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Federal Register
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Presidential Documents

Title 3—

The President

Proclamation 10476 of October 12, 2022

Establishment of the Camp Hale–Continental Divide National Monument

By the President of the United States of America

A Proclamation

The Camp Hale and Tenmile Range area lies along the continental divide in north-central Colorado and is treasured for its historical and spiritual significance, stunning geological features, and unique wildlife and plants. The rugged landscape serves as a living testament to a pivotal moment in America's military history, as these peaks and valleys forged the elite soldiers of the famed 10th Mountain Division—the Army's first and only mountain infantry division—which helped free Europe from the grip of Nazi control in World War II. The area is also foundational to preserving and interpreting the story of 10th Mountain Division veterans who, after their return from World War II, applied the skills they learned in the Camp Hale and Tenmile Range area to establish America's skiing and outdoor recreation industry. Today, the largely undeveloped peaks, slopes, and valleys of the Camp Hale and Tenmile Range area provide veterans, their families, and other visitors with a place to learn the history of the 10th Mountain Division; to honor their sacrifices and contributions to our Nation; and to experience firsthand the formidable environs that taught American soldiers to endure extreme mountain terrain, deep snow, and punishing cold. This endurance proved pivotal to the success of the United States and its allies in World War II when, in February 1945, the 10th Mountain Division successfully scaled a 1,500-foot cliff face to capture a German position in the Apennine Mountains, helping the Allies to break through the German defensive line in Italy and push further into Europe.

The Army began construction of Camp Hale in April of 1942 in the Pando Valley after the Department of Agriculture authorized the War Department to use 179,000 acres of National Forest lands to train soldiers to climb and ski in preparation for operations in harsh, cold, high-altitude areas. The valley floor—which sits at 9,200 feet in elevation—was broad enough to hold a large encampment, and the Eagle River, which passes through the valley, provided a year-round water supply. Near the encampment were training grounds fit for the Army's purpose, including the rugged Tenmile Range's rock faces, deep snow, and frigid temperatures. The site also took advantage of existing infrastructure, such as the nearby rail system and highway, which remain important arteries through the Rocky Mountains.

Visitors can see traces of the life of the thousands of young servicemen and approximately 200 servicewomen who were stationed at Camp Hale along the valley floor, surrounded on all sides by forested hills and mountains stretching up to more than 14,000 feet. At its height, Camp Hale sprawled across nearly 1,500 acres. Its 1,000 buildings included 245 barracks (which could house more than 15,000 soldiers), mess halls, warehouses, training facilities, firing ranges, administrative buildings, stables, corrals, a veterinary center, theaters, chapels, a field house, and a hospital. The camp also featured parade grounds, recreation areas, gunnery ranges, a combat range, ski hills, a stockade, a motor pool, railyards, and an extensive road and bridge network. Several contiguous areas on the side slopes of the valley also served as

training areas for skiing and rock climbing, storage areas for ammunition, and target training sites.

Between April and November of 1942, hundreds of construction workers—many living in harsh conditions in tents, trailers, and even in cars and trucks—rushed to build Camp Hale. Racial discrimination against Hispanic and Black construction workers at the camp caught national attention and led to an investigation by the War Production Board, prompting the United States Army to issue an order against racial discrimination in war construction projects in the region. This history—and the history of segregation within the Army itself during World War II—is a critical component of the experience of visiting and understanding Camp Hale.

Camp Hale opened for operation on November 16, 1942. Following the conclusion of the war, the Army used the camp only sporadically until its permanent closure in 1965. At that time, many facilities were removed or buried; however, much of the camp remains visible today, and the site was placed on the National Register of Historic Places in 1992. The layout of the camp can be discerned from its grid-like road system, formed by 3 major north-south roads and 21 east-west crossing streets, many of which are identifiable or still in use. Concrete foundations for the warehouse area, the Corps Area Service Command compound, the division headquarters, and the barracks extend across the valley floor. In the center of the site lie remnants of the field house, including buttresses and the floor slab. Evidence of six ammo bunkers in the magazine area, which provided ammunition storage for the camp, occupy a small saddle on the northeast side of the valley. On a hill just to the south of the magazine area remain the footers of the four water tanks that supplied the camp. At the eastern edge of the camp, the rifle range remains largely intact, and the range's target butts—a long series of rooms built of reinforced concrete—can still be seen. The area around the camp also includes remnants of the training that occurred there: the original pitons used to train technical climbing are embedded in several northeastern cliffs, and the remains of a tow and lift can be seen along two ski hills at the south end of the valley.

While Camp Hale was in operation, training exercises occurred among the peaks and slopes around Camp Hale and in the Tenmile Range. Today, the peaks that remain undeveloped around Camp Hale—which include Pearl Peak, Sheep Mountain, and Taylor Hill—and in the Tenmile Range—which include Peaks 1, 3, 4, and 5; the western slopes of Peaks 6 through 10; Tenmile Peak; and several other named peaks (such as the 14,625-foot Quandary Peak) that extend to the south—are largely unchanged since the 1940s. The entire landscape of the Camp Hale and Tenmile Range area, therefore, serves as a kind of living museum, allowing visitors to imagine and understand what life was like for the young servicemen in the 10th Mountain Division.

Camp Hale and its surroundings, including the undeveloped areas of the Tenmile Range, were used to train the 10th Mountain Division, the 99th Infantry Battalion, and other units in mountain and winter warfare. This iconic location inspired military innovation. While training there, the 99th Infantry Battalion—a unique, Norwegian-speaking military unit that consisted primarily of Norwegian nationals and Americans of direct Norwegian descent—developed a mount for heavy machinery using two skis. Following World War II, Camp Hale's unique attributes supported highly classified national security efforts. In the late 1950s, the Central Intelligence Agency trained various special mission teams at Camp Hale, including nearly 170 Tibetans for operations in China against the communist government.

The area is also foundational to the history of the United States ski and outdoor recreation industry and thus has had a profound impact on American culture. Veterans of the 10th Mountain Division founded or managed more than 60 ski resorts upon their return from deployment, some in the same mountains where they had trained. The remnants of the Mount

Royal/Peak One Ski Jumps, including a scaffold that supported the judges' platform, can also be found in the area. Other veterans from Camp Hale would go on to become trailblazers in conservation and outdoor education and recreation: David Brower served as the first executive director of the Sierra Club; Paul Petzoldt founded the National Outdoor Leadership School; and Fritz Benedict founded the 10th Mountain Division Hut Association, which manages a network of 30 mountain huts—including three in the Camp Hale and Tenmile Range area—that enable backcountry skiers, mountain bikers, and hikers to access and experience the historic and scientific objects found there. Journeying to the Camp Hale and Tenmile Range area of the continental divide allows visitors to experience the mountains and valleys that inspired these veterans to make important contributions to conservation and recreation and to learn about and reflect on the mark they left on America when they returned from service during war.

