainline valves, and other aboveground facilities. The Project would provide a maximum seasonal capacity of 5.7 billion cubic feet of natural gas per day to the Lake Charles market. According to Driftwood, its Project would provide enhanced supply access, resilience, and reliability to the natural gas market in the Lake Charles area.

The final EIS assesses the potential environmental effects of the construction and operation of the Project in accordance with the requirements of the National Environmental Policy Act (NEPA). The FERC staff concludes that approval of the proposed Project, with the mitigation measures recommended in the EIS, would result in some adverse environmental impacts, but none that are considered significant. Regarding climate change impacts, the Project's construction and operation emissions would increase the atmospheric concentration of greenhouse gasses (GHG), in combination with past, present, and future emissions from all other sources. This EIS is not characterizing the Project's GHG emissions as significant or insignificant because the Commission is conducting a generic proceeding to determine whether and how the Commission will conduct significance determinations going forward.[1] The EIS also concludes that no system, route, or other alternative would meet the Project objective while providing a significant environmental advantage over the Project as proposed.

The U.S. Environmental Protection Agency participated as a cooperating agency in the preparation of the EIS. Cooperating agencies have jurisdiction by law or special expertise with respect to resources potentially affected by the proposal and participate in the NEPA analysis.

The final EIS addresses the potential environmental effects of the construction and operation of the following project facilities:

- approximately 36.9 miles of 42-inch-diameter pipeline in Beauregard and Calcasieu Parishes, Louisiana (Line 200);
- approximately 32.4 miles of 42-inch-diameter pipeline in Beauregard and Calcasieu Parishes, Louisiana (Line 300) that would be constructed adjacent to Line 200 in a second phase of construction;
- approximately 0.9 mile of 30-inch-diameter lateral (Sempra Lateral) extending from Meter Station 14 to the Indian Bayou Compressor Station;
- approximately 0.8 mile of 30-inch-diameter lateral (Transco Lateral) extending from Meter Station 5 to the Indian Bayou Compressor Station;
- approximately 850 feet of dual 42-inch-diameter pipelines connecting the receiver facility to Meter Station 12;
- new compressor station identified as the Indian Bayou Compressor Station with a total 211,200 horsepower (hp) in Beauregard Parish, Louisiana;
- new receiver facility at the terminus of the Line 200 and Line 300 in Calcasieu Parish, Louisiana;
- 11 new meter stations and interconnects in Beauregard and Calcasieu Parishes, Louisiana;
- 6 mainline valves (MLV) within 3 valve facilities; and
- additional ancillary facilities such as communication facilities and pig launchers[2] and receivers.

The Commission mailed a copy of the *Notice of Availability* to federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners and other interested individuals and groups; and newspapers and libraries in the project area. The final EIS is only available in electronic format. It may be viewed and downloaded from the

[1] *Consideration of Greenhouse Gas Emissions in Natural Gas Infrastructure Project Reviews,* 178 FERC ¶ 61,108 (2022); 178 FERC 61,197 (2022).

[2] A ''pig'' is a tool that the pipeline company inserts into and pushes through the pipeline for cleaning the pipeline, conducting internal inspections, or other purposes.

FERC's website (*www.ferc.gov*), on the natural gas environmental documents page (*https://www.ferc.gov/industries-data/natural-gas/environment/environmental-documents*). In addition, the final EIS may be accessed by using the eLibrary link on the FERC's website. Click on the eLibrary link (*https://elibrary.ferc.gov/eLibrary/search*) select ''General Search'' and enter the docket number in the ''Docket Number'' field, excluding the last three digits (*i.e.* CP21–465). Be sure you have selected an appropriate date range. For assistance, please contact FERC Online Support at *FercOnlineSupport@ferc.gov* or toll free at (866) 208–3676, or for TTY, contact (202) 502–8659.

The final EIS is not a decision document. It presents Commission staff's independent analysis of the environmental issues for the Commission to consider when addressing the merits of all issues in this proceeding. Additional information about the Project is available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website (*www.ferc.gov*) using the eLibrary link. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription that allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. Go to *https://www.ferc.gov/ferc-online/overview* to register for eSubscription.

Dated: September 15, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–20408 Filed 9–20–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–8956–03–OAR]

Administration of Cross-State Air Pollution Rule Trading Program Assurance Provisions for 2021 Control Periods

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of data availability.

SUMMARY: The Environmental Protection Agency (EPA) is providing notice of the availability of data on the administration of the assurance provisions of the Cross-State Air Pollution Rule (CSAPR) trading programs for the control periods in 2021. Total emissions of nitrogen oxides (NO_X) reported by Missouri units participating in the CSAPR NO_X Ozone Season Group 2 Trading Program during the 2021 control period exceeded the state's assurance level under the program. Data demonstrating the exceedance and EPA's final calculations of the amounts of additional allowances that the owners and operators of certain Missouri units must surrender have been posted in a spreadsheet on EPA's website.

DATES: September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Questions concerning this action should be addressed to Garrett Powers at (202) 564–2300 or *powers.jamesg@epa.gov.*

SUPPLEMENTARY INFORMATION: The regulations for each CSAPR trading program contain ''assurance provisions'' designed to ensure that the emissions reductions required from each state covered by the program occur within the state. If the total emissions from a given state's affected units exceed the state's assurance level under the program, then two allowances must be surrendered for each ton of emissions exceeding the assurance level (in addition to the ordinary obligation to surrender one allowance for each ton of emissions). In the quarterly emissions reports covering the 2021 control period, Missouri units participating in the CSAPR NO_X Ozone Season Group 2 Trading Program reported emissions that exceed the state's assurance level under the program by 1,295 tons, resulting in a requirement for the surrender of 2,590 additional allowances.

When a state's assurance level is exceeded, responsibility for surrendering the required additional allowances is apportioned among groups of units in the state represented by ''common designated representatives'' based on the extent to which each such group's emissions exceeded the group's share of the state's assurance level. For the CSAPR NO_X Ozone Season Group 2 Trading Program, the procedures are set forth at 40 CFR 97.802 (definitions of ''common designated representative,'' ''common designated representative's assurance level,'' and ''common designated representative's share''), 97.806(c)(2), and 97.825.

On July 15, 2022, EPA published a document in the **Federal Register** providing notice of the data relied on to determine the amount of the exceedance of the Missouri assurance level and the preliminary calculations of the amounts of additional allowances that the owners and operators of certain Missouri units must surrender as a result of the exceedance and describing the process for submitting any objections (87 FR 42459). EPA received no written submissions objecting to the data and preliminary calculations.

In this document, EPA is providing notice of the final calculations of the amounts of additional allowances that must be surrendered. Responsibility for surrendering 2,590 additional allowances for the Missouri exceedance has been apportioned almost entirely to the group of units operated by Associated Electric Cooperative, Inc. (2,570 allowances), with much smaller shares apportioned to the groups of units operated by the municipal utilities of Chillicothe and Higginsville (4 and 16 allowances, respectively). Each set of owners and operators identified pursuant to this notice of the final calculations must hold the required additional allowances in an assurance account by November 1, 2022.

The data and final calculations are set forth in an Excel spreadsheet entitled ''2021_CSAPR_assurance_provision_calculations_final.xlsx'' available at *http://www.epa.gov/csapr/csapr-assurance-provision-nodas.* The spreadsheet contains data for the 2021 control period showing, for each Missouri unit identified as affected under the CSAPR NO_X Ozone Season Group 2 Trading Program, the amount of NO_X emissions reported by the unit and the amount of CSAPR NO_X Ozone Season Group 2 allowances allocated to the unit, including any allowances allocated from a new unit set-aside. The spreadsheet also contains calculations for the 2021 control period showing the total NO_X emissions reported by all such units in the state and the amount by which the total reported NO_X emissions exceeded the state's assurance level under the program. Finally, the spreadsheet also includes calculations for the 2021 control period showing, for each common designated representative for a group of such units in the state, the common designated representative's share of the total reported NO_X emissions, the common designated representative's share of the state's assurance level, and the amount of additional CSAPR NO_X Ozone Season Group 2 allowances that the owners and operators of the units in the group must surrender.

(Authority: 40 CFR 97.825(b).)

Rona Birnbaum,

Director, Clean Air Markets Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 2022–20380 Filed 9–20–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0163; FRL–9408–08–OCSPP]

Pesticide Product Registration; Receipt of Applications for New Uses (August 2022)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), EPA is hereby providing notice of receipt and opportunity to comment on these applications.

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

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0163, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (RD) (7505P), main telephone number: (703) 305–7090, email address: *RDFRNotices@epa.gov.* The mailing address for each contact person: Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001. As part of the mailing address, include the contact person's name, division, and mail code. The division to contact is listed at the end of each application summary.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or 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).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets.*

II. Registration Applications

EPA has received applications to register new uses for pesticide products containing currently registered active ingredients. Pursuant to the provisions of FIFRA section 3(c)(4) (7 U.S.C. 136a(c)(4)), EPA is hereby providing notice of receipt and opportunity to comment on these applications. Notice of receipt of these applications does not imply a decision by the Agency on these applications.

A. New Uses

EPA Registration Number: 62719–697. *Docket ID number:* EPA–HQ–OPP–2022–0646. *Applicant:* Corteva Agriscience LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Florpyrauxifen-benzyl. *Product type:* Herbicide. *Proposed use:* For use manufacturing products used on turfgrass. *Contact:* RD.

EPA File Symbol: 62719–TAI, 62719–TAO, and 62719–TTN. *Docket ID number:* EPA–HQ–OPP–2022–0646. *Applicant:* Corteva Agriscience LLC, 9330 Zionsville Road, Indianapolis, IN 46268. *Active ingredient:* Florpyrauxifen-benzyl. *Product type:* Herbicide. *Proposed use:* Turfgrass. *Contact:* RD.

EPA Registration Numbers: 7969–185, 7969–258, 7969–311, and 7969–463. *Docket ID number:* EPA–HQ–OPP–2022–0235. *Applicant:* BASF Corporation, 26 Davis Drive, P.O. Box 13528, Research Triangle Park, NC 27709. *Active ingredient:* Pyraclostrobin. *Product type:* Fungicide. *Proposed use:* Establish tolerance for use on coffee, green bean; stevia, dried leaves; and stevia, fresh leaves. *Contact:* RD.

EPA Registration Numbers: 91813–94 and 70506–611. *Docket ID number:* EPA–HQ–OPP–2021–0657. *Applicant:* ARYSTA LIFESCIENCE BENELUX c/o UPL NA Inc. and UPL Delaware, Inc. 630 Freedom Business Center, Suite 402 King of Prussia, PA 19406. *Active ingredient:* Dodine. *Product type:* Fungicide. *Proposed use:* New use of dodine on olive, with pit; fruit, pome, group 11–10; fruit, stone, group 12–12; and nut, tree, group 14–12. *Contact:* RD

EPA File Symbol: 11685–EA. *Docket ID number:* EPA–HQ–OPP–2019–0718. *Applicant:* Nufarm UK Limited, C/O Nufarm Americas Inc., 4020 Aerial Center Parkway, Morrisville, NC 27560. *Active ingredient:* MCPP-p 2-ethylhexyl ester. *Product type:* Materials Preservative. *Proposed use:* For use manufacturing products used in bituminous and polymer-modified bituminous roofing membranes. *Contact:* RD.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 13, 2022.

Delores Barber,

Director, Information Technology and Resources Management Division, Office of Program Support.

[FR Doc. 2022–20437 Filed 9–20–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2022–0752; FRL–10207–01–OCSPP]

Ortho-Phthalaldehyde; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the National Aeronautics and Space Administration (NASA) to use the pesticide ortho-phthalaldehyde (OPA) (CAS No. 643–79–8) to treat the coolant fluid of the internal active thermal control system of the International Space Station to control aerobic/microaerophilic bacteria in the aqueous coolant. The applicant proposes the use of a new chemical which has not been registered by EPA. Therefore, in accordance with the Code of Federal Regulations, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before October 6, 2022.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2022–0752, through the *Federal eRulemaking Portal* at *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Marietta Echeverria, Registration Division (7505T), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1030; email address: *RDFRNotices@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, North American Industrial Classification System (NAICS) (Code 32532) or involved with the International Space Station. This listing is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Other types of entities not listed could also be affected.

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/comments.html.*

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low-income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticide(s) discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. NASA has requested the EPA Administrator to issue a specific exemption for the use of OPA in the coolant of the internal active thermal control system (IATCS) of the International Space Station (ISS) to control aerobic/microaerophilic bacteria in the aqueous coolant. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserted that it has considered the registered biocide alternatives and has concluded that OPA is the most effective biocide that meets the requisite criteria including: The need for safe, non-intrusive implementation and operation in a functioning system; the ability to control existing planktonic and biofilm-residing micro-organisms; a negligible impact on system wetted materials of construction; and a negligible reactivity with existing coolant additives. The ISS would not have an adequate long-term solution for controlling the micro-organisms in the IATCS coolant without the use of OPA. The OPA is incorporated into a porous resin material contained in a stainless-steel canister. The canister containing the OPA-incorporated resin is inserted into a coolant system loop, using flexible hose and quick disconnects and is placed in line for 4 hours to deliver the OPA into the fluid. As the coolant fluid flows through the canister, the OPA elutes from the resin material into the coolant fluid. The total volume of the circulatory loops of the IATCS is 829 liters. The maximum concentration would be 500 milligrams (mg) of OPA per liter of coolant fluid. A total of 414,500 mg would be needed for the entire system. The OPA is incorporated into the resin at 210 mg OPA per cm^3 resin, resulting in a potential total use of 1,974 cm^3 of the OPA-containing resin. The level of OPA in the coolant is monitored periodically, and because OPA degrades over time, the concentration decreases to a level that is no longer effective in about 1 to 2 years. At this point, replenishment with new OPA-containing canisters is required. EPA has authorized similar emergency exemptions for this use since 2011. With the decision to extend the mission of the ISS to 2024, the need for this use is expected to continue for the duration.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 require publication of a notice of receipt of an application for a specific exemption proposing the use of a new chemical (*i.e.,* an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the NASA.

Authority: 7 U.S.C. 136 *et seq.*

Dated: September 12, 2022.

Marietta Echeverria,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2022–20469 Filed 9–20–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ACCOUNTING STANDARDS ADVISORY BOARD

Notice of Request for Comment on an Exposure Draft, Intragovernmental Leasehold Reimbursable Work Authorizations

AGENCY: Federal Accounting Standards Advisory Board.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Federal Accounting Standards Advisory Board (FASAB) has issued an exposure draft of a proposed Technical Bulletin titled *Intragovernmental Leasehold Reimbursable Work Authorizations.*

Respondents are encouraged to comment on any part of the exposure draft. Written comments are requested by November 4, 2022, and should be sent to *fasab@fasab.gov* or Monica R. Valentine, Executive Director, Federal Accounting Standards Advisory Board, 441 G Street NW, Suite 1155, Washington, DC 20548.

ADDRESSES: The exposure draft is available on the FASAB website at *https://www.fasab.gov/documents-for-comment/.* Copies can be obtained by contacting FASAB at (202) 512–7350.

FOR FURTHER INFORMATION CONTACT: Ms. Monica R. Valentine, Executive Director, 441 G Street NW, Suite 1155, Washington, DC 20548, or call (202) 512–7350.

Authority: 31 U.S.C. 3511(d), Federal Advisory Committee Act, as amended (5 U.S.C. app.).

Dated: September 19, 2022.

Monica R. Valentine,

Executive Director.

[FR Doc. 2022–20471 Filed 9–20–22; 8:45 am]

BILLING CODE P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Notice of Board Meeting

DATES: September 27, 2022 at 10 a.m.

ADDRESSES: Telephonic. Dial-in (listen only) information: Number: 1–202–599–1426, Code: 235 010 430#; or via web: *https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjIwOTFmZDctZjcxNC00MDk2LThlMGUtZDRmNTc1OGZlZDE2%40thread.v2/0?context=%7b%22Tid%22%3a%223f6323b7-e3fd-4f35-b43d-1a7afae5910d%22%2c%22Oid%22%3a%227c8d802c-5559-41ed-9868-8bfad5d44af9%22%7d.*

FOR FURTHER INFORMATION CONTACT: Kimberly Weaver, Director, Office of External Affairs, (202) 942–1640.

SUPPLEMENTARY INFORMATION:

Board Meeting Agenda

Open Session

1. Approval of the August 24, 2022 Board Meeting Minutes
2. Monthly Reports
   (a) Participant Activity Report
   (b) Investment Report
   (c) Legislative Report
3. Quarterly Report
   (d) Vendor Risk Management Update
4. Participant Survey Report
5. Behavioral Science Update
6. Internal Audit Update

Closed Session

7. Information covered under 5 U.S.C. 552b(c)(9)(B), (c)(10).

Authority: 5 U.S.C. 552b(e)(1).

Dated: September 15, 2022.

Dharmesh Vashee,

General Counsel, Federal Retirement Thrift Investment Board.

[FR Doc. 2022–20336 Filed 9–20–22; 8:45 am]

BILLING CODE 6760–01–P

FEDERAL TRADE COMMISSION

Privacy Act of 1974; System of Records

AGENCY: Federal Trade Commission.

ACTION: Notice of modified systems of records.

SUMMARY: The Federal Trade Commission (FTC) is making technical revisions to an appendix that applies to all agency systems of records. The FTC is updating the appendix that sets out locations of agency offices and buildings. Specifically, the FTC is updating the street addresses for the Midwest regional office in Chicago, the Southeast regional office in Atlanta, and the Western regional offices in Los Angeles and San Francisco. This action is intended to make these system notices clearer, more accurate, and up-to-date.

DATES: This notice shall become final and effective on September 21, 2022.

FOR FURTHER INFORMATION CONTACT: G. Richard Gold, Attorney, Office of the General Counsel, FTC, 600 Pennsylvania Avenue NW, Washington, DC 20580, (202) 326–2424.

SUPPLEMENTARY INFORMATION: To inform the public, the FTC publishes in the **Federal Register** and posts on its website a ''system of records notice'' (SORN) for each system of records that the FTC currently maintains within the meaning of the Privacy Act of 1974, as amended, 5 U.S.C. 552a (''Privacy Act'' or ''Act''). See *https://www.ftc.gov/about-ftc/foia/foia-reading-rooms/privacy-act-systems.* The Privacy Act protects records about individuals in systems of records collected and maintained by Federal agencies. (A system is not a ''system of records'' under the Act unless the agency maintains and retrieves records in the system by the relevant individual's name or other personally assigned identifier.) Each Federal agency, including the FTC, must publish a SORN that describes the records maintained in each of its Privacy Act systems, including the categories of individuals that the records in the system are about, where and how the agency maintains these records, and how individuals can find out whether an agency system contains any records about them or request access to their records, if any. The FTC, for example, maintains 40 systems of records under the Act. Some of these systems contain records about the FTC's own employees, such as personnel and payroll files. Other FTC systems contain records about members of the public, such as public comments, consumer complaints, or phone numbers submitted to the FTC's Do Not Call Registry.

The FTC's SORNs discussed in this notice apply only to the FTC's own Privacy Act record systems. They do not cover Privacy Act records that other Federal agencies may collect and maintain in their own systems. Likewise, the FTC's SORNs and the Privacy Act of 1974 do not cover personal records that private businesses or other non-FTC entities may collect, which may be covered by other privacy laws.

Based on a periodic review of its SORNs, the FTC is updating and republishing Appendix III. This Appendix includes the addresses of all FTC facilities, including its satellite building in Washington, DC, and regional offices. It also explains that the FTC may maintain records in other leased facilities or, in certain cases, may have contractors operate or maintain Privacy Act record systems off-site. The FTC is updating the street addresses for the Midwest regional office in Chicago, the Southeast regional office in Atlanta, and the Western regional offices in Los Angeles and San Francisco. The entire appendix as revised is set out below.

The FTC is not substantively adding or amending any routine uses of its Privacy Act system records. Accordingly, the FTC is not required to provide prior public comment or notice

to OMB or Congress for these technical amendments, which are final upon publication. See U.S.C. 552a(e)(11) and 552a(r); OMB Circular A–108, supra.

FTC Systems of Records Notices

Accordingly, the FTC revises and updates its Privacy Act systems of records below as follows:

Appendix III

Locations of FTC Buildings and Regional Offices

In addition to the FTC's headquarters building at 600 Pennsylvania Avenue NW, Washington, DC 20580, the FTC has a satellite building at 400 7th Street SW, Washington, DC 20024, and also operates the following Regional Offices where Privacy Act records may in some cases be maintained or accessed:

East Central Region, Eaton Center, Suite 200, 1111 Superior Avenue, Cleveland, OH 44114–2507

Midwest Region, 230 South Dearborn Street, Suite 3030, Chicago, IL 60604

Northeast Region, Alexander Hamilton U.S. Custom House, One Bowling Green, Suite 318, New York, NY 10004

Northwest Region, 915 Second Avenue, Suite 2896, Seattle, WA 98174

Southeast Region, 233 Peachtree Street NE, Harris Tower, Suite 1000, Atlanta, GA 30303

Southwest Region, 1999 Bryan Street, Suite 2150, Dallas, TX 75201

Western Region-Los Angeles, 10990 Wilshire Boulevard, Suite 400, Los Angeles, CA 90024

Western Region-San Francisco, 90 7th Street, Suite 14–300, San Francisco, CA 94103

In addition, FTC records subject to the Privacy Act may sometimes be maintained at other facilities leased by the FTC or operated by FTC contractors, including by other Federal agencies, or by the National Archives and Records Administration on the FTC's behalf.

Josephine Liu,

Assistant General Counsel for Legal Counsel.

[FR Doc. 2022–20384 Filed 9–20–22; 8:45 am]

BILLING CODE 6750–01–P

GOVERNMENT PUBLISHING OFFICE

Depository Library Council Meeting

AGENCY: U.S. Government Publishing Office.

ACTION: Notice of meeting.

SUMMARY: The Depository Library Council (DLC) will meet in conjunction with the Federal Depository Library Conference from Monday, October 17, 2022 through Wednesday, October 19, 2022, virtually. The sessions will take place from 12 p.m.. to 5:30 p.m. (EDT).

The meetings will take place online, and anyone can register to attend at *https://www.fdlp.gov/2022-fdl-conference.* Closed captioning will also be provided. The purpose is to discuss matters affecting the Federal Depository Library Program. All sessions are open to the public.

Dated: October 17–19, 2022.

Hugh Nathanial Halpern,

Director, U.S. Government Publishing Office.

[FR Doc. 2022–20382 Filed 9–20–22; 8:45 am]

BILLING CODE 1520–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: Notice.

SUMMARY: The Agency for Healthcare Research and Quality (AHRQ) announces a Special Emphasis Panel (SEP) meeting on ''Reducing Racial and Ethnic Healthcare Disparities in Chronic Conditions by Dissemination and Implementation of Patient Centered Outcomes Research (PCOR) Evidence(R18)''. This SEP meeting will be closed to the public.

DATES: October 27, 2022.

ADDRESSES: Agency for Healthcare Research and Quality, (Video Assisted Review), 5600 Fishers Lane, Rockville, Maryland 20857.

FOR FURTHER INFORMATION CONTACT: Jenny Griffith, Committee Management Officer, Office of Extramural Research, Education and Priority Populations, Agency for Healthcare Research and Quality, (AHRQ), 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 427–1557.

SUPPLEMENTARY INFORMATION: A Special Emphasis Panel is a group of experts in fields related to health care research who are invited by AHRQ, and agree to be available, to conduct on an as needed basis, scientific reviews of applications for AHRQ support. Individual members of the Panel do not attend regularly scheduled meetings and do not serve for fixed terms or a long period of time. Rather, they are asked to participate in particular review meetings which require their type of expertise.

The SEP meeting referenced above will be closed to the public in accordance with the provisions set forth in 5 U.S.C. app. 2, section 10(d), 5 U.S.C. 552b(c)(4), and 5 U.S.C. 552b(c)(6). Grant applications for ''Reducing Racial and Ethnic Healthcare Disparities in Chronic Conditions by Dissemination and Implementation of Patient Centered Outcomes Research (PCOR) Evidence(R18)'' are to be reviewed and discussed at this meeting. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Agenda items for this meeting are subject to change as priorities dictate.

Dated: September 16, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–20434 Filed 9–20–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Supplemental Solicitation for Nominations of Members From Populations Underrepresented in Medicine (URIM) To Serve on Scientific Peer Review Committee

AGENCY: Agency for Healthcare Research and Quality (AHRQ), HHS.

ACTION: To invite the public to nominate individuals from populations underrepresented in medicine to serve as scientific peer reviewers on Agency for Healthcare Research and Quality (AHRQ) scientific peer review groups.

SUMMARY: This supplemental notice invites the public to nominate individuals from populations underrepresented in medicine to serve as members to the AHRQ Initial Review Group (IRG), which is responsible for the scientific peer review of AHRQ grant applications. The AHRQ IRG conducts scientific and technical review for health services research and training grant applications and is comprised of five subcommittees or study sections, each with a particular research focus. AHRQ is seeking nominations from the public, including minority-serving institutions, academic health centers, community-based organizations, professional societies, or other state and federal agencies.

DATES: Nominations should be received on or before December 31, 2022.

ADDRESSES: Nominations should be submitted by email to *dsr@ahrq.hhs.gov.*

FOR FURTHER INFORMATION CONTACT: Celeste Torio, Ph.D., MPH., Director,

Division of Scientific Review, AHRQ/OEREP, (301) 427–1664 or by email at *celeste.torio@ahrq.hhs.gov.*

SUPPLEMENTARY INFORMATION: AHRQ's mission is to produce evidence to make health care safer, higher quality, more accessible, equitable, and affordable, and to work within the U.S. Department of Health and Human Services (DHHS) and with other partners to make sure that the evidence is understood and used. AHRQ works to fulfill its mission by supporting health services research, evaluation, demonstration, dissemination, and training grants.

AHRQ published its annual solicitation for nominations for membership to serve on the IRG in the **Federal Register** on May 9, 2022 (87 FR 27643). AHRQ is publishing this supplemental solicitation encouraging the nomination of individuals from populations underrepresented in medicine to serve on the AHRQ IRG in order to foster a diversity of perspectives among IRG membership. The peer review of AHRQ grant applications involves an assessment conducted by IRG committees consisting of qualified experts established according to scientific disciplines or medical specialty areas. Members of the IRG are selected based upon their training and experience in relevant scientific and technical fields, taking in account, among other factors: (1) The level of formal education and pertinent expertise and experience; (2) extent of engagement in relevant research; (3) extent of professional recognition; (4) need for specialization in relevant field; and (5) appropriate representation based on gender, racial/ethnic origin, and geography. See *42 CFR 67.15(a)(2)(i)–(v).*

The IRG is comprised of five subcommittees, or study sections, each with a particular emphasis around which peer reviewer expertise is assembled. AHRQ seeks nominations for each of the subcommittee competency domains described below:

Health Care Effectiveness and Outcomes Research: End-stage renal disease; cardiovascular disease; pediatrics; pharmacologist in opioid management; biostatisticians in health services research; health disparities and social determinants of health.

Healthcare Safety and Quality Improvement Research: Pharmacists with expertise in informatics; infectious diseases specialists; geriatricians; surgeons with a specialty in diagnostic error; health disparities and social determinants of health.

Healthcare Information Technology Research: Biomedical and consumer health informatics; family medicine; health care data analysis; health information technology; health services research in patient-oriented research; electronic health record and data for research; population-based studies in medicine; epidemiology; telehealth/telemedicine; emergency medicine; insurance benefit design; chronic condition care; natural language processing and machine learning; social networking and its determinants of health; health disparities and social determinants of health.

Healthcare Systems and Value Research: Health statistics; health care outcome research; evaluation and survey methods; health system and service research; health care policy research; health economics research; large database analysis; private health insurance/Medicaid and Medicare; learning laboratory development; health disparities and social determinants of health.

Health Care Research Training: Clinicians with knowledge of health policy; Medicare and Medicaid; addiction medicine; health disparities and social determinants of health.

Additional study section descriptive information can be found here:

Study Section Rosters: http://www.ahrq.gov/funding/process/study-section/peerrev.

Study Section Descriptions: http://www.ahrq.gov/funding/process/study-section/peerdesc.

Study Section Research Foci: http://www.ahrq.gov/funding/process/study-section/resfoci.

Interested individuals may nominate themselves, and organizations and individuals may nominate one or more qualified persons for study section membership. A diversity of perspectives is valuable to AHRQ's work. To help obtain a diversity of perspectives among nominees, AHRQ seeks nominations of individuals from populations underrepresented in medicine. All nominations must be submitted electronically, and should include:

1. A copy of the nominee's current curriculum vitae and contact information, including mailing address, phone number, and email address.

2. Preferred study section assignment.

Dated: September 16, 2022.

Marquita Cullom,

Associate Director.

[FR Doc. 2022–20419 Filed 9–20–22; 8:45 am]

BILLING CODE 4160–90–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[Document Identifier: CMS–855O and CMS–855I]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (the PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

DATES: Comments must be received by November 21, 2022.

ADDRESSES: When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *https://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

FOR FURTHER INFORMATION CONTACT: William N. Parham at (410) 786–4669.

SUPPLEMENTARY INFORMATION:

Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–855O Medicare Registration Application

CMS–855I Medicare Enrollment Application for Physician and Non-Physician Practitioners

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

Information Collection

1. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Registration Application; *Use:* Various sections of the Social Security Act (Act), the United States Code (U.S.C.), Internal Revenue Service Code (Code) and the Code of Federal Regulations (CFR) require providers and suppliers to furnish information concerning the amounts due and the identification of individuals or entities that furnish medical services to beneficiaries before allowing payment. The principal function of the CMS–855O is to gather information from a physician or other eligible professional to help CMS determine whether he or she meets certain qualifications to enroll in the Medicare program for the sole purpose of ordering or certifying certain Medicare items or services. The CMS–855O allows a physician or other eligible professional to enroll in Medicare without approval for billing privileges.

The collection and verification of this information protects our beneficiaries from illegitimate providers/suppliers. These procedures also protect the Medicare Trust Funds against fraud. The CMS–855O gathers information that allow Medicare contractors to ensure that the physician or eligible professional is not sanctioned from the Medicare and/or Medicaid program(s), or debarred, or excluded from any other Federal agency or program. Furthermore, the data collected also ensures that the applicant has the necessary credentials to order and certify health care services. This is the sole instrument implemented for this purpose. *Form Number:* CMS–855O (OMB control number 0938–1135); *Frequency:* Occasionally; *Affected Public:* Private Sector (Business or other for-profits), State, Local, or Tribal Governments; *Number of Respondents:* 6,190; *Number of Responses:* 6,190; *Total Annual Hours:* 3,095. (For policy questions regarding this collection contact Frank Whelan at 410–786–1302).

2. *Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicare Enrollment Application for Physician and Non-Physician Practitioners; *Use:* The Social Security Act (Act) requires providers and suppliers to furnish information concerning the amounts due and the identification of individuals or entities that furnish medical services to beneficiaries before allowing payment. The primary function of the CMS–855I Medicare enrollment application for physicians and non-physician practitioners is to gather information from an individual provider or supplier that tells us who he/she is, whether he/she meets certain qualifications to be a Medicare health care provider or supplier, where he/she practices or renders services, and other information necessary to establish correct claims payments.

The collection and verification of this information is the first line defense to defend and protect our beneficiaries from illegitimate physicians, non-physician practitioners, and other eligible professionals and to protect the Medicare Trust Fund against fraud. It gathers information that allow Medicare contractors to ensure only legitimate physicians, non-physician practitioners, and other eligible professionals enroll in the Medicare program, and are not sanctioned from the Medicare and/or Medicaid program(s), or debarred, or excluded from any other Federal agency or program. This is the sole instrument implemented for this purpose. *Form Number:* CMS–855I (OMB control number 0938–1355); *Frequency:* Occasionally; *Affected Public:* State, Local, or Tribal Governments, Private Sector (not-for-profit institutions); *Number of Respondents:* 472,617; *Number of Responses:* 472,617; *Total Annual Hours:* 961,651.

(For policy questions regarding this collection contact Frank Whelan at 410–786–1302).

Dated: September 16, 2022.

William N. Parham, III,

Director, Paperwork Reduction Staff, Office of Strategic Operations and Regulatory Affairs.

[FR Doc. 2022–20440 Filed 9–20–22; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for Office of Management and Budget (OMB) Review; National Medical Support Notice Part A (OMB No.: 0970–0222)

AGENCY: Office of Child Support Enforcement, Administration for Children and Families, Department of Health and Human Services.

ACTION: Request for public comments.

SUMMARY: The Office of Child Support Enforcement (OCSE), Administration for Children and Families (ACF), is

requesting a three-year extension of the National Medical Support Notice (NMSN) Part A. This request includes minor revisions to the NMSN Part A form, revisions to and separation of the instructions into a stand-alone attachment, a Part A sample, and the addition of the State Medical Support Contacts and Program Requirements matrix.

To allow states to program the changes to the proposed NMSN Part A, OCSE also requests an extension of the current version of the NMSN Part A for an additional year. The current Office of Management and Budget (OMB) approval expires on October 31, 2022.

DATES: *Comments due within 30 days of publication.* OMB must make a decision about the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. You can also obtain copies of the proposed collection of information by emailing *infocollection@acf.hhs.gov.* Identify all emailed requests by the title of the information collection.

SUPPLEMENTARY INFORMATION:

Description: Federal law requires that all child support orders under Title IV–D of the Social Security Act include medical coverage. The Child Support Performance and Incentive Act of 1998 (CSPIA) requires enforcement of this provision; the NMSN Part A is the means to enforce health care orders.

This information collection expedites requests for medical coverage between state child support enforcement agencies and employers. OCSE maintains Part A of the NMSN, which states initiate and send to a parent's employer to complete. States must supply some sensitive information to the parent's employer in order to enroll the child(ren) in the correct health coverage plan. This information includes names, dates of birth, Social Security numbers, and addresses. The employer retains the income withholding part of the form and withholds from the employee/obligor's income any premium payments that may be required by the employer's health care plan. Then the employer's health care administrator enrolls the child(ren) in the health care plan. The Department of Labor (DOL) maintains Part B of the NMSN. This request includes minor revisions to the NMSN Part A form, revisions to and separation of the instructions into a stand-alone attachment, a Part A sample, and the addition of the State Medical Support Contacts and Program Requirements matrix. OCSE will also request from OMB that the NMSN Part A expiration date match the expiration date of the NMSN Part B, which will be submitted by DOL.

Respondents: States and employers.

Annual Burden Estimates:

Information collection title	Total number of respondents	Annual number of responses per respondent	Average burden hours per response	Annual burden hours
2019 Form—Estimated Burden for Use Through 2023				
National Medical Support Notice—Part A—Notice to Withhold for Health Care Coverage—*States*	54	90,194	.17	827,981
National Medical Support Notice—Part A—Notice to Withhold for Health Care Coverage—*Employers*	1,310,727	3.72	.17	828,904
Estimated Annual Burden 2022–2023:				1,656,885
Revised Form—Estimated Burden for Implementation in 2023				
National Medical Support Notice—Part A—Notice to Withhold for Health Care Coverage—*States*	54	90,194	.17	827,981
National Medical Support Notice—Part A—Notice to Withhold for Health Care Coverage—*Employers*	1,310,727	3.72	.17	828,904
State Medical Support Contacts and Program Requirement Matrix—*States*	54	1	1	54
Estimated Annual Burden Beginning 2023:				1,656,939

Estimated Total Annual Burden Hours: 1,656,885 while states update systems and then 1,656,939 once states use the revised collection.

Authority: 45 U.S.C. 303.32; the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, Pub. L. 104–193; CSPIA, Pub. L. 105–200, Sec. 401(c); Sec. 609(a)(5)(C) of the Employee Retirement Income Security Act of 1974.

Mary B. Jones,

ACF/OPRE Certifying Officer.

[FR Doc. 2022–20367 Filed 9–20–22; 8:45 am]

BILLING CODE 4184–41–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Submission to OMB for Review and Approval; Public Comment Request; COVID–19 Provider Relief Fund and American Rescue Plan (ARP) Rural Payment Reporting Activities, OMB No. 0906–0068—Revision.

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: In compliance with of the Paperwork Reduction Act of 1995, HRSA has submitted an Information Collection Request (ICR) to the Office of Management and Budget (OMB) for review and approval. Comments submitted during the first public review of this ICR will be provided to OMB. OMB will accept further comments from the public during the review and approval period. OMB may act on HRSA's ICR only after the 30-day comment period for this Notice has closed.

DATES: Comments on this ICR should be received no later than October 21, 2022.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request a copy of the clearance requests submitted to OMB for review, email Samantha Miller, the HRSA Information Collection Clearance Officer at *paperwork@hrsa.gov* or call (240) 276–7189.

SUPPLEMENTARY INFORMATION:

Information Collection Request Title: COVID–19 Provider Relief Fund (PRF) Reporting Activities OMB No. 0906–0068—Revision.

Abstract: HRSA disburses the PRF and American Rescue Plan (ARP) Rural payments to eligible health care providers to support health care-related expenses or lost revenues attributable to the COVID–19 pandemic. Providers who have attested to the Terms and Conditions regarding their PRF and ARP Rural payment(s), including the requirement that the provider ''shall submit reports as the Secretary determines are needed to ensure compliance with conditions that are imposed on this Payment, and such reports shall be in such form, with such content, as specified by the Secretary in future program instructions directed to all Recipients,'' will be using the PRF Reporting Portal to submit information about their use of PRF and ARP Rural payments. In anticipation of the approved OMB form (control number 0906–0068) expiring on January 31, 2023, HRSA is undergoing the revision of the ICR approval to include the ARP Rural reporting requirements and to allow for data collection beyond the January 31, 2023 expiration.

A 60-day notice published in the **Federal Register**, 87, FR pp. 20441 (April 7, 2022). There was one request for program information.

Need and Proposed Use of the Information: Recipients of a PRF and ARP Rural payment agreed to a set of Terms & Conditions (T&Cs), which, among other requirements, mandate compliance with certain reporting requirements that will facilitate appropriate oversight of recipients' use of funds.

Information collected will allow for (1) assessing whether recipients have met statutory and programmatic requirements, (2) conducting audits, (3) gathering data required to report on findings with respect to the disbursements of PRF and ARP Rural payments, and (4) program evaluation. HRSA staff will also use information collected to identify and report on trends in health care metrics and expenditures before and during the allowable period for expending PRF and ARP Rural payments.

Included in this revision are the following:

- A new funding source is now included in the data collection form (the American Rescue Plan Act of 2021 (Pub. L. 117–2) (ARP Rural))
- Additional reporting periods are added for reporting entities to report on use of funds (Reporting Period 5, 6, and 7)
- Updated burden estimates to include ARP Rural payment reporting in Reporting Period 4
- Updated burden estimates to reflect the number of reporting entities and additional reporting periods
- Adjusted burden estimates for providers who have additional reporting requirements

Likely Respondents: PRF and ARP Rural payment recipients who have received more than $10,000 in aggregate PRF and ARP Rural payments during one of the Payment Received Periods outlined below and that agreed to the associated T&Cs are required to submit a report in the PRF Reporting Portal during the applicable Reporting Time Period.

Reporting period	Payment received period (payments exceeding $10,000 in aggregate received)	Reporting time period
Period 1	April 10, 2020, to June 30, 2020	July 1, 2021, to September 30, 2021.
Period 2	July 1, 2020, to December 31, 2020	January 1, 2022, to March 31, 2022.
Period 3	January 1, 2021, to June 30, 2021	July 1, 2022, to September 30, 2022.
Period 4	July 1, 2021, to December 31, 2021	January 1, 2023, to March 31, 2023.
Period 5	January 1, 2022, to June 30, 2022	July 1, 2023, to September 30, 2023.
Period 6	July 1, 2022, to December 31, 2022	January 1, 2024, to March 31, 2024.
Period 7	January 1, 2023, to June 30, 2023	July 1, 2024, to September 30, 2024.

Burden Statement: Burden in this context means the time expended by persons to generate, maintain, retain, disclose or provide the information requested. This includes the time needed to review instructions; to

develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information; to search data sources; to complete and review the collection of information; and to transmit or otherwise disclose the information. The total annual burden hours estimated for this ICR are summarized in the table below.

TOTAL ESTIMATED ANNUALIZED BURDEN—HOURS

Form name	Number of respondents	Number of responses per respondent	Total responses	Average burden per response (in hours)	Total burden hours
PRF Reporting Portal, Reporting Period 1 (Providers who received payments April 10, 2020, to June 30, 2020)	126,831	1	126,831	5.6	710,254
PRF Reporting Portal, Reporting Period 2 (Providers who received payments July 1, 2020, to December 31, 2020)	120,536	1	120,536	4.2	506,251
PRF Reporting Portal, Reporting Period 3 (Providers who received payments, January 1, 2021, to June 30, 2021)	20,493	1	20,493	6.1	125,007
PRF and ARP Rural Reporting Portal, Reporting Period 4 (Providers who received payments July 1, 2021, to December 31, 2021)	51,622	1	51,622	5.6	289,083
PRF and ARP Rural Reporting Portal, Reporting Period 5 (Providers who received payments January 1, 2022, to June 30, 2022)	4,256	1	4,256	5.5	23,408
PRF and ARP Rural Reporting Portal, Reporting Period 6 (Providers who received payments July 1, 2022, to December 31, 2022)	1,300	1	1,300	5.4	7,020
PRF and ARP Rural Reporting Portal, Reporting Period 7 (Providers who received payments January 1, 2023, to June 30, 2023)	3,690	1	3,690	5.4	19,926
Total	328,728		328,728		1,680,949

HRSA specifically requests comments on (1) the necessity and utility of the proposed information collection for the proper performance of the agency's functions, (2) the accuracy of the estimated burden, (3) ways to enhance the quality, utility, and clarity of the information to be collected, and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Maria G. Button,

Director, Executive Secretariat.

[FR Doc. 2022–20359 Filed 9–20–22; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; 30-Day Comment Request; NIH Extramural Harassment Web Form (Office of the Director, Office of Extramural Research)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

DATES: Comments regarding this information collection are best assured of having their full effect if received within 30-days of the date of this publication.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Patricia Valdez, Chief Extramural Research Integrity Officer, Office of Extramural Research, National Institutes of Health, 6705 Rockledge Dr., Room 811–G MSC 7963, Bethesda, Maryland 20892 or call non-toll-free number (301) 451–2160 or email your request, including your address to: *patricia.valdez@nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: This proposed information collection was previously published in the **Federal Register** on June 21, 2022, pages 36865–36866 (87 FR 36865) and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The Office of Extramural Research (OER), National Institutes of Health, may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

In compliance with section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below.

Proposed Collection: NIH Extramural Harassment Web Form, 0925–NEW, exp., date, XX/XX/XXXX, National Institutes of Health (NIH) Office of the Director (OD), Office of Extramural Research (OER).

Need and Use of Information Collection: The purpose of this web form is to assist extramural institutions with complying with section 239 of the Consolidated Appropriations Act, 2022

(Pub. L. 117–103), division H, title II, which requires that ''institutions that receive funds through a grant or cooperative agreement during fiscal year 2022 and in future years to notify the Director when individuals identified as a principal investigator or as key personnel in an NIH notice of award are removed from their position or are otherwise disciplined due to concerns about harassment, bullying, retaliation, or hostile working conditions.'' The Harassment Web Form will be used as a secure and confidential portal by which recipient institutions notify NIH when individuals identified as PD/PI or other Senior/Key personnel in an NIH notice of award are removed from their position or are otherwise disciplined by the recipient institution due to concerns about harassment, bullying, retaliation or hostile working conditions, as specified in NOT–OD–22–129. Notification must be provided by the Authorized Organization Representative within 30 days of the removal or disciplinary action and must be submitted to NIH through the Harassment Web Form. All required notifications must include, at a minimum, the name of the Authorized Organization Representative submitting the notification, the name of the individual of concern, a description of the concerns, the action(s) taken, and any anticipated impact on the NIH-funded award(s).

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 60.

ESTIMATED ANNUALIZED BURDEN HOURS

Type of respondent	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Private Sector	240	1	15/60	60
Total		240		60

Dated: September 15, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–20468 Filed 9–20–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in section 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: Developmental Biology Study Section.

Date: October 14, 2022.

Closed: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, 2131B, Bethesda, MD 20892–7510 (Video Assisted Meeting).

Contact Person: Jolanta Maria Topczewska, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (301) 451–0000, *jolanta.topczewska@nih.gov.*

Name of Committee: Health, Behavior, and Context Study Section.

Date: October 17, 2022.

Closed: 10 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, 2137C, Bethesda, MD 20892–7510 (Video Assisted Meeting).

Contact Person: Kimberly L. Houston, MD, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2137C, Bethesda, MD 20892, (301) 827–4902, *kimberly.houston@nih.gov.*

Name of Committee: Obstetrics and Maternal-Fetal Biology Study Section.

Date: October 28, 2022.

Closed: 10 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Eunice Kennedy Shriver National Institute of Child Health and Human Development, 6710B Rockledge Drive, 2127D, Bethesda, MD 20892–7510 (Video Assisted Meeting).

Contact Person: Luis E. Dettin, Ph.D., Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Room 2127D, Bethesda, MD 20892, (301) 827–8231, *luis.dettin@nih.gov.*

Information is also available on the Institute's/Center's home page: *https://www.nichd.nih.gov/about/org/der/srb* where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS.)

Dated: September 15, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–20400 Filed 9–20–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; 60-Day Comment Request; NIH Information Collection Forms To Support Genomic Data Sharing for Research Purposes (OD)

AGENCY: National Institutes of Health, HHS.

ACTION: Notice.

SUMMARY: In compliance with the requirement of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institutes of Health Office of the Director (OD) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

DATES: Comments regarding this information collection are best assured of having their full effect if received

within 60 days of the date of this publication.

FOR FURTHER INFORMATION CONTACT: To obtain a copy of the data collection plans and instruments, submit comments in writing, or request more information on the proposed project, contact: Julia Slutsman, Ph.D., Director, Genomic Data Sharing Policy Implementation Team, Office of Extramural Research, NIH, Office of Extramural Research, OD, NIH 6705 Rockledge Dr. (RKL1), Room 800–C, Bethesda, MD 20892, or call non-toll-free number (301)-594–7783 or email your request including your address to: *sharing@mail.nih.gov.* Formal requests for additional plans and instruments must be requested in writing.

SUPPLEMENTARY INFORMATION: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires: written comments and/or suggestions from the public and affected agencies are invited to address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimizes the burden of the collection of information from those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Proposed Collection Title: NIH Information Collection Forms to Support Genomic Data Sharing for Research Purposes—0925–0670—Expiration Date 11/31/2022—REVISION—Office of the Director (OD), National Institutes of Health (NIH).

Need and Use of Information Collection: Sharing research data supports the National Institutes of Health (NIH) mission and is essential to facilitate the translation of research results into knowledge, products, and procedures that improve human health. NIH has longstanding policies to make a broad range of research data, including genomic data, publicly available in a timely manner from the research activities that it funds. Genomic research data sharing is an integral element of the NIH mission as it facilitates advances in our understanding of factors that influence health and disease, while also providing opportunities to accelerate research through the power of combining large and information-rich datasets. To promote robust sharing of human and non-human data from a wide range of large-scale genomic research and provide appropriate protections for research involving human data, the NIH issued the NIH Genomic Data Sharing Policy (NIH GDS Policy). Human genomic data submissions and controlled-access genomic and related phenotypic data are managed through the database of Genotypes and Phenotypes (dbGaP) which is administered by the National Center for Biotechnology Information (NCBI), part of the National Library of Medicine at NIH.

Under the NIH GDS Policy, all investigators who receive NIH funding to conduct large-scale genomic research are expected to register studies with human genomic data in Database of Genotypes and Phenotypes (dbGaP), no matter which NIH-designated data repository will ultimately maintain the data. As part of the study registration process, investigators must provide basic study information such as the type of data that will be submitted to dbGaP, a description of the study, and an institutional assurance (*i.e.,* provided through submission of an Institutional Certification form) of the data submission which delineates any necessary limitations on the secondary use of the data (*e.g.,* data cannot be shared with for-profit companies, data can be used only for research of particular diseases).

Investigators interested in using controlled-access data for secondary research must apply through dbGaP and be granted permission from the relevant NIH Data Access Committee(s). As part of the application process, investigators and their institutions must provide information such as a description of the proposed research use of controlled-access datasets that conforms to any data use limitations, agree to the Genomic Data User Code of Conduct, and agree to the terms of access through a Data Use Certification agreement. Requests to renew data access and reports to close out data use are similar to the initial data access request, requiring sign-off by both the requestor and the institution, but also ask for information about how the data have been used, and about publications, presentations, or intellectual property based on the research conducted with the accessed data as well as any data security issues or other data management incidents.

NIH has developed online forms, available through the Database of Genotypes and Phenotypes (dbGaP), in an effort to minimize burden for researchers and their institutional officials completing the study registration, data submission, data access, and renewal and closeout processes.

OMB approval is requested for three years. There are no costs to respondents other than their time. The total estimated annualized burden hours are 72,301 hours.

ESTIMATED ANNUALIZED BURDEN HOURS

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Study Registration and Data Submission					
dbGaP Registration and Submission	Investigator Submitting Data	1,050	1	45/60	788
Institutional Certification	Investigator filling out Institutional Certification.	1,050	1	45/60	788
Institutional Certification	Institutional Official to Certify Institutional Certification.	1,050	1	30/60	525
Requesting Access to Data					
Data Access Request	Requester Submitting Request	3,900	10	45/60	29,250

ESTIMATED ANNUALIZED BURDEN HOURS—Continued

Form name	Type of respondents	Number of respondents	Number of responses per respondent	Average burden per response (in hours)	Total annual burden hours
Data Access Request	Institutional Signing Official to Certify Request.	3,900	10	30/60	19,500
Project Renewal or Project Close-out					
Project Renewal or Project Close-out form.	Requester Submitting Request	3,900	10	15/60	9,750
Project Renewal or Project Close-out form.	Institutional Signing Official to Certify Request.	3,900	10	18/60	11,700
Total		18,750	159,150		72,301

Dated: September 15, 2022.

Tara A. Schwetz,

Acting Principal Deputy Director, National Institutes of Health.

[FR Doc. 2022–20467 Filed 9–20–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2022 Notice of Supplemental Funding Opportunity

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of intent to award supplemental funding.

SUMMARY: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration (SAMHSA) is supporting an administrative supplement (in scope of the parent award) up to $20,833 (total costs) for one-year to the Improving Access to Overdose Treatment grant recipients for a total of up to $104,165 (total funding). These recipients were funded in FY 2018 with a project end date of September 30, 2023. The supplemental funding will be utilized specifically to increase the number of health care providers and pharmacists who receive training and technical assistance on the prescribing of drugs or devices approved or cleared under the FDA for emergency treatment of known or suspected opioid overdose.

FOR FURTHER INFORMATION CONTACT: Judith Ellis, Substance Abuse and Mental Health Services Administration, 5600 Fishers Lane, Rockville, MD 20857, telephone (240) 276–2567; email: *judith.ellis@samhsa.hhs.gov*.

SUPPLEMENTARY INFORMATION: Awardees will further collaborations with healthcare providers and pharmacists to educate them on overdose dangers and standing orders for FDA-approved overdose reversal drugs to patients and individuals who support persons at high-risk for overdose.

The required activities for this supplement are as follows:

- Increase use of SAMHSA's Opioid Overdose Prevention Toolkit as a guide to develop and implement a comprehensive prevention program to reduce the number of prescription drug/opioid overdose-related deaths and adverse events among cases of known or suspected opioid overdose.
- Provide technical assistance to collaborating partner organizations and practitioners in the implementation of a comprehensive prevention program to reduce the number of prescription drug/opioid overdose-related deaths and adverse events.
- Collaborate with additional pharmacies to distribute drugs or devices approved or cleared under the Federal Food, Drug, and Cosmetic Act for emergency treatment of known or suspected opioid overdose, as permitted by state law.
- Provide targeted public education on the state's ''Good Samaritan'' laws related to a drug overdose, if applicable, such as those that permit bystanders to alert emergency responders to an overdose or to administer drugs or devices approved or cleared under the Federal Food, Drug, and Cosmetic Act for emergency treatment of known or suspected opioid overdose without fear of civil or criminal penalties.

This is not a formal request for application. Assistance will only be provided to the Improving Access to Overdose Treatment Funding Opportunity SP–18–006 grant recipients based on the receipt of a satisfactory application and associated budget that is approved by a review group.

Funding Opportunity Title: FY 2018 Improving Access to Overdose Treatment Funding Opportunity SP–18–006.

Assistance Listing Number: 93.243.

Authority: Section 516 of the Public Health Services Act, as amended.

Justification: Eligibility for this supplemental funding is limited the Improving Access to Overdose Treatment Funding Opportunity SP–18–006 grant recipients funded in FY 2018. These organizations are uniquely positioned to provide training and technical assistance to organizations and practitioners in prescription drug overdose prevention activities being funded through this supplement.

Carlos Graham,

Reports Clearance Officer.

[FR Doc. 2022–20436 Filed 9–20–22; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4665–DR; Docket ID FEMA–2022–0001]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–4665–DR), dated August 8, 2022, and related determinations.