The Camp Hale and Tenmile Range area is also rich in ancient human history. The area bears the marks of centuries of habitation by Indigenous peoples who have called the region home since time immemorial and who referred to this area of the Rocky Mountains as *Káava'avichi*—meaning ''mountains laying down.'' Forced from much of their homelands when precious minerals were discovered, their history serves as a stark reminder that the United States' commitment to its highest ideals of democracy, liberty, and equality has too often been imperfect, particularly for Tribal Nations and Indigenous peoples. For thousands of years, the Ute people traveled to the Pando Valley when winter snows melted as part of an annual migration circuit to hunt game and collect medicinal plants. The area also served as an important transportation corridor for those traveling to sacred hot springs in Glenwood Springs, and the traditional Ute trail lies under the road that runs along the Eagle River today. Evidence of these ancient occupants is found at hundreds of sites, including lithic scatters, a high-elevation prehistoric camp, and stone circles where projectile points and prehistoric tools have been found. Burial sites of historic connection to the Ute Tribes—and of importance to them today—can also be found in the area with funerary objects and the remains of ancestral peoples who lived in the area thousands of years ago. One such site holds the 8,000-year-old remains of an ancient Ute—believed by some to have been a person of great stature in the Ute community. Some of the objects of cultural importance to the Ute Tribes are sensitive, rare, or vulnerable to vandalism and theft; therefore, revealing their specific names and locations could pose a danger to the objects.

As a result of the 1873 Brunot Agreement and an 1880 Congressional declaration, the Ute Tribes forcibly relinquished the Camp Hale and Tenmile Range areas (and much of the rest of their homelands), and retained only small portions of their ancestral homelands on reservations in southwestern Colorado and eastern Utah. More than a century later, however, the Camp Hale and Tenmile Range area remains culturally important to the Ute people, who consider the area an important place to honor their ancestors. They continue to return to the region to forage for medicinal and ceremonial plants, hunt, and fish.

The area is replete with evidence of the mining activity that sparked the exclusion of the Ute people and drove development in the region in the late 19th century. Perched on the side of Mount Royal at an elevation of 9,600 feet and named after the Pennsylvania hometown of one of its investors, the Masontown mining site once included a mill, numerous mine shafts, and a boarding house and homes that accommodated several hundred workers, until an avalanche destroyed the mill in 1912. Today, visitors along the Masontown Trail in the north end of the Tenmile Range area can observe remnants of the mill site, including bricks from the foundations of cabin ruins, miscellaneous containers, and pieces of metal equipment.

Other sites of historical interest exist in the area. To support the burgeoning mining industry in the region, railroad lines running through Tenmile Canyon

on the northern end of the Tenmile Range were constructed by the 1880s to connect small mountain settlements with Denver. Evidence remains of these historic rail lines and rail beds, as well as rock structures that were built to support railroad construction. The purpose of these unique rock structures, known as stone huts, remains a mystery, but they may have been used by Canadian woodcutters who worked on the construction of railroads.

An exhaustive survey and study of the entire area has not been completed; archaeologists and military and other historians anticipate that many other such culturally and historically important sites remain to be discovered throughout the area, thereby enriching our understanding of the area's significance.

In addition to the numerous objects in the region that document the history of America and ancient peoples, Camp Hale and the Tenmile Range form a geologically and ecologically linked landscape—rugged and stunning in appearance—that contains numerous features of scientific interest, including tarns, waterfalls, and alpine tundra. The continental divide—a defining high-altitude geologic feature of the Western Hemisphere that separates the watersheds of the Pacific and Atlantic Oceans—stretches along the southern border of both the Camp Hale and the Tenmile Range landscapes. Visitors can travel along the Continental Divide National Scenic Trail, which passes through the area, to explore the changing geology and ecology along the spine of the continent.

The area's geology and irregular topography formed during the Pleistocene glacial period when retreating glaciers deposited a large terminal moraine north of the current day Camp Hale, damming the Eagle River and forming an adjacent lake basin. When the lake ultimately overflowed, the Eagle River cut a new channel forming the deep, narrow canyon the river occupies today while leaving the lake intact. Over time, the lake drained, and the former lake floor became the broad, flat Pando Valley.

To the east, the Pando Valley abruptly gives way to the soaring peaks of the Tenmile Range, which stretches to the continental divide. The range boasts 10 peaks over 13,000 feet in elevation, including Quandary Peak, which, at 14,265 feet, is one of Colorado's iconic and most-visited ''Fourteeners.'' The slopes of these peaks are home to several high-alpine lakes, including the Pacific Tarn to the southeast of Pacific Peak, which, at 13,420 feet, is the highest named lake in the United States. Waterfalls descend the slopes—including Continental Falls, Mohawk Basin Falls, and McCullough Gulch Falls—and are components of a hydrologic system that defines the mountain west. Rock, too, descends from the range. Studied for decades, the Spruce Creek rock glacier, which is fed by a rockfall from Pacific Peak's northeast cirque, has advanced our understanding of the flow mechanics and morphology of rock glaciers.

The area's high peaks and alpine valleys contain rare and fragile native alpine tundra ecosystems that include species uniquely adapted to high altitudes. Two of the four known populations of the Weber's drab—a diminutive plant with yellow flowers standing only a few inches tall—can be found in the Tenmile Range. Fewer than 300 known individual plants of this species exist across 4 distinct populations distributed over 7 square miles. The diminutive plant is most often found in the splash zones of rocky crevices along streams near the timberline. Ephemeral pools caused by snowmelt among boulders and high-altitude alpine lakes in the area also host the rare and aptly named ice grass. Tiny in stature—standing less than an inch tall—ice grass can be found only in cold, high-altitude regions. The grass appears in only isolated, disjunct areas in Colorado, with the next nearest known population located hundreds of miles away in northwest Wyoming.

Among the Engelman spruce, subalpine fir, lodgepole pine, and quaking aspen stands that dominate the area, visitors might glimpse Canada lynx—

a federally listed threatened species—or the boreal toad—Colorado's only alpine species of toad and a Forest Service sensitive species that inhabits subalpine forest wetlands at elevations between 8,500 feet and 11,500 feet. The area is an important habitat connectivity corridor for lynx and related species. Spruce and McCullough Creeks hold populations of green lineage Colorado River cutthroat trout—also a Forest Service sensitive species—that are core conservation populations under the Colorado River Cutthroat Trout Conservation Strategy. The area also provides a habitat for mountain goats, moose, bighorn sheep, Rocky Mountain elk, mule deer, black bears, mountain lions, bobcats, bald eagles, white-tailed ptarmigans, hoary bats, olive-sided flycatchers, martens, pygmy shrews, boreal owls, northern goshawks, and several species of waterfowl.

In light of threats posed by vandalism, unmanaged recreation, and climate change, protecting the Camp Hale and Tenmile Range area of the continental divide will preserve its historic and prehistoric legacy and maintain its diverse array of natural and scientific resources, ensuring that the historic and scientific values of the area remain for the benefit of all Americans. Reserving this area would also honor the valor and sacrifice of the 10th Mountain Division, secure ongoing opportunities for Tribal communities to continue spiritual and subsistence practices, and enable the region's modern communities and the Nation to continue to benefit from the area's world class outdoor recreation opportunities.

WHEREAS, section 320301 of title 54, United States Code (the ''Antiquities Act''), authorizes the President, in his discretion, to declare by public proclamation historic landmarks, historic and prehistoric structures, and other objects of historic or scientific interest that are situated upon the lands owned or controlled by the Government of the United States to be national monuments, and to reserve as a part thereof parcels of land, the limits of which in all cases shall be confined to the smallest area compatible with the proper care and management of the objects to be protected; and

WHEREAS, I find that each of the objects identified above is an object of historic or scientific interest in need of protection under 54 U.S.C. 320301; and

WHEREAS, I find that the Camp Hale and Tenmile Range area of the continental divide is an important part of the history of the United States military and of the outdoor recreation industry; and

WHEREAS, I find that the Camp Hale and Tenmile Range area of the continental divide is sacred to sovereign Tribal Nations and Indigenous peoples of the United States; and

WHEREAS, I find that the Camp Hale and Tenmile Range area of the continental divide contains rare and fragile ecosystems and geological features that are of scientific interest; and

WHEREAS, I find that the unique and historical nature of the lands that make up the Camp Hale and Tenmile Range area of the continental divide and the collection of objects of historic and scientific interest therein make the landscape of the Camp Hale and Tenmile Range area itself an object of historic and scientific interest; and

WHEREAS, I find that there are threats to the objects identified in this proclamation; and

WHEREAS, I find that, in the absence of a reservation under the Antiquities Act, the objects identified in this proclamation are not adequately protected by otherwise applicable law or administrative designations because neither provide Federal agencies with the specific mandate to ensure proper care and management of the objects, nor do they withdraw the lands from the operation of the public land, mining, and mineral leasing laws; and

WHEREAS, I find that a national monument reservation is necessary to protect the objects of historic and scientific interest in the Camp Hale and Tenmile Range area of the continental divide for current and future generations; and

WHEREAS, I find that the boundaries of the monument reserved by this proclamation represent the smallest area compatible with the proper care and management of the objects of scientific or historic interest to be protected as required by the Antiquities Act; and

WHEREAS, it is in the public interest to ensure the preservation and protection of the objects of scientific and historic interest in the Camp Hale and Tenmile Range area of the continental divide;

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by the authority vested in me by section 320301 of title 54, United States Code, hereby proclaim the objects identified above that are situated upon lands and interests in lands owned or controlled by the Federal Government to be the Camp Hale-Continental Divide National Monument (monument) and, for the purpose of protecting those objects, reserve as part thereof all lands and interests in lands owned or controlled by the Federal Government within the boundaries described on the accompanying maps, which are attached hereto and form a part of this proclamation. These reserved Federal lands and interests in lands encompass approximately 53,804 acres. As a result of the distribution of the objects across the landscape of the Camp Hale and Tenmile Range area of the continental divide, and additionally and independently, because the landscape itself is an object in need of protection, the boundaries described on the accompanying maps are confined to the smallest area compatible with the proper care and management of the objects of historic or scientific interest identified above.

All Federal lands and interests in lands within the boundaries of the monument are hereby appropriated and withdrawn from all forms of entry, location, selection, sale, or other disposition under the public land laws or laws applicable to the Forest Service, including withdrawal from location, entry, and patent under the mining laws, and from disposition under all laws relating to mineral and geothermal leasing.

If the Federal Government subsequently acquires any lands or interests in lands not currently owned or controlled by the Federal Government within the boundaries described on the accompanying maps, such lands and interests in lands shall be reserved as a part of the monument, and objects identified above that are situated upon those lands and interests in lands shall be part of the monument, upon acquisition of ownership or control by the Federal Government.

The Secretary of Agriculture (Secretary), through the Forest Service, shall manage the monument pursuant to applicable legal authorities and in accordance with the terms, conditions, and management direction provided by this proclamation. The Secretary shall prepare, in consultation with the Secretary of the Interior, a management plan for the monument, which shall include provisions for continuing outdoor recreational opportunities consistent with the proper care and management of the objects identified above, and shall promulgate such regulations for its management as deemed appropriate. The Secretary shall provide for maximum public involvement in the development of the management plan, including consultation with federally recognized Tribal Nations, State and local governments, and other interested stakeholders. The final decision over any management plans and any management rules and regulations rests with the Secretary. Management plans or rules and regulations developed by the Secretary of the Interior governing uses within national parks or national monuments administered by the Secretary of the Interior shall not apply within the monument.

For purposes of protecting and restoring the objects identified above, the Secretary shall prepare a travel management plan to ensure appropriate

access for the management and use of the area, which shall provide for motorized and non-motorized mechanized vehicle uses, including mountain biking, consistent with the proper care and management of the objects identified above. Unless inconsistent with the proper care and management of the objects identified above, non-motorized mechanized vehicle uses, including mountain biking, shall continue to be permitted on the roads and trails designated for such uses on the date of this proclamation.

Nothing in this proclamation shall be deemed to enlarge or diminish the rights or jurisdiction of any Tribal Nation. The Secretary shall, to the maximum extent permitted by law and in consultation with Tribal Nations, ensure the protection of sacred sites and traditional cultural properties and sites in the monument and provide access to Tribal members for traditional cultural, spiritual, and customary uses, consistent with the American Indian Religious Freedom Act (42 U.S.C. 1996) and Executive Order 13007 of May 24, 1996 (Indian Sacred Sites), including collection of medicines, berries and other vegetation, forest products, and firewood for personal noncommercial use in a manner consistent with the proper care and management of the objects identified herein.