DATES: The declaration was issued August 8, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 8, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Missouri resulting from severe storms and flooding during the period of July 25 to July 28, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas and Hazard Mitigation throughout the State. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance, Hazard Mitigation, and Other Needs Assistance under section 408 will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, DuWayne Tewes, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Missouri have been designated as adversely affected by this major disaster:

St. Charles and St. Louis Counties and the Independent City of St. Louis for Individual Assistance.

Montgomery, St. Charles, and St. Louis Counties and the Independent City of St. Louis for Public Assistance.

All areas within the State of Missouri are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–20358 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4663–DR; Docket ID FEMA–2022–0001]

Kentucky; Amendment No. 8 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4663–DR), dated July 29, 2022, and related determinations.

DATES: This amendment was issued August 19, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include Public Assistance for the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 29, 2022.

Lee, Lincoln, and Powell Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–20362 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4666–DR; Docket ID FEMA–2022–0001]

Minnesota; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Minnesota (FEMA–4666–DR), dated August 9, 2022, and related determinations.

DATES: The declaration was issued August 9, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 9, 2022, the President issued a major disaster declaration under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), as follows:

I have determined that the damage in certain areas of the State of Minnesota resulting from severe storms, straight-line winds, tornadoes, and flooding during the period of May 29–30, 2022, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''). Therefore, I declare that such a major disaster exists in the State of Minnesota.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State.

Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration for the approved assistance to the extent allowable under the Stafford Act.

The Federal Emergency Management Agency (FEMA) hereby gives notice that pursuant to the authority vested in the Administrator, under Executive Order 12148, as amended, Brian F. Schiller, of FEMA is appointed to act as the Federal Coordinating Officer for this major disaster.

The following areas of the State of Minnesota have been designated as adversely affected by this major disaster:

Aitkin, Big Stone, Cass, Chippewa, Crow Wing, Douglas, Grant, Itasca, Kanabec, Kandiyohi, Lac qui Parle, Lyon, Nobles, Pine, Pope, Renville, Rock, Stevens, Swift, Todd, Traverse, Wadena, and Yellow Medicine Counties for Public Assistance.

All areas within the State of Minnesota are eligible for assistance under the Hazard Mitigation Grant Program.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–20365 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4663–DR; Docket ID FEMA–2022–0001]

Kentucky; Amendment No. 10 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–4663–DR), dated July 29, 2022, and related determinations.

DATES: This amendment was issued August 6, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 6, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the Commonwealth of Kentucky resulting from severe storms, flooding, landslides, and mudslides beginning on July 26, 2022, and continuing, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declaration of July 29, 2022, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, at 100 percent of the total eligible costs for a continuous 30-day period of the Commonwealth's choosing within the first 120 days of the declaration.

This adjustment to state and local cost sharing applies only to Public Assistance costs and direct Federal assistance eligible for such adjustments under the law. The Robert T. Stafford Disaster Relief and Emergency Assistance Act specifically prohibits a similar adjustment for funds provided for Other Needs Assistance (Section 408) and the Hazard Mitigation Grant Program (Section 404). These funds will continue to be reimbursed at 75 percent of total eligible costs.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–20360 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–3581–EM; Docket ID FEMA–2022–0001]

Virgin Islands; Amendment No. 1 to Notice of an Emergency Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of an emergency declaration for the territory of the U.S. Virgin Islands (FEMA–3581–EM), dated July 25, 2022, and related determinations.

DATES: This amendment was issued August 30, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of an emergency declaration for the territory of the U.S. Virgin Islands is hereby amended to include reimbursement for eligible emergency protective measures for the following area determined to have been adversely affected by the event declared an emergency by the President in his declaration of July 25, 2022.

Reimbursement for eligible emergency protective measures for the island of St. Croix for a period of 90 days ending on October 13, 2022 (already designated for emergency protective measures [Category B], limited to direct Federal assistance, under the Public Assistance program).

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially

Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–20364 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4663–DR; Docket ID FEMA–2022–0001]

Kentucky; Amendment No. 11 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky (FEMA–4663–DR), dated July 29, 2022, and related determinations.

DATES: This amendment was issued September 2, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the event declared a major disaster by the President in his declaration of July 29, 2022.

Lee County for Individual Assistance (already designated for Public Assistance).

Casey and Harlan Counties for Public Assistance.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–20363 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Internal Agency Docket No. FEMA–4652–DR; Docket ID FEMA–2022–0001]

New Mexico; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of New Mexico (FEMA–4652–DR), dated May 4, 2022, and related determinations.

DATES: This amendment was issued August 24, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated August 24, 2022, the President amended the cost-sharing arrangements regarding Federal funds provided under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act''), in a letter to Deanne Criswell, Administrator, Federal Emergency Management Agency, Department of Homeland Security, under Executive Order 12148, as follows:

I have determined that the damage in certain areas of the State of New Mexico resulting from wildfires, straight-line winds, flooding, mudflows, and debris flows during the period of April 5 to July 23, 2022, is of sufficient severity and magnitude that special cost sharing arrangements are warranted regarding Federal funds provided under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 *et seq.* (the ''Stafford Act'').

Therefore, I amend my declarations of May 4, 2022, June 9, 2022, and June 27, 2022, to authorize Federal funds for debris removal and emergency protective measures, including direct Federal assistance, under the Public Assistance program at 100 percent of the total eligible costs for an additional 90-day period from August 3, 2022 through November 1, 2022 for Mora and San Miguel Counties.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050 Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–20361 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[[Internal Agency Docket No. FEMA–4663–DR; Docket ID FEMA–2022–0001]

Kentucky; Amendment No. 9 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency, Department of Homeland Security (DHS).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky (FEMA–4663–DR), dated July 29, 2022, and related determinations.

DATES: The amendment was issued September 1, 2022.

FOR FURTHER INFORMATION CONTACT: Dean Webster, Office of Response and Recovery, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472, (202) 646–2833.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective August 11, 2022.

The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 97.030, Community Disaster Loans; 97.031, Cora Brown Fund; 97.032, Crisis Counseling; 97.033, Disaster Legal Services; 97.034, Disaster Unemployment Assistance (DUA); 97.046, Fire Management Assistance Grant; 97.048, Disaster Housing Assistance to Individuals and Households In Presidentially

Declared Disaster Areas; 97.049, Presidentially Declared Disaster Assistance—Disaster Housing Operations for Individuals and Households; 97.050, Presidentially Declared Disaster Assistance to Individuals and Households—Other Needs; 97.036, Disaster Grants—Public Assistance (Presidentially Declared Disasters); 97.039, Hazard Mitigation Grant.

Deanne Criswell,

Administrator, Federal Emergency Management Agency.

[FR Doc. 2022–20357 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–23–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Citizenship and Immigration Services

[OMB Control Number 1615–NEW]

Agency Information Collection Activities; New Collection: Outstanding Americans by Choice Nominee Questionnaire and Citizenship Ambassador Nominee Questionnaire

AGENCY: U.S. Citizenship and Immigration Services, Department of Homeland Security.

ACTION: 60-Day notice.

SUMMARY: The Department of Homeland Security (DHS), U.S. Citizenship and Immigration Services (USCIS) invites the general public and other Federal agencies to comment upon this new collection of information. In accordance with the Paperwork Reduction Act (PRA) of 1995, the information collection notice is published in the **Federal Register** to obtain comments regarding the nature of the information collection, the categories of respondents, the estimated burden (*i.e.,* the time, effort, and resources used by the respondents to respond), the estimated cost to the respondent, and the actual information collection instruments.

DATES: Comments are encouraged and will be accepted for 60 days until November 21, 2022.

ADDRESSES: All submissions received must include the OMB Control Number 1615–NEW in the body of the letter, the agency name and Docket ID USCIS–2021–0001. Submit comments via the Federal eRulemaking Portal website at *https://www.regulations.gov* under e-Docket ID number USCIS–2021–0001.

FOR FURTHER INFORMATION CONTACT: USCIS, Office of Policy and Strategy, Regulatory Coordination Division, Samantha Deshommes, Chief, telephone number (240) 721–3000 (This is not a toll-free number. Comments are not accepted via telephone message). Please note contact information provided here is solely for questions regarding this notice. It is not for individual case status inquiries. Applicants seeking information about the status of their individual cases can check Case Status Online, available at the USCIS website at *https://www.uscis.gov,* or call the USCIS Contact Center at 800–375–5283 (TTY 800–767–1833).

SUPPLEMENTARY INFORMATION:

Comments

You may access the information collection instrument with instructions or additional information by visiting the Federal eRulemaking Portal site at: *https://www.regulations.gov* and entering USCIS–2021–0001 in the search box. All submissions will be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary submission you make to DHS. DHS may withhold information provided in comments from public viewing that it determines may impact the privacy of an individual or is offensive. For additional information, please read the Privacy Act notice that is available via the link in the footer of *https://www.regulations.gov.*

Written comments and suggestions from the public and affected agencies should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Outstanding Americans by Choice Nominee Questionnaire and Citizenship Ambassador Nominee Questionnaire.

(3) *Agency form number, if any, and the applicable component of the DHS sponsoring the collection:* G–1579, G–1580; USCIS.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals or households. The information collected will be used to determine eligibility for recognition as an Outstanding American by Choice or a Citizenship Ambassador.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* The estimated total number of respondents for the information collection G–1579 is approximately 200 and the estimated hour burden per response is 30 minutes per response. The estimated total number of respondents for the information collection G–1580 is approximately 200 and the estimated hour burden per response is 30 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total estimated annual hour burden associated with this collection is 200 hours.

(7) *An estimate of the total public burden (in cost) associated with the collection:* The estimated total annual cost burden associated with this collection of information is $0. There is no cost burden placed on the respondents.

Dated: September 15, 2022.

Samantha L. Deshommes,

Chief, Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security.

[FR Doc. 2022–20395 Filed 9–20–22; 8:45 am]

BILLING CODE 9111–97–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–6348–N–01]

Notice of Federal Advisory Committee Meetings; Manufactured Housing Consensus Committee

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (HUD).

ACTION: Notice of Federal Advisory Committee Meetings: Manufactured Housing Consensus Committee.

SUMMARY: This notice sets forth the schedule and proposed agendas for two related sets of meetings of the Manufactured Housing Consensus Committee (MHCC). The meetings are open to the public and the sites are accessible to individuals with disabilities. The two agendas provide an opportunity for citizens to comment on the business before the MHCC.

DATES: The first set of meetings will be held on October 18–19, 2022, 9 a.m. to 5 p.m. Eastern Time (ET) daily, and on October 20, 2022, 9 a.m. to 12:30 p.m. (ET). The second set of meetings will be held on November 15–16, 2022, 9 a.m. to 5 p.m. (ET) daily, and on November 17, 2022, 9 a.m. to 12:30 p.m. (ET).

ADDRESSES: The first set of meetings (October 18–20, 2022) will be held at the Holiday Inn Washington—Capitol, 550 C Street SW, Washington, DC 20024. The second set of meetings (November 15–17, 2022) will be held at the DoubleTree by Hilton Hotel, Washington, DC—Crystal City—300 Army-Navy Drive, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Teresa B. Payne, Administrator, Office of Manufactured Housing Programs, Department of Housing and Urban Development, 451 7th Street SW, Room 9166, Washington, DC 20410, telephone (202) 708–6423 (this is not a toll-free number), email *mhcc@hud.gov.* Individuals can dial 7–1–1 to access the Telecommunications Relay Service (TRS), which permits users to make text-based calls, including Text Telephone (TTY) and Speech to Speech (STS) calls. Individuals who require an alternative aid or service to communicate effectively with HUD should email the point of contact listed above and provide a brief description of their preferred method of communication.

SUPPLEMENTARY INFORMATION:

Background

Notice of these meetings is provided in accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 10(a)(2) through implementing regulations at 41 CFR 102–3.150. The MHCC was established by the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. 5403(a)(3), as amended by the Manufactured Housing Improvement Act of 2000 (Pub. L. 106–569). According to 42 U.S.C. 5403, as amended, the purposes of the MHCC are to:

- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the Federal manufactured housing construction and safety standards in accordance with this section;
- Provide periodic recommendations to the Secretary to adopt, revise, and interpret the procedural and enforcement regulations, including regulations specifying the permissible scope and conduct of monitoring in accordance with subsection (b);
- Be organized and carry out its business in a manner that guarantees a fair opportunity for the expression and consideration of various positions and for public participation.

The MHCC is deemed an advisory committee not composed of Federal employees.

Public Comment

Citizens wishing to make comments on the business of the MHCC are encouraged to register by or before Monday, October 3, 2022, for the October session and October 31, 2022, for the November session, by contacting the Administering Organization (AO), Home Innovation Research Labs; *Attention:* Kevin Kauffman, 400 Prince Georges Blvd., Upper Marlboro, MD 20774, or email to *mhcc@homeinnovation.com* or call 1–888–602–4663. Written comments are encouraged. The MHCC strives to accommodate citizen comments to the extent possible within the time constraints of the meeting agendas. Advance registration for both meetings is strongly encouraged. The MHCC will also provide an opportunity for public comment on specific matters before the MHCC.

The Department of Energy's Energy Conservation Standards for Manufactured Housing (87 FR 32728 (May 31, 2022)), which have a compliance date of May 31, 2023, do not fully align with the current Manufactured Housing Construction and Safety Standards (MHCSS). Given that manufacturers have to comply with the Department of Energy's Energy Conservation Standards for Manufactured Housing and the MHCSS, and HUD's role in regulating the manufactured housing industry, HUD considers it imperative to promptly proceed with rulemaking to align the MHCSS with the Department of Energy's Energy Conservation Standards for Manufactured Housing. To this end, HUD is scheduling two sets of meetings of the MHCC to allow discussion, analysis, and recommendation to HUD of such alignment. These meetings are scheduled for three days each to provide sufficient time for thorough consideration. HUD, therefore, strongly encourages active participation by committee members, stakeholders, and other interested parties. The Secretary's requested outcome of the meetings will be for the MHCC to propose recommended changes to the Manufactured Home Construction and Safety Standards that align with the Department of Energy's Energy Conservation Standards for Manufactured Housing. Due to the impending May 31, 2023, date for compliance with the Department of Energy's Energy Conservation Standards for Manufactured Housing, HUD requests an expeditious review timeframe ending on or about December 31, 2022, for receipt of a response to the Secretary's request and proposed revisions to the MHCSS.

Tentative Agenda for the October 2022 Meeting

Tuesday, October 18, 2022

8:30–9:00 a.m. *Registration*
9:00–9:05 a.m. Call to Order—Chair, Co-Chair, and *Teresa Payne,* Designated Federal Officer (DFO)
9:05–9:35 a.m. Welcome and Opening Remarks
A. Roll Call—*Kevin Kauffman,* Administering Organization (AO)
B. Introductions
- Manufactured Housing Consensus Committee (MHCC) Members
- U.S. Department of Housing and Urban Development (HUD) Staff
- Administrative Announcements—*Teresa Payne,* DFO, and *Kevin Kauffman,* AO
- Explanation of the Administrative Procedure Act (APA) and the Regulatory Process—HUD Office of General Counsel

9:35–9:40 a.m. Approve Combined Draft Minutes from September 23, October 8, October 20, and November 19, 2021, MHCC meetings
9:40–9:50 a.m. Opening Comments—Julia R. Gordon, Assistant Secretary for Housing-Federal Housing Commissioner
9:50–10:20 a.m. Public Comment Period (Public Encouraged to Sign Up in advance by contacting the AO)
10:20–10:30 a.m. *Break*
10:30 a.m.–12:00 p.m. Review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing

12:00–1:00 p.m. *Lunch*
1:00–2:30 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing
2:30–2:45 p.m. *Break*
2:45–3:00 p.m. Public Comment Period—15 minutes
3:00–4:35 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing
4:35–4:50 p.m. Public Comment Period—15 minutes
4:50–5:00 p.m. Daily Wrap Up—DFO and AO
5:00 p.m. *Adjourn for the Day*

Wednesday, October 19, 2022

9:00–9:05 a.m. Reconvene Meeting—Chair and DFO
9:05–9:15 a.m. Roll Call—AO
9:15–9:30 a.m. Public Comment Period (Public Encouraged to Sign Up with AO or Meeting Planner)
9:30–10:45 a.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing
10:45–11:00 a.m. *Break*
11:00 a.m.–12:00 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing
12:00–1:00 p.m. *Lunch*
1:00–3:00 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing
3:00–3:10 p.m. *Break*
3:10–3:25 p.m. Public Comment Period—15 minutes
3:25–4:35 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing
4:35–4:50 p.m. Public Comment Period—15 minutes
4:50–5:00 p.m. Daily Wrap Up—DFO and AO
5:00 p.m. *Adjourn for the Day*

Thursday, October 20, 2022

9:00–9:05 a.m. Reconvene Meeting—Chair and DFO
9:05–9:15 a.m. Opening Remarks—Chair
Roll Call—AO
9:15–9:45 a.m. Public Comment Period (Public Encouraged to Sign Up with AO or Meeting Planner)
9:45–10:45 a.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing
10:45–11:00 a.m. *Break*
11:00 a.m.–12:00 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing
12:00–12:15 p.m. Public Comment Period
12:15–12:30 p.m. Daily Wrap Up—DFO and AO
12:30 p.m. *Adjournment*

Tentative Agenda for the November 2022 Meeting

As time allows, upon completion of the consideration of the Secretary's request to review the HUD proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing, remaining time in the agenda in the November meeting may be used to discuss log items and subcommittee items that have not been reviewed previously or are awaiting MHCC action. The log items that may be discussed and considered in the November set of meetings include:

Proposed Changes From Previous Cycles

- 3280 Subpart H—Heating, Cooling and Fuel Burning Systems—Log 216

Proposed Changes 2022–2023 Cycle

- 3280 Subpart G—Plumbing Systems—Log 225
- 3280 Subpart D—Body and Frame Construction Requirements—Log 226

Tuesday, November 15, 2022

8:30–9 a.m. *Registration*
9–9:05 a.m. Call to Order—Chair, Co-Chair, and *Teresa Payne,* Designated Federal Officer (DFO)
9:05–9:15 a.m. Welcome and Opening Remarks
A. Roll Call—*Kevin Kauffman,* Administering Organization (AO)
B. Introductions
- Manufactured Housing Consensus Committee (MHCC) Members
- U.S. Department of Housing and Urban Development (HUD) Staff
- Administrative Announcements—*Teresa Payne,* DFO, and *Kevin Kauffman,* AO

9:15–9:20 a.m. Approve Draft Minutes from October 18–20, 2022, Manufactured Housing Consensus Committee (MHCC) Meetings
9:20–9:50 a.m. Public Comment Period (Public Encouraged to Sign Up with AO or Meeting Planner)
9:50–10:50 a.m. Discussion on Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
10:50–11 a.m. *Break*
11 a.m.–12 p.m. Continue review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
12–1 p.m. *Lunch*
1–2:30 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
2:30–2:45 p.m. *Break*
2:45–3 p.m. Public Comment Period—15 minutes
3–4:35 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
4:35–4:50 p.m. Public Comment Period—15 minutes

4:50–5 p.m. Daily Wrap Up—DFO and AO
5 p.m. *Adjourn for the Day*

Wednesday, November 16, 2022

9–9:05 a.m. Reconvene Meeting—Chair and DFO
9:05–9:15 a.m. Roll Call—AO
9:15–9:30 a.m. Public Comment Period (Public Encouraged to Sign Up with AO or Meeting Planner)
9:30–10:45 a.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
10:45–11 a.m. *Break*
11 a.m.–12 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
12–1 p.m. *Lunch*
1–3 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
3–3:10 p.m. *Break*
3:10–3:25 p.m. Public Comment Period—15 minutes
3:25–4:35 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
4:35–4:50 p.m. Public Comment Period—15 minutes
4:50–5 p.m. Daily Wrap Up—DFO and AO
5 p.m. *Adjourn for the Day*

Thursday, November 17, 2022

9–9:05 a.m. Reconvene Meeting—Chair and DFO
9:05–9:15 a.m. Opening Remarks—Chair
Roll Call—AO
9:15–9:45 a.m. Public Comment Period (Public Encouraged to Sign Up with AO or Meeting Planner)
9:45–10:45 a.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
10:45–11 a.m. *Break*
11 a.m.–12 p.m. Continued review and consideration of HUD's proposed revisions of the Manufactured Home Construction and Safety Standards to Align with the Department of Energy's Energy Conservation Standards for Manufactured Housing Final Rule or Review of Current Log and Action Items or Subcommittee Meetings
12–12:15 p.m. Public Comment Period
12:15–12:30 p.m. Daily Wrap Up—DFO and AO
12:30 p.m. *Adjournment*

Julia R. Gordon,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 2022–20429 Filed 9–20–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R1–ES–2022–N050; FXES11130100000–223–FF01E00000]

Endangered Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation and survival of endangered species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before October 21, 2022.

ADDRESSES:

Document availability and comment submission: Submit a request for a copy of the application and related documents and submit any comments by one of the following methods. All requests and comments should specify the applicant name and application number (*e.g.,* Dana Ross, ESPER0001705):

- *Email: permitsR1ES@fws.gov.*
- *U.S. Mail:* Marilet Zablan, Regional Program Manager, Restoration and Endangered Species Classification, Ecological Services, U.S. Fish and Wildlife Service, Pacific Regional Office, 911 NE 11th Avenue, Portland, OR 97232–4181.

FOR FURTHER INFORMATION CONTACT: Colleen Henson, Regional Recovery Permit Coordinator, Ecological Services, (503) 231–6131 (phone); *permitsR1ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite the public to comment on applications for permits under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*). The requested permits would allow the applicants to conduct activities intended to promote recovery of species that are listed as endangered under the ESA.

Background

With some exceptions, the ESA prohibits activities that constitute take of listed species unless a Federal permit is issued that allows such activity. The ESA's definition of ''take'' includes such activities as pursuing, harassing, trapping, capturing, or collecting, in addition to hunting, shooting, harming, wounding, or killing.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered or threatened species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. These activities often include such prohibited actions as capture and collection. Our regulations

implementing section 10(a)(1)(A) for these permits are found in the Code of Federal Regulations (CFR) at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild. The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies.

Application No.	Applicant, city, state	Species	Location	Take activity	Permit action
ES702631	U.S. Fish and Wildlife Service, Pacific Regional Office, Portland, Oregon.	All species under the jurisdiction of the Pacific Regional Office. Lists of species for each of the applicable locations (see Location column in this table) can be found at the following website: *https://ecos.fws.gov/ecp/report/species-listings-by-state-totals?statusCategory=Listed*.	American Samoa, Guam, Northern Mariana Islands, Outlying Pacific Islands, Hawaii, Idaho, Oregon, and Washington.	Ecological studies and recovery actions, including survey, capture, handle, mark, monitor, collect, propagate, release, and outplant..	Renew and amend.
PER0051865	Kaloko-Honokōhau National Historical Park, Kailua-Kona, Hawaii.	Anchialine pool shrimp (*Procaris hawaiana*), Anchialine pool shrimp (*Vetericaris chaceorum*), Orangeblack Hawaiian damselfly (*Megalagrion xanthomelas*).	Hawaii	Harass by survey, monitor, capture, handle, mark (damselfly only), photograph, release, control invasive species, and restore habitat..	New.
PER0051869	U.S. Geological Survey, Western Ecological Research Center, San Diego, California.	Slevin's skink (*Emoia slevini*) ..	Commonwealth of the Northern Mariana Islands, Guam.	Harass by survey, monitor, capture, handle, mark, attach transmitters, biosample, release, and salvage..	New.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. 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 request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue a permit to an applicant listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Marilet A. Zablan,

Regional Program Manager for Restoration and Endangered Species Classification, Pacific Region.

[FR Doc. 2022–20439 Filed 9–20–22; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Smart Televisions, DN 3643;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.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: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf Maxwell, Ltd. on September 15, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain smart televisions. The complainant names as respondent: VIZIO, Inc. of Irvine, CA. The complainant requests that the Commission issue a limited exclusion

order and cease and desist orders and impose a bond upon respondent's alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3643'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 15, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–20427 Filed 9–20–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Hazelnuts and Products Containing the Same, DN 3642;* the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Katherine M. Hiner, Acting Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (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 United States International Trade Commission (USITC) at *https://www.usitc.gov.* The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.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: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of Pratum Farm LLC on September 15, 2022. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of regarding certain hazelnuts and products containing the same. The complainant names as respondents: Arslanturk Tarim Urunleri San Ihr Ve Ihr A.S. (''Arslanturk'') of

Turkey; Balsu Gida San Ve Tic. A.S. (''Balsu'') of Turkey; Balsu USA of Miami, FL; Farmeks Tarim Urunleri San Ve Tic. A.S. (''Farmeks'') of Turkey; Nimeks Organik Tarim Urun San Ve Tic Ltd., STI (''Nimeks'') of Turkey; Nimeks USA (NFSI) of Whitehall, PA; Progida Tarim Urunleri San Ve Tic. A.S. (''Progida'') of Turkey; and Olam Group of Fresno, CA. The complainant requests that the Commission issue a limited exclusion order pursuant to 19 U.S.C. 1337(d) and cease and desist orders pursuant to 19 U.S.C. 1337(f).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3642'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: September 15, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–20368 Filed 9–20–22; 8:45 am]

BILLING CODE 7020–02–P

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 731–TA–1587–1590 (Final)]

Certain Preserved Mushrooms From France, Netherlands, Poland, and Spain; Scheduling of the Final Phase of Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the scheduling of the final phase of antidumping investigation Nos. 731–TA–1587–1590 (Final) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of certain preserved mushrooms from France, Netherlands, Poland, and Spain, provided for in subheading 2003.10.01 of the Harmonized Tariff Schedule of the United States, preliminarily determined by the Department of Commerce (''Commerce'') to be sold at less-than-fair-value.

FOR FURTHER INFORMATION CONTACT: Kristina Lara (205–3386), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Scope.—For purposes of these investigations, Commerce has defined the subject merchandise as ''certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under these investigations are the genus Agaricus. ''Preserved mushrooms'' refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heat sterilized in containers each holding a net drained weight of not more than 12 ounces (340.2 grams), including but not limited to cans or glass jars, in a suitable liquid medium, including but not limited to water, brine, butter, or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces.

Excluded from the scope are ''marinated,'' ''acidified,'' or ''pickled'' mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives. To be prepared or preserved by means of vinegar or acetic acid, the merchandise must be a minimum 0.5 percent by weight acetic acid.

The merchandise subject to these investigations is classifiable under subheadings 2003.10.0127, 2003.10.0131, and 2003.10.0137 of the Harmonized Tariff Schedule of the United States (HTSUS). The subject merchandise may also be classified under HTSUS subheadings 2003.10.0143, 2003.10.0147, and 2003.10.0153. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.''

Background.—The final phase of these investigations are being scheduled, pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)), as a result of an affirmative preliminary determination by Commerce that imports of certain preserved mushrooms from France are being sold in the United States at less than fair value within the meaning of § 733 of the Act (19 U.S.C. 1673b). The investigations were requested in petitions filed on March 31, 2022, by Giorgio Foods, Inc., Blandon, Pennsylvania.

For further information concerning the conduct of this phase of the investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Participation in the investigations and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the final phase of these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, no later than 21 days prior to the hearing date specified in this notice. A party that filed a notice of appearance during the preliminary phase of the investigations need not file an additional notice of appearance during this final phase. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations.

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in the final phase of these investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made no later than 21 days prior to the hearing date specified in this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the investigations. A party granted access to BPI in the preliminary phase of the investigations need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the final phase of these investigations will be placed in the nonpublic record on November 3, 2022, and a public version will be issued thereafter, pursuant to § 207.22 of the Commission's rules.

Hearing.—The Commission will hold an in-person hearing in connection at the U.S. International Trade Commission Building with the final phase of these investigations beginning at 9:30 a.m. on November 17, 2022. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before November 11, 2022. Any requests to appear as a witness via videoconference must be included with your request to appear. Requests to appear via videoconference must include a statement explaining why the witness cannot appear in person; the Chairman, or other person designated to conduct the investigations, may in their discretion for good cause shown, grant such a request. Requests to appear as remote witness due to illness or a positive COVID–19 test result may be submitted by 3pm the business day prior to the hearing. Further information about participation in the hearing will be posted on the Commission's website at *https://www.usitc.gov/calendarpad/calendar.html.*

A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on November 15, 2022. Parties shall file and serve written testimony and presentation slides in connection with their presentation at the hearing by no later than 4:00 p.m. on November 16, 2022. Oral testimony and written materials to be submitted with respect for the public hearing are governed by sections 201.6(b)(2), 201.13(f), and 207.24 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 business days prior to the date of the hearing.

Written submissions.—Each party who is an interested party shall submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.23 of the Commission's rules; the deadline for filing is November 10, 2022. Parties shall also file written testimony in connection with their presentation at the hearing, and posthearing briefs, which must conform with the provisions of section 207.25 of the Commission's rules. The deadline for filing posthearing briefs is November 28, 2022. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations, including statements of support or opposition to the petitions, on or before November 28, 2022. On December 13, 2022, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before December 15, 2022, but such final comments must not contain new factual information and must otherwise comply with § 207.30 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings.

Additional written submissions to the Commission, including requests pursuant to § 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.21 of the Commission's rules.

By order of the Commission.

Issued: September 15, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–20426 Filed 9–20–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ) Docket No. 1806]

National Institute of Justice Listening Sessions With Stakeholder Organizations

AGENCY: National Institute of Justice, Office of Justice Programs, Justice.

ACTION: Notice.

SUMMARY: The National Institute of Justice (NIJ) plans to host a series of listening sessions with stakeholder organizations. The purpose of the listening sessions is for the NIJ Director to (1) to gather fact and information from stakeholder organizations about current challenges in the criminal justice and juvenile justice ecosystems that research could address and (2) to explain NIJ's priorities in regard to those challenges. NIJ's priorities are described at: *https://nij.ojp.gov/about/nij-director.* Stakeholder organizations include law enforcement, corrections, courts, criminal justice, and public safety professional associations; current NIJ grant and cooperative agreement recipients; law enforcement, corrections, courts, and other criminal justice agencies; juvenile justice agencies; crime victims agencies; advocacy groups, including community-based entities that are dedicated to evidence-based public safety initiatives; and other organizations with a nexus to criminal justice and juvenile justice operations and research.

DATES: In-person listening sessions will be held on the following dates and time: October 12, 2022 from 11:00 a.m. to 12:30 p.m.; October 20, 2022 from 10:00 to 11:30 a.m.; and November 7, 2022 from 10:00 to 11:30 a.m. All times in Eastern time.

ADDRESSES: In-person listening sessions will be held at the Office of Justice Programs, 810 7th Street NW, Washington, DC 20531. Virtual listening sessions will be held via Webex.

FOR FURTHER INFORMATION CONTACT: Barry Bratburd, National Institute of Justice, 810 7th Street NW, Washington, DC 20531; telephone number: (202) 616–5314; email address: *barry.bratburd2@usdoj.gov.*

SUPPLEMENTARY INFORMATION: NIJ is conducting this activity pursuant to its authorities at 34 U.S.C. 10122 and 6 U.S.C. 161–165.

NIJ anticipates holding several listening sessions in-person on the dates listed below. Space will be limited for each in-person listening session, and as a result, only 25 participants will be allowed to register for each. NIJ requests that each organization limit their representatives to only one per organization and attend only one listening session. Exceptions to this limit may occur, should space allow. Participants planning to attend are responsible for their own travel arrangements.

To express interest in attending a listening session, please send an email to the point of contact listed below by 5:00 p.m. Eastern time one week prior to the scheduled meeting and provide the name of your organization and the name of the representatives proposed to attend. A preliminary agenda will be sent via email to confirmed attendees prior to the listening session. Depending on the level of interest, NIJ may convene additional listening sessions to be held virtually or in person. The web address for any virtual listening sessions will be sent via email to confirmed attendees prior to those listening sessions.

Nancy La Vigne,

Director, National Institute of Justice.

[FR Doc. 2022–20407 Filed 9–20–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF JUSTICE

National Institute of Justice

[OJP (NIJ) Docket No. 1802]

Special Technical Committee for Criminal Justice Practice for Digital Multimedia Evidence

AGENCY: National Institute of Justice, Office of Justice Programs, Justice.

ACTION: Notice.

SUMMARY: The National Institute of Justice (NIJ) is seeking qualified individuals to serve on a Special Technical Committee (STC) for Criminal Justice Practice for Digital Multimedia Evidence. The purpose of the STC will be to update and revise the NIJ guide, *Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition* (NCJ 219941), and develop other relevant guides and standards related to digital multimedia evidence practice for criminal justice purposes.

DATES: Individuals wishing to submit an application to the National Institute of

Justice must do so by 5 p.m. eastern time December 20, 2022, as instructed below.

FOR FURTHER INFORMATION CONTACT: Martin Novak, Technology and Standards Division, Office of Research, Evaluation and Technology, National Institute of Justice, 810 7th Street NW, Washington, DC 20531; telephone number: (202) 598–7795; email address: *martin.novak@usdoj.gov.*

SUPPLEMENTARY INFORMATION:

How to Respond and What to Include: To apply to serve on the Special Technical Committee for Criminal Justice Practice for Digital Multimedia Evidence, please email a resume to the point of contact listed above by the deadline listed above. Please put ''Special Technical Committee for Criminal Justice Practice for Digital Multimedia Evidence'' in the subject line. Application materials must be submitted electronically. Hardcopy application materials will not be accepted. There is no page limit or limit to the amount of information that an interested applicant may submit to demonstrate his, her, or their qualifications. More information on the individuals sought for the STC is provided below. All materials submitted will be treated confidentially and discreetly and may be shared with U.S. Government staff or U.S. Government contractors for evaluation purposes related to selection for the STC only.

NIJ (pursuant to its authorities at 34 U.S.C. 10122 and 6 U.S.C. 161–165) is seeking qualified individuals to serve on a Special Technical Committee for Criminal Justice Practice for Digital Multimedia Evidence. The purpose of the STC will be to update and revise the NIJ guide, *Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition* (*https://www.ojp.gov/pdffiles1/nij/219941.pdf*), published in April 2008. NIJ developed and published the *Electronic Crime Scene Investigation: A Guide for First Responders, Second Edition* to assist State and local law enforcement and other first responders who may be responsible for preserving an electronic crime scene and for recognizing, collecting, and safeguarding digital evidence. The STC may also inform the development of other relevant guides and standards related to digital multimedia evidence practices for criminal justice purposes. NIJ guides and standards are consensus-based and designed to articulate the criminal justice end user community's operational requirements and best practices.

NIJ anticipates that the STC for Criminal Justice Practice for Digital Multimedia Evidence will be comprised of approximately 25 individuals who are crime scene investigators, digital forensic experts, computer forensic examiners, crime laboratory personnel, first responders, prosecutors, and other subject matter experts from federal, state, and local criminal justice agencies or other relevant technical or governmental organizations. Individuals will be selected to achieve the best possible balance of knowledge and expertise.

Submitted materials must clearly demonstrate the applicant's qualifications to serve on the STC. Law enforcement practitioners must be active sworn personnel or civilian employees of a law enforcement agency or crime laboratory. Candidates should have experience with the identification, collection, and preservation of digital multimedia evidence at crime scenes or through conducting search warrants; analysis of digital multimedia evidence for investigative purpose or for criminal proceedings; presentation of digital multimedia evidence in court; or some combination of the above. Individuals operating at all levels of a law enforcement agency are encouraged to apply, however sworn officers at the level of lieutenant and above are preferred. Nonsworn personnel should have at least ten years of experience of job duties relevant to the purpose of the STC.

NIJ anticipates that the STC will meet virtually several times over the course of approximately 18 to 24 months starting sometime in late 2022 or early 2023, with each meeting lasting one to two days. If conditions permit, the STC may meet at least once in person in the Washington, DC The majority of the work will be conducted by web conference, telephone, and email. Participation time will not be reimbursed; however, should travel be permitted, it is expected that travel and per diem expenses for travel originating outside the local Washington, DC area will be reimbursed. Any potential reimbursements are subject to, inter alia, the availability of appropriated funds, and to any modifications or additional requirements that may be imposed by law.

Nancy La Vigne,

Director, National Institute of Justice.

[FR Doc. 2022–20414 Filed 9–20–22; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Employment and Training Administration

Agency Information Collection Activities; Comment Request; Fidelity Bonding Demonstration

ACTION: Notice.

SUMMARY: The Department of Labor's (DOL) Employment and Training Administration (ETA) is soliciting comments concerning a proposed extension for the authority to conduct the information collection request (ICR) titled, ''Fidelity Bonding Demonstration.'' This comment request is part of continuing Departmental efforts to reduce paperwork and respondent burden in accordance with the Paperwork Reduction Act of 1995 (PRA).

DATES: Consideration will be given to all written comments received by November 21, 2022.

ADDRESSES: A copy of this ICR with applicable supporting documentation, including a description of the likely respondents, proposed frequency of response, and estimated total burden, may be obtained free by contacting Mallery Johnson by telephone at 202–693–3497 (this is not a toll-free number) or by email at *johnson.mallery@dol.gov.*

Submit written comments about, or requests for a copy of, this ICR by email to *johnson.mallery@dol.gov.* Though hard copy mail frequently experiences delays, comments can also be delivered by mail or courier to the U.S. Department of Labor, Employment and Training Administration, Reentry Employment Opportunities, Room N–4508, 200 Constitution Avenue NW, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mallery Johnson by telephone at 202–693–3497 (this is not a toll-free number) or by email at *johnson.mallery@dol.gov.*

SUPPLEMENTARY INFORMATION: DOL, as part of continuing efforts to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information before submitting them to the Office of Management and Budget (OMB) for final approval. This program helps to ensure requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements can be properly assessed.

The Federal Bonding Program provides fidelity bonds protecting employers who hire individuals with criminal records and other job applicants from theft, forgery, or embezzlement by the employee. Although the bonds have mainly been used for hires of individuals with criminal records, any job applicant is eligible for bonding services, including recovering substance abusers (alcohol or drugs) and persons having poor financial credit, youth and adults who lack a work history, individuals dishonorably discharged from the military, and others. Over the years, the Federal Bonding Program has remained a relatively small program, serving about 900 individuals each year. DOL expanded the use of fidelity bonds to place individuals previously incarcerated in jobs by providing multiple year grants to 24 states in 2019 and 8 additional grants in 2020 for states to purchase such bonds. Relatedly, the number of individuals served rose to approximately 1,050 in 2021.

In order to account for the accurate use and tracking of the expansion of fidelity bonding, the Department is now seeking to extend PRA approval for the Fidelity Bond Issuance Form. This form lists the contact information of the job placement agency and the employer; identifies the person being insured; and provides the amount and the effective date of the bond issued. The form also identifies the occupation, hourly wage, and hours per week of the job placement; the employer type, industry, and size of the firm; and the gender, race, and ethnicity of the person insured.

This information collection is conducted under the authority of section 185(a)(2) of the Workforce Innovation and Opportunity Act (WIOA), which requires recipients of funds under title I to maintain such records and submit such reports as the Secretary requires regarding the performance of Title I programs and activities (including Federal Bonding, a WIOA section 169 demonstration). The fidelity bonding demonstration grantees will report a recidivism rate for participants enrolled in Wagner-Peyser Employment Service. The proposed reporting and record-keeping system provides a minimum level of information collection that is necessary to comply with Equal Opportunity requirements, to hold grantees appropriately accountable for the Federal funds they receive to purchase bonds, and to allow the Department to fulfil its oversight and management responsibilities.

This information collection is subject to the PRA. A Federal agency generally cannot conduct or sponsor a collection of information, and the public is generally not required to respond to an information collection, unless it is approved by OMB under the PRA and displays a currently valid OMB Control Number. In addition, notwithstanding any other provisions of law, no person shall generally be subject to penalty for failing to comply with a collection of information that does not display a valid Control Number. *See* 5 CFR 1320.5(a) and 1320.6.

Interested parties are encouraged to provide comments to the contact shown in the **ADDRESSES** section. Comments must be written to receive consideration, and they will be summarized and included in the request for OMB approval of the final ICR. In order to help ensure appropriate consideration, comments should mention OMB CONTROL 1205–0541. Submitted comments will also be a matter of public record for this ICR and posted on the internet, without redaction. DOL encourages commenters not to include personally identifiable information, confidential business data, or other sensitive statements/information in any comments.

DOL is particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Agency: DOL–ETA.

Type of Review: Extension.

Title of Collection: Fidelity Bonding Demonstration.

Form: Fidelity Bonding Issuance Form.

OMB Control Number: 1205–0541.

Affected Public: State Workforce Agencies, local American Job Center staff, private employers.

Estimated Number of Respondents: 8,000.

Frequency: Once.

Total Estimated Annual Responses: 32,000.

Estimated Average Time per Response: Varies.

Estimated Total Annual Burden Hours: 2,400 hours.

Total Estimated Annual Other Cost Burden: $32,947.20.

Authority: 44 U.S.C. 3506(c)(2)(A).

Brent Parton,

Acting Assistant Secretary for Employment and Training, Labor.

[FR Doc. 2022–20396 Filed 9–20–22; 8:45 am]

BILLING CODE 4510–FN–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2021–0010]

Federal Advisory Council on Occupational Safety and Health (FACOSH)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for nominations to serve on the Federal Advisory Council on Occupational Safety and Health (FACOSH).

SUMMARY: The Assistant Secretary of Labor for Occupational Safety and Health (OSHA) invites interested parties to submit nominations for membership on FACOSH.

DATES: Nominations for FACOSH must be submitted (postmarked, sent, transmitted, or received) by November 21, 2022.

ADDRESSES: You may submit nominations and supporting materials by one of the following methods:

Electronically: You may submit nominations, including attachments, electronically into Docket No. OSHA—2021–0010 at *http://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the online instructions for submissions.

Docket: To read or download comments or other material in the docket, go to *http://www.regulations.gov.* Documents in the docket are listed in the *http://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the website. All submissions, including copyrighted material, are available for inspection through the OSHA Docket Office. Contact the OSHA Docket Office at (202)

693–2350 (TTY (877) 889–5627) for assistance in locating docket submissions.

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (OSHA–2021–0010). OSHA will place comments, including personal information, in the public docket, which may be available online. Therefore, OSHA cautions interested parties about submitting personal information such as Social Security numbers and birthdates.

FOR FURTHER INFORMATION CONTACT:

Press inquiries: Mr. Frank Meilinger, Director, OSHA Office of Communications; telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General information: Ms. Mikki Holmes, Director, OSHA Office of Federal Agency Programs; telephone (202) 693–2122; email *ofap@dol.gov.*

Copies of this **Federal Register** *document:* Electronic copies of this **Federal Register** document are available at *http://www.regulations.gov.* This document, as well as news releases and other relevant information are also available on the OSHA web page at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION: The Assistant Secretary of OSHA invites interested parties to submit nominations for membership on FACOSH.

I. Background

FACOSH is authorized to advise the Secretary of Labor (Secretary) on all matters relating to the occupational safety and health of Federal employees (Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, Executive Orders 12196 and 13511). This includes providing advice on how to reduce and keep to a minimum the number of injuries and illnesses in the Federal workforce and how to encourage the establishment and maintenance of effective occupational safety and health programs in each Federal agency.

II. FACOSH Membership

FACOSH is comprised of 16 members, who the Secretary appoints to staggered terms not to exceed three (3) years. The Assistant Secretary, who chairs FACOSH, is seeking nominations to fill six (6) position on FACOSH that become vacant on January 1, 2023. The Secretary will appoint the new members to three-(3) year terms.

The number of members the Secretary will appoint to three-year terms beginning January 1, 2023, includes:

- Three management representatives; and
- Three labor representatives.

FACOSH members serve at the pleasure of the Secretary unless the member is no longer qualified to serve, resigns, or is removed by the Secretary. The Secretary may appoint FACOSH members to successive terms. FACOSH meets at least two (2) times a year.

The Department of Labor is committed to equal opportunity in the workplace and seeks broad-based and diverse FACOSH membership. Any interested person or organization may nominate one (1) or more qualified persons for membership on FACOSH. Interested persons also are invited and encouraged to submit statements in support of particular nominees.

III. Nomination Requirements

Nominations must include the following information:

1. The nominee's contact information and current occupation or position;
2. Nominee's resume or curriculum vitae, including prior membership on FACOSH and other relevant organizations, associations and committees;
3. Category of membership (management, labor) the nominee is qualified to represent;
4. A summary of the nominee's background, experience and qualifications that addresses the nominee's suitability for the nominated membership category;
5. Articles or other documents the nominee has authored that indicate the nominee's knowledge, experience, and expertise in occupational safety and health, particularly as it pertains to the Federal workforce; and
6. A statement that the nominee is aware of the nomination, is willing to regularly attend and participate in FACOSH meetings, and has no apparent conflicts of interest that would preclude membership on FACOSH.

IV. Member Selection

The Secretary will appoint FACOSH members based upon criteria including, but not limited to, the nominee's level of responsibility for occupational safety and health matters involving the Federal workforce, experience and competence in occupational safety and health, and willingness and ability to regularly and fully participate in FACOSH meetings. Federal agency management nominees who serve as their agency's Designated Agency Safety and Health Official (DASHO) and labor nominees who are responsible for Federal employee occupational safety and health matters within their respective organizations are preferred as management and labor members, respectively. The information received through the nomination process, along with other relevant sources of information, will assist the Secretary in making appointments to FACOSH. In selecting FACOSH members, the Secretary will consider individuals nominated in response to this **Federal Register** notice, as well as other qualified individuals. OSHA will publish a list of the new FACOSH members in the **Federal Register**.

Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice under the authority granted by section 19 of the Occupational Safety and Health Act of 1970 (29 U.S.C. 668), 5 U.S.C. 7902, the Federal Advisory Committee Act (5 U.S.C. App), Executive Order 12196 and 13511, Secretary of Labor's Order 4–2010 (75 FR 55355, 9/10/2010), 29 CFR part 1960 (Basic Program Elements of for Federal Employee Occupational Safety and Health Programs), and 41 CFR part 102–3.

Signed at Washington, DC, on September 15, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–20398 Filed 9–20–22; 8:45 am]

BILLING CODE 4510–26–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2009–0025]

UL LLC: Grant of Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: In this notice, OSHA announces the final decision to expand the scope of recognition for UL LLC as a Nationally Recognized Testing Laboratory (NRTL).

DATES: The expansion of the scope of recognition becomes effective on September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Information regarding this notice is available from the following sources:

Press inquiries: Contact Mr. Frank Meilinger, Director, OSHA Office of Communications, U.S. Department of Labor, telephone: (202) 693–1999; email: *meilinger.francis2@dol.gov.*

General and technical information: Contact Mr. Kevin Robinson, Director, Office of Technical Programs and

Coordination Activities, Directorate of Technical Support and Emergency Management, Occupational Safety and Health Administration, U.S. Department of Labor, phone: (202) 693–2110 or email: *robinson.kevin@dol.gov.*

SUPPLEMENTARY INFORMATION:

I. Notice of Final Decision

OSHA hereby gives notice of the expansion of the scope of recognition of UL LLC (UL) as a NRTL. UL's expansion covers the addition of two test standards to the NRTL scope of recognition.

OSHA recognition of a NRTL signifies that the organization meets the requirements specified in 29 CFR 1910.7. Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within the scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products properly approved by the NRTL to meet OSHA standards that require testing and certification of the products.

The agency processes applications by a NRTL for initial recognition and for an expansion or renewal of this recognition, following requirements in appendix A to 29 CFR 1910.7. This appendix requires that the agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides a preliminary finding. In the second notice, the agency provides the final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. OSHA maintains an informational web page for each NRTL, including UL, which details the NRTL's scope of recognition. These pages are available from the OSHA website at *http://www.osha.gov/dts/otpca/nrtl/index.html.*

UL submitted an application, dated December 24, 2021, to expand their recognition as a NRTL to include thirty-eight additional test standards (OSHA–2009–0025–0043). This application was amended to separate two standards from the original request (OSHA–2009–0025–0044). The remaining thirty-six standards will be addressed in a separate **Federal Register** notice in the future. This expansion covers the addition of two standards to UL's NRTL scope of recognition. OSHA staff performed a detailed analysis of the application packet and reviewed other pertinent information. OSHA did not perform any on-site reviews in relation to this application.

OSHA published the preliminary notice announcing UL's expansion application in the **Federal Register** on August 19, 2022 (87 FR 51152). The agency requested comments by September 6, 2022, but it received no comments in response to this notice. OSHA is now proceeding with this final notice to grant this expansion of UL's scope of recognition.

To obtain or review copies of all public documents pertaining to UL's application, go to *http://www.regulations.gov* or contact the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor. Docket No. OSHA–2009–0025 contains all materials in the record concerning UL's recognition. Please note: Due to the COVID–19 pandemic, the Docket Office is closed to the public at this time but can be contacted at (202) 693–2350 (TTY ((877) 889–5627).

II. Final Decision and Order

OSHA staff examined UL's expansion application, its capability to meet the requirements of the test standards, and other pertinent information. Based on its review of this evidence, OSHA finds that UL meets the requirements of 29 CFR 1910.7 for expansion of its recognition, subject to the limitations and conditions listed in this notice. OSHA, therefore, is proceeding with this final notice to grant UL's scope of recognition. OSHA limits the expansion of UL's recognition to testing and certification of products for demonstration of conformance to the test standards listed below in table 1.

TABLE 1—LIST OF APPROPRIATE TEST STANDARDS FOR INCLUSION IN UL'S NRTL SCOPE OF RECOGNITION

Test standard	Test standard title
UL 2272	Standard for Electrical Systems and Personal E-Mobility Devices.
UL 2849	Standard for Electrical Systems for eBikes

OSHA's recognition of any NRTL for a particular test standard is limited to equipment or materials for which OSHA standards require third-party testing and certification before using them in the workplace. Consequently, if a test standard also covers any products for which OSHA does not require such testing and certification, a NRTL's scope of recognition does not include these products.

The American National Standards Institute (ANSI) may approve the test standards listed above as American National Standards. However, for convenience, we may use the designation of the standards-developing organization for the standards as opposed to the ANSI designation. Under the NRTL Program's policy (see OSHA Instruction CPL 01–00–004, chapter 2, section VIII), only standards determined to be appropriate test standards may be approved for NRTL recognition. Any NRTL recognized for a particular test standard may use either the proprietary version of the test standard or the ANSI version of that standard. Contact ANSI to determine whether a test standard is currently ANSI-approved.

A. Conditions

In addition to those conditions already required by 29 CFR 1910.7, UL must abide by the following conditions of the recognition:

1. UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major change in its operations as a NRTL, and provide details of the change(s);

2. UL must meet all the terms of its recognition and comply with all OSHA policies pertaining to this recognition; and

3. UL must continue to meet the requirements for recognition, including all previously published conditions on UL's scope of recognition, in all areas for which it has recognition.

Pursuant to the authority in 29 CFR 1910.7, OSHA hereby expands the scope of recognition of UL, subject to the limitations and conditions specified above.

III. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, 200 Constitution Avenue NW, Washington, DC 20210, authorized the preparation of this notice. Accordingly, the agency is issuing this notice pursuant to 29 U.S.C. 657(g)(2), Secretary of Labor's Order No. 8–2020 (85 FR 58393, September 18, 2020) and 29 CFR 1910.7.

Signed at Washington, DC, on September 14, 2022.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–20397 Filed 9–20–22; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 21, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Polly Penhale, ACA Permit Officer, at the above address, 703–292–8030.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2023–013

1. Applicant

Dr. Heather Lynch, Stony Brook University, IACS 163, Stony Brook, NY 11794.

Activity for Which Permit is Requested

Waste Management. The applicant seeks an Antarctic Conservation Act waste management permit for activities associated with penguin population surveys in the Western Antarctic Peninsula and the South Shetland Islands. The applicant proposes using battery-powered, quadrotor unmanned aerial vehicles (UAVs) to assist in the collection of imagery data for a multi-scale population census of penguin colonies. Mitigation measures will be put in place to prevent loss of aircraft. These measures include UAVs being flown by a trained pilot in fair-weather conditions and having stationed observers maintain visual contact with the aircraft at all times. The applicant proposes various recovery methods in the unlikely event that an aircraft is lost over land or sea. These measures will limit any potential impacts on the Antarctic environment. The applicant seeks a waste permit to cover any accidental release that may result from UAV use.

Location

King George Island, South Shetland Islands; Western Antarctic Peninsula.

Dates of Permitted Activities

November 15, 2022–February 1, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–20403 Filed 9–20–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Modification Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit modification request received and permit issued.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of requests to modify permits issued to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of a requested permit modification issued.

DATES: September 15, 2022 to February 3, 2026.

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, VA 22314; 703–292–4479; email: *ACApermits@nsf.gov.*

SUPPLEMENTARY INFORMATION: The National Science Foundation (NSF), as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 670), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection.

Description of Permit Modification Requested: The Foundation issued a permit (ACA 2022–020) to David Rootes, Environmental Manager, Antarctic Logistics and Expeditions, LLC (ALE), on November 29, 2021. The issued permit allows the applicant to operate a remote camp at Union Glacier, Antarctica, and provide logistical support services for scientific and other expeditions, film crews, and tourists. These activities include aircraft support, cache positioning, camp and field support, resupply, search and rescue, medevac, medical support and logistic support for some National Operators.