In recognition of the importance of these lands and objects to Tribal Nations, and to ensure that management decisions affecting the monument reflect Tribal expertise and Indigenous Knowledge, the Secretary shall meaningfully engage with Tribal Nations with cultural ties to the area, including the Ute Tribes, in the development of the management plan and to inform subsequent management of the monument. The Secretary shall pursue opportunities for co-stewardship through management planning and implementation, including entering into cooperative agreements with Tribal entities that have cultural ties to the monument, and shall explore opportunities to provide support to Tribal Nations to participate in the planning and management of the monument.

The establishment of this monument is subject to valid existing rights, including valid existing water rights. Consistent with the proper care and management of the objects identified above, nothing in this proclamation shall be construed to preclude the renewal or assignment of, or interfere with the operation, maintenance, replacement, modification, or upgrade of existing water infrastructure, including flood control, pipeline, or other water management infrastructure; State highway corridors or rights-of-way; or existing utility and telecommunications rights-of-way or facilities within or adjacent to the boundaries of existing authorizations within the monument. Nothing in this proclamation shall be deemed to affect the operation or use of the existing railroad corridor as a railroad right-of-way pursuant to valid existing rights or for recreational purposes consistent with the proper care and management of the objects identified above. Existing water resource, flood control, utility, pipeline, or telecommunications facilities located within the monument may be expanded, and new facilities may be constructed within the monument, to the extent consistent with the proper care and management of the objects identified above and subject to the Secretary's special uses authorities and other applicable law.

Nothing in this proclamation shall affect the responsibilities and authorities of the Department of Defense under applicable environmental laws for the remediation of hazardous substances or munitions or explosives of concern within the monument boundaries, nor affect any Department of Defense activities on lands not included within the monument. To further the protective purposes of the monument, the Secretary shall explore entering into a memorandum of understanding with the Secretary of Defense that would address collaboration between the Departments, pursuant to applicable laws and regulations, to support the remediation of hazardous substances or munitions or explosives of concern while ensuring the protection of the monument objects identified above, as well as implementing any needed controls for explosives safety. The Secretary and the Secretary of Defense shall cooperate

and coordinate regarding access to carry out necessary response actions under applicable environmental laws.

Nothing in this proclamation shall affect the Forest Service's ability to authorize access to and remediation of contaminated lands within the monument, including for remediation of mine, mill, or tailing sites, or for the restoration of natural resources.

Nothing in this proclamation shall preclude low-level overflights of military aircraft, flight testing or evaluation, the designation of new units of special use airspace, or the use or establishment of military flight training routes or transportation over the lands reserved by this proclamation.

Nothing in this proclamation shall be deemed to enlarge or diminish the jurisdiction of the State of Colorado with respect to fish and wildlife management.

Laws, regulations, and policies followed by the Forest Service in issuing and administering grazing permits on all lands under its jurisdiction shall continue to apply with regard to the lands in the monument.

The Secretary may carry out vegetative management treatments within the monument consistent with the proper care and management of the objects identified above, except that commercial timber harvest may only be used when the Secretary determines it appropriate to address ecological restoration or the risk of wildfire, insect infestation, or disease that would endanger the objects identified in this proclamation or imperil public safety.

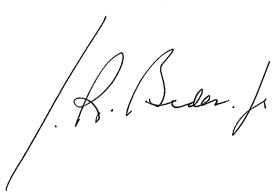
Nothing in this proclamation shall be construed to alter the authority or responsibility of any party with respect to emergency response activities within the monument, including wildland fire response, or to preclude avalanche control efforts within or adjacent to the monument, including efforts to mitigate avalanche risks to neighboring communities, roads and infrastructure, or recreation facilities or destinations.

Nothing in this proclamation shall be deemed to revoke any existing withdrawal, reservation, or appropriation; however, the national monument shall be the dominant reservation.

Warning is hereby given to all unauthorized persons not to appropriate, injure, destroy, or remove any feature of the monument and not to locate or settle upon any of the lands thereof.

If any provision of this proclamation, including its application to a particular parcel of land, is held to be invalid, the remainder of this proclamation and its application to other parcels of land shall not be affected thereby.

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



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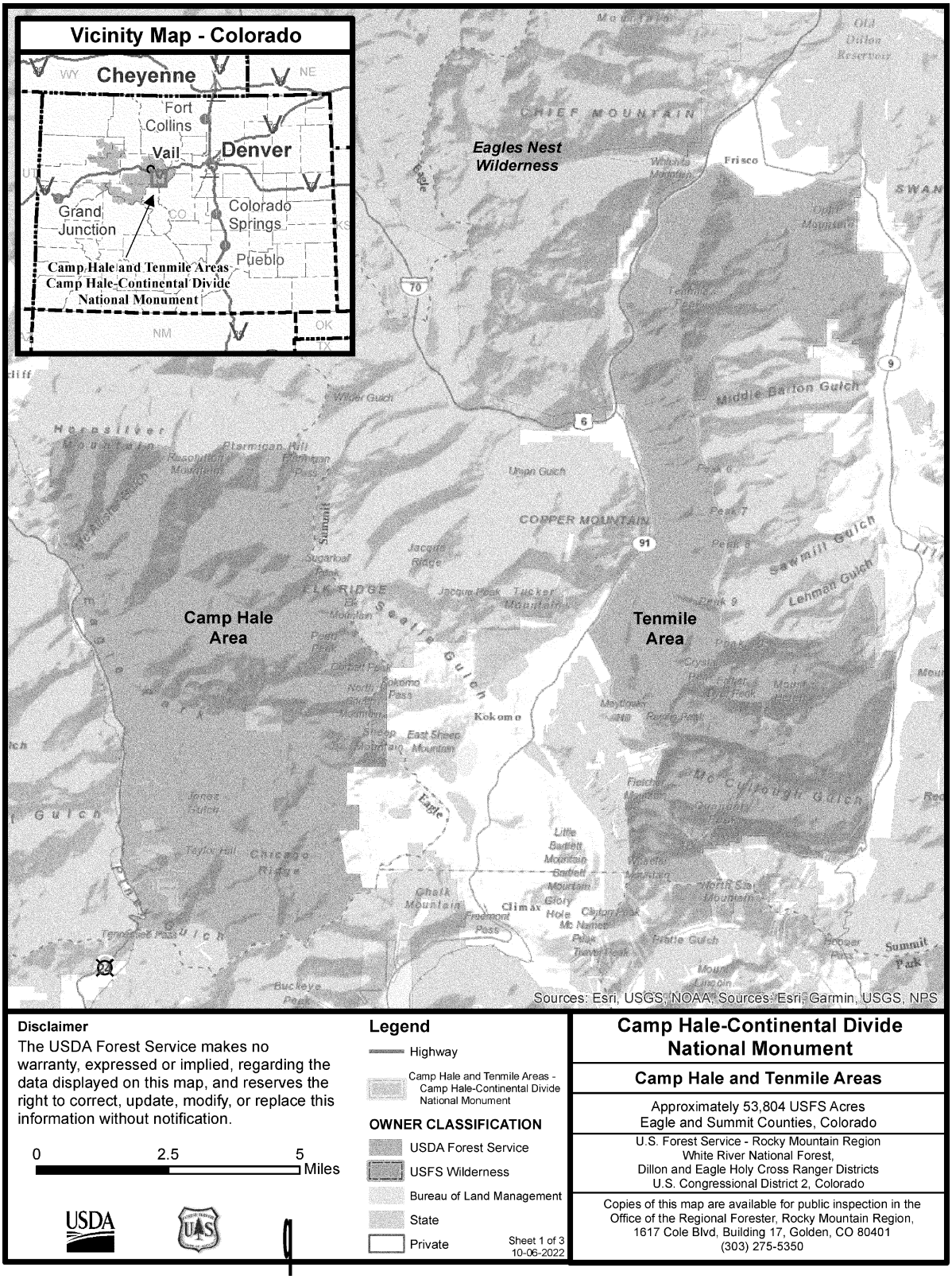