Now the applicant proposes a permit modification to continue permitted activities, including minimization, mitigation, and monitoring of waste, for the 2017–2018 Antarctic season. The Environmental Officer has reviewed the modification request and has determined that the amendment is not a material change to the permit, and it will have a less than a minor or transitory impact.

The permit modification was issued on September 15, 2022.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–20401 Filed 9–20–22; 8:45 am]

BILLING CODE 7555–01–P

NATIONAL SCIENCE FOUNDATION

Notice of Permit Applications Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit applications received.

SUMMARY: The National Science Foundation (NSF) is required to publish a notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act in the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by October 21, 2022. This application may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, Office of Polar Programs, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314 or *ACApermits@nsf.gov.*

FOR FURTHER INFORMATION CONTACT: Andrew Titmus, ACA Permit Officer, at the above address, 703–292–4479.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Pub. L. 95–541, 45 CFR 671), as amended by the Antarctic Science, Tourism and Conservation Act of 1996, has developed regulations for the establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Antarctic Specially Protected Areas.

Application Details

Permit Application: 2023–010

1. Applicant

Becky Ball, School of Mathematical and Natural Sciences, Arizona State University, Glendale, AZ 85306.

Activity for Which Permit is Requested

Take, Enter Antarctic Specially Protected Area (ASPA), Import to USA. The applicant plans to take up to 117 (500 gram) soil samples, 36 samples of the plant *Deschampsia antarctica,* 72 moss samples, and 36 cyanobacterial mat samples per year from 4 locations on King George Island, Robert Island, and the Antarctic Peninsula. This project will develop understanding of plant functional traits and their role in succession during glacial retreat in terrestrial Antarctica. The applicant plans to conduct sampling and soil respiration experiments at sites near to ASPA 151, ASPA 112, ASPA 125, ASPA 150, ASPA 128, and ASPA 134 with sampling occurring within the ASPA only if suitable sites cannot be accessed outside of the ASPA boundary. The applicant plans to import soil and plant samples into the USA for study at the home institutions.

Location

ASPA 112—Coppermine Peninsula, Robert Island, South Shetland Islands; ASPA 125—Fildes Peninsula, King George Island; ASPA 128—Western shore of Admiralty Bay, King George Island, South Shetland Islands; ASPA 134—Cierva Point and offshore islands, Danco Coast, Antarctic Peninsula; ASPA 150—Ardley Island, Maxwell Bay, King George Island; ASPA 151—Lions Rump, King George Island, South Shetland Islands.

Dates of Permitted Activities

1 December 2022–31 March 2024.

Permit Application: 2023–013

2. Applicant

Dr. Heather Lynch, Stony Brook University, IACS 163, Stony Brook, NY 11794.

Activity for Which Permit is Requested

Waste Management. The applicant seeks an Antarctic Conservation Act waste management permit for activities associated with penguin population surveys in the Western Antarctic Peninsula and the South Shetland Islands. The applicant proposes using battery-powered, quadrotor unmanned aerial vehicles (UAVs) to assist in the collection of imagery data for a multi-scale population census of penguin colonies. Mitigation measures will be put in place to prevent loss of aircraft. These measures include UAVs being flown by a trained pilot in fair-weather conditions and having stationed observers maintain visual contact with the aircraft at all times. The applicant proposes various recovery methods in the unlikely event that an aircraft is lost over land or sea. These measures will limit any potential impacts on the Antarctic environment. The applicant seeks a waste permit to cover any accidental release that may result from UAV use.

Location

King George Island, South Shetland Islands; Western Antarctic Peninsula.

Dates of Permitted Activities

November 15, 2022–February 1, 2023.

Erika N. Davis,

Program Specialist, Office of Polar Programs.

[FR Doc. 2022–20402 Filed 9–20–22; 8:45 am]

BILLING CODE 7555–01–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 22 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–108, CP2022–112.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20448 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail and First-Class Package Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 7, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail & First-Class Package Service Contract 221 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–103, CP2022–107.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20447 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a

domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on Sepember 16, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 31 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–117, CP2022–121.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20464 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on Sepember 16, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 29 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–115, CP2022–119.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20459 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on Sepember 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 25 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–111, CP2022–115.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20461 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 13, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 761 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–105, CP2022–109.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20443 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 14, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 20 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–106, CP2022–110.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20445 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 23 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–109, CP2022–113.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20451 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 28 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–114, CP2022–118.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20455 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 16, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 762 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–119, CP2022–123.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20454 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on Sepember 16, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 32 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–118, CP2022–122.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20457 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on Sepember 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 26 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–112, CP2022–116.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20446 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice September 21, 2022.*

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on Sepember 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel*

Select Service Contract 21 to Competitive Product List. Documents are available at *www.prc.gov,* Docket Nos. MC2022–107, CP2022–111.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20462 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on September 12, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Contract 760 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–104, CP2022–108.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20453 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on Sepember 16, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 30 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–116, CP2022–120.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20456 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

Product Change—Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Negotiated Service Agreement

AGENCY: Postal Service™.

ACTION: Notice.

SUMMARY: The Postal Service gives notice of filing a request with the Postal Regulatory Commission to add a domestic shipping services contract to the list of Negotiated Service Agreements in the Mail Classification Schedule's Competitive Products List.

DATES: *Date of required notice:* September 21, 2022.

FOR FURTHER INFORMATION CONTACT: Sean Robinson, 202–268–8405.

SUPPLEMENTARY INFORMATION: The United States Postal Service® hereby gives notice that, pursuant to 39 U.S.C. 3642 and 3632(b)(3), on Sepember 15, 2022, it filed with the Postal Regulatory Commission a *USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service, and Parcel Select Service Contract 27 to Competitive Product List.* Documents are available at *www.prc.gov,* Docket Nos. MC2022–113, CP2022–117.

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–20463 Filed 9–20–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95783; File No. SR–MRX–2022–15]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Port-Related Fees at Options 7, Section 6

September 15, 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 September 1, 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 the Exchange's port-related fees at Options 7, Section 6, as described further below.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/mrx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend Options 7, Section 6 to (i) prorate port fees for the first month of service, (ii) clarify that port

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

fees for cancelled services will continue to be charged for the remainder of month, and (iii) clarify that Nasdaq Testing Facility (''NTF'') ports are provided at no cost.

Currently, the Exchange does not prorate port connectivity fees. Thus, participants are assessed a full month's fee if they direct the Exchange to make the subscribed connectivity live on any day of the month, including the last day thereof. Participants are also assessed a full month's port fee if they cancel service during the month.

The Exchange proposes to provide prorated port fees for the first month of service for new requests. By prorating the first month's fees, the Exchange would charge participants port fees only for the days in which the participants are connected to the Exchange during the first month of service. The Exchange proposes to continue the current practice of charging port fees for the remainder of the month upon cancellation. If a participant starts and cancels service in the same month, the participant would not be billed for those days prior to the service start date but would be billed for the remainder of the month, including after the service is cancelled.[3]

The Exchange believes it is important for participants to have the option to establish new connections to the Exchange at any time during the month without being hampered by a full month charge irrespective of when during the month service begins. Moreover, other exchanges also charge new ports on a prorated basis for the first month of service.[4]

The Exchange also proposes to add subsection (iv) to Options 7, Section 6 to clarify the Exchange's existing practice that NTF Ports are provided at no cost. The NTF provides subscribers with a virtual System test environment that closely approximates the production environment on which they may test their automated systems that integrate with the Exchange. For example, the NTF provides subscribers a virtual System environment for testing upcoming releases and product enhancements, as well as testing firm software prior to implementation. The Exchange proposes adding express language in the Rules to provide increased clarity to market participants.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[6] 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 Exchange's proposed changes to its port fee schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options and equity securities transaction services that constrain its pricing determinations in that market. The Commission and the courts have repeatedly expressed their preference for competition over regulatory intervention in determining 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.'' [7]

The Exchange believes that it is reasonable to prorate port fees for the first month of connectivity. As discussed above, the Exchange believes it is important for participants to have the flexibility to establish new connections to the Exchange at any time during the month without being hampered by a full month charge. For example, the Exchange believes it is reasonable to charge a user who begins a subscription on the last day of the month to be charged only for use of a port for that day. As noted above, other exchanges already charge their customers for new ports on a prorated basis for the first month of service.[8] The proposed language describing the Exchange's practice to bill for the remainder of the month upon cancellation is intended only to clarify the existing practice and limit any confusion.

The Exchange believes that the proposal is also equitable and not unfairly discriminatory because the proposed change to prorate port fees for the first month of service and continue to charge for the remainder of the month upon cancellation will apply uniformly to all similarly situated participants. Removing the requirement to pay a full month's port fee if a user joins any day other than the first of the month is user-friendly and provides users incentive to subscribe at their convenience. The Exchange believes that prorating the fees for the first month of a user's subscription will ensure that the fees are more equitable to a user's utilization of the products. All users will benefit from the proration of the first month of their subscription.

The Exchange also believes that it is just and equitable, and in the interests of market participants, for the Exchange to clarify the Exchange's existing practice to provide NTF ports at no cost in Options 7, Section 6(iv), codifying existing practice where it is not expressly stated in the Rule. The Exchange believes that market participants will benefit from increased clarity, which will help limit any potential confusion in the future.

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.

Intramarket Competition

The Exchange does not believe that its proposal will place any category of Exchange participants at a competitive disadvantage. The proposed change to prorate port fees for the first month of service will apply uniformly to all similarly situated participants. All users will receive the benefit of a proration for the first month of port connectivity, which will enable users to save money that they otherwise would incur under the Exchange's current rules that do not provide for proration. The proposed language describing the Exchange's practice to bill for the remainder of the month upon cancellation, as well as the proposed language that NTF ports are provided at no cost, merely codify and clarify existing practices of the Exchange.

Intermarket Competition

The Exchange believes that the proposed change to its port fee schedule to provide proration for the first month

[3] For example, if a participant orders a port on September 4, 2022 and cancels the port on September 16, 2022, the participant would be charged the prorated port fee for September 5, 2022 through September 30, 2022.

[4] *See, e.g.,* Cboe BZX U.S. Equities Exchange Fee Schedule, available at *https://markets.cboe.com/us/equities/membership/fee_schedule/bzx/;* New York Stock Exchange Price List 2022, available at *https://www.nyse.com/publicdocs/nyse/markets/nyse/NYSE_Price_List.pdf.*

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4) and (5).

[7] Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (''Regulation NMS Adopting Release'').

[8] *Supra* note 4.

of port connectivity will not impose a burden on competition because the Exchange's execution services are completely voluntary and subject to extensive competition both from the other live exchanges and from off-exchange venues, which include alternative trading systems that trade national market system stock. Moreover, as noted above, other exchanges currently charge new ports on a prorated basis for the first month of service.[9] The proposed changes will help ensure that the Exchange's billing practices are commensurate with competitors.

The proposed change to the Exchange's port fee schedule is reflective of this competition because, as a threshold issue, the Exchange is a relatively small market so its ability to burden intermarket competition is limited. In this regard, even the largest U.S. equities exchange by volume only has 17–18% market share, which in most markets could hardly be categorized as having enough market power to burden competition. Accordingly, the Exchange does not believe that the proposed change will impair the ability of members, participants, or competing order execution venues to maintain their competitive standing in the financial markets.

The proposed change to clarify that NTF ports are provided at no cost is designed to expressly state existing practice without changing its operation and, therefore, the Exchange believes that the proposed change will not impose a burden on competition.

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) of the Act [10] and paragraph (f) of Rule 19b–4 [11] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is: (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–2022–15 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–2022–15. 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–2022–15 and should be submitted on or before October 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[12]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20374 Filed 9–20–22; 8:45 am]

BILLING CODE 8011–01–P

[9] *Supra* note 4.

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95782; File No. SR–MRX–2022–08]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 7 To Add Fees for Market Data

September 15, 2022.

On June 29, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess fees for market data. The proposed rule change was published for comment in the **Federal Register** on July 18, 2022.[3]

On August 25, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–08).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20373 Filed 9–20–22; 8:45 am]

BILLING CODE 8011–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95265 (July 12, 2022), 87 FR 42775.

[4] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95791; File No. SR–FINRA–2022–015]

Self-Regulatory Organizations; Financial Industry Regulatory Authority, Inc.; Order Instituting Proceedings To Determine Whether To Approve or Disapprove the Proposed Rule Change To Amend FINRA Rule 8312 (FINRA BrokerCheck Disclosure) To Release Information on BrokerCheck Relating to Firm Designation as a Restricted Firm

September 15, 2022.

I. Introduction

On June 3, 2022, the Financial Industry Regulatory Authority, Inc. (''FINRA'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change SR–FINRA–2022–015 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'') [1] and Rule 19b 4 [2] thereunder to amend Rule 8312 (FINRA BrokerCheck Disclosure) to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a ''Restricted Firm'' pursuant to Rule 4111 (Restricted Firm Obligations) and Rule 9561 (Procedures for Regulating Activities Under Rule 4111). The proposed rule change was published for public comment in the **Federal Register** on June 17, 2022.[3] On July 20, 2022, FINRA consented to an extension of the time period in which the Commission must approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to approve or disapprove the proposed rule change to September 15, 2022.[4] On September 15, 2022, FINRA responded to the comment letters received in response to the Notice.[5]

The Commission is publishing this order pursuant to Section 19(b)(2)(B) of the Exchange Act [6] to solicit comments on the proposed rule change and to institute proceedings to determine whether to approve or disapprove the proposed rule change.

II. Description of the Proposed Rule Change

A. Background

1. FINRA Rules 4111 (Restricted Firm Obligations) and 9561 (Procedures for Regulating Activities Under Rule 4111)

FINRA Rule 4111 established an annual process to designate as ''Restricted Firms'' member firms that present a high degree of risk to the investing public, based on numeric thresholds of firm-level and individual-level disclosure events, and then impose on such firms a ''Restricted Deposit Requirement'' [7] or, in addition or in the alternative, conditions or restrictions on the member firm's operations that are necessary or appropriate to protect investors and the public interest.[8] According to FINRA, the rule was designed to protect investors and the public interest by strengthening the tools available to FINRA to address the risks posed by member firms with a significant history of misconduct.[9] FINRA stated that it creates incentives for firms to change behaviors and activities, either to avoid being designated or re-designated as a Restricted Firm.[10]

FINRA Rule 9561 established expedited proceedings that: (1) provide firms an opportunity to challenge any requirements the Department has imposed, including any Restricted Deposit Requirements, by requesting a prompt review of its decision in the Rule 4111 process; and (2) address a member firm's failure to comply with any requirements imposed under Rule 4111.[11]

2. FINRA Rule 8312 (FINRA BrokerCheck Disclosure)

FINRA Rule 8312 (FINRA BrokerCheck Disclosure) governs the information about current and former registered broker-dealers and their associated persons that FINRA releases to the public through its BrokerCheck system.[12] Information available to investors through BrokerCheck includes, among other things, information reported on the most recently filed registration forms [13] (with limited exceptions) for both firms and registered individuals, and summary information about certain arbitration awards against a firm involving a securities or commodities dispute with a public customer.[14] This information includes a description of where and when the firm was established, people and entities that own controlling shares or directly influence the firm's daily operations, the name and succession history for current or former firms, the firm's active licenses and registrations, the types of businesses it conducts, information about arbitration awards and disciplinary matters, and information as to whether a particular member firm is subject to the provisions of the Taping Rule, among other information and disclosures.[15] FINRA stated that BrokerCheck helps investors make informed choices about the brokers and member firms with which they conduct business by providing

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Exchange Act Release No. 95092 (June 13, 2022), 87 FR 36551 (June 17, 2022) (File No. SR–FINRA–2022–015) (''Notice'').

[4] *See* letter from Michael Garawski, Associate General Counsel, FINRA, to Daniel Fisher, Branch Chief, Division of Trading and Markets, Commission, dated July 20, 2022. This letter is available at *https://www.finra.org/sites/default/files/2022-07/sr-finra-2022-015-extension1.pdf.*

[5] *See* letter from Michael Garawski, Associate General Counsel, FINRA, to Vanessa Countryman, Secretary, Commission, dated September 15, 2022 (''FINRA Response'').

[6] 15 U.S.C. 78s(b)(2)(B).

[7] *See* Rule 4111(i)(15) (definition of ''Restricted Deposit Requirement''). A firm subject to a Restricted Deposit Requirement will be required to establish a Restricted Deposit Account and deposit in that account cash or qualified securities with an aggregate value that is not less than the member firms's Restricted Deposit Requirement. *See* Rule 4111(a); 4111(i)(14) (definition of ''Restricted Deposit Account'').

[8] *See* Exchange Act Release No. 92525 (July 30, 2021), 86 FR 42925 (August 5, 2021) (Order Approving File No. SR–FINRA–2020–041, as Modified by Amendment Nos. 1 and 2) and Exchange Act Release No. 92525 (July 30, 2021), 86 FR 49589 (September 3, 2021) (Order Approving File No. SR–FINRA–2020–041) (Correction) (collectively, ''Rule 4111 Order''). Pursuant to FINRA Rule 9561(a)(1), FINRA's Department of Member Regulation (''Department'') shall issue a notice of its determination under Rule 4111 that a firm is a Restricted Firm and the requirements, conditions or restrictions to which the Restricted Firm is subject.

[9] *See* Rule 4111 Order, 86 FR at 42926.

[10] *See id.* at 42926 and 42932.

[11] *See id.* at 42931.

[12] According to FINRA, users of BrokerCheck include, among others, investors, member firms and other entities in the financial services industry, regulators, and individuals registered as brokers or seeking employment in the brokerage industry. *See* Notice, 87 FR at 36553. FINRA requires member firms to inform their customers of the availability of BrokerCheck. *See* Rule 2210(d)(8) (requiring that each of a member firm's websites include a readily apparent reference and hyperlink to BrokerCheck on the initial web page that the member firm intends to be viewed by retail investors and any other web page that includes a professional profile of one or more registered persons who conduct business with retail investors) and Rule 2267 (requiring member firms to provide to customers the FINRA BrokerCheck Hotline Number and a statement as to the availability to the customer of an investor brochure that includes information describing BrokerCheck); *see also* Notice, 87 FR at note 12 and accompanying text. The BrokerCheck website is available at *brokercheck.finra.org. See* Notice, 87 FR at note 11.

[13] These registration forms are the Uniform Application for Securities Industry Registration or Transfer (Form U4), the Uniform Termination Notice for Securities Industry Registration (Form U5), the Uniform Disciplinary Action Reporting Form (Form U6), the Uniform Application for Broker-Dealer Registration (Form BD), and the Uniform Request for Broker-Dealer Withdrawal (Form BDW). *See* Notice, 87 FR at note 13; *see also* Rule 8312(b)(2)(A).

[14] *See* Notice, 67 FR at 36552.

[15] *See id.* at 36553–36554.

registration and disciplinary history to investors at no charge.[16]

B. Proposed Amendments to Rule 8312

The proposed rule change would amend Rule 8312 to release information on BrokerCheck as to whether a particular member firm or former member firm is currently designated as a Restricted Firm pursuant to Rules 4111 and 9561. Information that a firm is currently a Restricted Firm would be displayed in BrokerCheck on both a firm's summary report and detailed report. Specifically, those reports would include the text, ''This firm is currently designated as a Restricted Firm pursuant to FINRA Rule 4111 (Restricted Firm Obligations),'' in a color or font that is prominent. The alert also would include the text ''Click here for more information,'' with a hyperlink to a page on FINRA's website that provides for the investing public a clear explanation of Rule 4111 and what it means to be a Restricted Firm.[17]

Information that a firm is a Restricted Firm would display on BrokerCheck while that firm is designated as a Restricted Firm. This Restricted Firm status would remain displayed while a Rule 9561 expedited proceeding to review the Department's decision is pending since the decision that designates a firm as a Restricted Firm will not be stayed during a Rule 9561 expedited proceeding.[18] When a firm is no longer designated as a Restricted Firm, no historical information would be displayed on BrokerCheck that the firm was a Restricted Firm.[19]

III. Proceedings To Determine Whether To Approve or Disapprove File No. SR–FINRA–2022–015 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to Section 19(b)(2)(B) of the Exchange Act to determine whether the proposed rule change should be approved or disapproved.[20] Institution of proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to the proposed rule change.

Pursuant to Section 19(b)(2)(B) of the Exchange Act, the Commission is providing notice of the grounds for disapproval under consideration.[21] The Commission is instituting proceedings to allow for additional analysis and input concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

IV. Request for Written Comments

The Commission requests that interested persons provide written submissions of their views, data, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposed rule change. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with the Exchange Act and the rules thereunder.

Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of views, data, and arguments, the Commission will consider, pursuant to Rule 19b–4, any request for an opportunity to make an oral presentation.[22]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by October 12, 2022. Any person who wishes to file a rebuttal to any other person's submission must file that rebuttal by October 26, 2022.

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 No. SR–FINRA–2022–015 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 No. SR–FINRA–2022–015. 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 such filing also will be available for inspection and copying at the principal office of FINRA. 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 No. SR–FINRA–2022–015 and should be submitted on or before October 12, 2022. If comments are received, any rebuttal comments should be submitted on or before October 26, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[23]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20376 Filed 9–20–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95780; File No. SR–PEARL–2022–39]

Self-Regulatory Organizations; MIAX PEARL, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Trading Permit Fees in the MIAX PEARL Options Fee Schedule

September 15, 2022.

[16] *See id.* at 36552.

[17] *See id.* at 36522. This would be similar to how BrokerCheck displays information that a firm is a ''taping firm.'' *See id.* at note 19.

[18] *See* Notice, 87 FR at 36552; *see also* Rule 9561(a)(4) (Effectiveness of the Rule 4111 Requirements).

[19] *See* Notice, 87 FR at 36552.

[20] 15 U.S.C. 78s(b)(2)(B).

[21] *Id.*

[22] Section 19(b)(2) of the Exchange Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29, 89 Stat. 97 (1975), grants the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Report of the Senate Committee on Banking, Housing and Urban Affairs to Accompany S. 249, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

[23] 17 CFR 200.30–3(a)(12); 17 CFR 200.30–3(a)(57).

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 September 12, 2022, MIAX PEARL, LLC (''MIAX Pearl'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission'') a 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 is filing a proposal to amend the MIAX Pearl Options Fee Schedule (the ''Fee Schedule'') to amend its monthly Trading Permit [3] fees for Members.[4]

The text of the proposed rule change is available on the Exchange's website at *http://www.miaxoptions.com/rule-filings/pearl* at MIAX Pearl's principal office, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the Fee Schedule to amend the amount and calculation of the monthly Trading Permit fees for Members. Currently, the Exchange assesses Trading Permit fees based upon the monthly total volume executed by the Member and its Affiliates [5] on the Exchange across all origin types, not including Excluded Contracts,[6] as compared to the Total Consolidated Volume (''TCV'') [7] in all MIAX Pearl-listed options. This Trading Permit fee structure has been in place since 2018.[8] The Exchange adopted a tier-based fee structure based upon the volume-based tiers detailed in the definition of ''Non-Transaction Fees Volume-Based Tiers'' [9] in the Definitions section of the Fee Schedule. The Exchange also assesses Trading Permit fees based upon the type of interface used by the Member to connect to the Exchange—the FIX Interface [10] and/or the MEO Interface.[11]

The Exchange now proposes to amend the calculation and amount of Trading Permit fees for Members by moving away from a volume tier-based fee structure for Electronic Exchange Members [12] (''EEMs'') to harmonize the tier-based structure for Market Maker [13] with that of its affiliates, Miami International Securities Exchange, LLC (''MIAX'') and MIAX Emerald, LLC (''MIAX Emerald''). Specifically, the Exchange proposes to adopt a flat monthly Trading Permit fee for EEMs that connect through either the FIX and/or MEO Interface and to adopt a tiered Trading Permit fee structure for Market Makers. Each of these changes are described below.

EEM Trading Permit Fees

First, the Exchange proposes to move away from a volume tier-based fee structure for EEM Trading Permit fees and charge EEMs (other than Clearing Firms) a flat monthly Trading Fee for connecting through the FIX Interface and/or MEO Interface.

All Members are able to use either interface based on their business models and needs. The FIX Interface is the industry-wide uniform message format and provides lower bandwidth, less capacity, and fewer Exchange resources. EEMs who are primarily order flow providers, are the only users of the FIX Interface.[14] The MEO Interface is the more robust interface offering lower

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ''Trading Permit'' means a permit issued by the Exchange that confers the ability to transact on the Exchange. *See* Exchange Rule 100.

[4] The term ''Member'' means an individual or organization that is registered with the Exchange pursuant to Chapter II of Exchange Rules for purposes of trading on the Exchange as an ''Electronic Exchange Member'' or ''Market Maker.'' Members are deemed ''members'' under the Exchange Act. *See* Exchange Rule 100 and the Definitions Section of the Fee Schedule.

[5] ''Affiliate'' means (i) an affiliate of a Member of at least 75% common ownership between the firms as reflected on each firm's Form BD, Schedule A, or (ii) the Appointed Market Maker of an Appointed EEM (or, conversely, the Appointed EEM of an Appointed Market Maker). An ''Appointed Market Maker'' is a MIAX Pearl Market Maker (who does not otherwise have a corporate affiliation based upon common ownership with an EEM) that has been appointed by an EEM and an ''Appointed EEM'' is an EEM (who does not otherwise have a corporate affiliation based upon common ownership with a MIAX Pearl Market Maker) that has been appointed by a MIAX Pearl Market Maker, pursuant to the following process. A MIAX Pearl Market Maker appoints an EEM and an EEM appoints a MIAX Pearl Market Maker, for the purposes of the Fee Schedule, by each completing and sending an executed Volume Aggregation Request Form by email to *membership@miaxoptions.com* no later than 2 business days prior to the first business day of the month in which the designation is to become effective. Transmittal of a validly completed and executed form to the Exchange along with the Exchange's acknowledgement of the effective designation to each of the Market Maker and EEM will be viewed as acceptance of the appointment. The Exchange will only recognize one designation per Member. A Member may make a designation not more than once every 12 months (from the date of its most recent designation), which designation shall remain in effect unless or until the Exchange receives written notice submitted 2 business days prior to the first business day of the month from either Member indicating that the appointment has been terminated. Designations will become operative on the first business day of the effective month and may not be terminated prior to the end of the month. Execution data and reports will be provided to both parties. *See* the Definitions Section of the Fee Schedule.

[6] ''Excluded Contracts'' means any contracts routed to an away market for execution. *See* the Definitions Section of the Fee Schedule.

[7] ''TCV'' means total consolidated volume calculated as the total national volume in those classes listed on MIAX Pearl for the month for which the fees apply, excluding consolidated volume executed during the period of time in which the Exchange experiences an Exchange System Disruption (solely in the option classes of the affected Matching Engine). *See* the Definitions Section of the Fee Schedule.

[8] *See* Securities Exchange Act Release No. 82867 (March 13, 2018), 83 FR 12044 (March 19, 2018) (SR–PEARL–2018–07).

[9] *See* the Definitions Section of the Fee Schedule for the monthly volume thresholds associated with each Tier.

[10] ''FIX Interface'' means the Financial Information Exchange interface for certain order types as set forth in Exchange Rule 516. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[11] ''MEO Interface'' or ''MEO'' means a binary order interface for certain order types as set forth in Rule 516 into the MIAX Pearl System. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[12] The term ''Electronic Exchange Member'' or ''EEM'' means the holder of a Trading Permit who is a Member representing as agent Public Customer Orders or Non-Customer Orders on the Exchange and those non-Market Maker Members conducting proprietary trading. Electronic Exchange Members are deemed ''members'' under the Exchange Act. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[13] The term ''Market Maker'' or ''MM'' means a Member registered with the Exchange for the purpose of making markets in options contracts traded on the Exchange and that is vested with the rights and responsibilities specified in Chapter VI of the Exchange Rules. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100.

[14] The Exchange does not propose to amend the fees for EEM Clearing Firms, which is set at $250 per month and not based on the amount of volume conducted on the Exchange. The term ''EEM Clearing Firm'' means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. *See* the Definitions Section of the Fee Schedule.

latency and higher throughput. The Exchange offers three time-in-force modifiers: [15] Day Limit (''Day''), Immediate-Or-Cancel (''IOC''), and Good 'Til Cancelled (''GTC'').[16] While all order types are available for use on either interface, only the time-in-force modifiers of IOC and Day are available on the MEO Interface.[17] The MEO Interface allows the submission of Cancel-Replacement orders,[18] which allow for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions.[19]

Specifically, the Exchange proposes to assess a flat monthly fee of $1,000 for EEMs that connect through the FIX Interface and a flat monthly fee of $3,000 for EEMs that connect through the MEO Interface. The Exchange proposes to charge a higher fee for EEMs that elect to use the MEO Interface due to it being the more robust interface offering lower latency and higher throughput. The Exchange also proposes to provide an EEM that chooses the MEO Interface Trading Permit with access to the FIX Interface at no additional cost. The Exchange does not propose to amend the Trading Permit fee for EEM Clearing Firms, which will remain at $250 per month.[20]

Market Makers only use the MEO Interface because it provides functionality that is necessary for Market Makers in satisfying their market making obligations.

Market Maker Trading Permit Fees

The Exchange proposes to amend the calculation and amounts of monthly Trading Permit fees for Market Makers to harmonize its fee structure with that of its affiliates, MIAX and MIAX Emerald.[21] The Exchange also notes that this proposal is substantially based on the recent filing by BOX Exchange LLC (''BOX'') to adopt monthly ''Participant'' fees for BOX's market makers based on options classes assigned, which filing has since passed the 60-day suspension deadline.[22]

The amount of the monthly Trading Permit fees for Market Makers would be based on the lesser of either the per class traded or percentage of total national average daily volume (''ADV'') measurement based on classes traded by volume. The amount of monthly Market Maker Trading Permit fee would be based upon the number of classes in which the Market Maker was registered to quote on any given day within the calendar month, or upon the class volume percentages.

Specifically, the Exchange proposes to adopt the following Trading Permit fees for Market Makers: (i) $3,000 for Market Maker registrations in up to 10 option classes or up to 20% of option classes by national ADV; (ii) $5,000 for Market Maker registrations in up to 40 option classes or up to 35% of option classes by ADV; (iii) $7,000 for Market Maker registrations in up to 100 option classes or up to 50% of option classes by ADV; and (iv) $9,000 for Market Maker registrations in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl. For example, if Market Maker 1 elects to quote the top 40 option classes which consist of 58% of the total national average daily volume in the prior calendar quarter, the Exchange would assess $5,000 to Market Maker 1 for the month which is the lesser of 'up to 40 classes' and 'over 50% of classes by volume up to all classes listed on MIAX Pearl'. If Market Maker 2 elects to quote the bottom 1000 option classes which consist of 10% of the total national average daily volume in the prior quarter, the Exchange would assess $3,000 to Market Maker 2 for the month which is the lesser of 'over 100 classes' and 'up to 20% of classes by volume.'

A Market Maker is determined to be registered in a class if that Market Maker has been registered in one or more series in that class. The Exchange will assess MIAX Pearl Market Makers the monthly Market Maker Trading Permit fee based on the greatest number of classes listed on MIAX Pearl that the MIAX Pearl Market Maker registered to quote in on any given day within a calendar month. The class volume percentage is based on the total national ADV in classes listed on MIAX Pearl in the prior calendar quarter. Newly listed option classes are excluded from the calculation of the monthly Market Maker Trading Permit fee until the calendar quarter following their listing, at which time the newly listed option classes will be included in both the per class count and the percentage of total national ADV.

The Exchange also proposes to adopt an alternative lower Trading Permit fee for Market Makers who fall within the 2nd, 3rd and 4th levels of the Market Maker Trading Permit fee table: (i) Market Maker registrations in up to 40 option classes or up to 35% of option classes by volume; (ii) Market Maker registrations in up to 100 option classes or up to 50% of option classes by volume; and (iii) Market Maker registrations in over 100 option classes or over 50% of option classes by volume up to all option classes listed on MIAX Pearl. In particular, the Exchange proposes to adopt footnote ''**'' following the Market Maker Trading Permit fee table for these Monthly Trading Permit tier levels, if the Market Maker's total monthly executed volume during the relevant month is less than 0.040% of the total monthly TCV for MIAX Pearl-listed option classes for that month, then the fee will be $3,500 instead of the fee otherwise applicable to such level.

The purpose of the alternative lower fee designated in proposed footnote ''**'' is to provide a lower fixed cost to those Market Makers who are willing to quote the entire Exchange market (or substantial amount of the Exchange market), as objectively measured by either number of classes assigned or national ADV, but who do not otherwise execute a significant amount of volume on the Exchange. The Exchange believes that, by offering lower fixed costs to Market Makers that execute less volume, the Exchange will retain and attract smaller-scale Market Makers, which are an integral component of the option marketplace, but have been decreasing in number in recent years, due to industry consolidation and lower market maker profitability. Since these smaller-scale Market Makers utilize less Exchange capacity due to lower overall volume executed, the Exchange believes it is reasonable and equitable to offer such Market Makers a lower fixed cost. The Exchange notes that the Exchange's affiliates, MIAX and MIAX Emerald, provide similar alternative lower Trading Permit fees for Market Makers who quote the entire MIAX and MIAX Emerald markets (or substantial amount of those markets), as objectively measured by either number of classes assigned or national ADV, but who do

[15] *See* MIAX Pearl Options Exchange User Manual, Section 6, Order Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited June 30, 2022).

[16] *See, e.g.,* Exchange Rule 516.

[17] *See* preamble to Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). *See also* Section 4.1.1.2 of the MEO Interface Specification, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf* (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

[18] *See* MIAX Pearl Options Exchange User Manual, Section 6, Interfaces and Liquidity Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited May 16, 2022).

[19] *See* Exchange Rule 516(d).

[20] The term ''EEM Clearing Firm'' means an EEM that solely clears transactions on the Exchange and does not connect to the Exchange via either the FIX Interface or MEO Interface. *See* the Definitions Section of the Fee Schedule.

[21] *See* MIAX Fee Schedule, Section (3)(b) and MIAX Emerald Fee Schedule, Section (3)(b).

[22] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17).

not otherwise execute a significant amount of volume on MIAX or MIAX Emerald.[23] The Exchange also notes that other options exchanges assess certain of their membership fees at different rates, based upon a member's participation on that exchange (as described in the table below), and, as such, this concept is not new or novel. The proposed changes to the Trading Permit fees for Market Makers who fall within the 2nd, 3rd and 4th levels of the fee table are based upon a business determination of current Market Maker assignments and trading volume.

* * * * *

As illustrated by the table below, the Exchange notes that the proposed fees for the Exchange's Trading Permits are in line with, or cheaper than, the similar trading permit and membership fees charged by other options exchanges. The Exchange believes other exchanges' membership and trading permit fees are useful examples of alternative approaches to providing and charging for membership and provides the table for comparison purposes only to show how the Exchange's proposed fees compare to fees currently charged by other options exchanges for similar membership and trading permits.

Exchange	Monthly membership/trading permit fee
MIAX Pearl Options (as proposed)	EEM Trading Permit fees: $1,000 for EEMs that connect via the FIX Interface. $3,000 for EEMs that connect via the MEO Interface. Market Maker Trading Permit fees: —$3,000 for Market Maker Assignments in up to 10 option classes or up to 20% of option classes by national ADV. —$5,000 for Market Maker Assignments in up to 40 option classes or up to 35% of option classes by ADV. —$7,000 for Market Maker Assignments in up to 100 option classes or up to 50% of option classes by ADV. —$9,000 for Market Maker Assignments in over 100 option classes or over 50% of option classes by ADV up to all option classes listed on MIAX Pearl.
BOX Options Exchange LLC ("BOX") [24].	Participant Fee: $1,500. Electronic Market Maker Trading Permit Fees: Tier 1 (up to and including 10 classes): $4,000. Tier 2 (up to and including 40 classes): $6,000. Tier 3 (up to and including 100 classes): $8,000. Tier 4 (over 100 classes): $10,000.
NYSE Arca, Inc. ("NYSE Arca") [25]	Options Trading Permits: Office and Clearing Firms: $1,000. Market Makers: 1st OTP—$8,000 for up to 60 plus the bottom 45% of option issues. 2nd OTP—Additional $6,000 for up to 150 plus the bottom 45% of option issues. 3rd OTP—Additional $5,000 for up to 500 plus the bottom 45% of option issues. 4th OTP—Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. 5th OTP—Additional $3,000 for all option issues. 6th–9th OTP—Additional $2,000. 10th or more OTPs—$500 for all options issues.
NYSE American, LLC ("NYSE American") [26].	ATP Trading Permits: Clearing Member: $1,000. Order Flow Provider: $1,000. Market Makers: $8,000 for up to 60 plus the bottom 45% of option issues. Additional $6,000 for up to 150 plus the bottom 45% of option issues. Additional $5,000 for up to 500 plus the bottom 45% of option issues. Additional $4,000 for up to 1,100 plus the bottom 45% of option issues. Additional $3,000 for all option issues. Additional $2,000 for 6th to 9th ATPs (plus additional fee for premium products). Additional $500 for the 10th or more ATPs.
Nasdaq PHLX LLC ("Nasdaq PHLX") [27].	Streaming Quote Trader ("SQT") permit fees: Tier 1 (up to 200 option classes): $0.00. Tier 2 (up to 400 option classes): $2,200. Tier 3 (up to 600 option classes): $3,200. Tier 4 (up to 800 option classes): $4,200. Tier 5 (up to 1,000 option classes): $5,200. Tier 6 (up to 1,200 option classes): $6,200. Tier 7 (all option classes): $7,200. Remote Market Maker Organization ("RMMO") permit fees: Tier 1 (less than 100 option classes): $5,000. Tier 2 (more than 100 and less than 999 option classes): $8,000. Tier 3 (1,000 or more option classes): $11,000.
Nasdaq ISE LLC ("Nasdaq ISE") [28]	Access Fees: Electronic Access Members ("EAMs"): $500. Primary Market Maker: $5,000 per membership. Competitive Market Maker: $2,500 per membership.
Cboe Exchange, Inc. ("Cboe") [29] ...	Electronic Trading Permit Fees: Market Maker: $5,000. Electronic Access Permit: $3,000. Clearing TPH Permit: $2,000.

[23] *See* MIAX Fee Schedule, Section (3)(b) and MIAX Emerald Fee Schedule, Section (3)(b).

Exchange	Monthly membership/trading permit fee
Cboe C2 Exchange, Inc. (''Cboe C2'') [30].	Access Permit Fees for Market Makers: $5,000. Electronic Access Permits: $1,000.
Cboe BZX Exchange, Inc. (''Cboe BZX Options'') [31].	$500 where member has an ADV < 5,000 contracts traded [32]. $1,000 where member has an ADV ≥ 5,000 contracts traded.

The proposed rule change is immediately effective.

[24] *See* BOX fee schedule, Section 1, *available at https://boxexchange.com/assets/BOX-Fee-Schedule-as-of-June-1-2022-1.pdf* (last visited June 29, 2022). BOX's Participant Fee is the analog to the Exchange's Trading Permit fee for Members who use the FIX interface. BOX's Electronic Market Maker Trading Permit fee is the analog for the Exchange's Trading Permit fee for Members who use the MEO interface. BOX had an average daily market share of 7.36% for the month of August 2022, as of August 31, 2022. *See* Market at a Glance, *available at https://www.miaxoptions.com/* (last visited August 31, 2022).

[25] *See* NYSE Arca Options Fees and Charges, OTP Trading Participant Rights, p.1, *available at https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf* (last visited July 12, 2022). NYSE Arca recently increased this Options Trading Permit Fees approximately 45%. *See* Securities Exchange Act Release No. 95142 (June 23, 2022), 87 FR 38786 (June 29, 2022) (SR–NYSEArca–2022–36). Under the new fee structure, it effectively costs a Market Maker $26,000 per month to trade all options issues on NYSE Arca. NYSE Arca's Options Trading Permit fee is the analog to the Exchange's Trading Permit fee for Members who use the FIX interface. NYSE Arca's Options Trading Permit fee for Market Makers is the analog for the Exchange's Trading Permit fee for Members who use the MEO interface.

[26] *See* NYSE American Options Fee Schedule, Section III, Monthly Trading Permit, Rights, Floor Access and Premium Product Fees, p. 23–24, *available at https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf* (last visited August 31, 2022). Under this fee structure, it effectively costs a Market Maker $26,000 per month to trade all options issues on NYSE American. NYSE American's ATP Trading Permit fee for Clearing Members and Order Flow Providers is the analog for the Exchange's Trading Permit fee for Members that use the FIX interface. NYSE American's ATP Trading Permit fee for Market Makers is the analog for the Exchange's Trading Permit fee for Members that use the MEO interface.

[27] *See* Nasdaq PHLX Options 7 Pricing Schedule, Section 8. Membership Fees, *available at https://listingcenter.nasdaq.com/rulebook/phlx/rules/Phlx%20Options%207* (last visited August 31, 2022). Nasdaq PHLX Options' SQT and RMMO fees is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

[28] *See* Nasdaq ISE Options 7 Pricing Schedule, Section 8.A. Access Services, *available at https://listingcenter.nasdaq.com/rulebook/ise/rules/ISE%20Options%207* (last visited August 31, 2022). Nasdaq ISE Options' EAM Access Fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface. Nasdaq ISE Options' Primary and Competitive Market Maker Access Fees are the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

[29] *See* Cboe Fee Schedule, Electronic Trading Permit Fees, *available at https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (last visited August 31, 2022). Cboe's Electronic Access Permit fee and Clearing TPH fee are the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface. Cboe's Market Maker Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface.

2. Statutory Basis

The Exchange believes that the proposal is consistent with the requirements of Section 6(b) of the Act, in general, and Section 6(b)(4) and 6(b)(5) of the Act,[33] in particular, in that it provides for the equitable allocation of reasonable dues, fees, and other charges among Exchange Members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Exchange commenced operations in February 2017 [34] and adopted its initial fee schedule that waived fees for Trading Permits to trade on the Exchange.[35] Although trading permit fees were waived, an initial fee structure was put in place to communicate the Exchange's intent to charge trading permit fees in the future. As a new exchange entrant, the Exchange chose to offer Trading Permits free of charge to encourage market participants to trade on the Exchange and experience, among things, the quality of the Exchange's technology and trading functionality. This practice is not uncommon. New exchanges often do not charge fees or charge lower fees for certain services such as memberships/trading permits to attract order flow to an exchange, and later amend their fees to reflect the true value of those services, absorbing all costs to provide those services in the meantime. Allowing new exchange entrants time to build and sustain market share through various pricing incentives before increasing non-transaction fees encourages market entry and promotes competition. It also enables new exchanges to mature their markets and allow market participants to trade on the new exchanges without fees serving as a potential barrier to attracting memberships and order flow.[36]

Later in 2018, as the Exchange's market share increased,[37] the Exchange adopted nominal fees for Trading Permits along with a tiered-volume based fee credit, known as the Trading Permit Fee Credit, and a Monthly

[30] *See* Cboe C2 Fee Schedule, Access Fees, *available at https://www.cboe.com/us/options/membership/fee_schedule/ctwo/* (last visited August 31, 2022). C2's Market Maker Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the MEO Interface. C2's Electronic Access Permit fee is the analog to the Exchange's Trading Permit fee for Members that use the FIX Interface.

[31] *See* ''Membership Fees'' section of the Cboe BZX Options Fee Schedule, *available at https://www.cboe.com/us/options/membership/fee_schedule/bzx* (last visited August 31, 2022). The Exchange understands Cboe BZX Options charges the same Membership Fee to all of its Options Members.

[32] Under the Exchange's tiered structure, a Member may trade approximately 106,000 more contracts on the Exchange than on Cboe BZX Options and continue to qualify for the Exchange's lowest tier. For example, a Member would qualify for Tier 1 of the Exchange's tiered pricing structure where that Member's total volume as a percentage of TCV is between 0.00% and 0.30%. Assuming an average of 37 million contracts are traded each day during a month, that Member would qualify for Tier 1 where that Member traded less than 111,000 contracts that day and be charged $500, the same fee as Cboe BZX Options, where that Member connects via the FIX Interface. On Cboe BZX Options, the Exchange understands that same member would no longer qualify for their lowest tier when their ADV equals or exceeds 5,000 contracts and be charged a fee of $1,000 for that month.

[33] 15 U.S.C. 78f(b)(4) and (5).

[34] *See* MIAX PEARL Successfully Launches Trading Operations, dated February 6, 2017, *available at https://www.miaxoptions.com/sites/default/files/alert-files/MIAX_Press_Release_02062017.pdf.*

[35] *See* Securities Exchange Act Release No. 80061 (February 17, 2017), 82 FR 11676 (February 24, 2017) (SR–PEARL–2017–10).

[36] *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17) (stating, ''[t]he Exchange established this lower (when compared to other options exchanges in the industry) Participant Fee in order to encourage market participants to become Participants of BOX. . .''). *See also* Securities Exchange Act Release No. 90076 (October 2, 2020), 85 FR 63620 (October 8, 2020) (SR–MEMX–2020–10) (''MEMX Membership Fee Proposal'') (proposing to adopt the initial fee schedule and stating that ''[u]nder the initial proposed Fee Schedule, the Exchange proposes to make clear that it does not charge any fees for membership, market data products, physical connectivity or application sessions.''). MEMX has seen its market share increase and recently proposed to adopt a membership fee and fees for connectivity. *See* Securities Exchange Act Release Nos. 93927 (January 7, 2022), 87 FR 2191 (January 13, 2022) (SR–MEMX–2021–19) (proposing to adopt membership fees); *and* 95299 (July 15, 2022), 87 FR 43563 (July 21, 2022) (SR–MEMX–2022–17) (proposing to adopt fees for connectivity). *See also, e.g.,* Securities Exchange Act Release No. 88211 (February 14, 2020), 85 FR 9847 (February 20, 2020) (SR–NYSENAT–2020–05), *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).

[37] The Exchange experienced a monthly average trading volume of 3.94% for the month of March 2018. *See* Market at a Glance, *available at www.miaxoptions.com* (last visited (August 31, 2022).

Volume Credit.[38] At that time, the Exchange chose to adopt a volume tier-based fee for Trading Permits along with the type of interface used—FIX or MEO—as a way to provide different choices regarding how potential Members could access the Exchange's System. This was for business and competitive reasons and to provide choice regarding Trading Permits and membership that had not previously existed. The Exchange now proposes to move away from the volume tier-based Trading Permit fee structure and align its Trading Permit fees with its affiliates, MIAX and MIAX Emerald, as well as other options exchanges by assessing Market Makers Trading Permit fees based on options classes assigned and assessing EEMs a flat monthly Trading Permit fee based on interface used.

The Exchange recently reviewed its current Trading Permit fees. In its review, the Exchange determined that the calculation and amount of Trading Permit fees would need to be amended, and volume tier-based Trading Permit fees for all Member types is no longer appropriate. Specifically, the Exchange found that Market Makers and EEMs using the MEO Interface were benefitting from lower MEO Interface Trading Permit fees while (1) consuming the most bandwidth and resources of the network; (2) transacting the vast majority of the volume on the Exchange; and (3) requiring the high touch network support services provided by the Exchange and its staff. The Exchange notes that Broker Dealers, Professional Customers, and Priority Customers [39] that use the FIX Interface take up significantly less Exchange resources and costs. Further, the Exchange notes that Market Makers and EEMs using the MEO Interface 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. In the Exchange's experience, most Exchange Members do not have a business need for the high performance MEO Interface required by Market Makers. The Exchange's high performance MEO Interface (including employee support for such interface), provides unparalleled system throughput and the capacity to handle 10.8 million quotes per second and average round trip latency rate of approximately 30.76 microseconds for a single quote. Over the period from March 2022 through May 2022, the Exchange processed 1.3 billion messages via the FIX Interface (0.33% of total messages received). Over that same time period, the Exchange processed 386.1 billion messages (99.67% of total messages received) over the MEO Interface, almost entirely from Market Maker message traffic (which equals approximately 6 billion messages per day over that time period) (386.1 billion messages divided 64 trading days from March through May 2022).

Additionally, in order to achieve consistent, premium quote and order throughput performance, the Exchange must build out and maintain an MEO infrastructure that has the capacity to handle the message rate requirements beyond those billions of daily messages. These billions of messages per day consume the Exchange's resources and significantly contribute to the overall expense for quote and MEO order storage and MEO throughput capabilities. Given this difference in utilization rate, the Exchange believes that it is reasonable, equitable, and not unfairly discriminatory that Market Makers and EEMs using the MEO Interface begin to pay for a higher portion of the system costs (compared to other Exchange Member types).

The Exchange notes that while Market Makers continue to account for a vast majority of the increased costs and resources placed on the Exchange and its systems (as discussed herein), Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. In fact, the Exchange provides Market Makers transactional volume-based discounts and rebates to incentivize Market Makers to direct order flow to the Exchange to obtain the benefit of the rebate, which will in turn benefit all market participants by increasing liquidity on the Exchange.[40] The proposed Trading Permit fees discussed herein are meant to strike a balance between offsetting the costs to which Market Makers place on the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

In its review of Trading Permit fees, the Exchange found that since 2018, Market Makers were paying nearly the same Trading Permit fees as EEMs that used the MEO Interface despite Market Makers consuming the most resources on the Exchange's system and contributing to increased costs for the Exchange. As such, the Exchange proposes to establish higher, separate electronic Trading Permit fees for Market Makers that are more aligned with the costs and resources that Market Makers continue to place on the Exchange and its systems and will align the Trading Permit fees with those of the majority of other options exchanges at similar or lower rates.[41]

Additionally, the Exchange believes that the proposed change will better align the Exchange's Trading Permit fees with rates charged by its affiliates and competing options exchanges in the industry for similar Trading Permits for such market participants. As such, the Exchange believes the proposed Market Maker Trading Permit fees are reasonable in that they are lower than comparable fees at other options exchanges.[42] 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 the Exchange in a manner than enables the Exchange to improve its overall competitiveness and strengthen market quality for all market participants. As stated above, the Exchange believes the proposed Market Maker Trading Permit fees are an appropriate balance between offsetting the costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

The proposed fees are equitable and not unfairly discriminatory as the fees apply equally to all Market Makers. As such, all similarly situated Market Makers, with the same number of appointments, will be subject to the same Market Maker Trading Permit fee. The Exchange also believes that assessing lower fees to Market Makers that quote in fewer classes is reasonable and appropriate as it will allow the Exchange to retain and attract smaller-scale Market Makers, which are an

[38] *See supra* note 8. The Exchange notes that it has since filed to remove these credits.

[39] The term ''Priority Customer'' means a person or entity that (i) is not a broker or dealer in securities, and (ii) does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial accounts(s). The number of orders shall be counted in accordance with Interpretation and Policy .01 of Exchange Rule 100. *See* the Definitions Section of the Fee Schedule and Exchange Rule 100, including Interpretation and Policy .01.

[40] For example, Market Makers may qualify for higher Tier 3 rebates as follows: (i) Maker rebates of ($0.44) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Origins not Priority Customer, and (ii) Maker rebates of ($0.42) in SPY, QQQ and IWM options for their Market Maker Origin when trading against Priority Customer Origins, if the Market Maker executes at least 1.10% in SPY when adding liquidity. This is compared to a lower Professional Customer Tier 3 rebate of ($0.40) for options transactions in the same classes. *See* Fee Schedule, Section (1)(a), footnote ''✦.''

[41] *See supra* notes 24 to 32.

[42] *See id.*

integral component of the options industry marketplace. Since these smaller Market Makers utilize less bandwidth and capacity on the Exchange network due to the lower number of quoted classes, the Exchange believes it is reasonable and appropriate to offer such Market Makers a lower fee. The Exchange also notes that other options exchanges assess permit fees at different rates, based upon a member's participation on that exchange,[43] and, as such, this concept is not new or novel.

Further, the Exchange believes the proposed tiered structure of the Market Maker Trading Permit fees is reasonable and appropriate. Under the proposal, Market Makers will be charged monthly fees based on the greatest number of classes quoted on any given trading day in a calendar month. Under the proposed fee structure, the fees increase as the number of classes quoted by a Market Maker increases. The Exchange believes this structure is reasonable and not unfairly discriminatory because the Exchange's system requires increased performance and capacity in order to provide the opportunity for Market Makers to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources required for the Exchange. Further, the Exchange believes that the proposed structure is equitable and not unfairly discriminatory as all similarly situated Market Makers will be charged the same fee. The Exchange notes that another options exchange in the industry calculates Market Maker Permit Fees in the same manner.[44]

There is no requirement, regulatory or otherwise, that any broker-dealer connect to and access any (or all of) the available options exchanges. One other exchange recently noted in a proposal to amend their own trading permit fees that of the 62 market making firms that are registered as Market Makers across Cboe, MIAX, and BOX, 42 firms access only one of the three exchanges.[45] Further, the Exchange and its affiliates, MIAX and MIAX Emerald, have a total of 47 members. Of those 47 total members, 35 are members of all three exchanges, four are members of only two (2) exchanges, and eight (8) are members of only one exchange. Of those that are Market Makers today on the Exchange, two (2) are not registered as Market Makers on MIAX and one (1) is not registered as a Market Maker on MIAX Emerald. Broken down even further, of those Market Makers that use the MEO Interface and reached the Exchange's top tier for the Trading Permit fee for June 2022, one (1) Market Maker was only a Member of the Exchange and not its two affiliates, MIAX and MIAX Emerald. The above data evidences that a Market Maker need not be a Member of all options exchanges, let alone the Exchange and its two affiliates, and market makers elect to do so based on their own business decisions and need to directly access each exchange's liquidity pool. 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 of the options exchanges discussed above. Indeed, Market Makers choose if and how to access a particular exchange and because it is a choice, the Exchange must set reasonable pricing, otherwise prospective market makers would not connect and existing Market Makers would disconnect from the Exchange.