Disclaimer

The USDA Forest Service makes no warranty, expressed or implied, regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification.

0 2.5 5 Miles

Legend

- Highway
- Camp Hale and Tenmile Areas - Camp Hale-Continental Divide National Monument

OWNER CLASSIFICATION

- USDA Forest Service
- USFS Wilderness
- Bureau of Land Management
- State
- Private

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10-06-2022

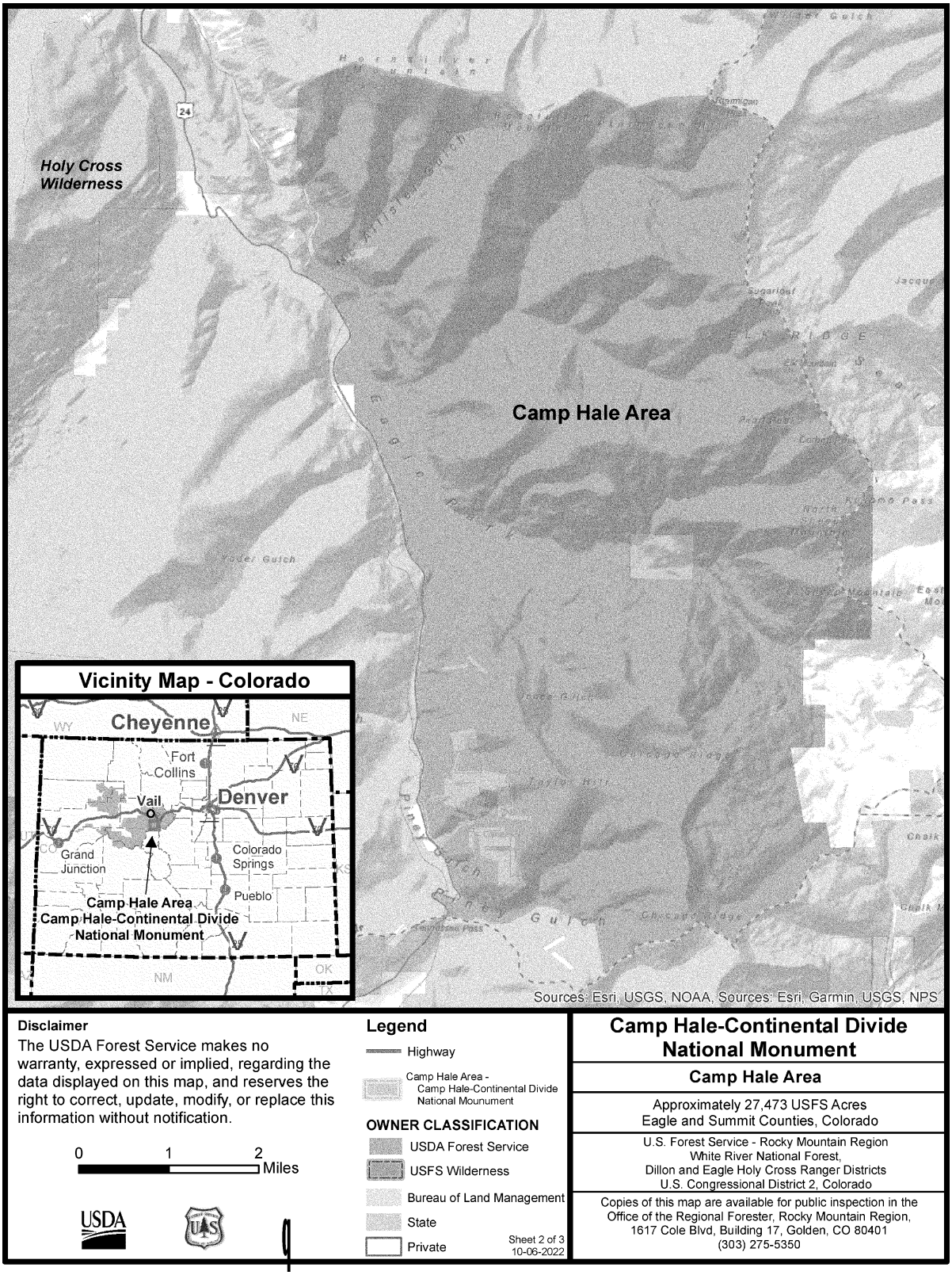
Camp Hale-Continental Divide National Monument

Camp Hale and Tenmile Areas

Approximately 53,804 USFS Acres
Eagle and Summit Counties, Colorado

U.S. Forest Service - Rocky Mountain Region
White River National Forest,
Dillon and Eagle Holy Cross Ranger Districts
U.S. Congressional District 2, Colorado

Copies of this map are available for public inspection in the Office of the Regional Forester, Rocky Mountain Region, 1617 Cole Blvd, Building 17, Golden, CO 80401
(303) 275-5350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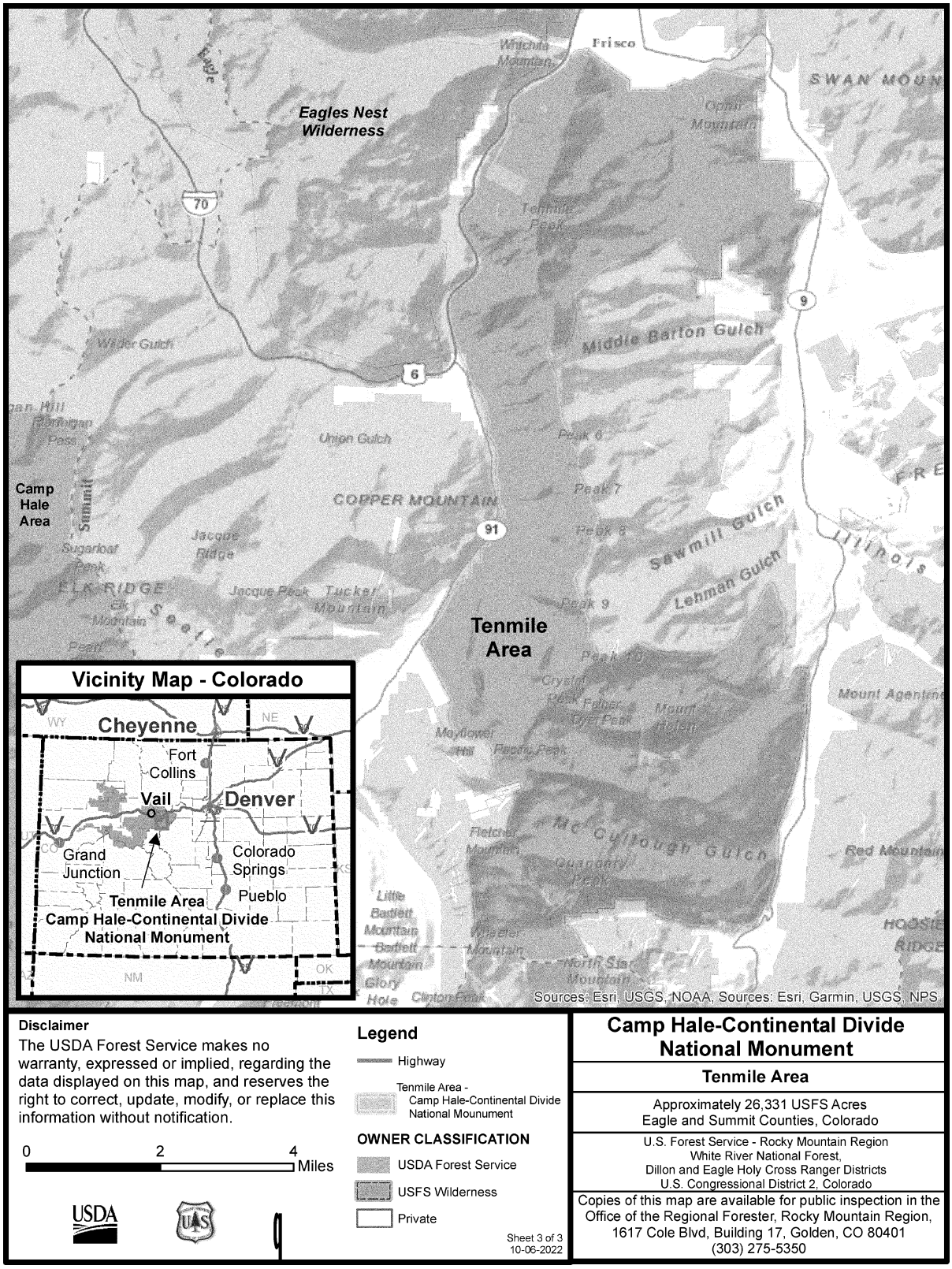
The USDA Forest Service makes no warranty, expressed or implied, regarding the data displayed on this map, and reserves the right to correct, update, modify, or replace this information without notification.
0 1 2 Miles
Legend
Highway
Camp Hale Area - Camp Hale-Continental Divide National Mounument
OWNER CLASSIFICATION
USDA Forest Service
USFS Wilderness
Bureau of Land Management
State
Private
Sheet 2 of 3
10-06-2022
Camp Hale-Continental Divide National Monument
Camp Hale Area
Approximately 27,473 USFS Acres
Eagle and Summit Counties, Colorado
U.S. Forest Service - Rocky Mountain Region
White River National Forest,
Dillon and Eagle Holy Cross Ranger Districts
U.S. Congressional District 2, Colorado
Copies of this map are available for public inspection in the Office of the Regional Forester, Rocky Mountain Region, 1617 Cole Blvd, Building 17, Golden, CO 80401
(303) 275-5350



[FR Doc. 2022–22810

Filed 10–18–22; 8:45 am]

Billing code 4310–10–C

Presidential Documents

Proclamation 10477 of October 14, 2022

Blind Americans Equality Day, 2022

By the President of the United States of America

A Proclamation

On Blind Americans Equality Day, we celebrate the essential contributions of blind and low-vision Americans, whose talents and strength shape every industry and every community.

In 1964, President Lyndon B. Johnson issued the first Presidential Proclamation honoring the independent spirit of blind Americans and calling on us all to help build a more accessible Nation. Twenty-six years later, in 1990, we came together as Democrats and Republicans to pass the most sweeping civil rights legislation in a generation—the Americans with Disabilities Act (ADA)—improving the lives of the now more than 60 million Americans living with a disability, including more than 7 million with vision loss. I was enormously proud to cosponsor that bill as a United States Senator, and as President, I am making sure that we deliver on its full promise to end discrimination, increase independence, and expand opportunity for everyone.

The ADA has been transformational, but it did not end our work. As long as disabled Americans—including those who are blind and low-vision—face barriers to equality, opportunity, and freedom, we have more to do. That is why, on my first day in office, I was proud to sign an Executive Order establishing a government-wide commitment to equity for all. I am proud to have appointed the first-ever White House Disability Policy Director and to work every day to make sure that the dignity and rights of disabled and blind Americans are championed in every policy that we pursue.