The Exchange believes that elasticity of demand for Exchange Membership exists when it comes to purchasing a Trading Permit and, as evidenced by the below data, prior fee proposals have resulted in Members terminating their memberships.[46] For example, over the course of those prior filings, three Members terminated their memberships in the time since the proposed fee increase first went into effect. In June 2021, the month immediately preceding the initial implementation of the prior proposed fee change, the Exchange had 20 users of the MEO Interface and 28 users of the FIX Interface. These numbers remained stagnant until August 2021, where one Member that utilized the MEO Interface ceased utilizing the MEO Interface and again in December 2021 where one Member that utilized the FIX Interface ceased utilizing the FIX Interface. These numbers again remained stagnant until March 2022, where another Member that utilized the FIX Interface ceased utilizing the FIX Interface. This resulted in 19 users of the MEO Interface and 26 users of the FIX Interface. Further, other exchanges have also experienced termination of memberships if their members deem permit or membership fees to be unreasonable or excessive. For example, the Exchange notes that a BOX participant modified its access to BOX in connection with the implementation of a proposed change to BOX's permit fees.[47] The absence of new memberships coupled with the termination of two memberships on the Exchange, as well as similar membership changes on another options exchange in relation to a trading permit fee increase, clearly shows that elasticity of demand exists.

The Exchange notes that there are material costs associated with providing the infrastructure and headcount to fully-support access to the Exchange. The Exchange incurs technology expenses related to establishing and maintaining Information Security services, enhanced network monitoring and customer reporting associated with its network technology. While some of the expense is fixed, much of the expense is not fixed, and thus increases as the expenses associated with access services for Market Makers increases. For example, new Market Makers to the Exchange may require the purchase of additional hardware to support those Members as well as enhanced monitoring and reporting of customer performance that the Exchange provides. Further, as the total number of Market Makers increase, the Exchange may need to increase its data center

[43] *See supra* notes 24 to 32; *see also* MIAX Fee Schedule, Section (3)(b) and MIAX Emerald Fee Schedule, Section (3)(b).

[44] *See supra* notes 24 to 32.

[45] *See* Securities Exchange Act 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). The Exchange believes that BOX's observation demonstrates that market making firms can, and do, select which exchanges they wish to access, and, accordingly, options exchanges must take competitive considerations into account when setting fees for such access.

[46] *See* Securities Exchange Act Release No. 95419 (August 4, 2022), 87 FR 48702 (August 10, 2022) (SR–PEARL–2022–30).

[47] According to BOX, a Market Maker on BOX terminated its status as a Market Maker in response to BOX's proposed modification of Market Maker trading permit fees. *See* Securities Exchange Act Release No. 94894 (May 11, 2022), 87 FR 29987 (May 17, 2022) (SR–BOX–2022–17). BOX noted, and the Exchange agrees, that this Market Maker's decision demonstrates that Market Makers can, and do, alter their membership status if they deem permit fees at an exchange to be unsuitable for their business needs, thus demonstrating the competitive environment for Market Maker permit fees and the constraints on options exchanges when setting Market Maker permit fees.

footprint and consume more power, resulting in increased costs charged by their third-party data center provider. Accordingly, the cost to the Exchange to provide access to its Market Makers is not fixed. The Exchange believes the proposed Market Maker Trading Permit fees are reasonable in order to offset a portion of the costs to the Exchange associated with providing access to Market Makers to its quote and order infrastructure.

The Exchange believes that charging higher fees to Market Makers, who connect solely through the MEO Interface, and EEMs that use the MEO Interface, is not unfairly discriminatory because Market Makers continue to account for the vast majority of network capacity utilization and trading activity on the Exchange and the MEO Interface provides higher throughput and enhanced functionality compared to the FIX Interface, justifying the increased cost. MEO Interface users account for the majority of expenses placed on the Exchange's systems. The MEO Interface also provides additional functionality that Market Makers and EEMs using the MEO Interface use to fulfill their market making obligations. The Exchange offers three time-in-force modifiers: [48] Day Limit (''Day''), Immediate-Or-Cancel (''IOC''), and Good 'Til Cancelled (''GTC'').[49] While all order types are available for use on either interface, only the time-in-force modifiers of IOC and Day are available on the MEO Interface.[50] Market Makers utilize the time-in-force of Day on orders to be posted on the MIAX Pearl Options Book [51] and to meet Market Makers' continuous quoting obligations under Exchange Rule 605(d).[52] EEMs using the MEO Interface and Market Makers that primarily remove liquidity tend to be more latency sensitive and utilize the time-in-force of IOC on orders when looking to remove liquidity from the MIAX Pearl Options Book. The MEO Interface allows the submission of Cancel-Replacement orders,[53] which allow for the immediate cancellation of a previously received order and the replacement of that order with a new order with new terms and conditions.[54] Cancel-Replacement orders are primarily used by Market Makers as part of their continuous quoting obligations. Market Makers use only the MEO Interface due to its lower latency, higher throughput, available time-in-force instructions and order types that assist them in satisfying their market making obligations. Market Makers do not use the FIX Interface due to the unavailability of the above functionality. While EEMs primarily use the FIX Interface, certain EEMs choose to use the MEO Interface due to its enhanced functionality and based on their own business models. The MEO Interface is the more robust interface offering lower latency and higher throughput. Market Makers use only the MEO Interface.

The Exchange notes that while Market Maker users of the MEO Interface continue to account for a vast majority of the increased System usage placed on the Exchange, Market Makers continue to be valuable market participants on the exchanges as the options market is a quote driven industry. The Exchange recognizes the value that Market Makers bring to the Exchange. The Exchange proposes higher, separate fees for users of the MEO Interface that are more aligned with the costs and resources that Market Makers continue to place on the Exchange and its systems.

Users of the MEO Interface, therefore, receive greater value than Users of the FIX Interface due to its higher throughput, lower latency, and available functionality. As the above data shows, the Exchange also expends much more resources to support the MEO Interface than it does to support the FIX Interface. Trading Permit fees for Members who connect through the MEO Interface are, therefore, higher than the Trading Permit fees for Members who connect through the FIX Interface. The proposed pricing structure also accounts for the corresponding use of the MEO and FIX Interfaces and proportionate pull on Exchange resources.

The Exchange believes that the proposed Market Maker Trading Permit fees are reasonable, equitable, and not unfairly discriminatory. The Exchange believes that the reasonableness of its proposed fees is demonstrated by the very fact that such fees are in line with, and in some cases lower than, the costs of similar access fees at other exchanges.[55] The Exchange notes these fees were similarly filed with the Commission and neither suspended nor disapproved.[56] The proposed fees are fair and equitable and not unfairly discriminatory because they apply equally to all Market Makers and access to the Exchange is offered on terms that are not unfairly discriminatory. The Exchange designed the fee rates in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. The Exchange believes that the proposed fee rates and criteria provide an objective and flexible framework that will encourage Market Makers to be appointed and quote in option classes while also equitably allocating the fees in a reasonable manner amongst Market Maker appointments to account for quoting and trading activity.

The Exchange again notes that it operates in a highly competitive market in which market makers can readily favor competing venues if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees for services and products, in addition to order flow, to remain competitive with other exchanges. The Exchange believes that the proposed changes reflect this competitive environment.

The Exchange again notes 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.

In sum, the Exchange believes the proposed fees are reasonable and reflect a competitive environment, as the Exchange seeks to amend its Trading

[48] *See* MIAX Pearl Options Exchange User Manual, Section 6, Order Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited June 30, 2022).

[49] *See, e.g.,* Exchange Rule 516.

[50] *See* preamble to Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). *See also* Section 4.1.1.2 of the MEO Interface Specification, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf* (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

[51] The term ''Book'' means the electronic book of buy and sell orders and quotes maintained by the System. *See* Exchange Rule 100.

[52] Only the time-in-force modifiers of IOC and Day are available on the MEO Interface. *See* Exchange Rule 516 (noting that not all order types and modifiers are available for use on each of the MEO Interface and the FIX Interface). *See also* MIAX Pearl Options Exchange MEO Interface Specification, Section 4.1.1.2, *available at https://www.miaxoptions.com/sites/default/files/page-files/MIAX_Express_Orders_MEO_v2.0.pdf* (indicating that the time-in-force instructions of IOC and Day are available on the MEO interface).

[53] *See* MIAX Pearl Options Exchange User Manual, Section 6, Interfaces and Liquidity Types, *available at https://www.miaxoptions.com/exchange-functionality/pearl* (last visited May 16, 2022).

[54] *See* Exchange Rule 516(d).

[55] *See supra* notes 24 to 32.

[56] The Exchange presumes that the fees of other exchanges are reasonable, as required by the Exchange Act in the absence of any suspension or disapproval order by the Commission providing otherwise.

Permit fees for Market Makers, while still attracting Market Makers to continue to, or seek to, access the Exchange. The Exchange further believes the proposed Trading Permit fees discussed herein are an appropriate balance between offsetting the costs to which Market Makers cost the Exchange and continuing to incentivize Market Makers to access and make a market on the Exchange.

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.

Intra-Market Competition

The Exchange believes that the proposed Market Maker Trading Permit fees do not place certain market participants at a relative disadvantage to other market participants because the proposed fees do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the fee rates are designed in order to provide objective criteria for Market Makers of different sizes and business models that best matches their quoting activity on the Exchange. Further, the Exchange believes that the proposed Market Maker Trading Permit fees will not impose a burden on intramarket competition because, when these fees are viewed in the context of the overall activity on the Exchange, Market Makers: (1) consume the most bandwidth and resources of the network; (2) transact the vast majority of the volume on the Exchange; and (3) require the high touch network support services provided by the Exchange and its staff, including more costly network monitoring, reporting and support services, resulting in a much higher cost to the Exchange. The Exchange notes that the majority of customer demand comes from Market Makers, whose transactions make up a majority of the volume on the Exchange. Further, as discussed herein, other Member types (Broker Dealers, Professional Customers, and Priority Customers) take up significantly less Exchange resources and costs. As such, the Exchange does not believe charging Market Makers higher Trading Permit fees than other Member types will impose a burden on intramarket competition.

The Exchange believes that the tiered structure of the proposed Market Maker Trading Permit fees will not impose a burden on intramarket competition because the tiered structure takes into account the number of classes quoted by each individual Market Maker. As discussed herein, the Exchange's system requires increased performance and capacity in order to provide the opportunity for each Market Maker to quote in a higher number of options classes on the Exchange. Specifically, the more classes that are actively quoted on the Exchange by a Market Maker requires increased memory for record retention, increased bandwidth for optimized performance, increased functionalities on each application layer, and increased optimization with regard to surveillance and monitoring of such classes quoted. As such, basing the Market Maker Trading Permit fee on the greatest number of classes quoted in on any given day in a calendar month is reasonable and appropriate when taking into account how the increased number of quoted classes directly impact the costs and resources for the Exchange.

Inter-Market Competition

The Exchange believes the proposed Market Maker Trading Permit fees do not place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market making firms are not forced to become market makers on all options exchanges. The Exchange notes that it has far less Market Makers as compared to the much greater number of market makers at other options exchanges. There are a number of large market makers that are participants of other options exchange but not Members of the Exchange. The Exchange is also unaware of any assertion that its existing fee levels or the proposed Market Maker Trading Permit fees would somehow unduly impair its competition with other options exchanges. To the contrary, if the fees charged are deemed too high by a market making firm, they can simply discontinue their membership with the Exchange.

The Exchange operates in a highly competitive market in which market participants can readily favor one of the 15 competing options venues if they deem fee levels at a particular venue to be excessive. Based on publicly-available information, and excluding index-based options, no single exchange has more than 11–12% equity options market share.[57] Therefore, no exchange possesses significant pricing power in the execution of multiply-listed equity and exchange-traded fund (''ETF'') options order flow. As of August 23, 2022, for the month of August 2022, the Exchange had a market share of approximately 4.49% of executed multiply-listed equity options[58] and the Exchange believes that the ever-shifting market share among exchanges from month to month demonstrates that market participants can discontinue or reduce use of certain categories of products, or shift order flow, in response to fee changes. In such an environment, the Exchange must continually adjust its fees and fee waivers to remain competitive with other exchanges and to attract order flow to the facility.

Finally, the Exchange notes that it operates in a highly competitive market in which market participants can readily favor competing venues. In such an environment, the Exchange must continually review, and consider adjusting, its fees and credits to remain competitive with other exchanges. For the reasons described above, the Exchange believes that the proposed rule change reflects this competitive environment.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor 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,[59] and Rule 19b–4(f)(2)[60] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule 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:

[57] *See* Market at a Glance, *available at www.miaxoptions.com* (last visited (August 31, 2022).

[58] *See id.*

[59] 15 U.S.C. 78s(b)(3)(A)(ii).

[60] 17 CFR 240.19b–4(f)(2).

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–PEARL–2022–39 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–PEARL–2022–39. 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–PEARL–2022–39 and should be submitted on or before October 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[61]

J. Matthew DeLesDernier,

Deputy Secretary.

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[61] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95789; File No. SR–MRX–2022–09]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 6 to Add Port Fees

September 15, 2022.

On July 1, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess port fees. The proposed rule change was published for comment in the **Federal Register** on July 18, 2022.[3]

On August 25, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–09).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20375 Filed 9–20–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95781; File No. SR–MRX–2022–07]

Self-Regulatory Organizations; Nasdaq MRX, LLC; Notice of Withdrawal of Proposed Rule Change To Amend Options 7, Section 5 To Add Membership Fees

September 15, 2022.

On June 29, 2022, Nasdaq MRX, LLC (''MRX'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 [1] and Rule 19b–4 thereunder,[2] a proposed rule change to assess membership fees. The proposed rule change was published for comment in the **Federal Register** on July 18, 2022.[3]

On August 25, 2022, MRX withdrew the proposed rule change (SR–MRX–2022–07).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95262 (July 12, 2022), 87 FR 42780.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95264 (July 12, 2022), 87 FR 42767.

[4] 17 CFR 200.30–3(a)(12).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[4]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20372 Filed 9–20–22; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95798; File No. SR–NYSE–2022–43]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Its Price List To Reflect the Fee for Directed Orders Routed by the Exchange to an Alternative Trading System

September 15, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (the ''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on September 7, 2022, New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to 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 its Price List to reflect the fee for Directed Orders routed by the Exchange to an alternative trading system (''ATS''). The proposed rule change is available on the Exchange's website at *www.nyse.com,* 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 self-regulatory organization 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 those statements may be examined at the places specified in Item IV below.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend the NYSE Price List to reflect the fee for Directed Orders routed by the Exchange to an ATS. The Exchange proposes to implement the fee change effective September 9, 2022.

Background

The Exchange operates in a highly competitive market. The Securities and Exchange Commission (''Commission'') has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [4]

While Regulation NMS has enhanced competition, it has also fostered a ''fragmented'' market structure where trading in a single stock can occur across multiple trading centers. When multiple trading centers compete for order flow in the same stock, the Commission has recognized that ''such competition can lead to the fragmentation of order flow in that stock.'' [5] Indeed, cash equity trading is currently dispersed across 16 exchanges,[6] numerous alternative trading systems,[7] and broker-dealer internalizers and wholesalers, all competing for order flow. Based on publicly available information, no single exchange currently has more than 17% market share.[8] Therefore, no exchange possesses significant pricing power in the execution of cash equity order flow. More specifically, the Exchange's share of executed volume of equity trades in Tapes A, B and C securities is currently has less than 12%.[9]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can move order flow, or discontinue or reduce use of certain categories of products. While it is not possible to know a firm's reason for shifting order flow, the Exchange believes that one such reason is because of fee changes at any of the registered exchanges or non-exchange venues to which a firm routes order flow. Accordingly, competitive forces constrain exchange transaction fees because market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

Proposed Rule Change

Pursuant to Commission approval, the Exchange adopted a new order type known as Directed Orders.[10] A Directed Order is a Limit Order [11] with instructions to route on arrival at its limit price to a specified ATS with which the Exchange maintains an electronic linkage. Under Exchange rules, the ATS to which a Directed Order is routed would be responsible for validating whether the order is eligible to be accepted, and if such ATS determines to reject the order, the order would be cancelled. Directed Orders must be designated with a Time in Force modifier of Day [12] or IOC [13] and are eligible to be designated for the Core Trading Session [14] only. Directed Orders that are the subject of this proposed rule change would be routed to OneChronos LLC (''OneChronos'').

In anticipation of the scheduled implementation of routing functionality to OneChronos,[15] the Exchange proposes to amend the Price List to state that the Exchange will not charge a fee for Directed Orders routed to OneChronos. To reflect the no fee, the Exchange proposes to amend the current table under Transaction Fees. Specifically, under Routing Fee—per share, the Exchange proposes to adopt new rule text to state ''No fee for a Directed Order, as defined in Rule 7.31(f)(1), routed to OneChronos LLC'' for securities priced at or above $1.00. Additionally, the Exchange proposes to adopt similar rule text under Transaction Fees and Credits For Tape B and C Securities. Specifically, the Exchange proposes to amend the first bullet under Routing Fees. As proposed, the first bullet would state:

- For securities at or above $1.00, no fee for a Directed Order, as defined in Rule 7.31(f)(1), routed to OneChronos LLC; $0.0005 per share in a NYSE American Auction; $0.0010 per share execution in an Away Market Auction at venues other than NYSE American; $0.0035 per share for all other executions, or $0.0030 if the member organization has adding ADV in Tapes A, B, and C combined that is at least 0.20% of Tapes A, B and C CADV combined.

The Exchange believes that the Directed Order functionality would facilitate additional trading opportunities by offering member organizations the ability to designate orders submitted to the Exchange to be routed to OneChronos for execution. The Exchange believes the functionality could create efficiencies for member organizations that choose to use the functionality by enabling them to send orders that they wish to route to OneChronos through the Exchange by leveraging order entry protocols already configured for their interaction with the Exchange. Member organizations that choose not to utilize Directed Orders would continue to be able to trade on the Exchange as they currently do.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[16] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[17] in particular, because it provides for the equitable allocation of reasonable dues, fees, and

[4] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (File No. S7–10–04) (Final Rule) (''Regulation NMS'').

[5] *See* Securities Exchange Act Release No. 61358, 75 FR 3594, 3597 (January 21, 2010) (File No. S7–02–10) (Concept Release on Equity Market Structure).

[6] *See* Cboe U.S. Equities Market Volume Summary, available at *https://markets.cboe.com/us/equities/market_share. See generally https://www.sec.gov/fast-answers/divisionsmarketregmrexchangesshtml.html.*

[7] *See* FINRA ATS Transparency Data, *available at https://otctransparency.finra.org/otctransparency/AtsIssueData.* A list of alternative trading systems registered with the Commission is *available at https://www.sec.gov/foia/docs/atslist.htm.*

[8] *See* Cboe Global Markets U.S. Equities Market Volume Summary, available at *http://markets.cboe.com/us/equities/market_share/.*

[9] *See id.*

[10] *See* Rule 7.31(f)(1). *See also* Securities Exchange Act Release No. 95423 (August 4, 2022), 87 FR 48741 (August 10, 2022) (SR–NYSE–2022–20).

[11] A Limit Order is defined in Rule 7.31(a)(2) as an order to buy or sell a stated amount of a security at a specified price or better.

[12] Pursuant to Rule 7.31(b)(1), any order to buy or sell designated Day, if not traded, will expire at the end of the designated session on the day on which it was entered.

[13] Pursuant to Rule 7.31(b)(2), a Limit Order may be designated with an Immediate-or-Cancel (''IOC'') modifier.

[14] The Core Trading Session for each security begins at 9:30 a.m. Eastern Time and ends at the conclusion of Core Trading Hours. *See* Rule 7.34(a)(2). The term ''Core Trading Hours'' means the hours of 9:30 a.m. eastern time through 4 p.m. eastern time or such other hours as may be determined by the Exchange from time to time. *See* Rule 1.1.

[15] *See https://www.nyse.com/publicdocs/nyse/notifications/trader-update/110000456275/OneChronos_August_2022_Trader_Update_Final.pdf.*

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(4) and (5).

other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

As discussed above, the Exchange operates in a highly fragmented and competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [18]

The Exchange believes that the ever-shifting market share among the exchanges from month to month demonstrates that market participants can shift order flow, or discontinue or reduce use of certain categories of products, in response to fee changes. Accordingly, changes to exchange transaction fees can have a direct effect on the ability of an exchange to compete for order flow.

In particular, the Exchange believes the proposed rule change is a reasonable means to incent member organizations to utilize the Directed Order functionality and evaluate its efficacy. The proposed routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Nor does any rule or regulation require market participants to send orders to an ATS generally, let alone to OneChronos. The routing of orders to OneChronos would operate similarly to the Primary Only Order already offered by the Exchange's affiliates NYSE American LLC (''NYSE American''), NYSE Arca, Inc. (''NYSE Arca''), NYSE Chicago, Inc. (''NYSE Chicago'') and NYSE National, Inc. (''NYSE National'') (''collectively, the ''Affiliated Exchanges''). On the Affiliated Exchanges, a Primary Only Order is an order that is routed directly to the primary listing market on arrival, without being assigned a working time or interacting with interest on the order book of the exchange to which it was submitted.[19]

The Exchange believes its proposal equitably allocates its fees among its market participants. The Exchange believes that the proposal represents an equitable allocation of fees because it would apply uniformly to all member organizations, in that all member organizations will have the ability to designate orders submitted to the Exchange to be routed to OneChronos, and each such member organization would not be charged a fee when utilizing the new functionality. While the Exchange has no way of knowing whether this proposed rule change would serve as an incentive to utilize the new order type, the Exchange expects that a number of member organizations will utilize the new functionality because it would create efficiencies for member organizations by enabling them to send orders that they wish to route to OneChronos through the Exchange, thereby enabling them to leverage order entry protocols already configured for their interactions with the Exchange.

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes it is not unfairly discriminatory as the proposal to not charge a fee would be assessed on an equal basis to all member organizations that use the Directed Order functionality. The proposal to not charge a fee would also enable member organizations to evaluate the efficacy of the new functionality. Moreover, this proposed rule change neither targets nor will it have a disparate impact on any particular category of market participant. The Exchange believes that this proposal does not permit unfair discrimination because the changes described in this proposal would be applied to all similarly situated member organizations. Accordingly, no member organization already operating on the Exchange would be disadvantaged by the proposed allocation of fees. The Exchange further believes that the proposed rule change would not permit unfair discrimination among member organizations because the Directed Order functionality would be available to all member organizations on an equal basis and each such participant would not be charged a fee for using the functionality.

Finally, the submission of orders to the Exchange is optional for member organizations in that they could choose whether to submit orders to the Exchange and, if they do, the extent of its activity in this regard. The Exchange believes that it is subject to significant competitive forces, as described below in the Exchange's statement regarding the burden on competition.

For the foregoing reasons, the Exchange believes that the proposal is consistent with the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

In accordance with Section 6(b)(8) of the Act,[20] the Exchange believes that the proposed rule change would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed change furthers the Commission's goal in adopting Regulation NMS of fostering integrated competition among orders, which promotes ''more efficient pricing of individual stocks for all types of orders, large and small.'' [21]

Intramarket Competition. The Exchange believes the proposed amendment to its Price List would not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes the proposed rule change is a reasonable means to incent member organizations to utilize the Directed Order functionality and allow member organizations to evaluate its efficacy. The Directed Order functionality would be available to all member organizations and all member organizations that use the Directed Order functionality to route their orders to OneChronos will not be charged a routing fee. The proposed routing of orders to OneChronos is provided by the Exchange on a voluntary basis and no rule or regulation requires that the Exchange offer it. Member organizations have the choice whether or not to use the Directed Order functionality and those that choose not to utilize it will not be impacted by the proposed rule change. The Exchange also does not believe the proposed rule change would impact intramarket competition as the proposed rule change would apply to all member organizations equally that choose to utilize the Directed Order functionality, and therefore the proposed change would not impose a disparate burden on competition among market participants on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily choose to send their orders to other exchange and off-exchange venues if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange's market share of intraday trading is currently less than 12%. In such an environment, the Exchange

[18] *See supra* note 4.

[19] *See* NYSE American Rule 7.31E(f)(1); NYSE Arca Rule 7.31–E(f)(1); NYSE Chicago Rule 7.31(f)(1); NYSE National Rule 7.31(f)(1).

[20] 15 U.S.C. 78f(b)(8).

[21] *See supra* note 4.

must continually adjust its fees and rebates to remain competitive with other exchanges and with off-exchange venues. Because competitors are free to modify their own fees and credits in response, and because market participants may readily adjust their order routing practices, the Exchange does not believe its proposed fee change can impose any burden on intermarket competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change is effective upon filing pursuant to Section 19(b)(3)(A) [22] of the Act and subparagraph (f)(2) of Rule 19b–4 [23] thereunder, because it establishes a due, fee, or other charge imposed by the Exchange.

At any time within 60 days of the filing of such proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) [24] of the Act to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–NYSE–2022–43 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–NYSE–2022–43. 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–NYSE–2022–43, and should be submitted on or before October 12, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[25]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20378 Filed 9–20–22; 8:45 am]

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[22] 15 U.S.C. 78s(b)(3)(A).

[23] 17 CFR 240.19b–4(f)(2).

[24] 15 U.S.C. 78s(b)(2)(B).

[25] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 34702; File No. 812–15322]

Nuveen Churchill Direct Lending Corp., et al.

September 15, 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: Nuveen Churchill Direct Lending Corp., Nuveen Fund Advisors, LLC, Nuveen Alternatives Advisors LLC, Churchill Asset Management LLC, Nuveen Churchill Advisors LLC, Nuveen Asset Management, LLC, Teachers Advisors, LLC, Teachers Insurance and Annuity Association of America, MM Funding, LLC, Churchill Middle Market Senior Loan Fund, LP, Churchill Middle Market Senior Loan Fund, Offshore LP, TGAM Churchill Middle Market Senior Loan Fund K, LP, TIAA Churchill Middle Market CLO I Ltd., Churchill Middle Market CLO IV Ltd., TPS Investors Master Fund, LP, TPS Investors Operating Fund, LLC, TPS Investors Fund II, LP, NAP Investors Fund, L.P., Nuveen Junior Capital Opportunities Fund, SCSp, Churchill Middle Market Senior Loan Fund II–K (Unlevered), LP, Churchill Middle Market Senior Loan Fund II–European Fund, SCSp, Churchill Middle Market Senior Loan Fund II–European Co-Invest Fund, SCSp, Churchill Middle Market Senior Loan Fund II–Master Fund, LP, Churchill Middle Market Senior Loan Fund II–PS Co-Invest Fund, LP, PS FinCo, Inc., Churchill Middle Market CLO III LLC, Churchill Middle Market CLO V–A, Ltd., CNV Investor Fund ScSp, Churchill Junior Capital Opportunities Fund II, L.P., Churchill Junior Capital Opportunities Fund II SCSp, Churchill Co-Investment Partners, L.P., Churchill Secondary Partners, L.P., CMIC Funding LP, Churchill MMSL III Investment Subsidiary, LP, Churchill MMSLF CLO–I, LP, Churchill Middle Market Senior Loan Fund–Master Fund SCSp, SICAV–RAIF–Fund IV, NC SLF Inc., NC SLF SPV I, LLC, Churchill NCDLC CLO–I, LLC, Nuveen Churchill BDC SPV II, LLC, Nuveen Churchill BDC SPV III, LLC, NCDL Equity Holdings LLC, Churchill Junior Capital Opportunities Fund II Master SCSp, CM Senior Master, LP, CM Multi Master, LP, Nuveen Churchill Private Capital Income Fund, NCPIF SPV I LLC, NCPIF Equity Holdings LLC, Nuveen Multi-Asset

Credit Fund, LP, Churchill Middle Market CLO VI Ltd., Churchill Middle Market CLO VII Ltd., and Churchill Middle Market Senior Loan Fund (JPY) Series 2022, L.P.

FILING DATES: The application was filed on April 15, 2022, and amended on July 11, 2022 and August 17, 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, October 11, 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: John McCally, General Counsel, Churchill Asset Management LLC, at *john.mccally@churchillam.com,* and Steven B. Boehm, Esq., Payam Siadatpour, Esq., and Anne G. Oberndorf, Esq., Eversheds Sutherland (US) LLP, at *anneoberndorf@eversheds-sutherland.us.*

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' second amended and restated application, dated August 17, 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.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–95795; File No. SR–CBOE–2022–039]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Order Approving a Proposed Rule Change To Expand the Nonstandard Expirations Pilot Program To Include P.M.-Settled Options on the Mini-S&P 500 Index That Expire on Tuesday or Thursday

September 15, 2022.

I. Introduction

On July 21, 2022, Cboe Exchange, Inc. (''Exchange'' or ''Cboe Options'') 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 expand its Nonstandard Expirations Pilot Program to permit P.M.-settled options on the Mini-S&P 500 Index that expire on Tuesday or Thursday. The proposed rule change was published for comment in the **Federal Register** on August 4, 2022.[3] The Commission received no comments on the proposal. The Commission is approving the proposed rule change.

II. Description of the Proposal

Cboe Options proposes to expand its existing Nonstandard Expirations Pilot (''Pilot Program'') [4] to permit P.M.-settled options on the Mini-S&P 500 Index (''XSP options'') that expire on Tuesday or Thursday. Under the existing Pilot Program, the Exchange is permitted to list P.M.-settled options on broad-based indexes that expire on: (1) any Monday, Wednesday, or Friday and, with respect to options on the S&P 500 Index (''SPX options'') any Tuesday or Thursday (''Weekly Expirations'' or ''EOWs'') and (2) the last trading day of the month (''EOMs'').[5] The Exchange notes that permitting XSP options with Tuesday and Thursday expirations, as proposed, would be in addition to the XSP options with Monday, Wednesday and Friday expirations that the Exchange may (and does) already list, as they are permissible Weekly Expirations for options on a broad-based index (*e.g.,* the Mini-S&P 500 Index) pursuant to Rule 4.13(e)(1). The Exchange states that the Pilot Program for Weekly Expirations will apply to Tuesday and Thursday XSP options as it currently applies to all other P.M.-settled broad-based index options with Monday, Wednesday, and Friday expirations and to SPX options with Tuesday and Thursday expirations.[6]

A. Tuesday and Thursday XSP Options

The Exchange's proposed rule change will allow it to open for trading XSP options with Tuesday and Thursday expirations to expire on any Tuesday or Thursday of the month, other than days that coincide with an EOM expiration.[7] The maximum number of expirations that may be listed for each Weekly Expiration (*i.e.,* a Monday expiration, Tuesday expiration, Wednesday expiration, Thursday expiration, or Friday expiration, as applicable) in a given class (including XSP) is the same as the maximum number of expirations permitted in Rule 4.13(a)(2) for standard options on the same broad-based index (which is 12 for XSP options).[8]

Weekly Expirations need not be for consecutive Monday, Tuesday, Wednesday, Thursday, or Friday expirations as applicable; however, the expiration date of a nonconsecutive expiration may not be beyond what would be considered the last expiration date if the maximum number of expirations were listed consecutively.[9] Weekly Expirations that are first listed in a given class may expire up to four weeks from the actual listing date.[10] If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 95392 (July 29, 2022), 87 FR 47803 (''Notice'').

[4] *See* Securities Exchange Act Release No. 62911 (September 14, 2010), 75 FR 57539 (September 21, 2010) (''Pilot Approval Order''). *See also* Securities Exchange Act Release No. 76909 (January 14, 2016), 81 FR 3512 (January 21, 2016) (permitting P.M.-settled options on broad-based indexes that expire on any Wednesday); and Securities Exchange Act Release No. 78531 (August 10, 2016), 81 FR 54643 (August 16, 2016) (permitting P.M.-settled options on broad-based indexes that expire on any Monday). The Pilot is currently set to expire on November 7, 2022. *See* Securities Exchange Act Release No. 94800 (April 27, 2022), 87 FR 26248 (May 3, 2022).

[5] *See* Rule 4.13(e).

[6] *See* Notice, *supra* note 3, 87 FR at 47804.

[7] If the Exchange lists EOMs and Weekly Expirations as applicable in a given class, the Exchange will list an EOM instead of a Weekly Expiration that expires on the same day in the given class. *See* Cboe Options Rule 4.13(e)(1).

[8] *See* Notice, *supra* note 3, 87 FR at 47803.

[9] *See* Cboe Options Rule 4.13(e)(1).

[10] *Id.*

expires on the same day in the given class. Other expirations in the same class are not counted as part of the maximum number of Weekly Expirations for an applicable broad-based index class. If the Exchange is not open for business on a respective Monday, the normally Monday expiring Weekly Expirations will expire on the following business day. If the Exchange is not open for business on a respective Tuesday, Wednesday, Thursday, or Friday, the normally Tuesday, Wednesday, Thursday, or Friday expiring Weekly Expirations will expire on the previous business day.[11] If two different Weekly Expirations on Mini-S&P 500 Index options (as is the case of S&P 500 Index options) would expire on the same day because the Exchange is not open for business on a certain weekday, the Exchange will list only one of such Weekly Expirations.[12]

B. Annual Pilot Program Report

The Exchange has previously undertaken to submit a Pilot report to the Commission at least two months prior to the expiration date of the Pilot Program (''Annual Report'').[13] The Exchange represents that it will abide by the same reporting requirements for the trading of XSP options that expire on any Tuesday or Thursday that it does for the trading of P.M.-settled options on broad-based indexes that expire on any Monday, Wednesday, or Friday and for SPX options that expire on Tuesday or Thursday pursuant to the Pilot Program.[14] The Exchange states that it will include data regarding XSP options that expire on Tuesdays or Thursdays as it does for all other Weekly Expirations in the Pilot Program annual report that it submits to the Commission at least two months prior to the expiration date of the Pilot Program.[15] The Exchange also proposes to include the following market quality data, over sample periods determined by the Exchange and the Commission, for XSP options as part of the annual report, as it does for SPX options:

- time-weighted relative quoted spreads;
- relative effective spreads; and
- time-weighted bid and offer sizes.[16]

The Exchange also will provide the Commission with any additional data or analyses the Commission requests because it deems such data or analyses necessary to determine whether the Pilot Program, including XSP options with Tuesday and Thursday expirations as proposed, is consistent with the Act.[17] As it does for current Pilot Program products, the Exchange states it will make public on its website all data and analyses in connection with XSP options with Tuesday and Thursday expirations it submits to the Commission under the Pilot Program.[18]

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b) of the Act.[19] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[20] which requires, among other things, that a national securities exchange have rules designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

As the Commission noted in its recent order approving the listing and trading of P.M.-settled options on the S&P 500 Index that expire on Tuesday or Thursday, the Commission has had concerns about the potential adverse effects and impact of P.M. settlement upon market volatility and the operation of fair and orderly markets on the underlying cash markets at or near the close of trading, including for cash-settled derivatives contracts based on a broad-based index.[21] The potential impact today remains unclear, given the significant changes in the closing procedures of the primary markets in recent decades. The Commission is mindful of the historical experience with the impact of P.M. settlement of cash-settled index derivatives on the underlying cash markets, but recognizes that these risks may be mitigated today by the enhanced closing procedures that are now in use at the primary equity markets.

The Exchange's proposal to add Tuesday and Thursday XSP expirations to the existing Pilot Program would offer additional investment options to investors and may be useful for their investment or hedging objectives while providing the Commission with data to monitor the effects of Tuesday and Thursday XSP expirations and the impact of P.M. settlement on the markets. To assist the Commission in assessing any potential impact of Tuesday and Thursday XSP expiration on the options markets as well as the underlying cash equities markets, the Exchange will be required to submit data to the Commission in connection with the Pilot Program.[22] Further, including the proposed Tuesday and Thursday XSP expirations in the Pilot Program, together with the data and analysis that the Exchange will provide to the Commission, will allow the Exchange and the Commission to monitor for and assess any potential for adverse market effects of allowing Tuesday and Thursday XSP expirations, including on the underlying component stocks. In particular, the data collected from the Pilot Program will help inform the Commission's consideration of whether the Pilot Program, as amended to include Tuesday and Thursday XSP expirations, should be modified, discontinued, extended, or permanently approved. Furthermore, the Exchange's ongoing analysis of the Pilot Program should help it monitor any potential risks from large P.M.-settled positions and take appropriate action if warranted.

For the foregoing reasons, the Commission finds that the proposed rule change is consistent with the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[23] that the proposed rule change (SR–CBOE–2022–039) be, and hereby is, approved.

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[11] *Id.*

[12] *See* proposed Cboe Options Rule 4.13(e)(1).

[13] *See* Pilot Approval Order, *supra* note 4.

[14] *See* Notice, *supra* note 3, 87 FR at 47804–47805. *See also* Pilot Approval Order, *supra* note 4, 75 FR at 57540 (stating, ''[i]n particular, the Commission notes that [the Exchange] will provide the Commission with the annual report analyzing volume and open interest of EOWs and EOMs, will also contain information and analysis of EOW and EOM trading patterns, and index price volatility and share trading activity for series that exceed minimum parameters.'').

[15] *See* Notice, *supra* note 3, 87 FR at 47804–47805.

[16] *See id.* at 47805.

[17] *See id.*

[18] *See id.*

[19] 15 U.S.C. 78f(b). 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).

[20] 15 U.S.C. 78f(b)(5).

[21] *See* Securities Exchange Act Release No. 94682 (April 12, 2022), 87 FR 22993 (April 18, 2022) (CBOE–2022–005).

[22] *See* Notice, *supra* note 3, 87 FR at 47804–47805 and Pilot Approval Order, *supra* note 4, 75 FR at 57540. *See also supra* notes 15–18.

[23] 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–20377 Filed 9–20–22; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #17624 and #17625; WEST VIRGINIA Disaster Number WV–00057]

Administrative Declaration of a Disaster for the State of West Virginia

AGENCY: U.S. Small Business Administration.

ACTION: Notice.

SUMMARY: This is a notice of an Administrative declaration of a disaster for the State of West Virginia dated 09/15/2022.

Incident: Severe Storms and Flooding.

Incident Period: 05/06/2022.

DATES: Issued on 09/15/2022.

Physical Loan Application Deadline Date: 11/14/2022.

Economic Injury (EIDL) Loan Application Deadline Date: 06/15/2023.

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: Cabell.

Contiguous Counties:

West Virginia: Lincoln, Mason, Putnam, Wayne.

Ohio: Gallia, Lawrence.

The Interest Rates are:

	Percent
For Physical Damage:	
Homeowners with Credit Available Elsewhere	3.375
Homeowners without Credit Available Elsewhere	1.688
Businesses with Credit Available Elsewhere	5.870
Businesses without Credit Available Elsewhere	2.935
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	2.935
Non-Profit Organizations without Credit Available Elsewhere	1.875

The number assigned to this disaster for physical damage is 17624 6 and for economic injury is 17625 0.

The States which received an EIDL Declaration # are Ohio, West Virginia.

(Catalog of Federal Domestic Assistance Number 59008.)

Isabella Guzman,

Administrator.

[FR Doc. 2022–20351 Filed 9–20–22; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 11863]

Regional Meeting of the Binational Bridges and Border Crossings Group in San Luis, Arizona

ACTION: Notice of a meeting.

SUMMARY: Delegates from the United States and Mexican governments, the states of California and Arizona, and the Mexican states of Baja California and Sonora will participate in a regional meeting of the U.S.-Mexico Binational Bridges and Border Crossings Group on Thursday, October 27, 2022 in San Luis, Arizona. The purpose of this meeting is to discuss operational matters involving existing and proposed international bridges and border crossings and their related infrastructure and to exchange technical information as well as views on policy. This meeting will include a public session on Thursday, October 27, 2022 from 8:30 a.m. until 11:30 a.m. This session will allow proponents of proposed bridges and border crossings and related projects to make presentations to the delegations and members of the public.

DATES: October 27, 2022.

SUPPLEMENTARY INFORMATION: For further information on the meeting and to attend the public session, please contact the Office of Mexican Affairs' Border Affairs Unit via email at *WHABorderAffairs@state.gov,* by phone at 202–647–9894, or by mail at Office of Mexican Affairs—Room 3924, Department of State, 2201 C St. NW, Washington, DC 20520.

Hillary Quam,

Border Coordinator, Office of Mexican Affairs, Department of State.

[FR Doc. 2022–20385 Filed 9–20–22; 8:45 am]

BILLING CODE 4710–29–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 670 (Sub-No. 1)]

Notice of Rail Energy Transportation Advisory Committee Meeting

AGENCY: Surface Transportation Board.

ACTION: Notice of Rail Energy Transportation Advisory Committee meeting.

SUMMARY: Notice is hereby given of a meeting of the Rail Energy Transportation Advisory Committee (RETAC), pursuant to the Federal Advisory Committee Act.

DATES: The meeting will be held on Wednesday, October 26, 2022, at 9 a.m. EDT.

ADDRESSES: The meeting will be held at the Surface Transportation Board headquarters at 395 E Street SW, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kristen Nunnally at (202) 245–0312 or *Kristen.Nunnally@stb.gov.* Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: RETAC was formed in 2007 to provide advice and guidance to the Board, and to serve as a forum for discussion of emerging issues related to the transportation of energy resources by rail. *Establishment of a Rail Energy Transp. Advisory Comm.,* EP 670 (STB served July 17, 2007). The purpose of this meeting is to facilitate discussions regarding issues including rail service, infrastructure planning and development, and effective coordination among suppliers, rail carriers, and users of energy resources. Potential agenda items for this meeting include a rail performance measures review, industry segment updates by RETAC members, and a roundtable discussion.

The meeting, which is open to the public, will be conducted in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2; Federal Advisory Committee Management regulations, 41 CFR parts 102–3; RETAC's charter; and Board procedures. Further communications about this meeting may

[24] 17 CFR 200.30–3(a)(12).

be announced through the Board's website at *www.stb.gov*.

Written Comments: Members of the public may submit written comments to RETAC at any time. Comments should be addressed to RETAC, c/o Kristen Nunnally, Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001 or *Kristen.Nunnally@stb.gov.*

Authority: 49 U.S.C. 1321, 49 U.S.C. 11101; 49 U.S.C. 11121.

Decided: September 16, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2022–20420 Filed 9–20–22; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Receipt and Request for Review of Noise Compatibility Program

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

ACTION: Notice of receipt and request for review of noise compatibility program.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for John F. Kennedy International Airport by The Port Authority of New York and New Jersey. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted for John F. Kennedy International Airport were in compliance with applicable requirements, effective May 19, 2017. The proposed noise compatibility program will be approved or disapproved on or before March 15, 2023. This notice also announces the availability of this noise compatibility program for public review and comment.

DATES: The effective date of start of FAA's review of the noise compatibility program is September 16, 2022. The public comment period ends November 15, 2022.

FOR FURTHER INFORMATION CONTACT: Andrew Brooks, Regional Environmental Program Manager, Airports Division, Federal Aviation Administration, 1 Aviation Plaza, Room 516, Jamaica, NY 11434. Phone Number: 718–553–2511. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program (NCP) for John F. Kennedy International Airport which will be approved or disapproved on or before March 15, 2023. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps (NEM) that are found by FAA to be in compliance with the requirements of title 49, chapter 475 of the United States Code (U.S.C.) (Aviation Safety and Noise Abatement Act, hereinafter referred to as ''the Act'') and title 14, Code of Federal Regulations (CFR) part 150 (14 CFR part 150), promulgated pursuant to the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes to reduce existing non-compatible uses and prevent the introduction of additional non-compatible uses. The FAA previously determined that the NEMs for John F. Kennedy International Airport were in compliance with applicable requirements under 14 CFR part 150, effective January 15, 2019 (Noise Exposure Map Notice for John F. Kennedy International Airport, New York City, New York, 82 FR 24770–1, May 30, 2017).

The FAA has formally received the NCP for John F. Kennedy International Airport on September 7, 2022. The airport operator has requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a NCP under section 47504 of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of NCPs, but that further review will be necessary prior to approval or disapproval of the program for John F. Kennedy International Airport. The formal review period, limited by law to a maximum of 180 days, was initiated on September 16, 2022 and will be completed on or before March 15, 2023.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing non-compatible land uses and preventing the introduction of additional non-compatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the proposed NCP for John F. Kennedy International Airport are available for examination online at *http://panynjpart150.com/JFK_FNCP.asp.*

The Port Authority of New York and New Jersey has also made a hard copy of the document available for review at the JFK Redevelopment Community Information Center, 144–33 Jamaica Avenue, Jamaica, NY 11435. Interested parties can contact the office at (718) 244–3834 to arrange for a review.

Questions regarding this notice may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT**.

Issued in Jamaica, NY, on September 16, 2022.

David A. Fish,

Director, Airports Division, Eastern Region.

[FR Doc. 2022–20394 Filed 9–20–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0174]

Agency Information Collection Activities; New Information Collection: Effectiveness of Third-Party Testing and Minimum Standards for Commercial Driver's License (CDL) Knowledge and Skills Tests

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This ICR is related to the collection of information to determine the effectiveness of (a) third party testing programs as they relate to commercial driver's license (CDL) skills and knowledge tests and (b) minimum testing standards for CDL skills and knowledge tests.

DATES: Comments on this notice must be received on or before November 21, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System Docket Number FMCSA–2022–0174 using any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* 1–202–493–2251.
- *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision-making process. DOT posts these comments, without edit, including any personal information the commenter provides, to *www.regulations.gov.* As described in the system of records notice DOT/ALL 14–FDMS, which can be reviewed at *https://www.transportation.gov/privacy,* the comments are searchable by the name of the submitter.

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''FAQ'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Nicole Michel, Research Division, Office of Analysis, Research, and Technology, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–4354; *nicole.michel@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

The CDL Program was enacted through the Commercial Motor Vehicle Safety Act of 1986 (CMVSA) (Pub. L. 99–570, 100 Stat. 3207–170) in response to jurisdiction concerns about avoidable commercial motor vehicle (CMV) crashes and commercial driver qualifications. The CMVSA required the Secretary of Transportation to promulgate regulations establishing minimum Federal requirements for CMV driver licensing, testing, qualifications, and driver classifications depending on the vehicle configuration. CMVSA further established the ''one driver, one license'' requirement, prohibiting any person who does not hold a valid CDL or learner's permit issued by his or her jurisdiction of domicile from operating a CMV that requires a driver with a CDL and established additional requirements for drivers who transport hazardous materials. The prohibition further affected driver training activities by requiring trainees to receive the training and behind-the-wheel experience necessary to acquire their CDL in their jurisdiction of domicile. CMVSA became law in 1992 and the requirements of the Act are implemented in Title 49, Code of Federal Regulations (CFR), Parts 383 and 384, with Part 383.51 establishing disqualifications and penalties for drivers convicted of traffic violations.

In 2005, AAMVA developed a model testing system that FMCSA approved, thus ensuring that jurisdictions using the Test Model maintain compliance with Federal Motor Carrier Safety Regulations (FMCSRs) governing CDL program training and licensing standards. In 2011, FMCSA established by regulation a requirement that all jurisdictions utilize a testing system that substantially conforms with the AAMVA 2005 Test Model (76 FR 26853). The Test Model, which was upgraded in 2010 and 2014, is currently being used to some degree in all 51 jurisdictions, however, the safety benefits and potential benefits of utilizing the AAMVA V Test Model have not been fully evaluated.

In the Moving Ahead for Progress in the 21st Century Act legislation signed into law on July 6, 2012, Congress passed a requirement for FMCSA to establish an entry level driver training (ELDT) program that both enhanced existing training standards and established minimum level CDL requirements consistent across all jurisdictions (Pub. L. 112–141, 126 Stat. 405). FMCSA's goal was to raise the standard of training, improve the quality of training, and ensure that each location developed a Safety Management System to reduce commercial vehicle accidents in every jurisdiction. Implemented in 49 CFR part 380, subpart F, the ELDT rule revised the mandatory training requirements for entry-level CMV operators who are required to possess a Class A or B commercial driver license; seek to upgrade their CDL; or wish to obtain a hazardous material, school bus, or passenger endorsement (86 FR 34631). The ELDT program was implemented beginning February 7, 2022.

An additional benefit of implementing ELDT is that the training standards and minimum level CDL requirements will apply to both jurisdiction and third-party examiners. Many jurisdictions rely extensively on third-party entities to provide training and conduct knowledge and skills tests. FMCSA currently prohibits the same third-party entity from serving as both trainer and examiner. Current prohibitions limit the ability jurisdictions have to increase training capacity. This has resulted in the more frequent use of third-party entities to make up shortfalls between the demand for CDLs and a jurisdiction's ability to provide training and examinations. There is a well-documented driver shortfall in the trucking industry and the use of third-party entities to conduct training and examinations helps with increasing examiner capacity and reducing delays in drivers being issued CDLs. However, a challenge for FMCSA and jurisdictions is that to date, there is limited research available correlating driver performance with the type of training received (jurisdiction or third party).

An additional challenge that has faced the CDL program since its inception has been fraud associated with the current AAMVA test model. The provisions of 49 CFR 384.228 and 384.229 are intended to provide states with a mechanism for detecting potential fraud and ensuring that all requirements are being addressed. Maintaining proper oversight and auditing third-party training providers remains a challenge

for SDLAs. The Training Provider Registry requirement for self-certification of compliance with ELDT and state licensing requirements adds to this challenge and will require SDLAs to allocate additional resources to ensure third-party training provider self-certifications are accurate and meet all requirements.

To address these information gaps, FMCSA is conducting a project titled ''Effectiveness of Third-Party Testing and Minimum Standards for the CDL Knowledge and Skills Test'', which will assess the effectiveness of the ELDT program, assess third-party training provider performance, and verify/validate compliance with ELDT minimum standards. This project is intended to address the following research questions:

1. Is there evidence of increasing or decreasing fraud among third-party examiners based on the pass rates and subsequent safety history of CDL holders who were tested by third-party testers?

2. Are there significant differences in the outcomes of third-party testing on CDL testing?

3. Would it be feasible to conduct a future study on the safety impacts of delegating CDL knowledge testing to third-party testers based on available data?

4. How do the driving histories of drivers who received behind-the-wheel training (pre-ELDT requirements) compare to drivers who completed the new ELDT requirements?

5. How do the driving histories of drivers who received theory instruction (pre-ELDT requirements) compare to drivers who completed the new ELDT requirements?

6. How do skills test pass rates of drivers pre-ELDT compliance compare to pass rates of drivers after the ELDT compliance date?

7. Are there identifiable safety benefits that have been realized by the adoption of the 2005 AAMVA CDL Test Model?

8. Are there external factors preventing SDLAs and the CDL community from achieving the full potential of safety benefits of the 2005 AAMVA CDL Test Model?

This one-time survey is necessary to determine institutional and programmatic issues in assessing the effectiveness of the ELDT programs and where improvements should be made; this will ultimately contribute to the safety of our transportation system. The survey will allow researchers to determine which version of the AAMVA V test model (or equivalent) is being utilized, as required by 49 CFR parts 383.131–133.

Title 23, United States Code (U.S.C.), Chapter 4, Section 403 authorizes the Secretary to use funds appropriated to carry out this section to conduct research and development activities, including demonstration projects and the collection and analysis of highway and motor vehicle safety data and related information with respect to all aspects of highway and traffic safety systems and conditions relating to vehicle, highway, driver, passenger, motorcyclist, bicyclist, and pedestrian characteristics; accident causation and investigations; and human behavioral factors and their effect on highway and traffic safety, including driver education, impaired driving and distracted driving; and research on, evaluations of, and identification of best practices related to driver education programs (including driver education curricula, instructor training and certification, program administration, and delivery mechanisms) and make recommendations for harmonizing driver education and multistage graduated licensing systems; and the effect of State laws on any aspects, activities, or programs described in subparagraphs (A) through (E). (See 23 U.S.C. 403(b)(1)(A)(i)–(ii), 23 U.S.C. 403(b)(1)(B)(i)–(iii), 23 U.S.C. 403(b)(1)(E), 23 U.S.C. 403(b)(1)(F)).

Title: Effectiveness of Third-Party Testing and Minimum Standards for Commercial Driver's License (CDL) Knowledge and Skills Tests.

OMB Control Number: 2126–00XX.

Type of Request: New ICR.

Respondents: State and local Government employees (management, professional and related); one respondent per State and one respondent for the District of Columbia.

Estimated Number of Respondents: 51 respondents.

Estimated Time per Response: 1.42 hours per respondent.

Expiration Date: N/A. This is a new ICR.

Frequency of Response: There is a one-time response to the survey per respondent.

Estimated Total Annual Burden: 72.42 hours (1.42 hours per response × 51 respondents) at an estimated cost of $4,749.63 ($93.13 per respondent × 51 respondents).

Definitions: N/A.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–20406 Filed 9–20–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0163]

Agency Information Collection Activities; New Information Collection: Human Factors Considerations in Commercial Motor Vehicle Automated Driving Systems

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

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, FMCSA announces its plan to submit the Information Collection Request (ICR) described below to the Office of Management and Budget (OMB) for its review and approval and invites public comment. This notice invites comments on a proposed information collection titled *Human Factors Considerations in Commercial Motor Vehicle Automated Driving Systems.* It is a driving simulator study with a series of questionnaires that will evaluate how commercial motor vehicle (CMV) drivers engage in Society of Automotive Engineers (SAE) Level 2 (L2) and Level 3 (L3) automated driving system (ADS)-equipped CMVs. Approximately 100 CMV drivers will participate in the study. The study will examine the effect of non-driving secondary task engagement, transfer of control, and training on driver behavior in ADS-equipped CMVs.

DATES: Comments on this notice must be received on or before November 21, 2022.

ADDRESSES: You may submit comments identified by Federal Docket Management System Docket Number FMCSA–2022–0163 using any of the following methods:

• *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.

• *Fax:* 1–202–493–2251.

• *Mail:* Dockets Operations; U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001.

• *Hand Delivery or Courier:* U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Room W12–140, Washington, DC 20590–0001 between 9 a.m. and 5 p.m. e.t., Monday through Friday, except Federal holidays.

Instructions: All submissions must include the Agency name and docket number. For detailed instructions on submitting comments, see the Public Participation heading below. Note that all comments received will be posted without change to *https://www.regulations.gov,* including any personal information provided. Please see the Privacy Act heading below.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov,* and follow the online instructions for accessing the docket, or go to the street address listed above.

Privacy Act: In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its decision making. DOT posts these comments, without edit, including any personal information the commenter provides, to *https://www.regulations.gov,* as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *https://www.dot.gov/privacy.*

Public Participation: The Federal eRulemaking Portal is available 24 hours each day, 365 days each year. You can obtain electronic submission and retrieval help and guidelines under the ''FAQ'' section of the Federal eRulemaking Portal website. If you want us to notify you that we received your comments, please include a self-addressed, stamped envelope or postcard, or print the acknowledgement page that appears after submitting comments online. Comments received after the comment closing date will be included in the docket and will be considered to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Theresa Hallquist, Office of Research and Registration, DOT, FMCSA, West Building 6th Floor, 1200 New Jersey Avenue SE, Washington, DC 20590–0001; 202–366–1064; *theresa.hallquist@dot.gov.*

SUPPLEMENTARY INFORMATION:

Background

Lower levels of automated driving system (ADS)-equipped CMVs present an environment that is ripe for overreliance. An L2 vehicle offers longitudinal and lateral support to the driver; however, the driver is still responsible for driving at all times. At this level, engaging in non-driving secondary tasks can be highly detrimental to driving performance as the driver may not recognize and respond to hazards timely or appropriately. In an L3 vehicle, the role of distraction is blurred. The driver takes on a more supervisory role and is in full control of the vehicle in a limited number of situations. When an L3 vehicle alerts the driver that a takeover is required, the driver needs to have situational awareness to resume full control of the vehicle. Engagement in non-driving secondary tasks may prevent the driver from maintaining situational awareness of the driving environment.

A recently completed study by FMCSA on research involving ADSs in CMVs found a lack of research related to ADS-equipped CMVs. To date, most commercial ADSs on U.S. roadways are in passenger vehicles, and CMV ADSs are only recently being implemented in real-world operations. Therefore, FMCSA needs more data on ADS-equipped CMVs to understand driver behavior and policy implications.

The purpose for obtaining data in this study is to evaluate driver readiness to assume control in SAE L2 and L3 ADS-equipped CMVs and develop and test a CMV driver distraction training program designed to improve driver readiness. Specifically, there are three primary objectives for the data collection: (i) determine the effect of distraction on CMV drivers of L2 vehicles; (ii) determine the effect of transfer of control on CMV drivers in L3 vehicles; and (iii) develop and evaluate a training program that is designed to decrease the levels of distraction that were identified in CMV drivers in L2 vehicles and designed to improve the problems with the transfer of control that were identified in L3 vehicles. Answers to these research questions will provide insight into the human factors associated with semi-automated CMVs. Moreover, these findings will inform training materials to educate drivers on distraction and the functionality of ADS as well as policy pertaining to the implications of ADSs in CMVs.

The study includes data collection from a series of questionnaires and a driving simulator-focused experiment. The collected survey data will support the simulator experiment data. The survey data will be used in two ways: in the assessment of driving performance data as covariates in the model (to control for certain demographic variables, such as age, gender, and experience) and to answer a research question on the relationship between driver characteristics and driver readiness and performance. Data on driver readiness and performance will be collected from the simulator experiment. Eligible drivers will hold a valid commercial driver's license, currently drive a CMV, be 21 years of age or older, and pass the motion sickness history screening questionnaire.

Data will be collected over two study sessions. The first study session will collect data on the effects of non-driving secondary tasks and readiness to resume control of an L2- or L3-equipped CMV. The second study session will assess the effectiveness of driver training to improve safety while operating an L2 or L3 CMV. Questionnaire data will be collected prior to the simulator study, during the simulator study, and after the simulator study. In addition, participants will complete questionnaires about the training in the second study session. All questionnaires will be preloaded in an app format for drivers to complete on a tablet.

We anticipate 100 participants in total for the driving simulator study. Fifty drivers will participate in the L2 study sessions, and the other 50 drivers will participate in the L3 study sessions. During consent, each participant will agree to participate in both the L2/L3 simulator study session and the training study session. For a participant who chooses not to continue, a new driver will be recruited to fill their position. These new participants will not have data from the L2/L3 study but will need to complete a new consent form, pre-/post-study questionnaires, and the training questionnaire. Each study session will be completed in 4 hours, resulting in a total of up to 8 hours of participation for drivers that complete both study sessions.

Multiple analyses will be used, including an assessment of driver distraction and its effects on driver readiness and driving performance. In the L2 and L3 studies, general linear mixed models (GLMMs) will be used to answer the research questions. In the transportation safety field, GLMMs are often used to analyze driver behavior and assess relationships between driving scenarios and behaviors. To evaluate the effectiveness of the training program, linear mixed models will be

used with random intercepts. Driver random intercepts will account for participants' correlated behaviors and expectations in the L2 or L3 system before and after training.

Title: Human Factors Considerations in Commercial Motor Vehicle Automated Driving Systems.

OMB Control Number: 2126–00XX.

Type of Request: New ICR.

Respondents: CMV drivers.

Estimated Number of Respondents: 100.

Estimated Time per Response: 4 hours.

Expiration Date: This is a new ICR.

Frequency of Response: Two responses.

Estimated Total Annual Burden: 475.5 hours.

Public Comments Invited: You are asked to comment on any aspect of this information collection, including: (1) whether the proposed collection is necessary for the performance of FMCSA's functions; (2) the accuracy of the estimated burden; (3) ways for FMCSA to enhance the quality, usefulness, and clarity of the collected information; and (4) ways that the burden could be minimized without reducing the quality of the collected information. The Agency will summarize or include your comments in the request for OMB's clearance of this ICR.

Issued under the authority of 49 CFR 1.87.

Thomas P. Keane,

Associate Administrator, Office of Research and Registration.

[FR Doc. 2022–20405 Filed 9–20–22; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Action

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the names of one or more persons that have been placed on OFAC's Specially Designated Nationals and Blocked Persons List based on OFAC's determination that one or more applicable legal criteria were satisfied. All property and interests in property subject to U.S. jurisdiction of this person are blocked, and U.S. persons are generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for effective date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202–622–2490; Associate Director for Global Targeting, tel.: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The Specially Designated Nationals and Blocked Persons List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Action

On September 15, 2022, OFAC determined that the property and interests in property subject to U.S. jurisdiction of the following person are blocked under the relevant sanctions authority listed below.

Individuals

1. MUTAMBA, Stephen, 192 Baines Ave., Harare, Harare, Zimbabwe; DOB 23 Oct 1961; POB Harare, Zimbabwe; Gender Male; Passport FN460001 (Zimbabwe); National ID No. 58004069A3 (Zimbabwe); Deputy Commissioner General, Administration, Zimbabwe Republic of Police (individual) [ZIMBABWE].

Designated pursuant to section 1(a)(iii) of Executive Order 13469 of July 25, 2008, ''Blocking Property of Additional Persons Undermining Democratic Processes or Institutions in Zimbabwe,'' 73 FR 43841, for having engaged in actions or policies to undermine Zimbabwe's democratic processes or institutions.

Dated: September 15, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–20390 Filed 9–20–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

Notice of OFAC Sanctions Actions

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Notice.

SUMMARY: The U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) is publishing the name of one or more persons that have been removed from OFAC's Specially Designated Nationals and Blocked Persons List (SDN List). Their property and interests in property are no longer blocked and U.S. persons are no longer generally prohibited from engaging in transactions with them.

DATES: See **SUPPLEMENTARY INFORMATION** section for applicable date(s).

FOR FURTHER INFORMATION CONTACT:

OFAC: Andrea Gacki, Director, tel.: 202–622–2480; Associate Director for Global Targeting, tel: 202–622–2420; Assistant Director for Licensing, tel.: 202–622–2480; Assistant Director for Regulatory Affairs, tel.: 202–622–4855; or the Assistant Director for Sanctions Compliance & Evaluation, tel.: 202–622–2490.

SUPPLEMENTARY INFORMATION:

Electronic Availability

The SDN List and additional information concerning OFAC sanctions programs are available on OFAC's website (*www.treasury.gov/ofac*).

Notice of OFAC Actions

On March 6, 2003, the President issued Executive Order 13288 pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.,* the National Emergencies Act, 50 U.S.C. 1601 *et seq.,* and section 301 of title 3, United States Code. In Executive Order 13288, the President declared a national emergency to deal with the unusual and extraordinary threat to the foreign policy of the United States posed by the actions and policies of certain members of the Government of Zimbabwe and other persons to undermine Zimbabwe's democratic processes or institutions. Executive Order 13288 blocks the property and interests in property of, *inter alia,* persons listed in the Annex to the Executive Order.

On November 22, 2005, the President issued Executive Order 13391, which, *inter alia,* replaced and superseded the Annex to Executive Order 13288 with a new Annex that included the names of individuals and entities, including individuals and entities that had previously been designated under Executive Order 13288.

On September 15, 2022, OFAC determined that the following persons should be removed from the SDN List and that the property and interests in property subject to U.S. jurisdiction of the following persons are unblocked:

Individuals

1. MANYONDA, Kenneth, 6 Speke Avenue, Murambi, Mutare, Zimbabwe; DOB 10 Aug 1934; Central Committee Member (individual) [ZIMBABWE].

2. MUGUTI, Edwin, 7 Tay Road, Vainona, Borrowdale, Zimbabwe; DOB 02 May 1964; Passport AN775556 (Zimbabwe); Deputy Minister of Health and Child Welfare (individual) [ZIMBABWE].

3. POTE, Selina; Deputy Secretary for Gender and Culture (individual) [ZIMBABWE].

4. SAKABUYA, Morris; Deputy Minister of Local Government, Public Works, and Urban Development (individual) [ZIMBABWE].

5. SIKOSANA, Absolom; Politburo Secretary for Youth Affairs (individual) [ZIMBABWE].

6. MATIZA, Biggie Joel; DOB 17 Aug 1960; Passport ZA557399 (Zimbabwe); Deputy Minister of Rural Housing and Social Amenities (individual) [ZIMBABWE].

7. MOYO, Simon Khaya; DOB 01 Oct 1945; Passport ZD001512 (Zimbabwe); Politburo Member (individual) [ZIMBABWE].

8. SAVANHU, Tendai; DOB 21 Mar 1968; Politburo Deputy Secretary of Transport and Social Welfare (individual) [ZIMBABWE].

9. SHIRI, Perence; DOB 11 Jan 1955; Zimbabwean Air Marshal (Air Force) (individual) [ZIMBABWE].

10. ZIMONDI, Paradzai; DOB 04 Mar 1947; Zimbabwe Prisons Chief (individual) [ZIMBABWE].

11. MUCHENA, Olivia Nyembezi, 59 The Chase, Mount Pleasant, Harare, Zimbabwe; DOB 18 Aug 1946; Passport AD000086 (Zimbabwe); Minister of State for Science and Technology Development (individual) [ZIMBABWE].

Dated: September 15, 2022.

Andrea M. Gacki,

Director, Office of Foreign Assets Control, U.S. Department of the Treasury.

[FR Doc. 2022–20389 Filed 9–20–22; 8:45 am]

BILLING CODE 4810–AL–P

DEPARTMENT OF VETERANS AFFAIRS

VA High Risk List Action Plan Update, Managing Risks and Improving VA Health Care

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Notice is given that the Department of Veterans Affairs (VA) High Risk List Action Plan Update—Managing Risks and Improving VA Health Care report to the U.S. Government Accountability Office (GAO) is available for public review at *https://www.va.gov/performance/.* In this update, VA provides the status on actions taken through March 2022; future planned actions with detailed project milestones; refined goals and objectives; a resource assessment; information on work related to the Coronavirus Disease 2019 pandemic.

FOR FURTHER INFORMATION CONTACT: Karen Rasmussen, M.D., Director for GAO–OIG Accountability Liaison at *VHA10BGOALGAOHRL@va.gov* or (202) 340–9429 (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The 2022 update also provides a response to critiques made in GAO's 2021 High Risk Series: Dedicated Leadership Needed to Address Limited Progress in Most High-Risk Areas (21–119SP), published March 2, 2021. VA's commitment to addressing the management functions GAO highlighted in its report will ensure initiatives continue to be reinforced by sound policy; are implemented by staff with the right knowledge, skills and abilities; receive the right information technology support; identify and secure essential human and financial resources; have management oversight; and are accountable throughout planning, implementation and reinforcement. Leaders in the Veterans Health Administration, in partnership with the Office of Information Technology, continue to establish a unified vision for ensuring VA effectively takes action to address the five areas of concern and drives organizational accountability toward resolution of the high-risk listing.

Signing Authority: Denis McDonough, Secretary of Veterans Affairs, approved this document on September 14, 2022, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

Luvenia Potts,

Regulation Development Coordinator, Office of Regulation Policy & Management, Office of the Secretary, Department of Veterans Affairs.

[FR Doc. 2022–20435 Filed 9–20–22; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0029]

Agency Information Collection Activity: Offer To Purchase and Contract of Sale; Credit Statement of Prospective Purchaser; and Addendum To Offer To Purchase and Contract of Sale (VIRGINIA)

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before November 21, 2022.

ADDRESSES: Submit written comments on the collection of information through Federal Docket Management System (FDMS) at *https://www.Regulations.gov* or to Nancy J. Kessinger, Veterans Benefits Administration (20M33), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420 or email to *nancy.kessinger@va.gov.* Please refer to ''OMB Control No. 2900–0029'' in any correspondence. During the comment period, comments may be viewed online through FDMS.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Ave. NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0029'' in any correspondence.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary

for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Authority: Public Law 104–13; 44 U.S.C. 3501–3521.

Title: VA Form 26–6705, Offer to Purchase and Contract of Sale; VA Form 26–6705b, Credit Statement of Prospective Purchaser; and VA Form 26–6705d, Addendum to Offer to Purchase and Contract of Sale (Virginia).

OMB Control Number: 2900–0029.

Type of Review: Extension of a currently approved collection.

Abstract: Under the authority of 38 U.S.C. 3720(a)(5) and (6), the Department of Veterans Affairs (VA) acquires properties for sale to the general public utilizing a private Service Provider. Without this collection, a determination of the best offer for a property and the highest net return/cash equivalent value HNR/CEV could not be made to determine the most financially advantageous purchase offer to VA (VA Form 26–6705); the creditworthiness of a prospective buyer could not be determined and the offer to purchase could not be accepted (VA Form 26–6705b or FNMA1003; and, proper acknowledgment of State law by the buyer at or prior to closing would not be made (VA Form 26–6705d)).

Affected Public: Individuals and households.

Estimated Annual Burden: 17,458 hours.

Estimated Average Burden per Respondent: 20 minutes and 5 minutes (average 15 minutes between the three forms).

Frequency of Response: One time.

Estimated Number of Respondents: 53,500.

By direction of the Secretary:

Dorothy Glasgow,

VA PRA Clearance Officer, (Alt) Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2022–20347 Filed 9–20–22; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 87 Wednesday,
No. 182 September 21, 2022

Part II

Consumer Product Safety Commission

16 CFR Parts 1112 and 1262
Safety Standard for Magnets; Final Rule

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Parts 1112 and 1262

[Docket No. CPSC–2021–0037]

Safety Standard for Magnets

AGENCY: Consumer Product Safety Commission.

ACTION: Final rule.

SUMMARY: The U.S. Consumer Product Safety Commission (Commission or CPSC) is issuing a rule to address the hazard associated with ingestion of one or more high-powered magnets. The CPSC has determined that unreasonable risks of injury are associated with small, powerful magnets that, when ingested, can interact internally through body tissue, which can lead to acute and long-term health consequences or death. The rule establishes requirements for subject magnet products that are designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contain one or more loose or separable magnets, but the subject products do not include magnet products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes. Each loose or separable magnet in a product that is subject to the rule and that fits entirely within CPSC's small parts cylinder must have a flux index of less than 50 kG^2 mm^2. The flux index is determined by the method described in the ASTM F963 Toy Standard. The rule exempts from its requirements toys subject to the ASTM F963 Toy Standard. The Commission takes this action under the Consumer Product Safety Act (CPSA).

DATES:

Effective date for magnet rule: This rule is effective on October 21, 2022 and will apply to all subject magnet products manufactured after that date. The incorporation by reference of the publication listed in this rule is approved by the Director of the Federal Register as of October 21, 2022.

Effective date for Notice of Requirements: The Notice of Requirements for this rule is effective on December 20, 2022 and will apply to subject magnet products that are children's products required to be tested by CPSC-accepted third party conformity assessment bodies.

FOR FURTHER INFORMATION CONTACT: Michelle Guice, Compliance Officer, U.S. Consumer Product Safety Commission, 4330 East West Highway, Bethesda, MD 20814; telephone (301) 504–7723; email: *MGuice@cpsc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. CPSC's Prior Work on the Magnet Ingestion Hazard

In 2012, the Commission initiated rulemaking to address the magnet ingestion hazard for products. The rule focused on magnet sets (which are among the subject magnet products addressed in this rule) that were involved in internal interaction injuries in children and teens. 77 FR 53781 (Sep. 4, 2012) (notice of proposed rulemaking); 79 FR 59962 (Oct. 3, 2014) (2014 magnet sets rule). The rule defined ''magnet sets'' as ''any aggregation of separable magnetic objects that is a consumer product intended, marketed or commonly used as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief.'' The rule required each magnet in a magnet set, and each individual magnetic object intended or marketed for use with or as a magnet set, that fit completely within CPSC's small parts cylinder, to have a flux index of 50 kG^2 mm^2 or less, consistent with the magnet size and strength limits specified in ASTM F963–11, which was in effect when the 2014 magnet sets rule was issued. Subsequently, ASTM F963–17 revised the definition of ''hazardous magnet'' to have a flux index of 50 kG^2 mm^2 or more. The final rule was published in October 2014, and it took effect on April 1, 2015.

On November 22, 2016, the U.S. Court of Appeals for the Tenth Circuit overturned CPSC's 2014 magnet sets rule, vacating and remanding it to the Commission. *Zen Magnets, LLC* v. *Consumer Prod. Safety Comm'n.,* 841 F.3d 1141 (10th Cir. 2016).[1]

On June 30, 2020, staff provided the Commission with an informational briefing package discussing the magnet ingestion hazard.[2] Staff recommended that CPSC continue to consider performance requirements for magnets, to address the ingestion hazard to children and teens.

Throughout this period, CPSC's Office of Compliance and Field Operations investigated and recalled numerous magnet products due to the magnet internal interaction hazard. CPSC has conducted 20 recalls involving hazardous magnets, including two recalls, both involving magnet sets, since preparation of the NPR. Of the 20 recalls, six involved toys subject to ASTM F963 and four involved products that would not be subject to the draft final rule (*e.g.,* a helmet with a magnetic strap). There were substantially fewer recalls of children's toys for violations of the magnet requirements specified in ASTM F963 after 2010 than before that time, reflecting that ASTM F963 has been effective in addressing the magnet internal interaction hazard for children's toys. The Commission previously incorporated by reference ASTM F963–17, as codified in 16 CFR part 1250, (referred to also as ASTM F963 Toy Standard) (82 FR 57119) (Dec. 4, 2017).

B. Notice of Proposed Rulemaking

In the **Federal Register** of January 10, 2022 (87 FR 1260), the Commission issued a notice of proposed rulemaking (NPR) under sections 7 and 9 of the Consumer Product Safety Act (CPSA; 15 U.S.C. 2051–2089), to address the unreasonable risk of injury and death associated with ingestion of loose or separable high-powered magnets.[3] As described in the NPR, the incident data showed that hazardous magnets continue to be ingested, in particular, by children and teens. When ingested, these powerful magnets can, among other risks, interact through body tissue with one another, or with a ferromagnetic object (*i.e.,* material attracted to magnets), leading to acute and long-term adverse health consequences or death.

The NPR proposed that each loose or separable magnet in a subject magnet product that fits entirely within a small parts cylinder, as provided in 16 CFR 1501.4, must have a flux index of less than 50 kG^2 mm^2. The NPR proposed the test procedure for determining the flux index in accordance with the test procedure in section 8.25.1 through 8.25.3 of the ASTM F963 Toy Standard.

The NPR proposed to exempt from the proposed rule, toys that are subject to the ASTM F963 Toy Standard, because that standard already includes requirements to adequately address the magnet ingestion hazard. Specifically,

[1] In accordance with the court's decision, the Commission removed the mandatory standard for magnets sets (16 CFR part 1240) from the Code of Federal Regulations on March 7, 2017. 82 FR 12716 (Mar. 7, 2017).

[2] The informational briefing package is available at: *www.cpsc.gov/s3fspublic/Informational%20Briefing%20Package%20Regarding%20Magnet%20Sets.pdf.*

[3] Staff's NPR briefing package is available at: *www.cpsc.gov/s3fs-public/2022-08-17-Final-Rule-Safety-Standards-for-Magnets.pdf?VersionId=QPs8iPwg0w0m5b4qsOF3Ebo.zOXY2cUN.*

ASTM F963–17 applies to ''toys,'' which are defined as objects ''designed, manufactured, or marketed as a plaything for children under 14 years of age.''

The final rule includes the toy exemption and modifies the NPR's proposal to clarify that the definition of ''subject magnet product'' means a consumer product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets, but does not include products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes.

II. Statutory Authority

A. Rulemaking Under the Consumer Product Safety Act

The subject magnet products are ''consumer products'' that can be regulated by the Commission under the authority of the CPSA. 15 U.S.C. 2052(a). Under section 7 of the CPSA, the Commission is authorized to promulgate a mandatory consumer product safety standard that sets forth performance requirements for a consumer product or that sets forth requirements that a product be marked or accompanied by clear and adequate warnings or instructions. 15 U.S.C. 2056. A performance, warning, or instruction standard must be reasonably necessary to prevent or reduce an unreasonable risk or injury associated with a consumer product.

Section 9 of the CPSA specifies the procedure that the Commission must follow to issue a consumer product safety standard under section 7. In accordance with section 9, the Commission commenced this rulemaking by issuing the NPR, including the proposed rule and a preliminary regulatory analysis under section 9(c) of the CPSA. In addition, the Commission requested comments on all aspects of the NPR, including the risk of injury identified, the regulatory alternatives under consideration, and other possible alternatives for addressing the risk. 15 U.S.C. 2058(c). With this notice, the Commission issues a final rule, along with a final regulatory analysis. 15 U.S.C. 2058(f)(2).[4]

Section 9 also requires the Commission to provide interested persons ''an opportunity for the oral presentation of data, views, or arguments,'' in addition to an opportunity to provide written comments. *Id.* 2058(d)(2). On February 15, 2022, the hearing notice was published in the **Federal Register** (87 FR 8442). The Commission held an online public hearing on the proposed rule on March 2, 2022. The submissions forwarded to the agency by presenters before the hearing, as well as the transcript of the hearing, can be read online at: *www.regulations.gov* under Docket No. CPSC–2021–0037. As discussed in section VI. of this preamble, the Commission considered all the oral and written comments received in response to the proposed rule.

B. Findings Required Under the Consumer Product Safety Act

According to section 9(f)(1) of the CPSA, before promulgating a consumer product safety rule, the Commission must consider and make appropriate findings to be included in the rule on the following issues: (1) the degree and nature of the risk of injury that the rule is designed to eliminate or reduce; (2) the approximate number of consumer products subject to the rule; (3) the public's need for the products subject to the rule, and the probable effect the rule will have on utility, cost, or availability of such products; and (4) the means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices. *Id.* 2058(f)(1).

Pursuant to section 9(f)(3) of the CPSA, to issue a final rule, the Commission must find that the rule is ''reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with such product'' and find that issuing the rule is in the public interest. *Id.* 2058(f)(3)(A)&(B). In addition, if a voluntary standard addressing the risk of injury has been adopted and implemented, the Commission must find that: (1) the voluntary standard is not likely to eliminate or adequately reduce the risk of injury, or that (2) substantial compliance with the voluntary standard is unlikely. *Id.* 2058(f)(3(D). The Commission also must find that the expected benefits of the rule bear a reasonable relationship to the costs of the rule and that the rule imposes the least burdensome requirements that would adequately reduce the risk of injury. *Id.* 2058(f)(3)(E)&(F). These findings are provided in section 1262.5 of the regulatory text, below.

III. The Product and Market

A. Description of the Product

The final rule applies to ''subject magnet products,'' which are consumer products that are designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contain one or more loose or separable magnets, but do not include products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes.

Magnets in subject magnet products typically are small, powerful, magnetic balls, cubes, cylinders, and other shapes that can be used to create jewelry (such as necklaces, bracelets, and simulated piercings), and can be aggregated to make sculptures, or used as desk toys, and as other building sets. One common example of a subject magnet product is a magnet set intended for users 14 years and older. Magnet sets are aggregations of separable magnetic objects that are marketed or commonly used as a manipulative or construction items for entertainment, such as puzzle working, sculpture building, mental stimulation, or stress relief. Magnet sets often contain hundreds to thousands of loose, small, high-powered magnets. Another example of a subject magnet product is jewelry with separable magnets, such as jewelry-making sets, and faux magnetic piercings/studs. Additional examples include products commonly referred to as ''executive toys,'' ''desk toys,'' and ''rock magnets'' (rock-shaped magnets), intended for amusement of users 14 years and older.

Subject magnet products are available in a variety of shapes, sizes (*e.g.,* 2.5 mm, 3 mm, 5 mm), and number of magnets (1 to thousands). Subject magnet products often consist of numerous identical magnets, although some products include non-identical magnets, such as 2 or more different shapes. Subject magnet products commonly include magnets between 3 mm and 6 mm in size and consist of several hundred magnets.

Magnets in subject magnet products have a variety of compositions, such as alloys of neodymium, iron, boron (NIB); ferrite/hematite; aluminum, nickel, cobalt (AlNiCo); and samarium and cobalt (SmCo). NIB and SmCo magnets are often referred to as ''rare earth'' magnets because neodymium and samarium are ''rare earth'' elements found on the periodic table. NIB is typically used in smaller magnets used

[4] The Commission voted 5–0 to publish this notice in the **Federal Register**. Chair Hoehn-Saric and Commissioners Trumka and Boyle issued statements in connection with their votes.

for magnet sets and magnetic jewelry sets, and ferrite/hematite is typically used in larger magnets, such as rock-shaped magnet toys. The magnetized cores of subject magnet products are coated with a variety of metals and other materials to make them more attractive to consumers and to protect the brittle magnetic alloy materials from breaking, chipping, and corroding.

Staff found that 5 mm diameter NIB magnets (the most common size identified in magnet ingestion incidents) typically have strong magnetic properties, ranging between 300 and 400 kG^2 mm^2; and ferrite rock magnets can measure upwards of 700 kG^2 mm^2. Staff also identified products close to the limit of 50 kG^2 mm^2, ranging from approximately 30 kG^2 mm^2 to 70 kG^2 mm^2. Some subject magnet products advertise having flux indexes lower than 50 kG^2 mm^2, which is more common for smaller magnets (*e.g.,* 2.5 mm magnets).

Some subject magnet products are ''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). Children's products that are toys are exempt from the rule because they are already required to comply with ASTM F963–17's requirements addressing the magnet ingestion hazard. One example of a subject magnet product that is a children's product and not a toy is children's jewelry.

B. The Product Market

Magnet products intended for the purposes covered in the rule largely entered the market in 2008, with significant sales beginning in 2009. CPSC's previous efforts to address the magnet ingestion hazard have focused primarily on magnet sets, given their involvement in ingestion incidents, their popularity, uses for amusement and jewelry, and the large number of loose, small, high-powered magnets in the sets. Accordingly, much of the information CPSC has about the market for subject magnet products focuses on magnet sets, which are the largest category of identified products involved in magnet ingestions.

From 2009 through mid-2012, most magnet set sellers were retailers with physical stores, such as bookstores, gift shops, and other outlets. In contrast, nearly all current marketers (firms or individuals) of magnet sets sell through internet sites, rather than physical stores. Some of these internet sites are operated by importers, but most operate on the sites of other internet retailer platforms.

In 2018, CPSC contracted with Industrial Economics, Incorporated (IEc), to examine the market for magnet sets. IEc found a total of 69 sellers of magnet sets on internet platforms in late 2018. IEc also identified 10 manufacturers and two retailers.[5] In 2020, CPSC reviewed the status of previously identified sellers of magnet sets on leading internet marketplaces and found evidence of the high turnover rates for these platforms. Only nine of the 69 sellers IEc identified in late 2018 were still selling magnet sets; the remainder either no longer offered magnet sets, or no longer operated on the platforms. In addition, CPSC identified 29 new sellers that had not been detected in late 2018.

In 2018, approximately 57 percent of magnet set sellers on one internet platform fulfilled orders domestically; whereas, in 2020, this number declined to 25 percent. In 2018, approximately 25 percent of magnet set sellers on another internet platform were domestic; whereas, in 2020, this number increased to 87 percent. Non-domestic sellers were located primarily in China and Hong Kong. Magnet sets purchased from foreign internet retailers can be shipped to consumers directly, or from warehouse facilities located domestically.

The most recent review by staff conducted in 2020 indicated that magnet sets were comprised, most commonly, of 216 magnetic spheres, with diameters of 5 mm. Retail prices per set average less than $20. IEc's review in 2018 showed similar findings.[6] Magnet sets are also available in larger sets of 512 separable magnets and 1,000 or more separable magnets. Magnet sets comprised of spheres or cubes with smaller dimensions (2.5 mm to 3 mm) are also marketed, typically at lower prices. Some of these magnet sets are advertised as having magnets with magnetic flux indices less than 50 kG^2 mm^2; below the threshold for being considered hazardous magnets. CPSC staff tested samples of such smaller magnets and found that although 2.5 mm magnets typically had flux indices of less than 50 kG^2 mm^2, many of the magnet sets tested failed the ASTM F963–17 requirements because at least one of the magnets in the set had a flux index of 50 kG^2 mm^2 or more. Sets with 3 mm diameter magnets were found to have flux indices generally above 50 kG^2 mm^2.

Children's and adult jewelry, and other types of adult magnet products intended for entertainment, mental stimulation, and stress relief, which have one or more separable/loose magnets, are also within the scope of the rule. Magnets are marketed online as jewelry-making sets, as well as fake studs/piercings. As discussed in section IV of this preamble, many magnet-ingestion cases involve the use of magnet products described as jewelry, such as bracelets and necklaces, and magnets used as jewelry (including those sold as part of a magnet set).

IV. Risk of Injury

A. Magnet Ingestion

For the NPR, CPSC's Directorate for Health Sciences (HS) assessed the magnet ingestion hazard. Specifically, HS staff found that when a subject magnet product is ingested, a magnet internal interaction hazard can occur. The magnet internal interaction hazard is described in detail in Tab A of Staff's NPR briefing package, as updated for this final rule in Tab A of the Staff's Final Rule briefing package. The risk of injury addressed by this rule is damage to intestinal tissue, caused when someone ingests more than one magnet from a subject magnet product (or one magnet and a ferromagnetic object). The magnets are attracted to each other in the digestive system, damaging the intestinal tissue that becomes trapped between the magnets. In rare cases, there can be interaction between and among magnets in the airways and digestive tract (esophagus). These injuries can be difficult to diagnose and treat because the symptoms of magnet ingestion often appear similar to entirely unrelated conditions, such as stomach viruses. Serious injury, and even death, are consequences of children ingesting magnets.

One of the health threats presented by magnet ingestion is internal magnet interaction leading to pressure necrosis injuries in the alimentary canal. Necrosis is a process of cell death, secondary to injury, which undermines cell membrane integrity and involves intricate cell-signaling responses. In the case of internal magnet interactions, the injury leading to necrosis is the pressure on the involved biological tissues that exceeds local capillary pressure and leads to ischemia.

Volvulus is another type of injury associated with the magnet internal interaction hazard. Volvulus is an obstructive twisting of the GI tract.

[5] IEc classified manufacturers as firms producing and selling their own magnet set products, and it classified retailers as firms that typically sell magnets from multiple manufacturers.

[6] IEc found that magnet sets with 216 magnets accounted for approximately one-third of the models in their market research, with an average price of $16.67. However, sets of 216 magnets that measured 5 mm in diameter averaged $18.62.

Volvulus is often accompanied by abdominal pain, distended abdomen, vomiting, constipation, and bloody stools. If left untreated, volvulus may lead to bowel ischemia, perforation, peritonitis, and death. Volvulus following magnet ingestion has been linked to fatal outcomes. In the United States, CPSC is aware of the death of a 20-month-old child who ingested magnets from a toy construction set, which caused volvulus, and another death of a 2-year-old child who ingested multiple magnets, resulting in small intestine ischemia secondary to volvulus. In addition, CPSC is aware of one death of an 8-year-old child in Poland, due to small intestine ischemia secondary to volvulus, after the victim ingested magnets that resulted in necrosis, toxemia (blood poisoning), hypovolemic shock, and eventually cardiopulmonary failure.

Like outcomes related to volvulus, small bowel ischemia can lead to local tissue necrosis, perforation, and subsequent peritonitis. Small intestine ischemia was implicated in the death of a 19-month-old child following ingestion of multiple magnets. Bowel obstruction, often a consequence of volvulus, is associated with abdominal cramps, vomiting, constipation, and distention. With respect to the relationships among local capillary and intraluminal pressures and magnet ingestions, subsequent outcomes include possible blockage of local blood and nutrient supply; progressive pressure necrosis of the involved tissues; and local inflammation, ulceration, and tissue death, with outcomes such as perforation (hole) or fistula in the GI tract. If left untreated, or otherwise unnoticed (including diagnosis as a stomach virus as noted previously), such events can progress into infection, sepsis, and death. The obstruction from the trapped tissue can elicit vomiting, and the local mucosa irritation may stimulate diarrhea. Advancing pressure necrosis of the involved tissues can lead to necrosis and subsequent leakage of the bowel contents into the peritoneal cavity.

Another example of the potential health outcomes associated with magnet ingestion is a case in which an asymptomatic 4-year-old child sustained several fistulae in the intestines that required surgical repair after ingesting magnets. Fistulae are abnormal passages between channels in the body that are associated with increased mortality. Fistulae may enable the leakage of gut contents into adjacent tissue structures or abdominal cavities, which can lead to infection, inflammation, perforation, sepsis, and possibly death. Fistulae may also bypass portions of the GI tract, thus undermining normal GI function.

Another potential health outcome of magnet ingestions is ulcerations. For example, one case involved a 28-month-old child who experienced stomach ulcerations after ingesting 10 magnets and received treatment with medication after the endoscopic removal and natural passage of the magnets. Untreated ulcers may require surgical intervention if they progress to perforation, and a perforated bowel may lead to leakage from the GI tract which carries risk of death as previously noted. Several magnet ingestion incident reports highlight the threat of perforation with possible outcomes like peritonitis. Peritonitis is an inflammation of the peritoneum, a membrane lining the abdominal cavity, which may be associated with leakage from the GI tract that can lead to sepsis. Sepsis is the body's response to severe infection, and it is associated with elevated rates of morbidity and mortality that can be mitigated with prompt treatment. Treatment of abdominal sepsis may require repair of a leaky GI tract.

Another potential health risk from ingested magnets is an aspiration threat. For example, in one reported case, a 3-year-old child ingested multiple magnets, two of them found attracting to each other on opposing surfaces of the pharyngoepiglottic fold in the throat, presenting an immediate aspiration threat, given the proximity to the airway. Aspiration of magnets has also been reported elsewhere in medical literature. Foreign body aspiration presents a risk of airway obstruction, ventilatory difficulty, choking, hypoxic-ischemic brain injury, pulmonary hemorrhage, and death, among other health outcomes.

Since the NPR, CPSC staff reviewed a recent multicenter cohort study that presented data on 596 cases of patients aged 0 to 21 years, from 25 children's hospitals in a 3-year period following high-powered magnet sales re-entering the U.S. market after judicial vacatur of CPSC's 2014 magnet sets rule (2017–2019).[7] Of the 596 patients treated for high-powered magnet exposures, 562 children (96.2%) ingested magnets, 17 children (2.9%) were treated for nasal or aural magnet foreign bodies, 4 children (0.7%) were treated for magnets in their genitourinary tract, and 1 patient (0.2%) presented with magnets in their respiratory tract. Most patients required serial radiography, with 81.4 percent of children receiving more than one x-ray. Thirty-six children (6%) required a computed tomography (CT) scan. Although magnets passed spontaneously in more than half of patients (53.7%), 276 children (46.4%) required a procedure for magnet removal, or to address complications from magnet ingestion. One hundred ninety-one patients (32%) required endoscopy alone; 58 patients (9.7%) required surgery alone; and 27 patients (4.5%) required both endoscopy and surgery. Magnet exposure led to morbidity in 57 (9.6%) patients, which included perforation (6%), fistula formation (3.7%), bowel obstruction (2.7%), bleeding (0.7%), infection (0.5%), volvulus (0.2%), and/or bowel herniation (0.2%). This study identified 19 children (3.2%) who developed more than one of these listed morbidities. Approximately 55.7 percent of patients required hospitalization (332 patients) and four patients (0.7%) were admitted to the ICU. The median length of hospital stay was 3 days. This study shows that magnet ingestion frequently led to hospitalization, the need for invasive medical management, and caused morbidity in nearly 1 in 10 children who ingested magnets.

B. Incident Data—NEISS

For the NPR, CPSC's Directorate for Epidemiology, Division of Hazard Analysis analyzed reported incidents related to magnet ingestion, see Tab B of Staff's NPR briefing package. For the NPR, CPSC staff analyzed magnet ingestion incident data obtained through the National Electronic Injury Surveillance System (NEISS) and the Consumer Product Safety Risk Management System (CPSRMS). The incident data analyzed for the NPR were extracted on January 8, 2021, and they included magnet ingestion reports that occurred from January 1, 2010, through December 31, 2020. CPSC estimated that 23,700 emergency department (ED)-treated magnet ingestions occurred in that timeframe. Among other observations, CPSC noted that estimated magnet ingestions, excluding products considered to be out-of-scope of the proposed rule, fell during the period the CPSC's 2014 magnet sets rule was in effect, and the estimated ingestions rose after the 2014 magnet sets rule was vacated (79 FR 59962). Specifically, CPSC estimated for the NPR approximately 2,300 ED-treated ingestions of magnets annually from 2010 through 2013 (years prior to the announcement of the magnet sets rule), approximately 1,300 annually from 2014 through 2016 (years the rule was

[7] This study can be found at: *www.regulations.gov/comment/CPSC-2021-0037-0010.*

announced and in place), and approximately 2,300 annually from 2017 through 2020 (the years following the removal of the rule).

For the final rule, Tab B of Staff's Final Rule briefing package updated the incident data analysis, covering magnet ingestions reported to have occurred from January 1, 2010, through December 31, 2021. CPSC staff reviewed the additional data obtained since the NPR, using the same characterizations in the NPR, and staff updated the estimates for ED-treated, magnet ingestions. Staff categorized the data set to assess the involvement of specific magnet product types in magnet ingestion cases. Based on the identification and/or description of the products involved in the cases, staff organized the cases into the following magnet categories: ''magnet set,'' ''magnet toy,'' ''jewelry,'' ''science kit,'' ''home/kitchen,'' ''F963 magnet toy,'' and ''unidentified.'' Staff further combined cases in those magnet categories into groupings as: ''amusement/jewelry''—cases involving magnet sets, magnet toys, or jewelry; ''unidentified''—cases involving unidentified magnet products; and ''exclusions''—cases involving home/kitchen products, ASTM F963 magnet toys, or science kits. In cases where magnet ingestion incident reports contained too limited information for staff to identify the type of product involved in the magnet ingestion, they were classified as ''unidentified.'' As explained in the NPR, staff does have additional information about the incidents in the unidentified product type category; specifically, these incidents involved ingestion of one or more magnets, based on product characteristics and use patterns typically consistent with subject magnet products. 87 FR 1269–75.

To account for the lack of product identification in many magnet ingestion incidents, staff analyzed magnet ingestion incident data in several ways. For one, aggregated information for all of the in-scope, out-of-scope, and unidentified product categories indicates that magnet ingestions, in general, are an issue, and the incidents have increased in recent years. This indicates the propensity of children and teens to ingest magnets, and it demonstrates the increasing risk of injury and death as magnet ingestion cases increase.

Staff also categorized incidents into specific product groups, based on information that was available in incident reports. For incidents that provided information sufficient to enable identification of the product type, the data revealed that six categories of products were involved in magnet ingestions—magnet sets, jewelry, magnet toys, science kits, ASTM F963 magnet toys, and home/kitchen magnets. For some of the incidents in these categories, there was specific information about the product—such as brand names—that allowed staff to determine the particular product involved in the incident. For other incidents in these categories, the product was referred to as a specific type (*e.g.,* magnet sets, desk toy, science kit, kitchen magnet, bracelet).[8] These categories provide information about the products involved in magnet ingestions, and the relative frequency of their involvement, to help determine which products the rule should address.

Staff also aggregated these categories into in-scope and out-of-scope groupings. Staff combined incidents from the magnets sets, magnet toys, and jewelry categories as ''amusement/jewelry'' and combined incidents from the home/kitchen, ASTM F963 magnet toys, and science kit categories as ''exclusions.'' Grouping several product type categories together allowed staff to generate national estimates of ED-treated magnet ingestions, to provide a number of ingestions nationally, and the relative involvement of in-scope and out-of-scope products, which helps identify the magnitude of the risk and the potential benefits of the rule to reduce that risk.

In addition, staff combined the amusement/jewelry and unidentified categories to conduct more detailed analyses. Staff also included incidents in the unidentified product type category within these analyses because there are several factors that indicate that many of the incidents in the unidentified product type category likely fall within the scope of the rule. The following factors were considered.

First, the incident data discussed in this preamble support the conclusion that many of the magnet ingestion incidents in the unidentified product type category actually involved subject magnet products. Of the NEISS magnet ingestion incidents for which staff could identify a product category, the primary products involved were magnet sets, magnet toys, and jewelry; far fewer incidents involved ASTM F963 magnet toys, home/kitchen magnets, or science kits. The same was true for CPSRMS incidents, for which far fewer incidents were in the ''unidentified'' category. Given this consistency across data sets, it is reasonable to conclude that the relative involvement of magnet product types established for magnet ingestions applied to the incidents that lacked product identification as well.

Second, magnet ingestion rates before, during, and after the vacated 2014 magnet sets rule show that a significant portion of magnet ingestion cases involved magnet sets. As discussed in the NPR, CPSC's assessment of incident data, as well as other researchers' assessments of NEISS data, and national poison center data, indicate that magnet ingestion cases significantly declined during the years the magnet sets rule was announced and in effect, compared to the periods before and after the 2014 magnet sets rule. 87 FR 1273–74. Magnet sets were the only products subject to that rule. As such, the significant decline in incidents during that time the rule was in effect, and the significant increase in incidents after that rule was vacated, strongly suggest that many magnet ingestion incidents involve magnet sets. Thus, it is reasonable to conclude that many of the incidents in the unidentified product category involved magnet sets. Moreover, the definition of ''magnet sets'' in the vacated rule was largely equivalent to the description of amusement products in the present rule (*i.e.,* magnet sets and magnet toys), suggesting that many magnet ingestion incidents, including those with unidentified product types, involve amusement products.

Third, incident data and recalls regarding magnets in children's toys further support the conclusion that magnet ingestions categorized as relating to ''unidentified'' products largely involved subject magnet products. ASTM F963 magnet toys make up only a small portion of magnet ingestion incidents where the product can be identified. It is reasonable to conclude that this holds true for unidentified products in magnet ingestions as well.

[8] Staff categorized incidents based on all of the information available in the reports, including descriptions, names, and uses of the product. However, for some of the incidents in which the report provided a product type but not a specific product brand/name, it is possible that the product was actually from another category. For example, the jewelry category includes cases in which the report indicates that the magnets were described as jewelry at the time of the incident, such as magnetic earrings. It is possible that the magnets in such cases were actually from a non-jewelry product. Similarly, products categorized as magnet toys could actually be another product type; for example, a product described as an ''executive desk toy,'' which did not meet the parameters for the magnet set category, and did not indicate marketing to children under 14 years old, was included in the magnet toy group, although it is possible that the product actually was a magnet set or other product type, and the report lacked information to indicate this. However, even if incidents in these categories were miscategorized, they likely would still fall within the scope of the rule because they meet the description of an in-scope product.

Taken together, these factors support the conclusion that most magnet ingestion incidents, including those in the ''unidentified'' product type category, involved products that fall within the ''amusement/jewelry'' (magnet sets, magnet toys, and jewelry) category, and not the ''exclusions'' (science kit, home/kitchen, or ASTM F963 magnet toys) category. For these reasons, staff included magnet ingestion incidents from the ''unidentified'' product type category in many of its analyses; to exclude such incidents likely would vastly underrepresent ingestions of subject magnet products.

For data extracted since the NPR, staff used the same categories and groupings for additional incidents. The new data extracted on January 13, 2022, included: (1) addition of 112 NEISS-reported incidents that occurred from January 1, 2021, through December 31, 2021, with an estimated 2,500 ED-treated ingestions of magnets from in-scope products which was higher than most of the preceding years, and (2) 111 additional CPSRMS-reported incidents that occurred from February 1, 2016, through December 27, 2021.[9] Staff provided the NEISS total estimates for 2010 through 2021, as follows:

- There were an estimated 26,600 (2,800 in 2021) ED-treated magnet ingestions involving magnet products of various types from 2010 through 2021.
- An estimated 5,000 of the 26,600 (20%) magnet ingestions involved magnet sets, magnet toys, or jewelry.
- An estimated 1,600 of the 26,600 (6%) magnet ingestions involved products identified as out-of-scope.
- An estimated 20,000 of the 26,600 (75.2%) magnet ingestions involved unidentified products.
- An estimated 5,000 victims (20%) were hospitalized or transferred to another hospital after treatment.
- The middle 3 years (2014 through 2016) show significantly fewer of these magnet ingestions (estimated 1,300 per year), compared with earlier and more recent years (*i.e.,* compared with 2,300 per year from 2010 through 2013, and 2,400 per year from 2017 through 2021).

Table 1 provides the number of cases for each magnet category, and Table 2 provides the estimates of ED-treated magnet ingestions identified in the NPR, since the NPR, and overall, from 2010 through 2021.

TABLE 1—COUNT OF MAGNET INGESTION CASES TREATED IN NEISS HOSPITAL EMERGENCY DEPARTMENTS BY MAGNET CATEGORY
[2010–2021]

Individual magnet category	NPR	2021 (since NPR)	2010–2021 (combined)	Combined magnet category	NPR	2021 (since NPR)	2010–2021 (combined)
Magnet Set	58	7	65	Amusement/Jewelry	221	24	245
Jewelry *	53	1	54				
Magnet Toy	110	16	126				
Unidentified	793	81	874	Unidentified	794	81	874
Science Kit	1	0	1	Exclusions	57	7	65
F963 magnet toy	11	2	13				
Home/Kitchen	46	5	51				
Total	1,072	112	1,184	Total	1,072	112	1,184

* Includes cases of uncertain product classification for which the magnets were being used as or like jewelry.
Source: NEISS, CPSC.

TABLE 2—ESTIMATED NUMBER OF MAGNET INGESTIONS TREATED IN HOSPITAL EMERGENCY DEPARTMENTS BY MAGNET CATEGORY
[2010–2021]

Magnet category	NPR			Since NPR			Combined		
	Estimate	CV	N	Estimate	CV	N	Estimate	CV	N
Amusement/Jewelry	4,400	0.17	221	**	**	24	5,000	0.16	245
Unidentified	18,100	0.14	793	1,900	0.26	81	20,000	0.15	874
Exclusions	1,300	0.20	58	**	**	7	1,600	0.19	65
Total	23,700	0.21	1,072	2,500	0.22	105	26,600	0.14	1,184

** This estimate does not meet NEISS reporting criteria. For a NEISS estimate to satisfy all reporting criteria, the coefficient of variation (CV) cannot exceed 0.33, there must be at least 20 sample cases (N), and there must be at least 1,200 estimated injuries.
Source: NEISS, CPSC. Estimates rounded to the nearest 100. Throughout this section, summations of estimates may not add to the total estimates provided in the tables, due to rounding. Estimates are derived from data in the NEISS sample. Estimates spanning periods of multiple years (such as the 12 years from 2010 to 2021) are total estimates, and *not* annual averages.

Table 3 provides the estimates for in-scope magnet categories in ED-treated ingestions in NPR, since NPR, and combined from 2010 through 2021. Combining only the ''amusement/jewelry'' and ''unidentified'' categories, and omitting ''exclusions,'' leaves us with a total of 25,000 estimated magnet ingestions that involved or likely involved the subject magnet products, as shown in Table 3. Of the 25,000 in-scope magnet ingestions, at least an estimated 5,000 (20%) correspond to cases associated with amusement/jewelry category, and an estimated 20,000 (80%) correspond to the unidentified category. When considering the data received since the NPR, the majority of the cases involved unidentified products, similar to the NPR data. As discussed above, the record strongly supports the conclusion that many of these unidentified magnet products were likely subject magnet products.

[9] The CPSRMS data analyzed in support of the NPR were extracted on January 13, 2022. Reporting to the CPSRMS database is ongoing, and therefore, it is common for reports to be received for incidents from prior years. This also means CPSC in the coming years may receive additional CPSRMS reports of magnet ingestions within the studied period, particularly 2021.

TABLE 3—ESTIMATED NUMBER OF IN-SCOPE MAGNET INGESTIONS TREATED IN HOSPITAL EMERGENCY DEPARTMENTS BY MAGNET CATEGORY
[2010–2021]

Magnet category	NPR			Since NPR			Combined		
	Estimate	CV	N	Estimate	CV	N	Estimate	CV	N
Amusement/Jewelry	4,400	0.17	221	(**)	(**)	24	5,000	0.16	245
Unidentified	18,100	0.15	793	1,900	0.26	81	20,000	0.15	874
Total	22,500	0.14	1,014	2,500	0.22	105	25,000	0.14	1,119

** This estimate does not meet NEISS reporting criteria. For a NEISS estimate to satisfy all reporting criteria, the coefficient of variation (CV) cannot exceed 0.33, there must be at least 20 sample cases (N), and there must be at least 1,200 estimated injuries.
Source: NEISS, CPSC. Estimates rounded to the nearest 100. Throughout this section, summations of estimates may not add to the total estimates provided in the tables, due to rounding. Estimates are derived from data in the NEISS sample. Estimates spanning periods of multiple years (such as the 12 years from 2010 to 2021) are total estimates, and *not* annual averages.

Table 4 presents the breakdown by age group.

TABLE 4—ESTIMATED NUMBER OF IN-SCOPE MAGNET INGESTIONS TREATED IN HOSPITAL EMERGENCY DEPARTMENTS BY AGE GROUP
[2010–2021]

Age group	Estimate			CV			N		
	NPR	Since NPR	Combined	NPR	Since NPR	Combined	NPR	Since NPR	Combined
Under 2 years	2,700	(**)	2,800	0.19	(**)	0.18	120	8	128
2 years	2,300	(**)	2,400	0.27	(**)	0.25	89	5	94
3–4 years	4,700	(**)	5,100	0.16	(**)	0.15	196	26	222
5–7 years	4,300	(**)	5,200	0.14	(**)	0.14	207	26	233
8–10 years	3,900	(**)	4,800	0.19	(**)	0.20	179	27	206
11–13 years	3,400	(**)	3,600	0.17	(**)	0.18	182	12	194
14 or More years	(**)	(**)	(**)	(**)	(**)	(**)	41	1	42
Total	22,500	2,500	25,000	0.14	0.22	0.14	1,014	105	1,119

** This estimate does not meet NEISS reporting criteria. For a NEISS estimate to satisfy all reporting criteria, the coefficient of variation (CV) cannot exceed 0.33, there must be at least 20 sample cases, and there must be at least 1,200 estimated injuries.
Source: NEISS, CPSC; estimates are rounded to nearest 100.