During the pandemic, my American Rescue Plan has helped States better cover low-income adults living with disabilities on Medicaid and given schools funding to reopen safely, helping to better serve students with vision loss and other disabilities. My Administration launched the Disability Information and Access Line to help blind and other disabled people schedule COVID–19 tests and vaccinations, and we have expanded the availability of accessible at-home tests for blind and low-vision Americans. Meanwhile, my Bipartisan Infrastructure Law is expanding access to transit for blind and other disabled Americans by updating old train stations and airports. The Labor Department is defending the rights of workers with disabilities to receive a fair wage. My Administration is creating jobs by funding State and local governments, employers, and nonprofits that hire more people with disabilities, including vision loss. Additionally, the Department of Education is funding projects to teach more STEM teachers braille, in turn expanding access to STEM education for blind and low-vision students. I have also signed Executive Orders to start to remove barriers that keep too many people with disabilities from voting.

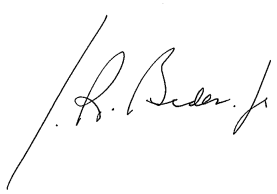
Across the board, we have been making great progress, but I know there is much more to do to guarantee every American the same fair shot to contribute, thrive, and succeed. I will keep fighting to get more disabled and blind Americans support and care in their own communities, as well as the workplace accommodations they deserve. I am proud to join so many fierce advocates in this cause, and I call today on all Americans

to help us build on the ADA's promise—moving our Nation closer to realizing its full potential as a place that is truly for everyone.

By joint resolution approved on October 6, 1964 (Public Law 88–628, as amended), the Congress authorized October 15 of each year as ''White Cane Safety Day,'' which is recognized today as ''Blind Americans Equality Day,'' to honor the contributions of blind and low-vision Americans.

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 October 15, 2022, as Blind Americans Equality Day. I call upon all government officials, educators, volunteers and all the people of the United States to mark this day with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, 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. 2022–22828
Filed 10–18–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10478 of October 14, 2022

National Character Counts Week, 2022

By the President of the United States of America

A Proclamation

During National Character Counts Week, we reflect on the highest standards of character—integrity, courage, empathy, decency, and respect—that lift each other up, bring our communities together, and make our Nation stronger.

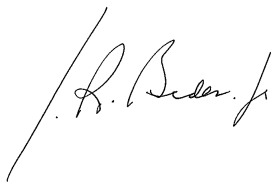
Through simple acts of kindness and inspiring demonstrations of selflessness, we see the best of America's character every day. We see it in teachers who take extra time after school to practice reading with the students who are falling behind, in our scientists and essential workers who create and deliver life-saving products to people in need, and in our first responders who rush towards danger to save others no matter the cost as we have seen this month with Hurricane Ian. We see how character counts in our service members who give their all to protect the freedoms we hold so dear. Time and again, Americans prove that we are a great Nation because we are a good people.

Since coming into office, I have championed policies that reflect the values our Nation stands for at its best. In my State of the Union Address, I put forth a Unity Agenda to rally our Nation to beat the opioid epidemic, take on the mental health crisis, support our brave veterans and their families, and end cancer as we know it. I reaffirmed our Nation's commitment to standing against hate, racism, and bigotry by hosting a first-of-its kind ''United We Stand'' Summit at the White House and announcing new measures to counter hate-fueled violence. In September, my Administration released a national strategy to end hunger as we know it by 2030, a moral duty we all share. In everything we do, including rebuilding our economy and leaving no one behind, fighting climate change and protecting the health of our public and our planet, and reducing costs of every day issues talked about around the kitchen table—like prescription drugs, health care, and energy bills—we see how character counts in how we choose to see one another as fellow Americans and treat one another with the dignity and respect we all deserve.

Now as much as ever, as Americans confront new threats to our personal rights, the pursuit of justice, and the rule of law that try the very soul of this Nation, we must all strive even harder to remember that character counts. I believe in the character of the people of this Nation, and I have never been more optimistic about our future than I am today.

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 October 16 through October 22, 2022, as National Character Counts Week. Now and throughout the year, I encourage all Americans to engage in efforts that honor and express the best attributes of our character, extend the hand of fellowship to their neighbors, and unite in service to their communities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, 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. 2022–22829
Filed 10–18–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Proclamation 10479 of October 14, 2022

National Forest Products Week, 2022

By the President of the United States of America

A Proclamation

During National Forest Products Week, we give thanks for the beauty of our forests and the bounty they provide: from the lumber in our homes and the paper we print to the medicines we take, the water we drink, and the air we breathe. We recommit this week to sustainable stewardship and management of our forests—not only preserving our forests' splendor for recreation or sacred Tribal ceremonies but also for safeguarding key economic resources, supporting millions of jobs, and helping to ease the climate crisis.

The United States is the world's largest producer of forest products, and every day, American foresters, loggers, mill workers, carpenters, scientists, restoration specialists, outdoor recreation workers, and others rely on forests for their livelihoods. But across America and the world, forests are under threat. Wildfires are growing more frequent and ferocious, super-charged by the climate crisis and decades of poor forest management. Globally, illegal deforestation devastates habitats and impedes forests' essential role in preserving biodiversity, filtering water, and absorbing carbon from the atmosphere, which slows our fight against climate change.

My Administration is committed to conserving, restoring, and revitalizing forests at home and abroad to preserve our environment and protect an important pillar of our economy. We have taken the most aggressive climate action in American history, including new investments in forest health and resilience, and fire prevention. The historic Bipartisan Infrastructure Law and Inflation Reduction Act put Americans to work combating wildfires, safeguarding mature and old-growth forests on Federal lands while also planting over a billion new trees. We are also committed to working with global partners to fight deforestation and are cracking down on the trafficking of illegally logged wood. I have signed an Executive Order to protect forests here at home as well, partnering with Tribal nations, local governments, and non-profits to boost conservation and create jobs. The order expressly recognizes the importance of Indigenous knowledge, practices, and Tribal treaty rights in forest management. I have used my authority under the Antiquities Act to restore protections to some of our most treasured national monuments, including places that have been sacred to Native peoples since time immemorial.

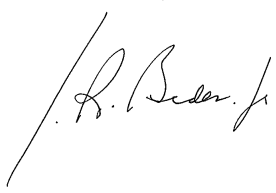
Meanwhile, innovations in sustainable wood manufacturing are creating good-paying union jobs on construction sites across the country. To further those gains, my Administration has awarded Forest Service Wood Innovations and Community Wood grants across the country. These market-based actions, along with other Federal and locally led efforts to conserve and restore forests nationwide, will bring us closer to reaching our ''America the Beautiful'' goal of voluntarily conserving at least 30 percent of our lands and waters by 2030 while also supporting hard working American families.