C. Databases Other Than NEISS

CPSC staff also analyzed magnet ingestion incident data obtained through CPSRMS. Staff's review of the CPSRMS data showed that from 2010 through 2021, there were 395 reported magnet ingestions in the database. Of these, 111 were reported since the NPR, including 56 magnet ingestions that occurred in 2021. Although the CPSRMS reports are anecdotal, and therefore, cannot be used for generating nationally representative estimates, they provide a minimum number of incidents, and they tend to include more information about the incidents and products involved, in comparison to the NEISS data. CPSRMS reports may contain photos, links to websites, detailed narratives, and medical documents; whereas NEISS reports contain brief narratives culled from medical records developed during the ED visit. At least 167 CPSRMS-reported magnet ingestions (including 43 incidents since the NPR) resulted in surgery, such as laparoscopy, laparotomy, appendectomy, cecostomy, enterotomy, colostomy, cecectomy, gastrotomy, jejunostomy, resection, and transplant, among others. At least 140 CPSRMS-reported magnet ingestions resulted in internal interaction through body tissue (including 32 incidents since the NPR). In cases that did not result in surgery, it was still common for victims to receive serial X-rays, and in many cases, endoscopies, and anesthesia.

D. Magnet Ingestions Incident Trends

As discussed in section 1.A. in the preamble, the Commission issued a magnet sets rule in 2014 that applied to magnet sets, which are a subset of the subject magnet products addressed in this rule. The 2014 magnet sets rule took effect in April 2015, and the rule remained in effect until it was vacated by the U.S. Court of Appeals for the Tenth Circuit in November 2016. As explained in the NPR, 87 FR 1274, and after further review of the incidents extracted after the NPR, staff noted a considerable change in magnet ingestion rates during the period of the Commission's later-vacated rule on magnet sets. CPSC's assessment of incident data, as well as other researchers' assessments of NEISS data and national poison center data, indicate that magnet ingestion cases significantly declined during the years in which the 2014 magnet sets rule was announced and in effect, compared to the periods before and after the rule.

Table 5 provides the annual estimates for ED-treated, magnet ingestions by year, from 2010 through 2021. Some of the year-to-year changes may be attributable to random variation in the sample; however, statistically significant differences emerge. Overall, 2014 through 2016 (when 2014 magnets sets rule had been announced and was in effect) had the lowest number of estimated annual ED-treated magnet ingestions. The analysis of the NEISS data showed that there were insufficient cases in 2014, and only 2014, to provide an estimate. Table 5 further shows that in-scope magnet ingestions are higher for the 2017 through 2021 period, than the previous periods, with more estimated in-scope magnet ingestions in 2021 (2,500) than most of the preceding years, including 2018 through 2020.

TABLE 5—ESTIMATED NUMBER OF IN-SCOPE * MAGNET INGESTIONS TREATED IN HOSPITAL EMERGENCY DEPARTMENTS BY YEAR

Year	Estimate	CV	N
2010	[a] 1,900	0.18	91
2011	[a b] 2,500	0.18	101
2012	[a] 2,700	0.26	115
2013	2,000	0.21	88
2014	(**)	(**)	62
2015	1,200	0.24	61
2016	1,400	0.24	77
2017	[a b] 2,900	0.25	112
2018	[a b] 2,400	0.18	120
2019	1,800	0.22	91
2020	2,200	0.21	96
2021	[a b] 2,500	0.22	105
Total	25,000	0.14	1,119

[a] Estimate is significantly greater than for the year 2015 (p-value<0.05).
[b] Estimate is significantly greater than for the year 2016 (p-value<0.05).
* These estimates exclude cases identifying non-subject-product-type magnets, and therefore, do not represent all magnet ingestions treated in hospital emergency departments.
** This estimate does not meet NEISS reporting criteria. For a NEISS estimate to satisfy all reporting criteria, the coefficient of variation (CV) cannot exceed 0.33, there must be at least 20 sample cases (N), and there must be at least 1,200 estimated injuries.
Source: NEISS, CPSC; estimates rounded to nearest 100. Summations of estimates may not add to the total estimates, due to rounding.

To assess these trends further, CPSC grouped years in relation to the vacated 2014 magnet sets rule, using the periods: 2010 through 2013 (prior to the announcement of the rule); 2014 through 2016 (when the final rule was announced and in effect [10]); and 2017 through 2021 (after the rule was vacated by the Court of Appeals). Table 6 shows the estimated number of magnet ingestions treated in U.S. hospital EDs during these periods, using annual estimates for each period, to account for the periods including different numbers of years. For 2010 through 2013, there were an estimated 2,300 ED-treated magnet ingestion incidents per year; for 2014 through 2016, there were an estimated 1,300 ED-treated magnet ingestion incidents per year, and for 2017 through 2021, there were an estimated 2,400 ED-treated magnet ingestion incidents per year. Thus, during the period when the 2014 magnet sets rule was announced and in effect (2014–2016), magnet injury ingestion estimates are lowest by a significant margin, compared with the earlier and more recent periods. This data is consistent with the annual yearly estimates provided in Table 5, which shows that the annual estimate for in-scope magnet ingestions is higher for the 2017 through 2021 period, than the previous periods, with more estimated in-scope magnet ingestions (2,500) than most of the preceding years, including 2018 through 2020.

TABLE 6—ESTIMATED NUMBER OF IN-SCOPE MAGNET INGESTIONS TREATED IN HOSPITAL EMERGENCY DEPARTMENTS BY PERIOD

Period	Annual average estimate	CV	N	Years in period
2010–2013	2,300	0.16	395	4
2014–2016	1,300	0.20	200	3
2017–2021	2,400	0.15	524	5
2010–2021	2,100	0.14	1,119	12

Source: NEISS, CPSC; estimates rounded to nearest 100.

Although CPSRMS data cannot be used to draw statistical conclusions, those data also suggest a similar decline in incidents for the period when the 2014 magnet sets rule was announced and in effect, as shown in Figure 1, below.

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[10] Staff grouped 2014, 2015, and 2016 for this analysis, because these are the years firms were likely to comply with the size and strength limits in the magnet sets rule. Because the standard took effect in April 2015, and remained in effect until November 2016, firms were required to comply with the standard for nearly all of 2015 and 2016. Although the rule was not in effect in 2014, the proposed rule was published in 2012, and the final rule was published, with essentially the same requirements, in October 2014. Once an NPR is published, firms have notice to prepare for the requirements that may be finalized; and once a final rule is published, firms often take steps to comply with the rule, even before it takes effect. Accordingly, it is reasonable to conclude that firms took steps to comply with the magnet sets standard in 2014.

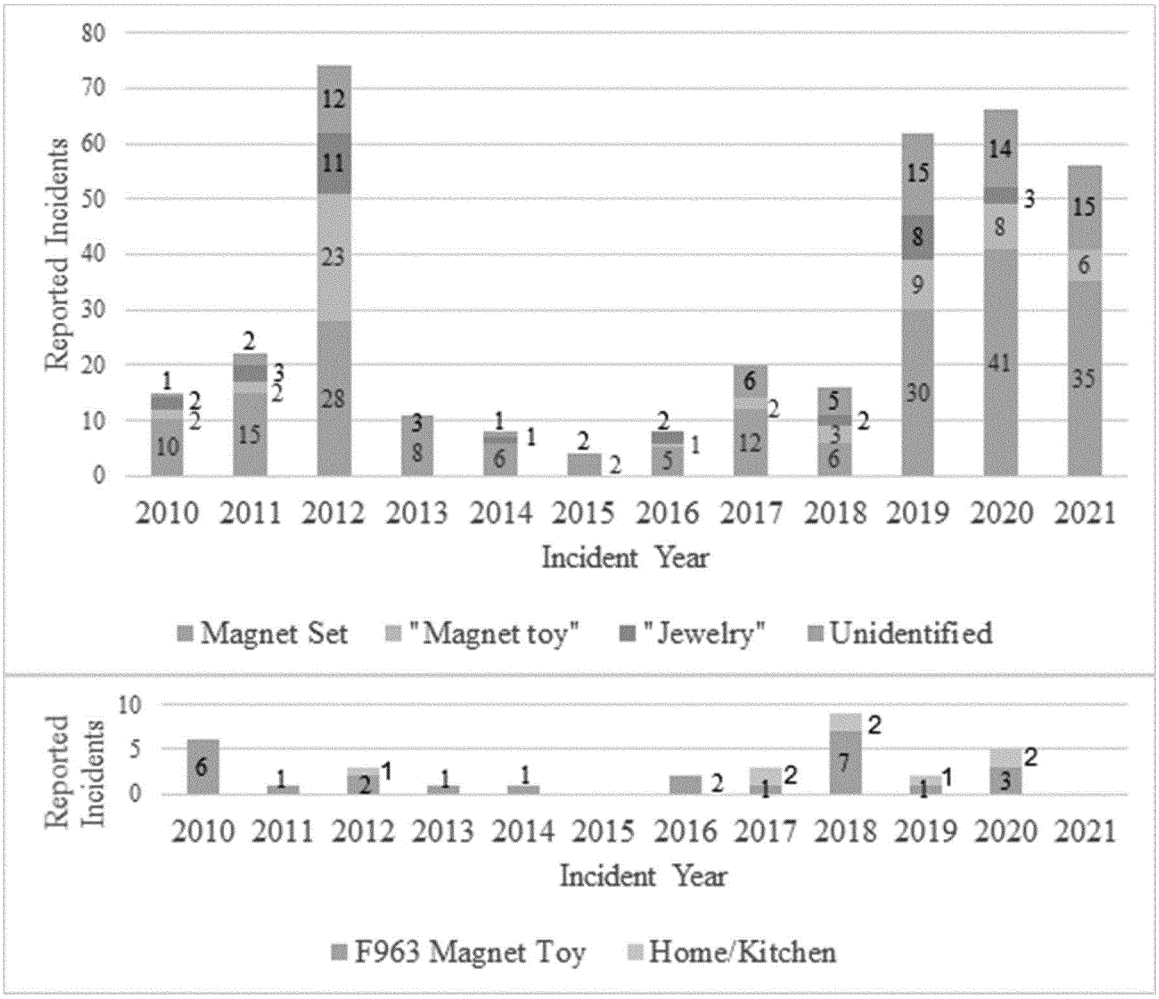

Figure 1. Annual incidents involving magnet product categories. *CPSRMS reporting for the years 2020 through 2021 is ongoing, and the counts for those years may increase as reporting continues.

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Table 7 shows CPSRMS-reported magnet ingestions, by period, using incidents categorized as ''amusement/jewelry'' and ''unidentified'' product types, consistent with the NEISS analysis. Table 7 breaks down the number of reported magnet ingestions in each category, including reported incidents from the NPR, and additional reports since the NPR. Of the 111 newly reported incidents, staff identified 64 additional incidents as involving a magnet set and 33 additional incidents as an unidentified product.

TABLE 7—MAGNET CATEGORY AND SCOPE FOR REPORTED MAGNET-INGESTIONS, JANUARY 2010–DECEMBER 2021 *

Magnet category	Reported incidents			Scope	Reported incidents		
	NPR	Since NPR	2010–2021 total		NPR	Since NPR	Total
Magnet Set	134 (47.2%)	64 (57.7%)	198 (50.1%)	Amusement/Jewelry.	214 (90.5%)	72 (94.6%)	286 (91.6%)
Magnet Toy	49 (17.3%)	7 (6.3%)	56 (14.2%)				
Jewelry	31 (10.9%)	1 (0.9%)	32 (8.1%)				
Unidentified	43 (15.1%)	33 (29.7%)	76 (19.2%)	Unidentified	43 (14.8%)	33 (29.7%)	76 (19.0%)
Science Kit	0	0	0				
F963 Magnet Toy	21 (7.4%)	4 (3.6%)	25 (6.3%)	Exclusions	27 (9.5%)	6 (5.4%)	33 (8.4%)
Home/Kitchen	6 (2.1%)	2 (1.8%)	8 (2.0%)				
Total	284 (100%)	111 (100%)	395 (100%)	Total	284 (100%)	111 (100%)	395 (100%)

* CPSRMS reporting for the years 2020–2021 is ongoing.

Counts of reported incidents may increase, especially for 2020 and 2021, as CPSC continues to collect data. Moreover, due to the anecdotal nature of the data, the data in this analysis are to be considered a minimum of all incidents that have actually occurred.

V. Relevant Existing Standards

In the NPR, CPSC identified six existing safety standards that in some way address the magnet ingestion hazard. 87 FR 1282. The NPR described these standards in detail and provided CPSC staff's assessment of their adequacy in addressing injuries and deaths associated with magnet ingestions, focusing on provisions that are relevant to the magnet ingestion hazard. *Id.* at 1282–87. None of the standards apply to all subject magnet products, and the standards do not adequately address the hazard for the subject magnet products. Since the NPR, there were no changes in the magnet requirements specified in these standards. The standards are summarized below. Four of the standards are domestic standards, and all but one (ASTM F963–17) are voluntary:

- ASTM F963–17, *Standard Consumer Safety Specification for Toy Safety*;
- ASTM F2923–20, *Standard Specification for Consumer Product Safety for Children's Jewelry*;
- ASTM F2999–19, *Standard Consumer Safety Specification for Adult Jewelry*; and
- ASTM F3458–21, *Standard Specification for Marketing, Packaging, and Labeling Adult Magnet Sets Containing Small, Loose, Powerful Magnets (with a Flux Index ≥50 kG² mm²)*.

In addition, two are international safety standards:

- EN 71–1: 2014, *Safety of Toys; Part 1: Mechanical and Physical Properties*; and
- ISO 8124–1: 2018, *Safety of Toys—Part 1: Safety Aspects Related to Mechanical and Physical Properties.*

A. ASTM F963–17

ASTM F963 was originally approved in 1986, and since then, the standard has been revised numerous times. In 2007, ASTM updated the standard to include requirements to address the magnet ingestion hazard in children's toys. In subsequent revisions, ASTM added requirements for toys containing magnets. ASTM F963 is a mandatory consumer product safety standard. ASTM approved ASTM F963–17 on May 1, 2017, and published it in August 2017. ASTM F963–17, which is the most recent version of the standard, is incorporated by reference in 16 CFR part 1250.

1. Scope

ASTM F963–17 applies to ''toys,'' which the standard defines as objects designed, manufactured, or marketed as playthings for children under 14 years old. As such, the standard does not apply to products that are intended for users 14 years or older, or products that would not be considered playthings. When ASTM adopted the provisions regarding magnets, it explained that the purpose of the requirements was to address magnet ingestion incidents resulting in serious injury or death, by identifying magnets and magnetic components that can be readily swallowed.[11]

2. Performance Requirements for Magnets

The standard specifies that toys may not contain a loose as-received ''hazardous magnet'' or a loose as-received ''hazardous magnetic component.'' In addition, toys may not liberate a ''hazardous magnet'' or ''hazardous magnetic component'' after specified use-and-abuse testing, which consists of soaking under water, cycling attachment and detachment, drop testing, torque testing, tension testing, impact testing, and compression testing. The standard excepts from the requirements ''magnetic/electrical experimental sets'' intended for children 8 years and older—such products need only comply with warning requirements, discussed below.

The standard defines a ''hazardous magnet'' as a magnet that is a small object (*i.e.,* fits entirely within a small parts cylinder specified in the standard) and has a flux index of 50 kG² mm² or more (as measured in accordance with the method specified in the standard). Thus, a magnet must be both small and strong, according to the criteria in the standard, to be ''hazardous.'' A ''hazardous magnetic component'' is any part of a toy that is a small object and contains an attached or imbedded magnet with a flux index of 50 kG² mm² or more.

ASTM F963–17 describes the small parts cylinder in section 4.6; to be a small object, the magnet must fit entirely within the cylinder. The small parts cylinder depicted in ASTM F963–17 is the same as the small parts cylinder in CPSC's regulations, at 16 CFR 1501.4. Sections 8.25.1 through 8.25.3 describe the test methodology to measure the maximum absolute flux of a magnet and to calculate the flux index. A flux index is a calculated value of magnetic density and size. The flux index of a magnet is calculated by multiplying the square of the magnet's maximum surface flux density (in KGauss (kG)) by its cross-sectional area (in mm²).

3. Warning Requirements

ASTM F963–17 does not include specific labeling requirements for toys containing loose as-received hazardous magnets or hazardous magnetic components, except for ''magnetic/electrical experimental sets'' intended for children 8 years and older, which are exempt from the performance requirements and need only meet labeling requirements. The standard defines a ''magnetic/electrical experimental set'' as a ''toy containing one or more magnets intended for carrying out educational experiments that involve both magnetism and electricity.'' Section A12.4 (Magnets) in the standard explains that this definition is intended to cover only products that combine magnetism and electricity. The packaging and instructions for magnetic/electrical experimental sets intended for children 8 years and older must be labeled with a warning that addresses the magnet ingestion hazard.

4. Assessment of Adequacy

The size and strength requirements in ASTM F963–17 are consistent with the requirements in this rule for subject magnet products. Although the size and strength requirements are adequate to address the hazard, ASTM F963–17 only applies to products designed, manufactured, or marketed as playthings for children under 14 years old; it does not apply to products intended for older users or products that would not be considered playthings. Accordingly, the Commission finds that compliance with the standard is not likely to adequately reduce the magnet ingestion hazard.

As the incident data indicate, children and teens commonly access and ingest magnets from products intended for older users. Both NEISS and CPSRMS data indicate that the most common products identified in magnet ingestions were magnet sets and magnet toys, which are products that are intended for users 14 years or older, or where the intended user age was unknown but there were no indications that the product was intended for users under 14 years. Despite the involvement of products intended for users 14 years and older, the vast majority of magnet

[11] ASTM F963–17; section A9.4 (Magnets in Toys).

ingestion incidents involved children under 14 years old. For example, among CPSRMS incidents for which the victim's age was known, the most common ages that ingested magnet sets were 2, 8, 9, and 10 years old.

The sources from which children access ingested magnets further illustrates the need to address magnets in products intended for older users. For example, according to CPSRMS data, children and teens commonly ingest magnets that belong to other family members, in the home, from friends, or loose in the environment, suggesting their access is not limited to toys intended for them.

In addition, ASTM F963–17 does not apply to products that are not intended to be playthings. Both NEISS and CPSRMS data indicate that many products involved in magnet ingestion incidents are described as jewelry, and that children of various ages ingest magnet jewelry (*e.g.,* accidentally ingesting magnets while simulating lip, tongue, and cheek piercings). Because ASTM F963–17 only applies to playthings, it does not apply to jewelry, regardless of the intended user age.[12]

As such, ASTM F963–17 is not sufficient to address the magnet ingestion hazard, because it does not impose any requirements on products intended for users 14 years or older or non-toy jewelry, which are known to be involved in many magnet ingestion incidents.

B. ASTM F2923–20

ASTM first issued ASTM F2923 in 2011. The current version of the standard is ASTM F2923–20, which was approved on February 1, 2020, and published in March 2020.

1. Scope

ASTM F2923–20 applies to ''children's jewelry,'' which is jewelry designed or intended primarily for use by children 12 years old or younger. The standard defines ''jewelry'' as a product that is primarily designed and intended as an ornament worn by a person. The standard does not apply to toy jewelry or products intended for a child when playing. The standard includes requirements that are intended to address ingestion, inhalation, and attachment hazards associated with children's jewelry that contains a hazardous magnet or hazardous magnetic component. The standard defines a ''hazardous magnet'' and ''hazardous magnetic component'' by referencing the definition in ASTM F963, except that the standard exempts chains that are longer than 6 inches from the definition of ''hazardous magnetic component.''

2. Performance Requirements for Magnets

ASTM F2923–20 prohibits children's jewelry from having a hazardous magnet or hazardous magnetic component. The standard excepts from this requirement children's jewelry intended for children 8 years and older consisting of earrings, brooches, necklaces, or bracelets—such products need only comply with warning requirements, discussed below. In addition, the standard prohibits children's jewelry from liberating a hazardous magnet or hazardous magnetic component after the use-and-abuse testing specified in ASTM F963.

3. Warning Requirements

ASTM F2923–20 does not include specific labeling requirements for children's jewelry containing hazardous magnets or hazardous magnetic components, except for children's jewelry intended for children 8 years and older that consists of earrings, brooches, necklaces, or bracelets. These products are exempt from the performance requirements and need to include a warning that addresses the magnet ingestion hazard. Instructions that accompany the product must also include these warnings.

4. Assessment of Adequacy

Although the size and strength requirements in the standard adequately address the magnet ingestion hazard, the standard excepts certain children's jewelry from these performance requirements, and the scope of products covered by the rule makes the standard insufficient to address magnet ingestions generally.

The first issue with the standard is that it excludes from the size and strength requirements for magnets children's jewelry that is intended for children 8 years and older that consists of earrings, brooches, necklaces, and bracelets. Applying only warning requirements to these products is not adequate to reduce the magnet ingestion hazard. As the incident data indicate, almost half of magnet ingestion incidents involve children 8 years and older, and children and teens, particularly in this age group, commonly were using magnets as jewelry at the time of ingestion. As explained further in the discussion of ASTM F3458–21 below, caregivers and children commonly do not heed warnings, and children and teens commonly access magnets that are separated from the packaging on which warnings are provided (the magnets within the scope of the final rule are too small to have legible and complete warnings printed on them).

The second issue with the standard is that it applies only to jewelry that is designed or intended primarily for use by children 12 years old or younger. As such, it does not impose requirements on magnet sets or magnet toys intended for users 14 years and older, which are the most common product types identified in magnet ingestion incidents. The standard also does not apply to jewelry intended for users over 12 years old. Although the incident data do not indicate the intended user age of jewelry products involved in ingestions, the data indicate that children and teens of various ages ingested magnets intended for users 14 years and older when using the magnets as jewelry, making it is reasonable to conclude that jewelry intended for users over 12 years old poses an ingestion hazard for children and teens.

C. ASTM F2999–19

ASTM first issued ASTM F2999 in 2013; the current version of the standard is ASTM F2999–19, which ASTM approved on November 1, 2019, and published in November 2019.

1. Scope

ASTM F2999–19 establishes requirements and test methods for certain hazards associated with adult jewelry, including magnets. The standard defines ''adult jewelry'' as jewelry designed or intended primarily for use by consumers over 12 years old. It defines ''jewelry'' as a product primarily designed and intended as an ornament worn by a person, and provides several examples, such as bracelets, necklaces, earrings, and jewelry craft kits where the final assembled product meets the definition of ''jewelry.'' The standard defines a ''hazardous magnet'' as ''a magnet with a flux index >50 as measured by the method described in Consumer Safety Specification F963 and which is swallowable or a small object.''

[12] Section 1.3 of ASTM F963–17 states that the standard applies to ''toys intended for use by children under 14 years of age'' and section 3.1.91 defines a ''toy'' as ''any object designed, manufactured, or marketed as a plaything for children under 14 years of age.'' Section 1.3.1 of ASTM F2923–20 specifies that the standard, which applies to children's jewelry, does not apply to ''toy jewelry or any other products that are intended for use by a child when the child plays (that is, a necklace worn by a doll or stuffed animal; novelty jewelry with play value)'' and further states that ''any product which is predominately used for play value is a toy'' and ''toys are subject to the requirements of Consumer Safety Specification F963.''

2. Performance Requirements for Magnets

ASTM F2999–19 does not include any performance requirements for adult jewelry that contains magnets; it specifies only labeling requirements, discussed below.

3. Labeling Requirements

ASTM F2999–19 states that ''adult jewelry that contains hazardous magnets as received should include a warnings statement which contains the following text or substantial equivalent text which clearly conveys the same warning.'' Rather than the mandatory language ASTM standards typically use (*i.e.,* shall), the standard merely recommends (*i.e.,* should) that warnings regarding hazardous magnets be provided with adult jewelry. The warning statement provided in the standard warns of the internal interaction hazard if magnets are swallowed or inhaled, and the warning recommends seeking immediate medical attention.

4. Assessment of Adequacy

CPSC assesses that ASTM F2999–19 does not adequately reduce the risk of injury and death associated with magnet ingestions. The standard does not include any requirements for adult jewelry containing magnets—rather, it suggests complying with the magnet labeling provisions. As incident data indicate, many magnet ingestion incidents involve products used as jewelry, and children and teens access products intended for older users. This demonstrates the need for a mandatory requirement for adult jewelry.

In addition, the only provisions in the standard that address magnet ingestions are warnings. As discussed further in the ASTM F3458–21 section below, warning requirements, alone, are not adequate to address the magnet ingestion hazard because caregivers and children commonly do not heed warnings, and children and teens commonly access magnets that are separated from their packaging, where warnings are provided.

The scope of the standard also makes it insufficient to address adequately the magnet ingestion hazard. Because it applies only to jewelry designed or intended primarily for use by consumers over 12 years old, the standard does not impose requirements on magnet sets or magnet toys intended for users 14 years and older, which are the most common products identified in magnet ingestion incidents. It also does not impose requirements on jewelry intended for users 12 years old and younger. Although the incident data do not indicate the intended user age of jewelry involved in magnet ingestions, because many incidents involve children 12 years old and younger, it is reasonable to conclude that jewelry intended for such users poses a magnet ingestion hazard for children and teens.

D. ASTM F3458–21

In 2019, ASTM Subcommittee F15.77 on Magnets began work to develop a standard for magnet sets intended for users 14 years and older. On February 15, 2021, ASTM approved ASTM F3458–21, and published the standard in March 2021. ASTM F3458–21 consists of marketing, packaging, labeling, and instructional requirements for magnet sets intended for users 14 years and older.

1. Scope

ASTM F3458–21 defines a ''magnet set'' as ''an aggregation of separable magnetic objects that are marketed or commonly used as a manipulative or construction item for puzzle working, sculpture building, mental stimulation, education, or stress relief.'' It also defines a ''small, powerful magnet'' as an ''individual magnet of a magnet set that is a small object'' and has a flux index of 50 kG^2 mm^2 or more. The criteria for identifying a small object and the flux index are the same as in ASTM F963–17.

2. Performance Requirements for Magnets

The standard includes performance criteria in the form of test methods to determine if a product is a ''small, powerful magnet,'' and test methods for assessing label permanence. However, the standard does not include performance requirements preventing small, powerful magnets from being used in magnet sets. Instead, ASTM F3458–21 includes requirements for instructional literature, sales/marketing, labeling, and packaging, discussed below.

3. Instructional Literature Requirements

ASTM F3458–21 requires magnet sets intended for users 14 years and older to come with instructions that address assembly, maintenance, cleaning, storage, and use. The instructions must include warnings (as specified below), the manufacturer's suggested strategy for counting and storing magnets, a description of typical hazard patterns (*e.g.,* young children finding loose magnets), an illustration of the hazard, a description of typical symptoms associated with magnet ingestion, and statements regarding medical attention when magnets are ingested.

4. Sales/Marketing Requirements

The standard prohibits manufacturers from knowingly marketing or selling magnet sets intended for users 14 years and older to children under 14 years old and requires them to ''undertake reasonable efforts'' to ensure the product is not marketed or displayed as a children's toy. For online sales, manufacturers must ''undertake reasonable efforts'' to ensure that online sellers do not sell magnet sets intended for users 14 years and older to children under 14 years. When selling directly to consumers online, manufacturers must include warnings (as specified below) and instructional literature about the hazard pattern.

5. Labeling Requirements

ASTM F3458–21 requires magnet sets intended for users 14 years and older to bear warnings on the retail packaging and ''permanent storage container,'' which the standard defines as a container designed to hold the magnet set when it is not in use. At a minimum, the warnings must address the hazard associated with magnet ingestions, direct users to keep the product away from children, and provide information about medical attention. The standard includes an example warning label and specifies design and style requirements for the warning label. In addition, the standard requires the label to be permanent and provides a test method for assessing label permanence.

6. Packaging Requirements

The standard requires magnet sets intended for users 14 years and older to be sold with or in a permanent storage container. The permanent storage container must include a way to verify that all the magnets have been returned to the container. In addition, the standard requires the permanent storage container to be re-closeable and include means of restricting the ability to open the container.

7. Assessment of Adequacy

CPSC assesses that ASTM F3458–21 would not adequately reduce the risk of injury and death associated with magnet ingestions. The standard only applies to magnet sets intended for users 14 years and older. As such, it imposes no requirements on other products intended for users 14 years and older, or on jewelry (both children's and adult), which are shown to be involved in magnet ingestion incidents.

In addition, ASTM F3458–21 does not include performance requirements to prevent magnet sets intended for users 14 years and older from containing small, powerful magnets, and instead,

relies on requirements to inform and encourage consumers to keep magnets away from children. As incident data indicate, children and teens access magnet products, including magnet sets, that are intended for older users, making it important to address the magnet ingestion hazard for magnet sets intended for users 14 years and older. Safety messaging (*e.g.,* warnings and instructions) and packaging requirements, without performance requirements for the magnets themselves, are not likely to adequately address the hazard.

a. Safety Messaging. One factor that weighs against consumers heeding safety warnings is their perception that magnet products present a low safety risk. Magnets in products intended for amusement or jewelry are likely to appear simple, familiar, and non-threatening to children, teens, and caregivers. Incident data and consumer reviews for subject magnet products demonstrate that consumers commonly view these types of magnetic products as suitable playthings for children, which undermines the perceived credibility of warnings that state the magnets are hazardous for children. The availability of children's toys that are similar to subject magnet products intended for users 14 years and older may also affect consumers' perception of the hazard because the products appear similar, and some are marketed for children. Once familiar with a product, consumers tend to generalize across similar products, and the more familiar consumers are with a product, the less likely they are to look for, or read, warnings and instructions. If caregivers observe their child, or their child's peers using a product or a similar product without incident, caregivers may conclude that their child can use the product safely, regardless of what the warnings state. This is also true of recommendations from others, including online reviews of products, which can influence the likelihood of consumers disregarding warnings. CPSC reviewed numerous consumer reviews of subject magnet products and found that many indicated that consumers purchased the product for a child, or that their children started playing with it, despite the product not being intended for users under 14 years old. Similarly, when a child or teen repeatedly uses the product in or around their mouth, without ingesting a magnet or experiencing consequences from ingestion, they and their caregivers are likely to conclude that the hazard is unlikely to occur or is irrelevant for them.

Another reason that safety messaging has limited effectiveness is that consumers misunderstand the hazard. For small, powerful magnets, the internal interaction hazard is a hidden hazard, so consumers are unlikely to anticipate and appreciate the risk to children, especially older children and teens who do not have a history of mouthing or ingesting inedible objects. However, of the magnet ingestion cases that identify whether the ingestions were intentional or accidental, the majority describe accidental ingestions, which is much more difficult for consumers to appreciate and prevent.

Similarly, there are developmental factors that predispose older children and teens to disregard warnings and use the small, powerful magnet products in and around their mouths and noses. Experimentation and peer influence are common determinants of behavior for this age group. Small, powerful magnets offer a seemingly safe and reversible way to try out lip, tongue, cheek, and nose piercings; and if children and teens see their peers doing this, they may act similarly, despite being aware of the risks.

In addition, consumers misunderstand the progression of symptoms associated with magnet ingestions, which also may lead them to disregard warnings. As incident reports show, many children, teens, and caregivers assume erroneously that, when ingested, magnets will pass through the body and exit the body without causing harm.

Another factor that limits the potential effectiveness of safety messaging is how children and teens obtain magnets they ingest. As incident data show, children and teens commonly obtain magnets loose in their environments, from friends, or at school, where the product is separated from any packaging or instructions that bear warnings. Because small, powerful magnets are too small themselves to carry warnings, these children and teens, and their caregivers, may not be alerted to the hazard.

Indeed, to date, safety messaging has been ineffective at reducing the magnet ingestion hazard. CPSC staff has examined dozens of incident reports that indicate children and teens obtained and ingested small, powerful magnets, even when the product was marketed and prominently labeled with warnings about the hazard and state that the product was not appropriate for children. For example, of the CPSRMS incidents that reportedly occurred between January 1, 2010, and December 31, 2021, at least 68 incident products had magnet internal interaction warnings, at least 74 had age labels or warnings indicating the product was not for children, and at least 66 had both types of relevant safety messages. In contrast, reports for only 14 incidents (total for both data sets) mentioned that the product had neither magnet internal interaction warnings nor age labels or warnings against use by children.

Another indication of the ineffectiveness of safety messaging to address the magnet ingestion hazard is the upward trend in magnet ingestion cases in recent years, despite years of consumer awareness campaigns. For many years, CPSC has drawn attention to the magnet ingestion hazard through recalls, safety alerts, public safety bulletins, and rulemaking activity. In addition, there have been numerous public outreach efforts by health organizations and other consumer advocacy groups to warn consumers about the internal interaction hazard posed by small, powerful magnets. Despite these efforts, magnet ingestion incidents have increased in recent years.

b. Packaging. Similar to safety messaging, there are several reasons CPSC considers packaging requirements inadequate to address the magnet ingestion hazard. Incident data show that children and teens commonly access magnets loose in their environment and from friends, in which case the product is likely to be separated from its packaging, rendering CR packaging or visual cues that all magnets are in the package ineffective.

In addition, the features included in ASTM F3458–21 to make the packaging difficult for children to open would not be effective in preventing older children and teens from accessing the magnets in the packaging and ingesting them. For example, an option provided in the standard allows the packaging to meet the requirements in 16 CFR 1700.15 and 1700.20. Those provisions are intended to make packaging significantly difficult for children under 5 years old to open within a reasonable time. Thus, such packaging does not prevent all children under 5 years old from opening it, particularly if given ample time; and it is not intended to prevent any children 5 years and older from opening the packaging. As the incident data indicate, most magnet ingestion incidents involve victims 5 years and older, making this packaging ineffective at restricting their access. Similarly, for the alternative packaging options in the standard, children and teens are likely to have cognitive and motor skills sufficient to access the products.

Even if CR packaging features did prevent children and teens from opening the packaging, the effectiveness

of packaging to address the hazard would rely on consumers correctly repackaging all the magnets after and every use, which is likely unrealistic. The products often are intended for purposes that make repackaging after each use unlikely. For example, products like magnet sets are intended to assemble and display complex sculptures, and some jewelry may involve creating designs, making it unlikely consumers will disassemble their designs to repackage all the magnets after every use. In addition, consumers are not likely to perceive the products as hazardous because they are intended for amusement or jewelry and are not hazardous in appearance. Therefore, consumers would not consider it necessary to repackage all the magnets after every use. Even for products that are obviously hazardous and commonly use CR packaging, such as chemicals and pharmaceuticals, consumers may not use the packaging consistently. Consumers may also consider CR packaging a nuisance, making it unlikely for them to store magnets in the packaging after every use.

In addition, the small size and large number of magnets (particularly in some magnet sets and magnetic jewelry sets) make locating and counting the magnets after every use not feasible or realistic, leaving it difficult to impossible to ensure all the magnets in the set are returned to the package. For example, staff has identified products that were involved in magnet ingestion incidents that consisted of thousands of 2.5 mm diameter magnets. Staff has found that it is not uncommon for magnets to be flicked away from one another or dropped when consumers handle or try to separate them. These actions are foreseeable, particularly for magnets intended for fidgeting and building. In examining magnet sets, staff found that many sets are sold with extra pieces, in part, because losing magnets is expected. In addition, many incident reports and consumer reviews of magnet sets mention lost magnets. Given the large number of magnets included in some sets, plus their small size, and the tendency for them to be separated and lost, it is unlikely that CR packaging will be used effectively by consumers. The time and effort necessary to locate, assemble, and repackage such small and numerous magnets is likely to be beyond what consumers are willing to spend.

E. EN 71–1: 2014

The European standard applies to children's toys, which are products intended for use in play by children younger than 14 years old. The requirements regarding magnets in EN 71–1: 2014 are essentially the same as in ASTM F963–17—any loose as-received magnet and magnetic component must either have a flux index less than 50 kG^2 mm^2, or not fit entirely in the small parts cylinder. The flux index is determined using the same method as in ASTM F963–17, and the small parts cylinder is the same as in ASTM F963–17. EN 71–1: 2014 also requires similar use-and-abuse testing as ASTM F963–17, to ensure that toys do not liberate a hazardous magnet or hazardous magnetic component. The standard includes a similar exemption to ASTM F963–17 for magnetic/electrical experimental sets intended for children 8 years of age and older, which need only bear a warning regarding the magnet ingestion hazard.

As discussed above in section V.A. of the preamble, for ASTM F963–17, CPSC assesses that these provisions do not adequately reduce the risk of injury and death associated with magnet ingestions because of the limited scope of the standard. Because the standard only applies to toys intended for children under 14 years old, it does not impose any requirements on products intended for older users, or products that would not be considered playthings. As the incident data indicate, magnet ingestion incidents include children and teens ingesting products intended for older users, and ingesting jewelry, neither of which this standard addresses.

F. ISO 8124–1: 2018

This standard applies to toys, which are products intended for use in play by children under 14 years old. The standard requires any loose as-received magnet and magnetic component to either have a flux index less than 50 kG^2 mm^2 or not fit entirely within the small parts cylinder. The flux index is determined the same way as in ASTM F963–17, and the small parts cylinder is the same as in ASTM F963–17. ISO 8124–1 also requires similar use-and-abuse testing as ASTM F963–17, to ensure that a hazardous magnet or hazardous magnetic component does not liberate from a toy. Similar to ASTM F963–17, ISO 8124–1 also provides an exemption for magnetic/electrical experimental sets intended for children 8 years and older, which need only bear a warning regarding the magnet ingestion hazard.

Thus, the provisions addressing the magnet ingestion hazard in ISO 8124–1: 2018 are largely the same as in ASTM F963–17. Because the standard only applies to toys intended for children under 14 years old, it does not impose any requirements on products intended for older users, or on products that would not be considered playthings. As the incident data indicate, magnet ingestion incidents include children and teens ingesting products intended for older users and ingesting jewelry, neither of which this standard addresses.

G. Compliance With Existing Standards

CPSC has limited information about the extent to which products comply with existing standards. Based on staff's analysis, only a small number of magnet ingestion incidents for which a product type could be identified involved children's toys subject to ASTM F963–17. This provides some indication that children's toys commonly comply with the standard. Of the magnet ingestion incidents that involved children's toys, staff identified only 7 incidents that involved internal interaction of the magnets through body tissue, again showing there may be a high level of compliance with the standard requiring flux index below 50 kG^2 mm^2. (None of the products in these seven incidents complied with the magnet requirements in ASTM F963.)

CPSC also does not have detailed information about the extent to which products comply with ASTM F2923, F2999, or F3458. Incident reports commonly do not provide enough detail to identify the specific product (*e.g.,* brand) to obtain it and assess it for compliance. In addition, for ASTM F3458, the standard was adopted recently (March 2021), making it difficult to assess the level of compliance with it. However, for the reasons discussed in this section, the Commission finds that none of the existing standards would adequately address the unreasonable risk of injury associated with subject magnet products.

H. Consideration of the Existing Standards, Collectively

For the same reasons than no existing standard is individually adequate, the standards collectively fail to adequately reduce the magnet ingestion hazard. As explained above, each standard contains critical inadequacies with regard to protecting against ingestion hazards associated with the particular products that are covered. Furthermore, there are subject magnet products, such as magnets sets, or magnet toys, or jewelry kits intended for users 14 years of age and older, and jewelry (both children and adult), that are not within the scope of the existing standards. Accordingly, even industry compliance with *all* the existing standards, were it achieved,

would not adequately address the ingestion hazard.

VI. Response to Comments on the Proposed Rule

This section summarizes the issues raised by comments, both oral and written, on the proposed rule, and it provides the Commission's responses to those comments.

A. Oral Presentations

On May 2, 2022, the Commission provided the public an opportunity to present views on the proposed rule in person before the Commission. Oral comments were presented at the hearing from representatives from the American Academy of Pediatrics, North American Society for Pediatric Gastroenterology, Hepatology and Nutrition, Kids in Danger, Consumer Federation of American, and Consumer Reports. These commenters provided testimony supporting the CPSC's rulemaking for a safety standard to address the unreasonable risk of injury and death associated with ingestion of loose or separable high-powered magnets. The commenters orally testified that there is overwhelming evidence of the significant hazards associated with magnets that have a flux of 50 or greater. Commenters testified on the serious medical consequences when children ingest hazardous magnets, including gastrointestinal perforations, abdominal abscesses, fistulas in the bowel, and death. Commenters also testified testimony regarding the ineffectiveness of regulatory alternatives, including safety messaging, labeling, and packaging requirements. Commenters recommended that the Commission not rely on child-resistant containers, bittering agents, or other attempts to deter children, but rather, they asked CPSC to mandate a standard that will eliminate the hazard. Specific oral comments that covered the same issues as the written comments are addressed below in section VI.B. of the preamble.

B. Written Comments

The preamble to the NPR invited comments concerning all aspects of the proposed rule. We received written comments from more than 700 commenters in response to the NPR. The Commission reviewed and considered several late comments that were filed regarding this rule.[13] Many of the comments contained more than one issue, and many of the comments addressed the same or similar issues. Thus, we organized our responses by issue. All of the comments can be viewed at: *www.regulations.gov,* by searching under the docket number for this rulemaking, CPSC–2021–0037.

In general, most who commented in favor of the proposed rule were medical professionals and/or representatives of consumer advocacy groups and medical associations;[14] there were also some individual consumers, and a subject magnet product manufacturer, Retrospective Goods, LLC, who also generally supported the proposed rule. These commenters argued that safety messaging and safeguards are insufficient to address the magnet ingestion hazard and that the proposed rule represents a minimum standard for addressing the hazard. In contrast, most who commented in opposition to the proposed rule were individual consumers, along with several subject magnet product manufacturers and hobbyist groups.[15]

Commission Authority

(Comment 1) Commenters in favor of the proposed rule opined that it is the Commission's authority and responsibility to address the ingestion hazard posed by the subject magnet products. These commenters encouraged the Commission to promulgate the final rule expeditiously as a minimum standard to address the hazard. Some commenters opined that the rule violates consumers' constitutional rights, including the right to freedom of expression through purchasing products they desire, and that a rule that prohibits the sale of covered magnet sets is drastically out of proportion to the risks presented by the product. Many commenters requested alternative regulatory actions to address the hazard, such as limiting sales for online purchases with restrictions, such as warnings; prohibiting sales to users under specified ages; requiring identification or adult signature for purchases; restricting sales of magnets by certain manufacturers or sellers; or restricting sales to certain stores or locations.

(Response 1) Section 7 of the CPSA authorizes the Commission to promulgate consumer product safety standards as performance requirements or that require products to be marked or accompanied by clear and adequate warnings and instructions. The requirements of a standard issued under this provision must be reasonably necessary to prevent or reduce an unreasonable risk of injury associated with the product. Determining whether a product presents an unreasonable risk of injury requires the Commission to consider, among other factors, the costs and benefits of regulatory action. The regulatory analysis discusses that assessment (see section VIII. of this preamble). The Commission must balance several factors, such as the severity of injury, the likelihood of injury, and the possible harm the regulation could impose on manufacturers and consumers.

Although some consumers assert that their constitutional rights are impacted, there is no constitutional right to purchase an unreasonably dangerous product. Some commenters suggest that the way to address the hazard of children ingesting magnets from subject magnet products might be to limit the manner or places where products are sold. The CPSA authorizes the Commission to issue standards that specify performance requirements or requirements for labeling and/or instructions. *See* 15 U.S.C. 2056. Sales restrictions do not fit within either of those categories. Furthermore, sales limitations or requirements for strong warning restrictions are unlikely to reduce ingestions significantly, because, as discussed in detail in section V.D.7 of the preamble, the Commission has determined that consumers are unlikely to heed safety warnings if they perceive the product to be low risk or they misunderstand the hazard and the associated health consequences of ingestion. Moreover, both children and teens can access magnets of subject magnet products from many sources other than stores. As the incident data indicate, magnet ingestion incidents associated with subject magnet products include children and teens who ingested magnets from products intended for older users.

(Comment 2) A few commenters stated that there was insufficient time to consider the NPR and urged that the final rule should be delayed until more information is obtained.

(Response 2) The Commission has provided stakeholders with sufficient time to consider and comment on the proposed rule. The NPR was published in the **Federal Register** on January 10,

[13] CPSC received late-filed comments in support of the proposed rule from the American Academy of Pediatrics (AAP), and the North American Society for Pediatric Gastroenterology, Hepatology and Nutrition (NASPGHAN). Retrospective Goods, LLC, also submitted a late comment. Shihan Qu also submitted a petition via: *www.change.org.* These comments were added to the docket on *www.regulations.gov.*

[14] For example, CPSC received a joint letter in support of the proposed rule by AAP and NASPGHAN.

[15] For example, CPSC received a letter in opposition to the proposed rule, which was submitted by the Hobby Manufacturers Association, representing more than 59 manufacturers, importers, publishers, producers, and suppliers of hobby products and hobby accessories.

2022, and the public comment period ended on March 28, 2022. Although a few commenters requested that the CPSC delay the final rule until more information is obtained, CPSC has determined that the risk of injury associated with subject magnet product ingestions increases when there is no mandatory rule addressing the hazard. In particular, as already explained, during the years when the 2014 magnet sets rule was announced and in effect (2014–2016), there were appreciably fewer magnet ingestions, compared with the earlier and more recent periods. The years 2017 through 2021 saw an uptick in the number of in-scope magnet ingestions, with 2021 having more incidents than most of the preceding years. Waiting for additional data sources to become available before taking effective action would result in more magnet ingestion injuries that likely could be preventable with promulgation of the final rule.

(Comment 3) Nano Magnetics, a manufacturer of subject magnet products, asserted that CPSC has refused to communicate with manufacturers, consumers, and representative beneficiaries of the subject magnet products regarding methods to address the magnet ingestion hazard, but communicated with organizations and advocacy groups in favor of the proposed restrictions.

(*Response 3*) The CPSC provided opportunities for all stakeholders to present their views in the oral hearing, and in the NPR, we invited written comments including any opposing views, which the Commission reviewed and considered in adopting this rule.

Lack of Product Defect

(Comment 4)—Numerous commenters asserted that magnet sets pose no risk of injury when used properly, that they function as intended, and therefore, they are not defective. Other commenters argued that the Commission has no authority to issue a rule that would result in a prohibition of all subject magnet products currently on the market simply because certain consumers use magnets in a manner that is inconsistent with the purpose intended for the product. The commenters argued that the improper use of a product by a minority of consumers does not render the product defective and does not warrant promulgating a rule that would remove the product from the market.

(Response 4)—To promulgate a consumer product safety standard, the Commission must find that the rule is reasonably necessary to reduce an unreasonable risk of injury associated with the product. A product may present an unreasonable risk of injury, even if the product does not contain a fault, flaw, or irregularity that impacts the manner in which the product functions. If evidence demonstrates that foreseeable misuse of a product results in an unreasonable risk of injury, the Commission has the authority to promulgate a rule reasonably necessary to reduce or eliminate that risk. When assessing risk, CPSC considers how consumers may actually use a product, not just the manner of use intended by the manufacturer. For example, the Commission's cigarette lighter standard requires disposable and novelty lighters to meet child-resistance requirements to protect against the misuse of lighters by children. 16 CFR part 1210. Similarly, the Commission's lawn mower standard includes requirements to guard against consumers intentionally removing a shielding safety device from the mower. 16 CFR part 1205. *See Southland Mower* v. *Consumer Product Safety Commission,* 619 F.2d 499, 513 (5th Cir. 1980) (reviewing the Commission's lawn mower standard, the court stated: ''Congress intended for injuries resulting from foreseeable misuse of a product to be counted in assessing risk'').

For this rule, CPSC has analyzed the magnet ingestion incident data and reviewed the various methods to address the hazard. CPSC determines that the subject magnet products carry the highest ingestion risk for children and teens. As detailed in section V.D.7, of the preamble, CPSC explained that consumers are likely to have a common perception of low risk pertaining to the subject magnet products and often misunderstand the magnet ingestion hazard. Safety messaging, including public awareness-raising efforts, has been insufficient to protect children and teens from the hazard. Due to factors like the inability of caregivers to provide constant supervision and manage common sources of access to hazardous magnets, consumers may be unable to avoid the hazard even if they are aware of the hazard and are actively trying to prevent it. After considering various methods by which to address the hazard, including safety messaging (*e.g.,* warnings, instructional literature, marketing, and public awareness-raising efforts) and safeguards (*e.g.,* CR packaging and aversive agents), the Commission concludes that mandating performance requirements is necessary to adequately address the hazard.

Risk and Severity of Injury

(*Comment 5)* Medical professionals and consumer advocacy groups were largely supportive of the proposed rule as a minimum standard to adequately protect children from subject magnet products. Many cited the most current literature on magnet exposure in children (discussed in section IV of the preamble), and others cited firsthand professional accounts of treating high-powered magnet exposures in children and associated medical outcomes from those injuries. AAP [16] and the NASPGHAN [17] expressed strong support for the proposed rule. In their comments, they highlighted the current medical recommendation for prompt medical intervention. The Canadian Paediatric Society's Injury Prevention Committee, Children's Safety Network (CSN) at Education Development Center (EDC), and the Pacific Institute for Research and Evaluation (PIRE) also provided comments in support of the proposed rule. Additionally, a number of medical professionals offered individual comments in favor of the proposed rule. These commenters stated that magnets, in general, present a unique health risk because some level of medical management is warranted for all magnet ingestions; magnets that have migrated past the esophagus routinely require serial imaging and surgical intervention; and children are suffering adverse health outcomes from magnet internal interaction hazards.

(*Response 5)* The Commission agrees that the magnet ingestion data and most current scientific literature related to magnet ingestion show that magnet internal interaction hazard and the associated injury mechanism continue to pose serious and long-lasting adverse health outcomes.

(Comment 6) Several individual commenters stated that the subject magnet products are rarely involved in magnet ingestion incidents. These commenters were typically individual consumers who claimed that there have been only a ''few,'' ''several,'' or a ''handful of'' injuries, based on outdated magnet ingestion data.

(Response 6) Contrary to these commenters' assertions, magnet ingestions are common and have increased in recent years. The Commission estimates that 26,600 magnet ingestions were treated in hospital EDs from January 1, 2010,

[16] AAP represents 67,000 primary care pediatricians, pediatric medical subspecialists, and pediatric surgical specialists dedicated to the health, safety, and well-being of infants, children, adolescents, and young adults.

[17] NASPGHAN represents more than 2,500 pediatric gastroenterologists in the United States, Canada, and Mexico and is the only organization singularly dedicated to advocating for children with gastrointestinal disease.

through December 31, 2021; this represents an estimated 25,000 ingestions, excluding out-of-scope products. An estimated 2,500 ED-treated ingestions of magnets from in-scope products occurred in 2021, higher than the majority of the preceding years, including 2018 through 2020. An estimated 5,000 (20% of 25,000) victims were hospitalized or transferred to another hospital due to incidents that occurred in the period from 2010 through 2021. These estimates are based on the NEISS reports, which capture only brief, medically-focused narratives from the ED visit. Therefore, the estimates do not account for the victims who were initially released and later sought medical attention for magnet-related injuries, including treatment for complications arising from medical management.

In examining CPSRMS data from this 12-year period, CPSC found that at least 167 CPSRMS-reported magnet ingestions resulted in surgery (including 43 incidents since the NPR), such as laparoscopy, laparotomy, appendectomy, cecostomy, enterotomy, colostomy, cecectomy, gastrotomy, jejunostomy, resection, and transplant, among others. Some injuries also resulted in direct hospital admissions, bypassing hospital EDs entirely. CPSC estimates the number of subject magnet product injuries treated outside of hospital EDs with CPSC's Injury Cost Model (ICM), which uses empirical relationships between the characteristics of injuries (diagnosis and body part) and victims (age and sex) initially treated in hospital EDs and the characteristics of those treated initially in other settings. Using the time period during 2017 through 2021, based on the NEISS annual estimate of about 481 magnet injuries initially treated in hospital EDs involving magnets identified as amusement/jewelry products, there were 320 injuries that were treated and released and 161 injuries that required hospitalization. Based on estimates from the ICM, 185 injuries were treated outside of hospitals annually and another 78 injuries resulted in direct hospital admission.

(Comment 7) Several commenters, including Kids in Danger and Consumer Reports, requested that CPSC continue to conduct research after the final rule to determine if the excluded products, such as magnet products sold to school educators for educational purposes, should also be addressed.

(*Response 7)* The Commission will continue to assess any new incident data and review the adequacy of the rule in addressing magnet ingestion hazards on an ongoing basis, and CPSC staff will continue to work with the relevant standards groups on magnet ingestion hazards.

Other Approaches To Addressing the Hazard

(Comment 8) Safety Messaging—Several commenters in support of the proposed rule, including AAP and NASPGHAN, contend that the magnet internal interaction hazard cannot adequately be addressed with warnings, instructions, awareness-raising efforts, and other forms of safety messaging. The commenters explained that children, teens, and caregivers do not fully comprehend the hazard and risk of children and teens ingesting magnets.

One commenter, Independent Safety Consulting, LLC, stated that warnings will not be necessary in combination with the proposed size and strength limitations and may contribute to the growing issue of warning fatigue due to the prevalence of product warnings. Other individual commenters opposing the proposed rule argued that approaches involving safety messaging are more appropriate than strength and size limitations. These commenters stated that the CPSC should require warning labels only for certain products, require specific warnings and instructions, such as age restrictions, and limit sales and marketing of such products to specific physical stores or online.

Numerous individual commenters argued that approaches involving safety messaging and warnings are more appropriate than strength and size limitations. The majority of these commenters stated that their personal freedoms should not be restricted because some consumers, particularly parents, are irresponsible and do not supervise their children. Several individual commenters asserted that some brands of subject magnet products already have clear warnings about the hazard and market the products only to adults, asserting that these products have been involved in few-to-no magnet ingestion injuries. Most who oppose the proposed rule requested that adult products be excluded from the scope of the rule. They compared the magnet internal interaction hazard to other common hazards, like incidents with trampolines, fireworks, scissors, knives, firearms, balloons, and toys with small parts, arguing that these other products present similar or worse hazards but they are not banned. In addition, they argued that there are other, more hazardous products on the market for adults to purchase and use (*e.g.,* guns and cigarettes).

(Response 8) CPSC's assessment of the magnet internal interaction hazard shows that it is a unique, hidden hazard, unlike common and more readily apparent hazards, like hazards from trampolines and fireworks. The hazards identified in the rule involving multi-magnet ingestions and ingestions of both a magnet and a potentially ferromagnetic object, all call for some level of medical management. It is foreseeable that consumers will not anticipate, nor appreciate, the likelihood of children and teens ingesting magnets. The majority of the incident reports for the subject magnet products involved victims above the ages typically associated with ingestion of small objects (under 3 years old) and hazardous substances (under 5 years old). CPSC finds that it is unrealistic to expect parental supervision at all times, especially for these older ages, and ingestions can be quick and difficult to notice and prevent, considering the small size and sometimes large number of magnets in the subject magnet products. Many of the reports indicated that the magnets were ingested accidentally, while children and teens were attempting to separate the magnets with their teeth or were using the magnets to simulate oral piercings. Relatively few reports indicated the magnets were ingested intentionally.

As discussed in detail in section V.D.7. of the preamble, the Commission has determined that safety messaging has limited effectiveness for preventing the magnet ingestion hazard. In general, safety messaging relies on encouraging consumers to avoid hazards, as opposed to eliminating the hazards by design. For safety messaging to be effective, it must be seen, read, understood, and heeded. Specific to the subject magnet products, there are many obstacles to the success of safety messaging, which include, consumers commonly misperceive risk associated with the hazard; the hazard patterns and symptomology are often misunderstood; and the common sources of access to magnets (*e.g.,* children and teens sharing magnets when outside the home) make it difficult, if not impossible, for caregivers to prevent access to the hazard and likewise, reduce the chances of children and their caregivers seeing safety messaging provided with the products. Caregivers may also forego reading warnings if they think they already know the hazard. Magnet ingestions have continued an upward trend over the past years since the CPSC's 2014 magnets sets rule was vacated, despite increased prevalence of safety messaging provided with the

products, and numerous public outreach efforts by the CPSC, medical associations, consumer advocacy groups, and news sources.

(Comment 9) Packaging and Aversive Agents — Commenters who favor the proposed rule, such as Kids in Danger and Consumer Reports, opined that the magnet internal interaction hazard cannot adequately be addressed with packaging requirements. They explained that it is common for children and teens to acquire magnets without packaging, and that packaging requirements, such as child-resistant (CR) packaging, are only effective as long as the packaging is retained and used consistently to store the product. These commenters note that CR packaging would not be effective for the majority of victims, considering the victims' ages. Several individual commenters who are against the proposed rule opined that, to the contrary, approaches involving packaging and aversive agents are more appropriate than strength and size limitations.

(Response 9) The Commission has determined that safeguards, such as special packaging and aversive agents, are ineffective at addressing the magnet internal interaction hazard. As discussed in detail in section V.D.7 of the preamble, in many cases, the magnets do not come with their original packaging, making packaging features bearing warning language immaterial (*e.g.,* when children and teens find magnets in their environment or receive them from friends). CR features, such as those specified in ASTM F3458–21, are designed to limit access to products by children under 5 years of age only, and CPSC found that the majority of magnet ingestion incidents involved victims ages 5 years and older. Furthermore, CR features would be effective for these younger ages only if the magnets are repackaged correctly and in their entirety after every use, which CPSC finds unrealistic, as explained above. Incident reports and customer reviews further demonstrate that it is common to lose magnets from the subject magnet products, particularly from products with numerous magnets (*e.g.,* magnet sets with hundreds to thousands of tiny magnets).

Similarly, deterrents, such as aversive agents (*e.g.,* foul odors or bitterants), are unlikely to be effective. Serious injury is possible when one ingests as few as two magnets, or even a single magnet in the presence of a ferromagnetic object; in addition, children may ingest multiple magnets before they detect the aversive agent. Children frequently ingest unpalatable substances, which indicates that foul odors and tastes are not sufficient to deter children from ingesting harmful substances.

Reliance on ASTM standards

(Comment 10) Numerous commenters, including Shihan Qu of Zen Magnets, LLC, and Hobby Manufacturers Association, recommended publicizing and enforcing ASTM F3458—21, which includes warning, instructional literature, marketing, and packaging requirements for adult magnet sets. Commenters claimed that the combination of requirements for warnings, instructions, marketing, and packaging is sufficient to address the hazard. Additionally, one commenter, Retrospective Goods, LLC, a subject magnet product manufacturer, stated that CPSC has not undertaken any meaningful safety campaigns regarding the hazard for 7 years.

(Response 10) The Commission has concluded that the requirements specified in ASTM F3458–21 are inadequate to address the magnet internal interaction hazard without size and strength requirements. Section V.D.7. of the preamble explains that warning, instructional literature, marketing, and packaging requirements for adult magnet sets do not address the hazard because the incident data indicates that children and teens commonly access and ingest magnets from products intended for older users. Clear and repeated safety messaging and marketing have been insufficient to discourage magnet ingestion, and CR packaging is unlikely to address the hazard, particularly given that most of the known magnet ingestions have involved victims ages 5 years and older.

Contrary to the assertion that CPSC has not engaged in safety campaigns, CPSC, in addition to raising awareness of the magnet ingestion hazard through publicized recalls, has drawn attention to the hazard through safety alerts and public safety bulletins. CPSC maintains a ''Magnets Information Center'' website,[18] which provides an informational video, a description of the hazard, what steps to take when magnets are swallowed, and links to recalls, relevant CPSC materials, applicable regulations, and informational posters. CPSC also issued a safety alert about the magnet ingestion hazard, which describes the hazard and what steps to take when magnets are swallowed. In addition to CPSC's information campaigns, health organizations and other consumer advocacy groups have made numerous public outreach efforts to warn consumers about the magnet ingestion hazard.[19] Some of the recent efforts include CPSC's annual holiday safety campaign,[20] CPSC's Twitter Chat on High-Powered Magnet Safety,[21] and numerous articles from popular news sources.[22]

Scope of the Rule

(Comment 11) Rely on Enforcement Action—Several commenters, including Magnet Safety Organization, opined that the CPSC enforcement actions, rather than rulemaking, is the appropriate approach. Other commenters, such as the Hobby Manufacturers Association, asserted that CPSC should focus enforcement activities only on manufacturers and importers that do not use clear marketing and warnings to explain the hazard and warn against use by children.

(Response 11) From January 1, 2010, through May 25, 2022, CPSC's Office of Compliance and Field Operations has investigated and recalled numerous magnet products involving the magnet internal interaction hazard. CPSC has conducted 20 recalls involving 25 firms/retailers, and totaling approximately 13,832,901 recalled units, including craft kits, desk toys, magnet sets, pencil cases, games, bicycle helmets, maps, and children's products among others. Of these 20 recalls, 10 involved products that would not be subject to the rule; specifically, 6 involved children's toys that are subject to the ASTM F963 Toy Standard. Although these 10 recalls did not apply to products that are subject to the rule, they illustrate the magnet ingestion hazard.

[18] Available at: *www.cpsc.gov/Safety-Education/Safety-Education-Centers/Magnets.*

[19] Examples include the American Academy of Pediatrics (*https://services.aap.org/en/search/?k=magnets);*North American Society for Pediatric Gastroenterology, Hepatology and Nutrition (*www.naspghan.org/content/72/en/Foreign-Body-Ingestion*); Consumer Reports (*www.consumerreports.org/product-safety/magnets-marketed-as-toys-could-be-dangerous-to-kids/*); Consumer Federation of America (*https://consumerfed.org/testimonial/cfa-comments-cpscs-notice-proposed-rulemaking-safety-standard-magnet-sets/*); and Kids In Danger (*https://kidsindanger.org/2011/11/cpsc-warns-about-high-powered-magnets/*).

[20] CPSC's Top Safety Tips for Early Holiday Shoppers Amid Reports of Expected Toy Shortage (2021): *www.cpsc.gov/Newsroom/News-Releases/2021/Top-Safety-Tips-for-Early-Holiday-Shoppers-Amid-Reports-of-Expected-Toy-Shortage.*

[21] On May 19, 2021, CPSC staff provided responses regarding magnet safety in a public Q&A.

[22] Examples of recent news articles addressing the hazard include the following, among others: *www.washingtonpost.com/business/2021/08/17/magnet-safety-recall/, www.washingtonpost.com/business/2019/12/27/senator-urges-regulators-take-action-magnet-ingestions/, www.cnn.com/2019/04/12/health/kids-swallow-objects-study/index.html,* and *www.foxnews.com/health/parts-of-boys-colon-intestines-removed-after-swallowing-toy-magnets-mom-says.*

Despite this active enforcement to remove from the market products that present a substantial product hazard, such efforts are necessarily limited to particular entities and products. By contrast, this rulemaking establishes requirements that all non-exempt subject magnet products must meet from the effective date of the rule. The magnitude of the hazard, the similarity of the ingestion hazard across the subject magnet products, and the relevant similarities of the products themselves, make the rulemaking approach appropriate here.

(Comment 12) Mental Stimulation Should Be Removed from Definition— Several commenters, including subject magnet product manufacturers Retrospective Goods, LLC, and Nano Magnetics, requested clarifications pertaining to the NPR's proposed product scope and exemptions, particularly regarding ''mental stimulation.'' These commenters recommended removing ''mental stimulation'' from the inclusion criteria for ''subject magnet product.'' Commenters also suggested that the final rule identify more of the exempted products, such as the products intended for scientific or technical research, and educational, professional, and industrial applications. Many individual commenters mentioned the artistic, educational, entertainment, social, and therapeutic benefits of small, powerful magnets in consumer products, such as magnet sets.

(Response 12) The NPR recommended exempting from the proposed rule, children's toys subject to the ASTM F963 Toy Standard, and the final rule retains that exemption because that standard is mandatory and adequately addresses the magnet ingestion hazard associated with children's toys. The NPR further noted: ''it is reasonable to exclude home/kitchen products from the proposed rule,'' and ''other products that would fall outside the scope of the proposed rule include research and educational products, or those intended for commercial or industrial purposes, if they are not also intended for amusement or jewelry.'' 87 FR 1291–92. The NPR specifically sought comment on whether ''home/kitchen magnets or education products should be addressed in the rule.'' *Id.* at 1312.

The Commission disagrees that ''mental stimulation'' should be removed from the definition of ''subject magnet products.'' Mental stimulation is an important criterion because it is an apt descriptor for subject magnet products that appeal to children and teens, including uses like puzzle working and sculpture building. However, the Commission agrees that the term ''mental stimulation'' may be interpreted more broadly than intended, by capturing products not for home uses that nonetheless may be mentally stimulating, such as products manufactured, sold, and/or distributed solely for educational uses at schools and universities. Accordingly, in response to comments, the final rule clarifies the definition of ''subject magnet product'' to mean a consumer product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets, but does not include products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes.

This clarification addresses potential confusion between in-scope and out-of-scope products, by specifying in the definition certain products that are not subject to the final rule, even if the intended use of these products involves mental stimulation. These excluded products are intended to be sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes. As shown in the incident data, these types of applications have not been associated with magnet ingestions, and would be less likely to pose an unreasonable risk of injury to children or teens since they would not be sold for or used in home settings and/or for personal use by children.

Products manufactured, sold, and/or distributed for use in the home, such as hardware magnets, that contain one or more loose or separable magnets but that are not designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, would not be subject to the rule because they do not meet the definition of a ''subject magnet product.'' However, if any of these products are designed, marketed, or intended to be used, even in part, for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, such uses would cause the magnets to be subject to the requirements of the standard. Unlike magnet products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes, these products are used in the home, and if they have subject magnet product uses such as jewelry or mental stimulation, they may appeal to children or teens, and the magnet internal interaction hazard may pose the same unreasonable risk of injury to as identified for other subject magnet products.

(Comment 13) Noncompliant magnets should be widely available. Some commenters, including Nano Magnetics, contend that that use of small, aggregated magnetics have resulted in great scientific and medical innovations and that the proposed rule would prevent scientific breakthroughs.

(Response 13) The Commission is not persuaded that the final rule would adversely impact innovation in scientific or medical fields. The final rule clarifies the definition of *subject magnet product* to mean a consumer product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets, but does not include products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes. Accordingly, uses for magnets such as scientific or medical research, as contemplated by the commenters, may continue under the revised definition.

(Comment 14) Some commenters, including individual consumers, stated that requiring magnets to be weaker or bigger would limit their beneficial uses, and the products with only one magnet should be excluded from the final rule. Other commenters asserted that magnets that are not spherical or disc-shaped should be excluded from the final rule.

(Response 14) The scope of the rule includes non-spherical and non-disc-shaped magnets because the hazard is not limited to these magnets only; for example, the Commission is aware of cases involving internal interaction of rock-shaped magnets. The product scope also includes products with only one magnet because subject magnet products may be sold per-magnet, and a single magnet can interact internally through body tissue with an unrelated magnet or ferromagnetic object.

ASTM F963 Test Method

(Comment 15) Commenters in favor of the proposed rule, including Safe Kids Worldwide, Consumers Union, AAP, and NASPHAN, generally supported incorporation of the ASTM F963 testing requirements as a minimum approach for addressing the magnet ingestion hazard. One manufacturer, Retrospective Goods, LLC, stated that the ASTM test method for measuring flux is widely used internationally and is well-understood; therefore, they assert, ''there is no need to change the current ASTM test procedure for measuring a magnet's flux.'' As an example, the commenter provided a method from an international test lab that describes a procedure for locating the pole of a small magnet. The procedure uses a magnet's attraction to a ferromagnetic bar to orient and identify the poles, and it uses an adhesive surface to hold the magnet during testing. The commenter questioned whether the CPSC test procedure provided in Tab D of the NPR has been tested by other laboratories and stated: ''changing the ASTM test procedure could lead to confusion and potentially uneven or conflicting results.''

(Response 15) CPSC staff developed a test procedure consistent with ASTM F963–17 to locate the magnet pole of small diameter magnets and to secure the magnet during the flux density measurement. This test procedure is provided for informative purposes and is not specified in the performance requirement. Therefore, testing of the procedure by other laboratories is not warranted. CPSC staff's procedure does not change the ASTM test procedure because there is no test procedure specified in ASTM F963–17 for locating the pole surface of a magnet; nor is there a test procedure for how to secure the magnet while measuring the maximum flux density. The exemplar method cited by the commenter for locating the pole of a small diameter magnet and holding the magnet during testing is similar in concept to the test method developed by CPSC staff.

(Comment 16) One commenter, Kids in Danger, supported the wider use-and-abuse testing from ASTM F963, to ensure products do not liberate magnets. A manufacturer, Retrospective Goods, LLC, conversely stated that ''no data has been presented that liberated magnets with a flux over 50 kG^2 mm^2 in adult products, which also meet the scope of the Rule, are posing a problem. Any such requirement should be supported by data.''

(Response 16) CPSC's review of magnet ingestion incident data has not identified a pattern of children ingesting hazardous magnets that liberated from products not subject to ASTM F963–17. However, CPSC will continue to monitor new incident data to assess if new patterns develop that indicate use-and-abuse testing is necessary for products that are outside the scope of ASTM F963–17.

(*Comment 17)* One trade association, Magnet Safety Association, stated that the measurement of flux was created by ASTM as high-level guidance for voluntary safety measures and ''was not designed to be used to determine whether magnets will present injury if ingested multiply.'' The commenter stated that the flux measurement in ASTM does not represent attractive force, and the ratings do not appropriately scale with the strength or shapes of magnets. Therefore, the commenter asserted that the Commission should use a measurement that is appropriately created for such usage and properly reviewed by experts.

(Response 17) The performance requirement in the final rule duplicates the ASTM F963–17 approach to addressing the magnet internal interaction hazard in children. The current ASTM test to determine flux index is a method that has been used by test laboratories to determine compliance with the toy standard and it is a method also used by other domestic and international standards for identifying hazardous magnets. The Commission has determined that the requirement effectively addresses magnet internal interaction hazard in toy products.

(Comment 18) One commenter, Joshua Pruett, suggested that a test method to measure the force applied to a membrane sandwiched between two magnets (presumably the attractive force of two magnets across body tissue) is an alternative that would be a closer analog to the hazard the agency wishes to prevent than the current method in ASTM F963–17, which measures a magnet's flux index.

(Response 18) The method proposed by the commenter is not a currently accepted test procedure, and it would not be reasonable because a specific attractive force between two magnets has not been correlated to tissue damage and severity of injury.

(Comment 19) Comments from Consumer Reports, Joshua Pruett, and Retrospective Goods, LLC, made statements regarding sampling requirements for testing magnets. Consumer Reports stated that, given the variation in flux strength across magnets due to variation in density, CPSC should require manufacturers to produce products that are consistent and uniform, adding that CPSC should require large sample sizes. Mr. Pruett suggested a representative sample consisting of 10 to 20 percent of the magnets in a set, but no less than 1 to 3 magnets per set, would provide robust test results. Retrospective Goods, LLC, stated that manufacturers should be allowed the flexibility to determine the appropriate sampling for their product. Retrospective Goods requested that the final rule include an acceptable tolerance range for magnets.

(Response 19) The performance requirement in the final rule duplicates the ASTM F963–17 approach to addressing the magnet internal interaction hazard for children. The final rule requires all loose magnets subject to the rule to be either too large for children to swallow, or, if they are small enough to be swallowed, to have a measured flux index under 50 kG^2 mm^2. The performance requirement does not impose production requirements on the manufacturer; and it is the manufacturer's responsibility to have processes in place to ensure each magnet produced will meet the proposed requirements. Manufacturers may choose sampling methods that are appropriate to their production setting and demonstrate confidence in complying with the proposed rule. Consistent with the ASTM F963–17 test method, and to prevent a hazard to children, a subject magnet product fails the proposed requirement if at least one magnet from the product has a magnetic flux index of 50 kG^2 mm^2 or greater.

(Comment 20) Numerous commenters opined on whether the proposed flux index limit is sufficient to address the magnet internal interaction hazard. Most supported the limit; however, several commenters, including Consumer Reports, stated that CPSC should continue to study whether magnets with flux indexes lower than 50 kG^2 mm^2 may also pose an unreasonable risk of injury to children, and should be brought within the scope of this rule at a later time. Additionally, Consumer Reports recommended that CPSC study whether larger magnets pose an unreasonable risk of injury.

(Response 20) The current ASTM test to measure flux index is the method accepted by domestic and international standards development bodies that has been used by test labs to determine compliance with ASTM F963, EN 71–1 and ISO 8124–1. CPSC's review indicates that the requirement effectively addresses the magnet internal interaction hazard in toy

products. Recall information further supports this conclusion. Recalls of children's toys involving the magnet ingestion hazard have declined substantially since the ASTM F963 Toy Standard took effect. ASTM F963 was announced as the mandatory standard for toys in 2008, and it took effect in 2009. From 2006 through 2009, CPSC issued more than a dozen recalls of children's toys, due to the ingestion hazard associated with loose or separable, small, powerful magnets. In contrast, from January 2010 through May 2022—a period approximately three times as long—there were a total of 20 recalls related to the magnet ingestion hazard, only six involving children's toys. Recalls provide some indication of the products involved in magnet ingestions, because products are recalled when they present a hazard. This marked decline in recalls of children's toys for magnet ingestion hazards indicates that children's toys largely comply with the ASTM F963 Toy Standard and are not involved in hazardous incidents. Although CPSC is currently not aware of demonstrable evidence indicating that magnets with a flux index below 50 kG^2 mm^2 are hazardous, CPSC staff will continue to review magnet ingestion incidents to assess whether magnets with flux indexes lower than 50 kG^2 mm^2 pose an unreasonable risk of injury. However, the Commission concludes that further study of whether larger magnets pose an unreasonable risk of ingestion injury is unwarranted at this time because the rule requires loose or separable magnets in the subject magnet products to have a flux index under 50 kG^2 mm^2 if the magnets are small enough to be ingested.

(Comment 21) Several commenters requested that, following promulgation of the final rule, the CPSC investigate whether, and to what extent, the number of magnets ingested affects the likelihood of internal interaction injuries. One manufacturer, Retrospective Goods, LLC, stated that there are no data showing that magnets in aggregate clumps increase the risk of internal interaction injury. This commenter explained that x-rays taken of ingestion incidents involving multiple magnets show that the pattern is limited to strings or rings of magnets.

(Response 21) The existing flux index method was developed to estimate the magnetic attraction force of individual conventional dipole magnets. Individual magnets stacked together with their magnetic poles aligned, or connected side-by-side, could potentially have a stronger flux index or otherwise be more difficult to separate than each individual magnet. A clump of magnets could be less powerful than an ordered aggregation, as the magnetic poles could overlap, interact, and counteract one another. CPSC's review of NEISS and CPSRMS-reported incidents did not show evidence demonstrating that internal interaction injuries occurred because of increased strength from magnets in aggregate.

(Comment 22) One manufacturer, Retrospective Goods, LLC, asserted that the flux index is not an accurate measurement of magnetic attractive force because magnets of different size, shape, and composition can have the same flux densities but different points of contact (convex surface likes spheres and cylinder ends have a single point of contact versus flat surfaces of disks) and/or different pole surface areas. The commenter stated the result is that magnets of different size and shape can have the same flux index but different attractive forces; therefore, the commenter claimed the flux index is an arbitrary way of measuring safety risk. However, the commenter also concluded that historical health data indicate that a flux index less than 50 kG^2mm^2 is an appropriate predictor of safety for all disk magnets and spherical magnets composed of neodymium; therefore, the commenter asserted the belief that the rule should be limited to disk- and sphere-shaped neodymium magnets.

(Response 22) The commenter's analysis of attractive force does not consider the area over which the force is dispersed when two magnets attract to apply pressure (force divided by area) on the pinched tissue; attractive force, by itself, is not the only factor to consider. The commenter also did not provide evidence, and CPSC is not aware of any, that correlates tissue damage to a specific magnetic attractive force over a specific area. The Commission proposed a performance requirement that duplicates the ASTM F963–17 approach to addressing the magnet internal interaction hazard in children. The current ASTM test to determine flux index is a method that has been used by test labs to determine compliance with the toy standard, and it is a method that is also used by other domestic and international standards for identifying hazardous magnets. CPSC's rationale for using the 50 kG^2mm^2 flux index is based on historical incident data indicating that the ASTM F963 requirement effectively addresses the magnet internal interaction hazard in toy products. In fact, the same commenter concluded that the proposed rule is effective for certain magnets, based on incident data, but the commenter did not provide an adequate rationale for excluding other magnets. Therefore, the commenter's analysis does not change our conclusion that loose or separable magnets in the subject magnet products should either be too large to fit in the small parts cylinder described in 16 CFR 1501.4, or they must have a flux index of less than 50 kG^2 mm^2, when tested in accordance with the procedures described in the ASTM F963–17.

Impacts on Businesses and Jobs

(Comment 23) Several individual commenters who are opposed to the proposed rule claim that U.S. companies will go out of business as a result of the rule.

(Response 23) In the initial regulatory flexibility analysis (IRFA), CPSC noted that a few small firms whose businesses focus on sales of magnet products that do not comply with the final rule, including some small firms selling products on their own websites, would face relatively greater losses in producer surplus (estimated to average about $5 to $10 per unit for magnet sets). 87 FR 1303. These and other small businesses could respond to the rule by undertaking measures, such as marketing or incorporating magnets that comply with the rule, or increase their marketing of products that do not have loose or separable hazardous magnets. Such measures could partially offset losses in producer surplus resulting from firms' inability to continue marketing noncomplying magnet products. A review of products currently offered by current or former sellers of products that would not meet the rule found that most of these current or former sellers also market products that either would comply with the rule or are not within the scope of the rule. One of the leading importers of magnet sets that recalled and stopped sales of the products in March 2022, still markets a variety of magnetic products that would comply with the final rule (if the product marketing is accurate regarding the size and strength of the loose or separable magnets). These facts indicate that sellers of magnet products subject to the rule should be able to remain in business, even if the rule becomes effective.

(Comment 24) The NPR proposed that the rule take effect 30 days following its publication in the **Federal Register**. CPSC sought comments on the advantages and disadvantages of a different effective date, including extending the period before the rule becomes effective. *Id.* at 1305. Retrospective Goods, LLC, a manufacturer of subject magnet

products, commented that a 30-day effective date would be workable for the firm if the rule is limited to size and strength requirements as proposed. However, the commenter asserted, if amendments change the flux index, the test method, or add additional tests or requirements, the firm, and likely other sellers, would need time to make those changes and a 90-day effective date would be more appropriate. This commenter also noted that the portion of the rule that regulates children's products requires that the Notice of Requirements (NOR) for the testing rule be amended, and the statute requires a 90-day effective date after that amendment. The commenter opined that it would make little sense, from a public safety standpoint, to have more stringent requirements for adult products than for children's products while the new rule is being fully implemented.

(Response 24) As noted in the IRFA, the alternatives to the proposed rule that the Commission considered included setting a longer period before the rule becomes effective. Although a later effective date could give firms additional time to develop complying products, or to shift marketing to nonmagnetic products, most current sellers of noncompliant subject magnet products already market other products that either comply with the rule or do not constitute subject magnet products. Furthermore, the NPR itself alerted sellers to the potential need to adjust their marketing focus. Given the facts and the nature of the market, a 30-day effective date for the final rule should not present significant hardships to small businesses. Additionally, the 30-day effective date is consistent with the requirements in section 9(g)(1) of the CPSC, which states: ''each consumer product safety rule shall specify the date such rule is to take effect,'' which generally ''shall be set at a date at least 30 days after the date of promulgation.'' 15 U.S.C. 2085(g)(1),

The NPR noted that certain subject magnet products would be considered children's products if they are ''designed or intended primarily for children 12 years of age or younger.'' For example, some jewelry items that are subject magnet products may be children's products, while others may not be. Accordingly, the NPR proposed to amend part 1112 to add a NOR to include procedures for accreditation of testing laboratories to test subject magnet products that are children's products for compliance with the new standard. Under section 14(a)(3), the testing and certificate requirements apply to any children's product manufactured more than 90 days after the Commission has established and published an NOR for accreditation of third party conformity assessment bodies to assess conformity with an applicable children's product safety rule.

Accordingly, although the effective date of the final rule for both children's and non-children's subject magnet products is 30 days after publication of the final rule, the effective date under 16 CFR part 1112 is 90 days after the publication of the final rule. All the subject magnet products must comply with the new standard, but for children's products, such as children's jewelry, that currently are not subject to the mandatory standard under ASTM F963–17, testing laboratories also must go through the process of applying for accreditation and obtain approval to become a CPSC-accepted third party conformity assessment body. Ninety days provides sufficient time for testing laboratories to apply for, and comply with, the CPSC's procedures.

Regulatory Analysis

(Comment 25) The Magnet Safety Organization (MSO) submitted comment on the preliminary regulatory analysis. MSO asserts that CPSC's economic analysis does not account for the variety of quantities in which sets are sold. MSO's proposed regulatory alternative would set a performance standard that requires a minimum quantity of small rare earth magnets per set.

(Response 25) CPSC's review of product offerings over the years shows that magnet sets with 216 to 224 spheres have been most common (and the commenter acknowledges this) in households. If magnet products (*i.e.,* magnet sets) contain large numbers of individual magnets, or have magnets with high mass or volume that would result in costs of the rule (in the form of lost consumer surplus and producer surplus) greater than the estimated value of benefits (in the form of reduced societal costs) per set, then significant price increases for hazardous magnet products might reduce—but not eliminate—future exposure to the unreasonably dangerous products. Additionally, the Commission must assess all of the costs and benefits of the rule to address the risk of injury associated with magnet ingestion from subject magnet products. The commenter's proposed regulatory alternative that would limit sales to a minimum number of magnets per set could greatly increase prices and result in lost consumer surplus for consumers who would prefer products with smaller numbers of magnets and lower prices. Loss of that segment of the market would also decrease the producer surplus for manufacturers and importers of the products.

(Comment 26) Regarding the NPR's cost/benefit analysis, MSO stated: ''According to the NPR, the range in Consumer surplus is equal to the annual magnet product sales, multiplied by the range of product price from $15 to $25. And the Producer surplus is curiously calculated with a fixed product price of $20, minus a variable cost between $10 and $15.'' MSO also claims that, based on the preliminary regulatory analysis's estimate of annual societal costs of $47.6 million, ''above 1,904,000 units of Annual Sales is when societal benefit exceeds societal cost.'' Furthermore, MSO claims: '' if the sales were comparable to 2009, 'the first year of significant sales, may have totaled about 2.7 million sets,' then societal benefit handily exceeds societal costs.''

(Response 26) The commenter's conclusions appear to be based on several misinterpretations of the preliminary regulatory analysis. In the absence of precise data on annual sales of hazardous magnet products, CPSC presented estimates of the costs of the rule in the form of lost consumer surplus and lost producer surplus for a wide range of annual sales. When the preliminary analysis was prepared, CPSC noted that, because the assumed range of annual sales is wide and likely includes the actual sales levels, it is reasonable to conclude that the costs of the proposed rule could range from about $5 million to $8.75 million (if sales amount to about 250,000 products annually), to about $20 million to $35 million (if sales amount to about 1 million products annually). CPSC's intent was to provide estimates of costs of the rule in a range of annual sales that would capture likely costs. For the final rule, CPSC determines that it is reasonable to assume that the costs of the rule could range from about $2 million to $3.5 million (if sales amount to about 100,000 products annually), to about $20 million to $35 million (if sales amount to about 1 million products annually).

MSO is incorrect regarding CPSC's analysis of the consumer/producer surplus. The $15 to $25 figure was the assumed consumer surplus per unit, not the assumed price range. CPSC presented the example in which consumers who purchased the noncomplying subject magnet products at an average price of $20 would have been willing to spend, on average, $35 to $45 per product (*i.e.,* an additional $15 to $25 per set).

In addition, MSO speculates on sales data that, if comparable to 2009, ''the first year of significant sales, may have totaled about 2.7 million sets.'' Contrary to MSO's assertions, the final regulatory analysis for the 2014 magnet sets rule was based on sales of about 800,000 sets annually during the 2009 to June 2012 period. MSO did not provide, and CPSC does not have, any information or basis for determining that annual sales of hazardous magnet products would approach the very high level of 2.7 million sets MSO tosses out. The NPR requested commenters to provide information on sales of subject magnet products, but commenters offered no additional information. 87 FR 1312.

(Comment 27) We received comments from MSO and the Hobby Manufacturers Association, among others, asserting that if the rule is passed, it will be ineffectual because previous CPSC corrective actions have pushed domestic suppliers of subject products out of CPSC's authority, and caused ''nearly all'' of these products to enter the U.S. from overseas.

(Response 27) The NPR's preliminary regulatory analysis noted that an unusual aspect of the market for the subject magnets is the ability of consumers to order magnets directly, mainly from suppliers located in China. However, not all hazardous magnet products are being sold by overseas sellers. In fact, a review of sellers on two major internet platforms in 2020 and 2021 found that most sellers were domestic. The numbers of hazardous magnet products directly imported from overseas sources under the mandatory rule that are not stopped through enforcement efforts, would likely comprise a small fraction of what total sales have been in recent years. The dramatic decline in magnet ingestion incidents during the period of the 2014 magnet sets rule supports this conclusion that the rule will be effective.

VII. Description of the Final Rule

The Commission is issuing a rule establishing a standard for subject magnet products. This section of the preamble describes the rule, including differences between the NPR's proposal and the final rule.

A. Scope, Purpose, Application, and Exemptions—§ 1262.1

Scope and purpose. This section of the rule states that the requirements of 16 CFR part 1262 are intended are intended to reduce or eliminate an unreasonable risk of death or injury to consumers who ingest one or more hazardous magnets from a subject magnet product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets.

Application. Except as provided under the toy exemption, all subject magnet products that are manufactured after the effective date, are subject to the requirements of this part 1262. This section makes several editorial changes to the proposed rule. The language ''in the United States, or imported, on or'' has been deleted to reflect the statutory language of CPSA section 9(g)(1), which provides that a safety standard subject to that section shall be applicable to consumer products ''manufactured after the effective date.'' 15 U.S.C. 2058(g)(1). Another editorial change deletes the definition of ''consumer product.'' Because the statutory citation is provided for the definition of ''consumer product,'' 15 U.S.C. 2052(a)(1), a recitation of that definition is unnecessary.

Exemption. This section of the rule also provides an exemption from the requirements of new 16 CFR part 1262, specifically: Toys that are subject to 16 CFR part 1250, *Safety Standard Mandating ASTM F963 for Toys.* Because the ASTM F963 Toy Standard already includes requirements to adequately address the magnet ingestion hazard associated with children's toys, the final rule retains the exemption as proposed in the NPR.

B. Definitions—§ 1262.2

This section of the rule provides definitions for the terms ''hazardous magnet'' and ''subject magnet product.'' *Hazardous magnet* is defined as ''a magnet that fits entirely within the cylinder described in 16 CFR 1501.4 and that has a flux index of 50 kG^2 mm^2 or more when tested in accordance with the method described in this part 1262.'' In the NPR, *subject magnet product* was defined as a consumer product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets. The final rule adds clarifying language to the definition of *subject magnet product,* as explained below.

In the NPR, the Commission specifically sought comment on products that might be excluded from the proposed rule, including magnets used for education, research, commercial, and industrial uses. 87 FR 1312. As discussed in section VI.B. of the preamble, several commenters, including magnet set manufacturers, requested clarifications pertaining to the product scope and exemptions, particularly regarding products that might meet the definition of ''mental stimulation.'' They asserted that ''mental stimulation'' should be removed from the inclusion criteria for ''subject magnet product'' because the rule otherwise would include products primarily intended for use in scientific, technical, and professional settings, as well as educational purposes. Commenters also requested that the final rule should identify more clearly the exempted products, such as products intended only for scientific or technical research, and educational, professional, and/or industrial applications.

In response to comments, the final rule clarifies that the definition of ''subject magnet product'' means a consumer product that is designed, marketed, or intended to be used for entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets, but does not include products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes.

C. Requirements—§ 1262.3

Each loose or separable magnet in a *subject magnet product,* if it fits entirely within the cylinder described in 16 CFR 1501.4, must have a flux index of less than 50 kG^2 mm^2 when tested in accordance with the test procedure for determining flux index. Based on the widespread and longstanding use of the flux index limit of 50 kG^2 mm^2, its development and acceptance by multiple stakeholders, the effectiveness of standards that have used this limit to address magnet ingestion incidents, and CPSC testing showing that some magnets involved in internal interaction incidents had flux indexes close to 50 kG^2 mm^2, the final rule requires that magnets that are small enough to ingest have a flux index of less than 50 kG^2 mm.

D. Test Procedure for Determining Flux Index—§ 1262.4

This section of the rule describes how to determine the flux index of subject product magnets. Under the final rule, each loose or separable magnet in a subject magnet product that fits entirely within the small parts cylinder

described in 16 CFR 1501.4 must have a flux index of less than 50 kG² mm² when tested in accordance with a prescribed method. In practice, the first step is to determine whether each loose or separable magnet in a subject magnet product fits in the small parts cylinder, and the second step is to determine what is its flux index.

The small parts cylinder is described and illustrated in 16 CFR part 1501.4. Figure 2, below, shows the illustration, including the dimensions of the cylinder provided in the regulation.

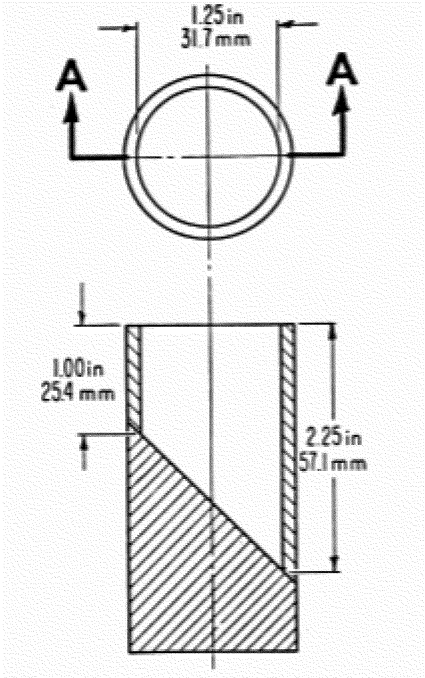

Figure 2: Small parts cylinder in 16 CFR 1501.4

If a magnet fits entirely within this cylinder, then its flux index must be less than 50 kG² mm².

To determine the flux index of a magnet, the final rule provides that at least one loose or separable magnet of each shape and size in the subject magnet product must have its flux index determined using the procedure in sections 8.25.1 through 8.25.3 of ASTM F963–17, which specify test equipment, measurements, the test method, and the calculation for determining flux index. The test requires a direct current field gauss meter with a resolution of 5 gauss (G) capable of determining the field with an accuracy of 1.5 percent or better and an axial probe with a specified active area diameter and a distance between the active area and probe tip. Using the meter, the probe tip is placed in contact with the pole surface of the magnet, the probe is kept perpendicular to the surface, and the probe is moved across the surface to find the maximum absolute flux density. The flux index, in kG² mm², is determined by multiplying the area of the pole surface (mm²) of the magnet by the square of the maximum flux density (kG²). The flux density must be less than 50 kG² mm² to comply with the final rule.

As detailed in the memorandum in Tab D of Staff's NPR briefing package and in Tab D of Staff's Final Rule briefing package, CPSC staff developed a test methodology that is consistent with the test methods specified in ASTM F963–17, to assist testing laboratories in improving the accuracy and consistency in measuring the maximum flux density and calculating the maximum flux index for small diameter magnets. This test procedure is not mandatory, but it is provided as an example of how to measure flux index of small spherical magnets less than 3 mm in diameter. This example test method is available in the Appendix to Tab D of Staff's Final Rule briefing package.

E. Findings—§ 1262.5

Section 9 of the CPSA requires the Commission to make certain findings when issuing a consumer product safety standard. Specifically, the Commission must consider and make findings about the degree and nature of the risk of injury; the number of consumer products subject to the rule; the need of the public for the rule and the probable effect on utility, cost, and availability of the product; and other means to achieve the objective of the rule, while minimizing the impact on competition, manufacturing, and commercial practices. The CPSA also requires the rule to be reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product; and issuing the rule must be in the public interest. 15 U.S.C. 2058(f)(3).

In addition, the Commission must find that: (1) if an applicable voluntary standard has been adopted and implemented, compliance with the voluntary standard is not likely to adequately reduce the risk of injury, or compliance with the voluntary standard is not likely to be substantial; (2) the benefits expected from the regulation bear a reasonable relationship to the regulation's costs; and (3) the regulation imposes the least burdensome requirement that would prevent or adequately reduce the risk of injury. *Id.* These findings are stated in § 1262.5 of the rule and are based on information provided throughout this preamble and the staff's briefing packages for the proposed and final rules.

VIII. Final Regulatory Analysis

The Commission is issuing this rule under sections 7 and 9 of the CPSA. The CPSA requires that the Commission publish a final regulatory analysis with the text of the final rule. 15 U.S.C. 2058(f)(2). This section of the preamble provides the final regulatory analysis of the rule, which is discussed further in Tab F of Staff's Final Rule briefing package.

A. Societal Costs of Deaths and Injuries

The Commission's ICM provides estimates of the societal costs of injuries reported through NEISS, as well as the societal costs of other medically treated injuries. The major aggregated societal cost components provided by the ICM include medical costs, work losses, and the intangible costs associated with lost quality of life or pain and suffering.

Medical costs include three categories of expenditures: (1) medical and hospital costs associated with treating the injury victim during the initial recovery period and in the long term, including the costs associated with corrective surgery, the treatment of chronic injuries, and rehabilitation services; (2) ancillary costs, such as costs for prescriptions, medical equipment, and ambulance transport; and (3) costs of health insurance claims processing. For the ICM, CPSC derives the cost estimates for these expenditure categories from national and state databases including Medical Expenditure Panel Survey (MEPS), the Nationwide Inpatient Sample of the Healthcare Cost and Utilization Project (HCUP–NIS), the Nationwide Emergency Department Sample (NEDS), the National Nursing Home Survey (NNHS), MarketScan® claims data, and a variety of other federal, state, and private databases.

Work loss estimates are intended to include: (1) the forgone earnings of the victim, including lost wage work and household work; (2) the forgone earnings of parents and visitors, including lost wage work and household work; (3) imputed long-term work losses of the victim that would be associated with permanent impairment; and (4) employer productivity losses, such as the costs incurred when employers spend time juggling schedules or training replacement workers. Estimates are based on information from HCUP–NIS, NEDS, Detailed Claims Information (a workers' compensation database), the National Health Interview Survey, U.S. Bureau of Labor Statistics, and other sources. The intangible, or non-economic, costs of injury reflect the physical and emotional trauma of injury, as well as the mental anguish of victims and caregivers. Intangible costs are difficult to quantify because they do not represent products or resources traded in the marketplace. Nevertheless, they typically represent the largest component of injury cost and need to be accounted for in any benefit-cost analysis involving health outcomes. The ICM develops a monetary estimate of these intangible costs from jury awards for pain and suffering. Although these awards can vary widely on a case-by-case basis, studies have shown them to be systematically related to a number of factors, including economic losses, the type and severity of injury, and the age of the victim.[23] CPSC derived estimates for the ICM from regression analysis of jury awards in nonfatal product liability cases involving consumer products compiled by Jury Verdicts Research, Inc.

Table 8 below provides *annual* estimates of the injuries and societal costs associated with ingestions of magnets categorized as magnet sets, magnet toys, and jewelry. Based on NEISS estimates for 2017 through 2021, there were an estimated annual average of about 481 ED-treated injuries, comprised of 320 injuries that were treated and released and 161 injuries that required hospitalization. Additionally, based on annual estimates from the ICM, 185 injuries were treated outside of hospitals, and another 78 injuries resulted in direct hospital admission.

Based on ICM estimates, these injuries resulted in annual societal costs of $51.8 million (in 2020 dollars) during the period 2017 through 2021. The average estimated societal cost per injury was about $14,000 for injuries treated in physician's offices, clinics, and other non-hospital settings; about $24,000 for injuries that were treated and released from EDs; and about $175,000 for injuries that required admission to the hospital for treatment. Medical costs and work losses (including work losses of caregivers) accounted for about 43 percent of these injury cost estimates, and the less tangible costs of injury associated with pain and suffering accounted for about 57 percent of the estimated injury costs.

In addition to the magnet cases upon which Table 8 was based, for which identifying information was reported (*i.e.,* magnets from magnet sets, magnet toys, or jewelry), there were also 403 NEISS cases during 2017 through 2021 (representing about 1,873 ED-treated injuries annually), in which the magnet type was classified as ''unidentified.'' These cases included narratives that mentioned that at least one magnet was ingested but presented insufficient information to classify the magnet product type. CPSC's analysis of the data, the trends in NEISS, CPSRMS, and poison center-reported,[24] magnet-related incidents relative to the vacated 2014 rule on magnet sets, support the conclusion that the ''unidentified'' magnet products generally involved magnets considered within scope of the rule; that is, intended for subject magnet product uses. Based on ICM estimates for all magnet products involved in ingestion injuries, including unidentified, average annual societal costs for 2017–2021 were $167.9 million. Because CPSC does not know precisely how many of these products would fall within the scope of this rule, CPSC conservatively has not included them in the primary benefit analysis summarized above. Instead, CPSC includes the benefits from unidentified magnet products in this final rule's sensitivity analysis to illustrate the theoretical upper bounds of benefits from this rule.

[23] W. Kip Viscusi (1988), *The determinants of the disposition of product liability cases: Systematic compensation or capricious awards?* International Review of Law and Economics, 8, 203–220; Gregory B. Rodgers (1993), *Estimating jury compensation for pain and suffering in product liability cases involving nonfatal personal injury,* Journal of Forensic Economics 6(3), 251–262; and Mark A. Cohen and Ted R. Miller (2003), ''*Willingness to award*'' *nonmonetary damages and implied value of life from jury awards,* International Journal of Law and Economics, 23, 165–184.

[24] As discussed in the NPR, annual national poison center magnet exposure calls increased by 344 percent from 281 per year (2012–2017) to 1,249 per year (2018–2019). Considering incidents dating back to 2008 (5,738 total), the incidents from 2018 and 2019, alone, accounted for 39 percent of the magnet incidents since 2008. These researchers drew conclusions similar to CPSC's, asserting that significant increases in magnet injuries correspond to periods in which high-powered magnet sets were allowed to be sold. 87 FR 1274.

TABLE 8—ESTIMATED AVERAGE ANNUAL MEDICALLY TREATED INJURIES AND ASSOCIATED SOCIETAL COSTS FOR INGESTIONS OF PRODUCTS CATEGORIZED AS MAGNET SETS, MAGNET TOYS, AND JEWELRY, INCLUDING THOSE FOR UNIDENTIFIED MAGNETS FOR 2017 THROUGH 2021

Injury disposition	Estimated No.	Estimated societal costs ($ millions) *
Doctor/Clinic	185	$2.6
Treated and Released from Hospital ED	320	7.5
Admitted to Hospital through ED (NEISS)	†161	28.1
Direct Hospital Admissions, Bypassing	78	13.6
Total Medically Attended Injuries	743	51.8

* In 2020 dollars.
† This estimate may not be reliable because of the small number of cases on which it is based.

B. Benefits of the Rule

The benefits of the rule account for the reduction in the risk of injury from magnet ingestions and the resulting value of the societal costs of the injuries that the rule would prevent. In addition to the injuries reflected in the analysis above, staff is aware of four fatalities in the United States resulting from magnet ingestions, excluding one death involving a toy subject to ASTM F963.[25] Given that nearly all incidents result in injuries as opposed to deaths, CPSC focuses its benefits assessment on the mitigation of injuries. However, CPSC does include the mitigation of deaths in the benefits assessment in a sensitivity analysis in this regulatory evaluation.

The annual expected benefits of the rule, on a per-product basis, depend on the exposure to risk associated with subject magnet products, as well as the estimated societal costs described in Table 8, above. Although subject magnet products may retain their magnetism for many years, it is likely that some are discarded well before that time. Thus, the actual expected product life of subject magnet products is uncertain; this analysis presents a range of potential benefit estimates, per subject magnet product, under an assumed product life of 1.5, 2, and 3 years. Table 9 presents benefit estimates under the alternative product life assumptions (line (b)).

TABLE 9—PRESENT VALUE OF SOCIETAL COSTS PER SUBJECT MAGNET PRODUCT IN USE (OR GROSS BENEFITS OF A RULE), FOR THREE EXPECTED PRODUCT LIVES FROM 2017 THROUGH 2021

(a) Aggregate Annual Societal Costs (millions $)	$51.8	$51.8	$51.8
(b) Expected Useful Product Life (years)	1.5	2	3
(c) Magnet Products in Use, Average Annual	515,000	626,000	818,000
(d) Annual Societal Costs per Subject Magnet Product [(a) ÷ (c)]	$101	$83	$63
(e) Present Value of Societal Costs, per Subject Magnet Product[26] (*3% Discount Rate*)	$150	$162	$180
(f) Present Value of Societal Costs, per Subject Magnet Product (*7% Discount Rate*)	$144	$154	$167

Line c presents the average annual estimated number of subject magnet products in use during the period 2017 through 2021, based on producer-reported annual magnet set sales collected by CPSC's Office of Compliance and Field Operations up through mid-2012. The estimate also includes assumptions of annual sales of all subject magnet products through 2021 (including an assumption of 500,000 units per year for 2017–2021 as explained below), an expected product life of 1.5, 2, and 3 years (line b), and the application of the CPSC's Product Population Model, a statistical model that projects the number of products in use, given estimates of annual product sales and product failure rates. In the NPR, the Commission requested comments with information on annual sales and expected product life of magnet products subject to the proposed rule. No commenter provided specific sales or product life information, however.

The annual estimated societal costs per subject magnet product in use (line d of Table 2) are presented as the quotient of the annual societal costs (line a), and the estimated average number of products in use (line c). Based on these estimates, and an assumed average product life ranging from 1.5 to 3 years, the present value of societal costs, per subject magnet product, ranges from about $150 to about $180, using a 3 percent discount rate (line e), or from about $144 to $167, using a 7 percent discount rate (line f).

Because the rule would prohibit the sale of the subject magnet products with one or more loose or separable hazardous magnets, the approximation of benefits would be equal to the present value of societal costs presented in lines (e) and (f) and would range from about $144 (with a 1.5-year product life and a 7 percent discount rate) to $180 (with a 3-year product life and a 3 percent discount rate) per product.

C. Costs Associated With the Rule

This section discusses the costs associated with the rule, which include costs to consumers and to manufacturers/importers of subject magnet products. Both consumers and producers benefit from the production and sale of consumer products. The consuming public obtains the use value or utility associated with the consumption of products; producers obtain income and profits from the production and sale of products. Consequently, the costs of requiring that

[25] Staff is aware of seven deaths that occurred in the period November 24, 2005, to January 5, 2021, involving ingestion of hazardous magnets. Two of these deaths occurred abroad, and one of the five U.S. ingestion cases occurred before 2010, and that case involved a children's toy subject to ASTM F963.

[26] These calculations are based on estimated product survival by month after purchase, which is multiplied by monthly societal costs per unit. The streams of expected societal costs are then discounted to their present values (at 3% and 7%).

subject magnet products comply with the rule would consist of: (1) the lost use value experienced by consumers who would no longer be able to purchase subject magnet products that do not meet the standard (at any price) and who cannot find an appropriate substitute; and (2) the lost income and profits to firms that could not produce, import, or sell noncomplying products in the future.

Both consumer and producer surplus depend on product sales, among other things. The unit sales of subject magnet products are not known. This analysis accordingly considers possible costs associated with several plausible estimates of sales, ranging from about 100,000 to 1 million subject magnet products per year. The lower bound of 100,000 units [27] and upper bound of 1 million units are based on information from reports by firms to CPSC's Office of Compliance and Field Operations.[28] For purposes of exposition, CPSC uses an assumption of annual sales of 500,000 units per year, in the midpoint of the range of estimates. CPSC uses a wide range, not because of the appropriate endpoints of that range are precisely determined, but instead to demonstrate that, even at the extremes of a reasonable range, the overall result of preliminary regulatory analysis is that the rule's benefits outweigh the costs.

1. Costs to Consumers

The primary cost associated with the rule is lost utility to consumers. Subject magnet products may be used for a variety of purposes, including amusement and jewelry. CPSC has received comments regarding subject magnet products, including magnet sets, citing usefulness of the magnets as a manipulative or construction item for entertainment, such as puzzle working, sculpture building, or stress relief. Others have claimed that the magnets can have beneficial artistic, educational, social, innovative, and therapeutic values. In addition to consumer uses promoted by sellers, and uses reported in comments by consumers, use of magnets as jewelry from magnet sets is a common hazard pattern. The individual magnets might also have other uses, apart from their intended uses (*e.g.,* using magnets from a magnet set to post items on a refrigerator door). Thus, CPSC concludes that consumers derive utility from magnet sets and other subject magnet products within the scope of the rule from a wide variety of uses, even those not promoted by sellers.

CPSC cannot estimate with any precision the use value that consumers receive from these products. However, we can describe use value conceptually. In general, use value includes the amount of: (1) consumer expenditures for the product, plus (2) what is called ''consumer surplus.'' Assuming annual sales of about 500,000 subject magnet products as explained above, and an average retail price of about $20 (based on price data for magnet sets), consumer expenditures would amount to about $10 million annually. These expenditures represent the minimum value that consumers would expect to get from these products. It is represented by the area of the rectangle OBDE in the standard supply and demand graph below (Figure 3), where B equals $20, and E equals 500,000 units.

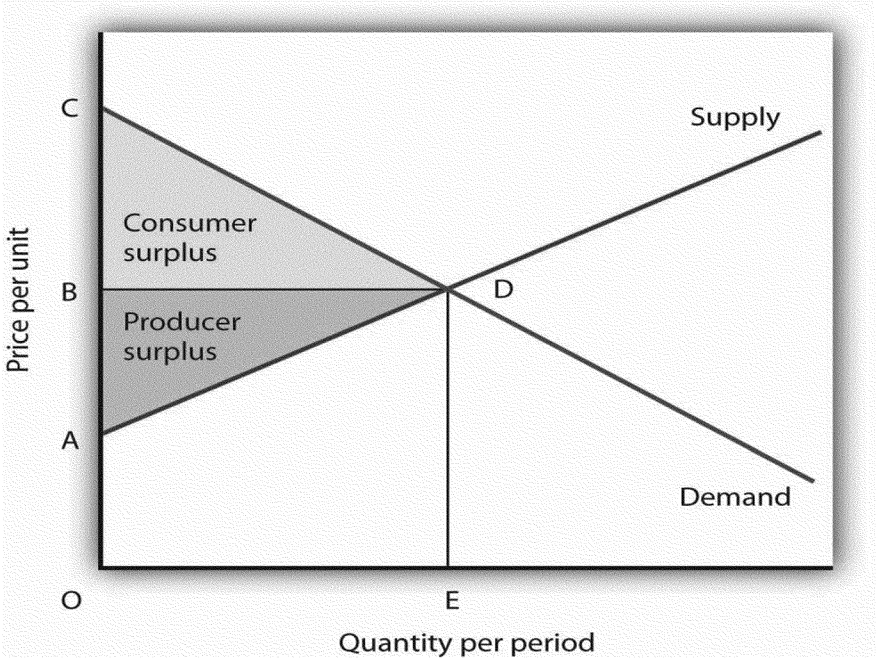

Figure 3: Supply and demand graph illustrating the concepts of consumer and producer surplus.

[27] The lower bound estimate in the NPR was 250,000. 87 FR 1303. Since the NPR, a leading seller was subject to a recall. To account for this change, an adjustment to 100,000 was made.

[28] For the 2014 magnet sets rule CPSC assessed that 2.7 million magnet sets were sold to U.S. consumers from 2009 through mid-2012, or an average of about 800,000 annually. Since 2012, administrative actions and recalls have set the market in a state of flux and sales have likely decreased. To capture this change in lieu of industry data (of which none was subsequently provided by commenters during the NPR comment period) CPSC made an adjustment from 800,000 to 500,000 magnets sets sold on an annual basis. CPSC then added a range of −50% (250,000) and +100% (1 million) to represent the theoretical extremes. More weight was given to the upside to account for CPSC's assessment that a rebound back to 2012 sales level and beyond was likelier than the same magnitude of decline.

In Figure 3, consumer surplus is given by the area of the triangle BCD under the graph's demand function and represents the difference between the market-clearing price and the maximum amount consumers would have been willing to pay for the product. This consumer surplus will vary for individual consumers, but it represents a benefit to consumers over and above what they paid. For example, tickets to a concert might sell for $100 each, but some consumers who buy them for $100 would have been willing to pay $150 per ticket. Those consumers paid $100 and received benefits that they value at $150, thereby receiving a consumer surplus of $50.

In general, the use value of the subject magnet products obtained by consumers is represented by the area of the trapezoid OCDE in Figure 3. However, the prospective loss in use value associated with the rule would amount to, at most, the area of the triangle representing the consumer surplus. This is because consumers would no longer be able to obtain utility from the products that do not comply with the rule, but they would have the $10 million (represented by the rectangle OBDE) that they would have spent on noncomplying subject magnet products in the absence of a rule. The net loss in consumer surplus associated with the rule would be reduced by consumers' ability to purchase replacement products that comply with the rule and provide the same utility, or by their ability to purchase other products that provide use-value.

CPSC does not have, and no commenter offered, information regarding aggregate consumer surplus, or, by extension, the amount of utility that would be lost as a result of the rule. However, if, for example, consumers who purchased subject magnet products that do not comply with the rule at an average price of $20, would have been willing to spend, on average, $35 to $45 per product (*i.e.,* an additional $15 to $25 per product), then the lost utility would amount to about $7.5 million (*i.e.,* [$35 − $20] × 500,000 units annually) to $12.5 million (*i.e.,* [$45 − $20] × 500,000 units annually) annually.

Finally, we note that the loss in consumer surplus just described represents the maximum loss of consumer utility from the rule. This is because consumers are likely to gain some amount of consumer surplus from products that are purchased as an alternative to those subject magnet products that would no longer be available because of the rule. If, for example, consumers purchased close substitutes (*e.g.,* products that are almost as satisfying and similarly priced) for the subject magnet products that do not meet the standard, the overall loss in consumer surplus (and, hence, the costs of the rule) would tend to be small. On the other hand, if consumers do not purchase close substitutes, the costs of the rule would be higher.

2. Costs to Manufacturers/Importers

The lost benefits to firms that could result from the rule are measured by a loss in what is called producer surplus. Producer surplus is a profit measure that is analogous to consumer surplus. Whereas consumer surplus is a measure of benefits received by individuals who consume products, net of the cost of purchasing the products, producer surplus is a measure of the benefits accruing to firms that produce and sell products, net of the costs of producing them. More formally, ''producer surplus'' is defined as the total revenue (TR) of firms selling the magnets, less the total variable costs (TVC) of production. Variable costs are costs that vary with the level of output and usually include expenditures for raw materials, wages, distribution of the product, and the like.

In Figure 3, total revenue is given by the area OBDE, which is simply the product of sales and price. The total variable costs of production are given by the area under the supply function, OADE. Consequently, producer surplus is given by the triangle ABD, which is the area under the market clearing price and above the supply function. Note that this represents the maximum loss to producers; if suppliers produce and sell alternatives that are similar to the subject magnet products, the lost producer surplus could be less.

Following our example above, assuming sales of the subject magnet products average 500,000 units annually, with an average retail price of $20 per product total industry revenues have averaged about $10 million annually (*i.e.,* 500,000 units × $20 per product). Information provided by magnet set sellers to CPSC's Office of Compliance and Field Operations suggested that the average import cost of magnet sets to U.S. importers, a major variable cost, may amount to about $10 per set, or an average of about $5 million annually (*i.e.,* 500,000 sets × $10 import cost per set). Apart from the import costs of the magnets, the variable costs of production are probably relatively small. Because magnet sets are often packaged and shipped from China and sometimes sent directly to the importer's point of sale, U.S. labor costs may be low; and because the magnets sets are small, non-perishable, and not particularly valuable, storage costs likewise are low. For example, assuming the variable costs of production account for about half of the difference between total revenues ($10 million) and import costs ($5 million), producer surplus would amount to about $2.5 million (*i.e.,* ($10 million − $5 million) ÷ 2) annually. At most, the lost producer surplus would amount to about $5 million annually, if there were no variable costs other than the costs of importing the magnets (*i.e.,* total revenue of $10 million for 500,000 units annually, less the import costs of about $5 million). Although this information is specifically related to magnet sets, a similar relationship could apply to other subject magnet products affected by the rule.

Manufacturers and importers might be able to respond to the rule by measures such as marketing or incorporating magnets that comply with the rule or increased marketing of products that do not have loose or separable magnets. Such measures would offset losses in producer surplus resulting from firms' inability to continue marketing noncomplying magnet products.

As noted above, actual sales levels of non-complying subject magnet products are not known with certainty. Additionally, CPSC cannot estimate precisely either consumer surplus or producer surplus; nor were any such data provided in response to the NPR's request for such information. Table 10 below provides rough estimates of the possible costs of the rule for various future hypothetical sales levels ranging from 100,000 to 1 million products annually. The cost estimates are based on the assumptions described above and are made for illustrative purposes. Nevertheless, because the range of sales is wide, and the range provide here is likely to include the actual annual sales levels, it is reasonable to assume that the costs of the rule are within the range from approximately $2 million to $3.5 million (if sales amount to about 100,000 products annually), to about $20 million to $35 million (if sales amount to about 1 million products annually). As noted above, these costs could be offset by increased marketing of products that incorporate complying magnets or by incorporating products that do not include loose or separable magnets.

TABLE 10—POSSIBLE COSTS OF THE RULE, FOR VARIOUS LEVELS OF NONCOMPLYING SUBJECT MAGNET PRODUCT SALES

Magnet product sales (annually)	Consumer surplus (millions $)	Producer surplus (millions $)	Total costs (millions $)
100,000	$1.5 to $2.5	$0.5 to $1	$2 to $3.5
500,000	$7.5 to $12.5	$2.5 to $5	$10 to $17.5
750,000	$11.25 to $18.75	$3.75 to $7.5	$15 to $26.25
1,000,000	$15 to $25	$5 to $10	$20 to $35

In addition to lost producer surplus, manufacturers and importers of subject magnet products that comply with the rule would incur some additional costs to certify that their products meet the requirements of Section 14 of the CPSA. The certification must be based on a test of each product model or a reasonable testing program. The costs of the testing might be minimal, especially for manufacturers that currently have product testing done for products subject to the requirements in ASTM F963. Importers may also rely upon testing completed by other parties, such as their foreign suppliers, if those tests provide sufficient information for the manufacturers or importers to certify that the magnets in their products comply with the rule. As noted above, for subject magnet products that are children's products, such as children's jewelry, the certification must be based on testing by an accredited third party conformity assessment body, at somewhat higher costs.

D. Sensitivity Analysis

The foregoing base-case analysis of potential costs and benefits of the rule presents estimated costs for a wide range of prospective sales in the absence of a rule, 100,000 to 1 million units. Estimated potential benefits/societal costs of injuries per unit are based on expected useful product life of 18 months, 2 years, and 3 years. The present value of expected injury costs occurring over the lives of products are discounted at 3 percent and 7 percent. Thus, the base analysis incorporates sensitivity analysis for some important parameters and assumptions. Staff conducted additional sensitivity analysis to evaluate the impact of variations in some other important parameters. Alternative inputs for the sensitivity analysis included:

- Assuming lower and higher unit sales in recent years than the base case of 500,000 units for 2017 through 2022;
- Assuming 25 percent, 50 percent, and 100 percent of estimated injury costs involving unidentified magnet products would be addressed by the rule, and;
- Including an estimate of societal costs of fatal ingestion injuries in the potential benefits calculation.

Staff's sensitivity analysis shows that per-unit injury costs being addressed by the rule vary greatly for the wide range of assumed annual unit sales. However, for all scenarios examined, the potential benefits well exceed the estimated costs of the rule, in the form of lost consumer surplus and lost producer surplus, estimated to range generally from $20 to $35 per subject magnet product. In addition, the sensitivity analysis shows that including even a relatively small portion of NEISS cases involving unidentified magnet products to the base case, which is limited to in-scope identified products, substantially increase the estimated gross benefits of the rule.

If 100 percent of unidentified magnet injuries were within the scope of the draft final rule, average estimated annual magnet ingestion societal costs would be an additional $167.9 million. Including these societal costs with those estimated for in-scope identified subject magnet products ($51.8 million) results in average annual societal costs of magnet ingestion injuries of $219.7 million for the period 2017 through 2021, an increase of 324 percent. Including these cases as addressable societal costs would lead to a corresponding increase the estimated gross benefits of the rule.

In estimating the benefits of the rule associated with reduced mortality, we assume that the standard will avoid two to four deaths over a 10-year period, the average annual statistical value of the rule's life-saving could be about $2.1 million to $4.2 million. Adding these potential societal costs to those associated with nonfatal magnet ingestions would increase the expected gross benefits of the proposed standard by about 4 percent to 7 percent over the base estimate.

E. Summary of the Final Regulatory Analysis Results

Estimated aggregate annual societal costs from ingestion injuries involving subject magnet products for 2017 through 2021 total $51.8 million. Assumptions about annual product sales and expected product life of 1.5, 2, and 3 years yields estimated numbers of products in use during those years ranging from 515,000 to 818,000. The estimated present value of societal costs per subject magnet product (at a 3% discount rate) ranges from $150 per unit (at a 1.5-year expected life) to $180 per unit (at a 3-year expected life). On the cost side, estimates of consumer and producer surplus were uncertain, but they might range from about $2–$3.5 million to about $20–$35 million, based on unit sales ranging from 100,000 to 1 million.

Based on annual unit sales of noncomplying subject magnet products of 500,000, expected aggregate benefits total $51.8 million annually, while costs (lost consumer and producer surplus) range from $10 million to $17.5 million annually. Thus, although both the benefits and costs of the rule are uncertain, based on a range of assumptions, our estimates suggest that the potential benefits of the rule are projected to exceed the potential costs. These estimated benefits exclude cases involving in-scope magnet products that have not been identified as amusement/jewelry products. As discussed, the sensitivity analysis shows that including NEISS cases involving unidentified magnet products to the base case substantially increases the estimated gross benefits of the rule.

Table 11, below, shows a comparison of the estimated benefits and costs of the rule.

TABLE 11—COMPARISON OF ESTIMATED BENEFITS AND COSTS OF THE RULE

Annual magnet product sales [1]	Benefits (millions $)		Total costs from lost consumer & producer surplus (millions $)
	Identified as amusement and/or jewelry	Including 100% of unidentified magnet incidents	
500,000	$51.8	$167.9	$10 to $17.5.

IX. Alternatives to the Rule

CPSC considered several alternatives to reduce the risk of injuries and death associated with ingestion of subject magnet products. However, as discussed below, CPSC does not consider any of these alternatives capable of adequately reducing the risk of injury and death.

A. Rely on Voluntary Standards

One alternative to the rule is to take no regulatory action and, instead, rely on voluntary safety standards to address the magnet ingestion hazard. As discussed above, there are four ASTM standards and two international standards that address the magnet ingestion hazard, covering children's toys, jewelry, and magnet sets. Relying on these standards would eliminate the costs associated with the rule because it would not mandate compliance.

However, there are considerable limitations and unknowns associated with this alternative. The shortcomings of the standards are discussed in detail in section V. in the preamble. CPSC does not consider the existing voluntary standards capable of adequately reducing the magnet ingestion hazard, either individually or collectively, because their limited scope fails to cover all of the subject magnet products associated with injuries and deaths, and/or the voluntary standards do not impose size and strength limits on subject magnet products with loose or separable magnets. In addition, CPSC does not know the level of compliance with ASTM F3458, ASTM F2999, or ASTM F2923; if the rate of compliance is low, these would not be an effective way to address the hazard, even if the requirements in these standards were adequate. Finally, waiting for ASTM to revise its standards to adequately address the hazard would delay the safety benefits of the final rule. For these reasons, the Commission did not select this alternative.

B. Alternative Performance Requirements

Another alternative to the rule is to adopt a mandatory standard with less stringent requirements than the rule, such as a higher flux index limit, or different requirements for certain shapes and sizes of magnets. This may reduce the costs associated with the rule, by allowing firms to market and permit consumers to use a wider variety of products than under the rule. The reduction in costs would depend on the specific requirements adopted. As discussed in section V of the preamble, no other performance requirements in the currently applicable voluntary standards, aside from flux method test requirements in ASTM F963 Toy Standard, have been shown to adequately address the ingestion hazards associated with subject magnet products. Accordingly, on the record before us, choosing alternative performance requirements would reduce the safety benefits of the rule. If the alternative performance requirements reduced costs by allowing more products to remain on the market, it would also leave more hazardous products on the market, thereby decreasing the safety benefits.

The rule mandates a performance requirement that duplicates the ASTM F963 Toy Standard's approach to addressing magnet internal interaction hazard in children, which has been shown to be effective. The current ASTM test to determine flux index is a method that has been used by test labs to determine compliance with ASTM F963 and is a method that is also used by other domestic and international standards for identifying hazardous magnets. Importers may also rely upon testing completed by other parties, such as their foreign suppliers, if those tests provide sufficient information for the manufacturers or importers to certify that the magnets in their products comply with the rule. Firms that magnetize the products would have equipment to measure the magnetic force of their products; and many of these firms should be familiar with the test methodology or have access to testing firms that can perform the tests. The increased costs related to testing therefore should be relatively minor, especially for small manufacturers that currently have product testing done for products subject to the requirements in ASTM F963–17, which is mandated by 16 CFR part 1250. For these reasons, the Commission did not select alternative performance requirements.

C. Require Safety Messaging

Instead of performance requirements, the Commission could require safety messaging on products to address the magnet ingestion hazard, such as through labeling and instructional literature. This alternative would reduce the costs associated with the rule, because it would allow firms to continue to sell subject magnet products with loose or separable hazardous magnets and the costs of providing warnings and instructional information likely would be small.

However, CPSC does not consider this alternative effective for adequately reducing the risk of injury and death associated with magnet ingestions, as discussed in section V of the preamble. To summarize, the effectiveness of warnings depends on convincing consumers to avoid the hazard, and there are numerous reasons consumers may disregard warnings for these products. Caregivers do not expect older children and teens to ingest inedible objects; the magnet ingestion hazard is not readily apparent; caregivers and children underappreciate the likelihood and severity of the hazard; magnets are often ingested accidentally; and children and teens commonly access magnets without their packaging.

Warning information on labels and instructional literature, as well as public outreach efforts to inform consumers of the hazard, have been used for many years to try to address the magnet ingestion hazard. However, these efforts have not addressed the magnet ingestion hazard successfully, as evidenced by the increase in magnet ingestion incidents in recent years, including magnet ingestion incidents involving products with clear warnings. For all these reasons, the Commission did not select this alternative.

D. Require Special Packaging

Another alternative is for the Commission to require special packaging for subject magnet products that contain hazardous magnets to limit children's access to the products. Such packaging could, for example, help consumers determine if all magnets have been returned to the package and include child-resistant features. Although this alternative would create some costs associated with packaging, those costs likely would be lower than the cost of the rule because they would allow the subject magnets to remain unchanged. Staff estimates that the cost of safety packaging may amount to about $1 per magnet product, depending on the requirements and features of the packaging.

CPSC does not consider this alternative effective for adequately reducing the risk of injury and death associated with magnet ingestions. To summarize the detailed discussion in section V. of the preamble, consumers are unlikely to repackage all magnets after each use. Even if consumers return all magnets to a package after each use, safety features to prevent easy access to the contents of the package would address only a minority of the vulnerable population. Safety packaging is generally intended to restrict children under 5 years old from accessing package contents. Older children and teens are likely to have the cognitive and motor skills necessary to access products in special packaging. This is problematic because incident data show that older children and teens make up the majority of magnet ingestion victims. In addition, many incidents involve children and teens acquiring magnets without the product packaging, such as from friends, at school, or loose in the environment. For these reasons, the Commission did not select this alternative.

E. Require Aversive Agents

Instead of the size and strength requirements in the rule, the Commission could require manufacturers to coat loose or separable hazardous magnets in subject magnet products with aversive agents, such foul odors or bitterants. Aversive agents may dissuade some children and teens from placing hazardous magnets in their mouths. This alternative would reduce the costs associated with the rule, because it would allow firms to continue to sell subject magnet products with loose or separable hazardous magnets, would allow consumers to continue to use them, and the costs of such coatings likely would be small.

CPSC does not consider this alternative effective for adequately reducing the risk of injury and death associated with magnet ingestions. To summarize the detailed discussion in section V. of the preamble, real-world investigations have not demonstrated that bitterants are effective at preventing ingestions. Bitterants do not deter initial ingestion because the user has not yet tasted the bitterant; this makes bitterants ineffective at protecting users from harms that can result from a single ingestion. Incident reports indicate that ingesting a single magnet (and ferromagnetic object), or multiple magnets at once or in quick succession, can result in serious injuries. In addition, once a magnet is in a person's mouth, they may not be able to prevent ingestion, even if deterred by a bitterant. Bitterants would be particularly ineffective for accidental ingestions, where victims do not intentionally place magnets in their mouth; incident data indicate that some magnet ingestions involve unintentional ingestions, particularly for older victims. Moreover, children frequently ingest unpalatable substances, such as gasoline, cleaners, and ammonia, indicating that unpleasant taste or odor, alone, is not sufficient to deter children from ingesting items or substances. Finally, some portion of the population, possibly as high as 30 percent, may be insensitive to certain bitterants. For these reasons, the Commission did not select this alternative.

F. Later Effective Date

Another alternative is to provide a later effective date for a final rule. In the NPR, the Commission proposed a final rule effective 30 days after it is published. A later effective date would reduce the impact of the rule on manufacturers and importers, by providing additional time for firms to develop products that comply with the rule or modify products to comply with the rule. However, delaying the effective date would delay the safety benefits of the rule as well. Additionally, one commenter, Retrospective Goods, LLC, stated that 30 days is adequate for manufacturers and importers to come into compliance with the rule. As such, the Commission did not select this alternative.

X. Paperwork Reduction Act

This rule does not contain a ''collection of information'' as that term is used in the Paperwork Reduction Act (44 U.S.C. 3501–3521). Therefore, the rule need not be submitted to the Office of Management and Budget in accordance with 44 U.S.C. 3507(d) and implementing regulations codified at 5 CFR 1320.11.[29]

XI. Final Regulatory Flexibility Analysis

The Regulatory Flexibility Act (RFA) requires that agencies review rules for their potential economic impact on small entities, including small businesses. Section 604 of the RFA calls for agencies to prepare a final regulatory flexibility analysis, describing the impact of the rule on small entities and identifying impact-reducing alternatives. Further details about the initial regulatory flexibility analysis are available in Tab F of Staff's NPR briefing package, as updated in Tab F of Staff's Final Rule briefing package. Additional information about costs associated with the rule are available in Tab E of Staff's NPR briefing package, as updated in Tab E of Staff's Final Rule briefing package.

A. The Need for, and Objectives of, the Rule

The rule prohibits the sale or distribution in commerce of subject magnet products that do not meet the specific requirements described in section VII of this preamble. CPSC has received information, as described in section IV of this preamble, regarding the hazards posed by, and growing numbers of injuries with, hazardous magnets in consumer products. These interactions have led to serious injuries and deaths, typically by causing intestinal twisting (volvulus injuries), fistulae, and perforations. Many of these ingestions resulted in surgical removal of magnets and surgical repair of injuries, and others required non-surgical medical interventions, such as emergency endoscopies and colonoscopies.

The objective of the rule is to eliminate or reduce the risk of injury to consumers from the ingestion of one or more small, powerful magnets that comprise the subject magnet products, and thereby reduce the future incidence and cost to society of magnet ingestions.

B. Comments on the Initial Regulatory Flexibility Analysis

CPSC received comments from more than 700 parties in response to the NPR. The Commission's responses to comments that address issues that were mentioned in the IRFA are included in section VI.B. of the preamble. None of the comments resulted in changes to the

[29] There is an Office of Management and Budget control number, under the Paperwork Reduction Act, for collection of information regarding third party testing for children's products, addressed in 16 CFR part 1107.

regulatory analysis or regulatory flexibility analysis.

C. Comments From the Chief Counsel for Advocacy of the U.S. Small Business Administration

The U.S. Small Business Administration (SBA) did not file comments on the proposed rule.

D. Small Entities Subject to the Rule

The rule would affect firms or individuals who manufacture, import, and sell subject magnet products. All of the identified importers of magnet sets are small businesses under applicable SBA size standards, and we expect this is also true for manufacturers and importers of other subject magnet products, such as jewelry with loose/separable magnets.

As discussed in section III.B. of the preamble, reviews of the online market for magnet sets from 2018 to July 2021 by CPSC staff and IEc found that the leading internet marketplaces have high turnover rates for magnet set sellers and magnet set products offered on their sites. The most recent review in 2021 found that the great majority of sellers of magnet sets (in terms of distinct firms or individuals, if not unit sales) appeared to sell through their stores operated on the sites of other internet retailer platforms. The dominant business model for importers of magnet sets is expected to be direct sales to consumers using their own internet websites or other internet shopping sites. However, the rule could also affect some third party retailers of the products, whether selling them online or physically in ''brick & mortar'' stores, such as bookstores, gift shops, or stores that sell novelty items.

E. Projected Reporting, Recordkeeping, and Other Compliance Requirements

Section 14(a)(1) of the CPSA requires manufacturers, importers, or private labelers of a consumer product (that is not a children's product) subject to a consumer product safety rule to certify, based on a test of each product or a reasonable testing program, that the product complies with all rules, bans or standards applicable to the product. 15 U.S.C. 2063(a)(1). The rule specifies the procedure to use to determine whether a subject magnet product complies with those requirements. For products that manufacturers certify based on a test of each product or a reasonable testing program, manufacturers would issue a general certificate of conformity (GCC). Section 14(a)(2) of the CPSA, 15 U.S.C. 2063(a)(2), requires manufacturers, importers, or private labelers of any product subject to a children's product safety rule to submit sufficient samples of the children's product, or samples that are identical in all material respects to the product, to a CPSC-accepted, third party conformity body for testing. Based on passing test results from the CPSC-accepted, third party conformity body, the manufacturer, importer, or private labeler issues a Children's Product Certificate (CPC) indicating the children's product is compliant with the children's product safety rule. For example, in the case of subject magnet products that are children's products, such as children's jewelry, the CPC must be based on testing by a CPSC-accepted third party conformity assessment body. The CPC must be furnished to each distributor or retailer of the product and to the CPSC, if requested.

F. Steps Taken To Minimize Significant Impact on Small Entities

Small manufacturers/importers of subject magnet products would likely incur some additional costs to certify that their products meet the requirements of the rule, as required by Section 14 of the CPSA. The certification must be based on a test of each product or a reasonable testing program. CPSC is mandating a performance requirement that duplicates the ASTM F963 Toy Standard approach to addressing magnet internal interaction hazard in children. The current ASTM test to determine flux index is a method that has been used by test labs to determine compliance with the ASTM F963 and in other domestic and international standards for identifying hazardous magnets. The increased costs related to testing should be relatively minor, especially for manufacturers that currently have product testing done for products subject to the requirements in the ASTM F963. As noted above, for subject magnet products that are children's products other than toys, such as children's jewelry, the certification must be based on testing by an accredited third party conformity assessment body, at somewhat higher costs.

As discussed in section VIII of the preamble, the main impact on small businesses of a rule would be the lost income and profits to firms that could not produce, import, and sell noncomplying products in the future. The lost benefits to firms results from producer surplus is a measure of the total revenue of firms selling the magnets, less the total variable costs of production. As predominantly imported products, the variable costs for small businesses handling subject magnet products are mainly the import costs. The producer surplus for magnet sets could average about $5 to $10 per unit, based on an average retail price of $20. A similar relationship could apply to other subject magnet products affected by the rule, such as jewelry with separable magnets.

A few small firms whose businesses focus on sales of magnet products that would not comply with the rule, including some of the firms selling products on their own websites, would face relatively greater losses in producer surplus. These and other small businesses could respond to the rule by measures such as marketing or incorporating magnets that comply with the rule or increased marketing of products that do not have loose or separable magnets. Such measures could offset losses in producer surplus resulting from firms' inability to continue marketing noncomplying magnet products.

As discussed in the analysis above, all domestic firms that are expected to manufacture or import subject magnet products are small businesses. Therefore, an exemption for small manufacturers/importers is not possible, because all manufacturers/importers that would be subject to the rule are small.

G. Alternatives to the Rule

CPSC considered several other alternatives that might reduce the impact of a rule on small businesses, including promulgating an alternative set of requirements for the flux index or size of the magnets; requiring safer packaging; requiring warnings on the packaging and promotional materials; requiring aversive agents on magnets; relying on voluntary standards; delaying the effective date; and taking no action. Each of these alternatives is addressed in section IX of the preamble. All of these alternatives would reduce the expected impact of the rule on small business. However, as discussed in section IX of this preamble, these alternatives would not achieve the same injury reductions as the rule, and their adoption would not result in a rule that adequately addresses the risk of serious injury or death caused by ingestions of magnets from the subject magnet products.

XII. Incorporation by Reference

The rule incorporates by reference ASTM F963–17. The Office of the Federal Register (OFR) has regulations regarding incorporation by reference. 1 CFR part 51. Under these regulations, in the preamble, 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 ASTM F963–17 that the Commission incorporates by reference in section VII of the preamble.

The standard is reasonably available to interested parties and interested parties can purchase a copy of ASTM F963–17 from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959 USA; telephone: (610) 832–9585; *www.astm.org.* Once this rule takes effect, a read-only copy of the standard will be available for viewing at no charge on the ASTM website at: *www.astm.org/READINGLIBRARY/.* 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.*

XIII. Testing, Certification, and Notice of Requirements

Section 14(a) of the CPSA includes requirements for certifying that children's products and non-children's products comply with applicable mandatory standards. 15 U.S.C. 2063(a). Section 14(a)(1) addresses required certifications for non-children's products, and sections 14(a)(2) and (a)(3) address 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.'' *Id.* 2052(a)(2). The following factors are relevant when determining whether a product is a children's product:

- manufacturer statements about the intended use of the product, including a label on the product if such statement is reasonable;
- whether the product is represented in its packaging, display, promotion, or advertising as appropriate for use by children 12 years of age or younger;
- whether the product is commonly recognized by consumers as being intended for use by a child 12 years of age or younger; and
- the Age Determination Guidelines issued by CPSC staff in September 2002, and any successor to such guidelines.

Id. ''For use'' by children 12 years and younger generally means that children will interact physically with the product based on reasonably foreseeable use. 16 CFR 1200.2(a)(2). Children's products may be decorated or embellished with a childish theme, be sized for children, or be marketed to appeal primarily to children. *Id.* 1200.2(d)(1).

As discussed in section III of the preamble, some subject magnet products (*e.g.,* children's jewelry) are children's products and some are not. Therefore, this rule requires subject magnet products that are not children's products to meet the certification requirements under section 14(a)(1) of the CPSA and requires subject magnet products that are children's products to meet the certification requirements under sections 14(a)(2) and (a)(3) of the CPSA. The Commission's requirements for certificates of compliance are codified in 16 CFR part 1110.

Non-Children's Products. Section 14(a)(1) of the CPSA requires every manufacturer (which includes importers [30]) of a non-children's product that is subject to a consumer product safety rule under the CPSA or a similar rule, ban, standard, or regulation under any other law enforced by the Commission to certify that the product complies with all applicable CPSC requirements. 15 U.S.C. 2063(a)(1).

Children's Products. Section 14(a)(2) of the CPSA requires the manufacturer or private labeler of a children's product that is subject to a children's product safety rule to certify, based on testing by a third-party conformity assessment body (*i.e.,* testing laboratory), that the product complies with the applicable children's product safety rule. *Id.* 2063(a)(2). Section 14(a) also requires the Commission to publish an NOR for a testing laboratory to obtain accreditation to assess conformity with a children's product safety rule. *Id.* 2063(a)(3)(A). Because some subject magnet products are children's products, the rule is a children's product safety rule, as applied to those products.

The Commission published a final rule, codified at 16 CFR part 1112, entitled *Requirements Pertaining to Third Party Conformity Assessment Bodies,* which established requirements and criteria concerning testing laboratories. 78 FR 15836 (Mar. 12, 2013). Part 1112 includes procedures for CPSC to accept a testing laboratory's accreditation and lists the children's product safety rules for which CPSC has published NORs. When CPSC issues a new NOR, it must amend part 1112 to include that NOR. Accordingly, in this rule, the Commission amends part 1112 to add this standard for magnets to the list of children's product safety rules for which CPSC has issued an NOR.

Testing laboratories that apply for CPSC acceptance to test subject magnet products that are children's products for compliance with the new rule must meet the requirements in part 1112. When a laboratory meets the requirements of a CPSC-accepted, third party conformity assessment body, the laboratory can apply to CPSC to include 16 CFR part 1262, *Safety Standard for Magnets,* in the laboratory's scope of accreditation on the CPSC website at: *www.cpsc.gov/labsearch.*

XIV. Environmental Considerations

The Commission's regulations address when 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 1500–1508) and do not require an EA or EIS. 16 CFR 1021.5(c). Among those actions are rules that provide performance standards for products. *Id.* 1021.5(c)(1). Because this rule would create performance requirements for subject magnet products, the rule falls within the categorical exclusion, and thus, no EA or EIS is required.

XV. Preemption

Executive Order (E.O.) 12988, *Civil Justice Reform* (Feb. 5, 1996), directs agencies to specify the preemptive effect of a rule in the regulation. 61 FR 4729 (Feb. 7, 1996), section 3(b)(2)(A). The regulation for subject magnet products is promulgated under the authority of the CPSA. 15 U.S.C. 2051–2089. Section 26 of the CPSA provides that ''whenever a consumer product safety standard under this Act is in effect and applies to a risk of injury associated with a consumer product, no State or political subdivision of a State shall have any authority either to establish or to continue in effect any provision of a safety standard or regulation which prescribes any requirements as to the performance, composition, contents, design, finish, construction, packaging or labeling of such product which are designed to deal with the same risk of injury associated with such consumer product, unless such requirements are identical to the requirements of the Federal Standard.'' 15 U.S.C. 2075(a). States or political subdivisions of a state may, however, apply for an exemption

[30] The CPSA defines a ''manufacturer'' as ''any person who manufactures or imports a consumer product.'' 15 U.S.C. 2052(a)(11).

from preemption regarding a consumer product safety standard, and the Commission may issue a rule granting the exemption if it finds that the state or local standard: (1) provides a significantly higher degree of protection from the risk of injury or illness than the CPSA standard, and (2) does not unduly burden interstate commerce. *Id.* 2075(c).

Thus, absent grant of an exemption, the requirements of part 1262 preempt non-identical state or local requirements for subject magnet products designed to protect against the same risk of magnet ingestion.

XVI. Congressional Review Act

The Congressional Review Act (CRA; 5 U.S.C. 801–808) states that before a rule may take effect, the agency issuing the rule must submit the rule, and certain related information, to each House of Congress and the Comptroller General. 5 U.S.C. 801(a)(1). The CRA submission must indicate whether the rule is a ''major rule.'' The CRA states that the Office of Information and Regulatory Affairs determines whether a rule qualifies as a ''major rule.''

Pursuant to the CRA, this rule does not qualify as a ''major rule,'' as defined in 5 U.S.C. 804(2). To comply with the CRA, CPSC will submit the required information to each House of Congress and the Comptroller General.

XVII. Effective Date

The CPSA requires that consumer product safety rules promulgated under sections 7 and 9 shall take effect at least 30 days after the date the rule is promulgated, but not later than 180 days after the date the rule is promulgated unless the Commission finds, for good cause shown, that an earlier or later effective date is in the public interest and, in the case of a later effective date, publishes the reasons for that finding. 15 U.S.C. 2058(g)(1). The NPR proposed a 30-day effective date after the rule is published in the **Federal Register**, and no comments were received in opposition to the effective date.[31] Accordingly, the rule will go into effect October 21, 2022 and will apply to all non-exempt subject magnet products manufactured after that date.

Under section 14(a)(3), 15 U.S.C. 2063(a)(3), the testing and certificate requirements apply to any children's product manufactured more than 90 days after the Commission has established and published notice of the requirements for accreditation of third-party conformity assessment bodies to assess conformity with a children's product safety rule to which such children's product is submitted. Accordingly, although the effective date of the rule for both children's and non-children's subject magnet products is 30 days after publication of the rule, the effective date for application of 16 CFR part 1112 is 90 days after the publication of the rule. Testing laboratories that meet the requirements of a CPSC-accepted third party conformity assessment body will have 90 days to become accredited to include 16 CFR part 1262, *Safety Standard for Magnets,* in the scope of the accreditation to test subject magnet products that are children's product for compliance with the new rule. Although all of the subject magnet products must comply with the standard, for children's products such as children's jewelry, that are not currently subject to the mandatory standard under ASTM F963–17, testing laboratories must go through the process of applying for accreditation and obtaining approval to become a CPSC-accepted third party conformity assessment body. We conclude that 90 days provides sufficient time for testing laboratories to apply for and comply with the CPSC's procedures. Accordingly, the notice of requirements will go into effect December 20, 2022.

XVIII. Conclusion

For the reasons stated in this preamble, the Commission concludes that subject magnet products that do not meet the requirements specified in this rule, and are not exempt from the rule, present an unreasonable risk of injury associated with ingestion of such products. The Commission finds that the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury associated with magnet ingestions.

List of Subjects

16 CFR Part 1112

Administrative practice and procedure, Audit, Consumer protection, Reporting and recordkeeping requirements, Third-party conformity assessment body.

16 CFR Part 1262

Consumer protection, Imports, Incorporation by reference, Safety.

For the reasons discussed in the preamble, the Commission amends title 16 of the Code of Federal Regulations as follows:

PART 1112—REQUIREMENTS PERTAINING TO THIRD PARTY CONFORMITY ASSESSMENT BODIES

■ 1. The authority citation for part 1112 continues to read as follows:

Authority: Pub. L. 110–314, section 3, 122 Stat. 3016, 3017 (2008); 15 U.S.C. 2063.

■ 2. Amend § 1112.15 by adding paragraph (b)(52) to read as follows:

§ 1112.15 When can a third party conformity assessment body apply for CPSC acceptance for a particular CPSC rule or test method?

* * * * *

(b) * * *

(52) 16 CFR part 1262, Safety Standard for Magnets.

* * * * *

■ 3. Add part 1262 to read as follows:

PART 1262—SAFETY STANDARD FOR MAGNETS

Sec.

Authority: 15 U.S.C. 2056, 2058.

§ 1262.1 Scope, purpose, application, and exemptions.

(a) *Scope and purpose.* This part, a consumer product safety standard, prescribes the safety requirements for a *subject magnet product,* as defined in § 1262.2(b). These requirements are intended to reduce or eliminate an unreasonable risk of death or injury to consumers who ingest one or more *hazardous magnets* (as defined in § 1262.2(a)) from a *subject magnet product.*

(b) *Application.* Except as provided in paragraph (c) of this section, all *subject magnet products* that are manufactured after October 21, 2022, are subject to the requirements of this part.

(c) *Exemption.* The following consumer products are exempt from the requirements of this part: Toys that are subject to 16 CFR part 1250.

§ 1262.2 Definitions.

The following definitions apply for purposes of this part:

(a) *Hazardous magnet* means a magnet that fits entirely within the cylinder described in 16 CFR 1501.4 and that has a flux index of 50 kG^2 mm^2 or more when tested in accordance with the method described in 1262.4.

(b) *Subject magnet product* means a consumer product that is designed, marketed, or intended to be used for

[31] The CPSC did not propose an anti-stockpiling provision, but sought comments in the NPR on whether to include one in the rule. No commenter supported inclusion of anti-stockpiling language. Given the absence of record support as well as the relatively brief 30-day effective date period, CPSC finds it unnecessary to provide such a provision in the final rule.

entertainment, jewelry (including children's jewelry), mental stimulation, stress relief, or a combination of these purposes, and that contains one or more loose or separable magnets, but does not include products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes.

§ 1262.3 Requirements.

Each loose or separable magnet in a *subject magnet product* that fits entirely within the cylinder described in 16 CFR 1501.4 must have a flux index of less than 50 kG^2 mm^2 when tested in accordance with the method described in § 1262.4.

§ 1262.4 Test procedure for determining flux index.

(a) Select at least one loose or separable magnet of each shape and size in the *subject magnet product.*

(b) Measure the flux index of each selected magnet in accordance with the procedure in section 8.25.1 through 8.25.3 of ASTM F963–17, *Standard Consumer Safety Specification for Toy Safety,* approved on May 1, 2017. 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. You may obtain a copy from ASTM International, 100 Barr Harbor Drive, P.O. Box C700, West Conshohocken, PA 19428–2959; phone: (610) 832–9585; *www.astm.org.* A read-only copy of the standard is available for viewing on the ASTM website at *www.astm.org/READINGLIBRARY/.* You may inspect a copy at the 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,* 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.*

§ 1262.5 Findings.

(a) *General.* Section 9(f) of the Consumer Product Safety Act (15 U.S.C. 2058(f)) requires the Commission to make findings concerning the following topics and to include the findings in the rule.

(b) *Degree and nature of the risk of injury.* (1) The standard is designed to reduce the risk of death and injury associated with magnet ingestions. There were an estimated 26,600 magnet ingestions were treated in hospital EDs from January 1, 2010, through December 31, 2021. There were an estimated 5,000 magnet ingestions treated in U.S. hospital EDs between January 1, 2010, and December 31, 2021, that involved in-scope identified subject magnet products, and an additional estimated 20,000 ED-treated magnet ingestions involving unidentified magnet products, which are likely to have involved subject magnet products. There were an estimated 2,500 ED-treated ingestions of magnets from identified magnet products in year 2021, higher than the majority of the preceding years, including 2018 through 2020. In this same period, January 1, 2010, through December 31, 2021, there were an estimated 286 CPSRMS-reported magnet ingestions involving identified subject magnet products and 76 CPSRMS-reported magnet ingestions involving unidentified subject magnet products. In addition, based on NEISS annual estimates from 2017–2021, ICM showed that there were an additional estimated 263 magnet ingestion injuries per year involving identified subject magnet products, which were treated in medical settings other than EDs (185 injuries treated outside of hospitals and 78 resulted in direct hospital admission).

(2) The potential injuries when a child or teen ingests one or more hazardous magnets are serious. Health threats posed by hazardous magnet ingestion include pressure necrosis, volvulus, bowel obstruction, bleeding, fistulae, ischemia, inflammation, perforation, peritonitis, sepsis, ileus, ulceration, aspiration, and death, among others. These conditions can result from magnets attracting to each other through internal body tissue, or a single magnet attracting to a ferromagnetic object. CPSC is aware of serious injuries and several fatal magnet ingestion incidents that occurred in the United States, resulting from internal interaction of magnets.

(c) *Number of consumer products subject to the rule.* The CPSC estimates that there are approximately 500,000 subject magnet products sold annually in the United States. However, to account for a range of sales estimates, staff provided information for sales ranging from 100,000 to 1 million units annually.

(d) *The need of the public for subject magnet products and the effects of the rule on their cost, availability, and utility.* (1) Consumers use subject magnet products for entertainment, mental stimulation, stress relief, and jewelry. The rule requires subject magnet products to meet performance requirements regarding size or strength, but it does not restrict the design of products. As such, subject magnet products that meet the standard can continue to serve the purpose of amusement or jewelry for consumers. Magnets that comply with the performance requirements of the rule, such as non-separable magnets, larger magnets, weaker magnets, or non-permanent magnets, may be useful for amusement or jewelry. However, it is possible that there may be some negative effect on the utility of subject magnet products if compliant products function differently or do not include certain desired characteristics.

(2) Retail prices of subject magnet products generally average under $20. CPSC has identified subject magnet products that comply with the rule, and the prices of compliant and non-compliant products are comparable.

(3) If the costs associated with redesigning or modifying subject magnet products to comply with the rule results in manufacturers discontinuing products, there may be some loss in availability to consumers. However, this would be mitigated to the extent that compliant products meet the same consumer needs, and there are compliant products currently available for sale to consumers.

(4) Manufacturers may sell complying products to mitigate costs. In addition to products that comply with the performance requirements, there are products that are not subject to the performance requirements. Products sold and/or distributed solely to school educators, researchers, professionals, and/or commercial or industrial users exclusively for educational, research, professional, commercial, and/or industrial purposes are not subject magnet products, and firms may continue to manufacture, sell, and distribute such magnet products.

(e) *Other means to achieve the objective of the rule while minimizing adverse effects on competition, manufacturing, and commercial practices.* The Commission considered other alternatives that might reduce the impact of a rule on small businesses, including promulgating an alternative set of requirements for the flux index or size of the magnets; requiring safer packaging; requiring warnings on the packaging and promotional materials; requiring aversive agents on magnets; relying on voluntary standards; delaying the effective date; and taking no action. Although each of the alternative actions would have lower costs and less impact on small business, none is likely to significantly reduce the injuries associated with ingestion of magnets from subject magnet products.

(f) *Unreasonable risk.* (1) Incident data indicate that there were an estimated 25,000 magnet ingestions treated in U.S. hospital EDs from January 1, 2010, to December 31, 2021, which involved in-scope magnet products. Of these estimated 25,000 ED-treated magnet ingestions, an estimated 5,000 involved in-scope identified subject magnet products, and an estimated 20,000 involved ''unidentified'' magnet product types that, based on incident data and factors considered by the Commission, are likely to be subject magnet products. During 2017 through 2021, based on the NEISS annual estimate of about 481 magnet injuries initially treated in hospital EDs involving in-scope identified magnets there were 320 injuries that were treated and released and 161 injuries that required hospitalization. Additionally, based on estimates from the ICM, 185 injuries were treated outside of hospitals annually and another 78 injuries resulted in direct hospital admission. These incidents indicate the frequency with which children and teens ingest magnets, and the need to address the magnet ingestion hazard.

(2) The potential injuries when a person ingests one or more magnets are serious. Health threats posed by magnet ingestion include pressure necrosis, volvulus, bowel obstruction, bleeding, fistulae, ischemia, inflammation, perforation, peritonitis, sepsis, ileus, ulceration, aspiration, and death, among others. These conditions can result from magnets attracting to each other through internal body tissue, or a single magnet attracting to a ferromagnetic object. Magnet ingestion incidents commonly result in hospitalization, particularly when subject magnet products are ingested. The Commission is aware of serious injuries as well as five fatal magnet ingestion incidents that occurred in the United States between November 24, 2005, and January 5, 2021. Four of these incidents involved children 2 years old or younger, and all five victims died from injuries resulting from internal interaction of the magnets. Four of the five incidents identified the products as magnet sets, amusement products, or described them as having characteristics that are consistent with subject magnet products.

(3) CPSC's trend analysis of the incident data indicates that magnet ingestions have significantly increased in recent years. In 2014, Commission issued a rule that applied to magnet sets, which are a subset of the subject magnet products addressed in this rule. The 2014 magnet sets rule took effect in April 2015 and remained in effect until it was vacated and remanded by the U.S. Court of Appeals for the Tenth Circuit Court in November 2016. *Zen Magnets, LLC* v. *Consumer Prod. Safety Comm'n.,* 841 F.3d 1141 (10th Cir. 2016). ED-treated ingestions of magnets from subject magnet products continued to rise since the 2014 magnets set rule was vacated. A review of the annual estimates for ED-treated, magnet ingestions by year, from 2010 through 2021 showed that magnet ingestions are higher for the 2017 through 2021 period, than the previous periods, with more in-scope magnet ingestions in 2021 (2,500) than most of the preceding years, including 2018 through 2020. To assess these trends further, CPSC grouped the years in relation to the vacated 2014 magnet sets rule, using three separate periods. CPSC reviewed the magnet ingestions treated in U.S. hospital EDs for the periods 2010 through 2013 (years prior to the announcement of the 2014 magnet sets rule), 2014 through 2016 (years when the 2014 magnet sets rule was announced and in effect), and 2017 through 2021 (years after the magnet set rule was vacated). For 2010–2013, there were approximately 2,300 ED-treated magnet ingestion incidents per year; for 2014–2016, there were an approximately 1,300 ED-treated magnet ingestion incidents per year; for 2017–2021, there were approximately 2,400 ED-treated magnet ingestion incidents per year. Thus, during the period when the 2014 magnet sets rule was announced and in effect (2014–2016), magnet injury ingestion estimates are lowest by a significant margin, compared with the earlier and more recent periods. CPSRMS data also showed a similar decline in incidents for the period when the magnet sets rule was announced and in effect. CPSC's assessment of incident data, as well as other researchers' assessments of NEISS data, and national poison center data, all indicated that magnet ingestion cases significantly declined during the years when the 2014 magnet sets rule was announced and in effect, compared to the periods before and after the 2014 magnet sets rule.

(4) For these reasons, the Commission finds that the rule is reasonably necessary to eliminate or reduce an unreasonable risk of injury associated with the product.

(g) *Public interest.* This rule is intended to address an unreasonable risk of injury and death posed by magnet ingestions. The Commission finds that compliance with the requirements of the rule will significantly reduce magnet ingestion deaths and injuries in the future; thus, the Commission finds that promulgation of the rule is in the public interest.

(h) *Voluntary standards.* (1) The Commission is aware of six relevant standards, four domestic and two international, that address the magnet ingestion hazard. One standard is mandatory, ASTM F963–17, *Standard Consumer Safety Specification for Toy Safety* (incorporated by reference at §§ 1262.4 and 1250.2 of this chapter). The other voluntary standards include: ASTM F2923–20, *Standard Specification for Consumer Product Safety for Children's Jewelry;* ASTM F2999–19, *Standard Consumer Safety Specification for Adult Jewelry;* ASTM F3458–21, *Standard Specification for Marketing, Packaging, and Labeling Adult Magnet Sets Containing Small, Loose, Powerful Magnets (with a Flux Index* $\geq$ *50 kG² mm²)* (see § 1262.4 for the availability of ASTM standards from ASTM International); EN–71–1: 2014, *Safety of Toys; Part 1: Mechanical and Physical Properties* (available from EN European Standards; Krimicka 134, 318 00 Pilsen, Czech Republic, phone: 420 377 921 379; *www.en-standard.eu*); and ISO 8124–1: 2018, *Safety of Toys—Part 1: Safety Aspects Related to Mechanical and Physical Properties* (available from International Organization for Standardization; Chemin de Blandonnet 8, CP 401–1214 Vernier, Geneva, Switzerland; phone: 41 22 749 01 11; *www.iso.org*).

(2) The Commission finds that compliance with existing standards is not likely to result in the elimination or adequate reduction of the risk of injury associated with ingestion of subject magnet products.

(i) *Relationship of benefits to costs.* (1) CPSC estimates that aggregate annual societal costs from ingestion injuries involving subject magnet products for 2017 through 2021 totaled $51.8 million, even when ingestion injuries involving unidentified magnet products are excluded. The expected costs of the rule include the lost value experienced by consumers who would no longer be able to purchase subject magnet products with loose or separable hazardous magnets, as well as the lost profits to firms that could not produce and sell non-complying products in the future. Estimates of consumer and producer surplus range from about $2 million to $3.5 million to about $20 million to $35 million, based on unit sales ranging from 100,000 to 1 million. If annual unit sales of non-complying subject magnet products are 500,000, expected aggregate benefits from the rule would total $51.8 million annually as noted above; costs (lost consumer and producer surplus) would range from $10

million to $17.5 million annually. Thus, the benefits of the rule would greatly exceed the costs.

(2) If unidentified magnet products involved in ingestion injuries, which are also likely to be subject magnet products, are considered as well, average annual societal costs for 2017 through 2021 would increase by $167.9 million. A sensitivity analysis shows that adding even a relatively small portion of NEISS cases involving unidentified magnet products to the base case substantially increases the estimated gross benefits of the rule. Although CPSC's analysis of the data, the trends in NEISS, CPSRMS, and poison center-reported, magnet-related incidents support the conclusion that the unidentified magnet products generally involved magnets considered within the scope of the rule, because CPSC does not know precisely how many of these products would fall within the scope of this rule, CPSC has not included them in the primary benefit analysis. Instead, CPSC includes the benefits from unidentified magnet products in this final rule's sensitivity analysis to illustrate the theoretical upper bounds of benefits from this rule. Theoretically, including 100 percent of these societal costs with those estimated for identified subject magnet products ($51.8 million) could yield average annual societal costs of magnet ingestion injuries of $219.7 million for the period 2017 through 2021.

(j) *Least burdensome requirement that would adequately reduce the risk of injury.* CPSC considered several less-burdensome alternatives to the rule.

(1) One alternative is to take no regulatory action and, instead, rely on existing standards to address the magnet ingestion hazard. This alternative would reduce the burden associated with the rule by avoiding a mandatory standard, but it is unlikely to adequately address the magnet ingestion hazard due to the limited scope and requirements of existing standards and uncertainty regarding compliance with them.

(2) Another alternative is a mandatory standard with less stringent requirements than the proposed rule, such as a higher flux index limit, or different requirements for certain shapes and sizes of magnets. This could reduce the burden associated with a rule by allowing firms to market a wider variety of products than under the rule. However, this alternative would reduce the safety benefits because allowing certain hazardous magnets in subject magnet products to remain on the market does not address the hazard such products pose.

(3) Safety messaging is another alternative to the rule. This alternative would reduce the burdens associated with the rule because it would not require modifying or discontinuing subject magnet products, and the costs of such warnings and instructional information likely would be small. However, this alternative is not likely to adequately reduce the magnet ingestion hazard. Incident data shows children commonly access ingested magnets from sources that do not include the product packaging where warnings are provided. Incident data, behavioral and developmental factors, and other information indicate that children and caregivers commonly disregard safety messaging regarding the magnet ingestion hazard. Finally, this approach has not been effective at adequately reducing the hazard, to date.

(4) Another alternative is to require special packaging to limit children's access to subject magnet products. Although this alternative would create some packaging costs, those costs likely would be lower than the costs of the rule because this alternative would allow subject magnet products to remain unchanged. However, this alternative is not likely to adequately reduce the risk of injury and death associated with magnet ingestions. Consumers are unlikely to repackage all magnets after each use, given the small size and large number of magnets in products, the potential to lose magnets, and consumers' underappreciation of the hazard. In addition, commercially reasonable packaging requirements would only prevent young children (typically, children under 5 years old) from accessing the product, not older children, or teens, who are involved in the majority of magnet ingestion incidents.

(5) Another alternative is to require subject magnet products to be coated with aversive agents. This alternative would reduce the burden associated with the rule because it would allow firms to continue to sell subject magnet products and the costs of such coatings likely would be small. However, such requirements are not likely to adequately address the hazard because they do not address ingestions that occur when the first magnet is placed in the victim's mouth, before the aversive agent is detected, accidental ingestions, or children who are developmentally inclined to place objects in their mouths.

(6) Another alternative is to provide a later effective date for the final rule. This may reduce the burdens associated with the rule by spreading them over a longer period, but it would also delay the safety benefits of the rule.

(7) For these reasons, the Commission finds that the rule imposes the least burdensome requirement that prevents or adequately reduces the risk of injury associated with magnet ingestions.

Alberta E. Mills,

Secretary, Consumer Product Safety Commission.

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FEDERAL REGISTER PAGES AND DATE, SEPTEMBER

CFR PARTS AFFECTED DURING SEPTEMBER

At the end of each month the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

385.....56921
386.....56921
390.....56921
391.....56372
395.....56921
535.....56156
594.....56373

50 CFR

32.....57107
600.....54902, 56204
622.....56204
635 .....54910, 54912, 57648
648.....53695, 54902
660 .....54171, 54902, 55317
679 .....54902, 54913, 55925

Proposed Rules:

17.....56381
222.....54948
223.....55200
224.....56925
229.....55348
300.....55768
622.....55376
635.....55379
648.....56393
660.....55979

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

Last List September 20, 2022

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