To recognize the importance of the many products generated by our Nation's forests, the Congress, by Public Law 86–753 (36 U.S.C. 123), as amended, has designated the week beginning on the third Sunday in October of each

year as ''National Forest Products Week'' and has authorized and requested the President to issue a proclamation in observance of this week. In honor of this year's National Forest Products Week, my Administration will continue working across public, Tribal, and private lands to conserve America's forests and protect the vital resources they provide. Together, we can strengthen our economy and pass on a healthier planet to our children and our grandchildren.

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 October 16 through October 22, 2022, as National Forest Products Week. I call upon the people of the United States to join me in this observance and in recognizing all Americans who are responsible for the stewardship of our Nation's beautiful, forested landscapes.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of October, 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. 2022–22830
Filed 10–18–22; 8:45 am]
Billing code 3395–F3–P

Presidential Documents

Executive Order 14087 of October 14, 2022

Lowering Prescription Drug Costs for Americans

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered as follows:

Section 1. *Policy*. Too many Americans face challenges paying for prescription drugs. On average, Americans pay two to three times as much as people in other countries for prescription drugs, and one in four Americans who take prescription drugs struggle to afford their medications. Nearly 3 in 10 American adults who take prescription drugs say that they have skipped doses, cut pills in half, or not filled prescriptions due to cost.

On July 9, 2021, I signed Executive Order 14036 (Promoting Competition in the American Economy), which directed various actions in pursuit of my Administration's policy to improve competition, increase wages, and reduce prices for prescription drugs, among other goods and services. In response to Executive Order 14036, the Department of Health and Human Services (HHS) submitted a report to the White House Competition Council calling for bold legislative and administrative actions to lower drug prices.

On August 16, 2022, I signed Public Law 117–169, commonly referred to as the Inflation Reduction Act of 2022 (IRA), which will lower the cost of prescription drugs and save millions of Americans hundreds or thousands of dollars per year. The IRA will protect Medicare beneficiaries from catastrophic drug costs by phasing in a cap for out-of-pocket costs at the pharmacy and establishing a $35 monthly cap per prescription for insulin covered by a Medicare prescription drug plan and insulin delivered through traditional pumps. Starting this January, Medicare beneficiaries with prescription drug coverage will pay $0 out of pocket for recommended adult vaccines (including the shingles vaccine). The IRA will also require certain companies to pay Medicare rebates if they increase the prices of drugs used by Medicare beneficiaries faster than the rate of inflation. In addition, the Secretary of HHS (Secretary) will be able to negotiate prices for selected high-cost prescription drugs for Medicare beneficiaries for the first time ever. Following the passage of the IRA, HHS has taken critical steps to swiftly implement these historic provisions in order to deliver results and lower health care costs for the American people.

As my Administration works to implement the IRA, it is critical that we take additional actions to complement the IRA and further drive down prescription drug costs. Within HHS, the Center for Medicare and Medicaid Innovation (''Innovation Center'') tests health care payment and delivery models to improve health care quality and make the delivery of health care more efficient. In June 2022, the Innovation Center announced a new model to improve cancer care and lower health care costs for cancer patients, including prescription drug costs. The Innovation Center provides my Administration and the American people with a useful set of tools to help lower health care costs and improve quality of care, and its work can advance the continued policy of my Administration to lower the cost of prescription drugs.

Sec. 2. *HHS Actions*. In furtherance of the policy set forth in section 1 of this order, the Secretary shall, consistent with the criteria set out in 42 U.S.C. 1315a(b)(2), consider whether to select for testing by the Innovation Center new health care payment and delivery models that would lower

drug costs and promote access to innovative drug therapies for beneficiaries enrolled in the Medicare and Medicaid programs, including models that may lead to lower cost-sharing for commonly used drugs and support value-based payment that promotes high-quality care. The Secretary shall, not later than 90 days after the date of this order, submit a report to the Assistant to the President for Domestic Policy enumerating and describing any models that the Secretary has selected. The report shall also include the Secretary's plan and timeline to test any such models. Following the submission of the report, the Secretary shall take appropriate actions to test any health care payment and delivery models discussed in the report.

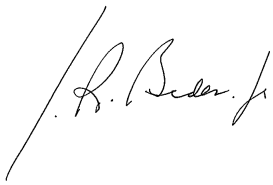
Sec. 3. *General Provisions*. (a) Nothing in this order shall be construed to impair or otherwise affect:

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

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

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

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



THE WHITE HOUSE,
October 14, 2022.

[FR Doc. 2022–22834
Filed 10–18–22; 8:45 am]
Billing code 3395–F3–P

Rules and Regulations

Federal Register
Vol. 87, No. 201
Wednesday, October 19, 2022

OFFICE OF SPECIAL COUNSEL

5 CFR Chapter 18

Prohibited Personnel Practices, Disclosures of Information Evidencing Wrongdoing, FOIA, Production of Records or Testimony, Privacy Act, and Disability Regulations To Conform With Changes in Law and Filing Procedures and Other Technical Changes

AGENCY: U.S. Office of Special Counsel.

ACTION: Final rule.

SUMMARY: The U.S. Office of Special Counsel (OSC) revised its regulations to update the information on filing of complaints and disclosures with OSC, to update the prohibited personnel practice provisions, Freedom of Information Act (FOIA) provisions, Privacy Act provisions, provisions concerning nondiscrimination based on disability, and to make other technical revisions. These revisions are intended to streamline OSC's filing procedures and reflect changes in law.

DATES: This final rule is effective October 19, 2022.

FOR FURTHER INFORMATION CONTACT: Susan Ullman, General Counsel, U.S. Office of Special Counsel, by telephone at 202–804–7000, or by email at *frliaison@osc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

OSC published proposed regulations on February 1, 2022. *See* 87 FR 5409. OSC solicited public comment on those proposed regulations, and the 30-day comment period ended March 4, 2022. OSC has considered the comments and is issuing this final rule.

II. Overview of Comments Received

In response to the proposed rule, OSC received five sets of comments. Two were from individuals; two were from organizations; and one was from a consortium of three organizations. One of the organizations endorsed the consortium's comments. The consortium then amended its comments to cross-endorse the endorsing organization's comments. In this document OSC refers collectively to these cross-endorsing organizations as ''the consortium.'' In the first section we address general comments. In the sections that follow we address comments related to specific sections of the rule. OSC did not receive any comments concerning its Hatch Act program at § 1800.4, its regulations governing Production of Records or Testimony at subpart B of part 1820, or its disability regulations at part 1850.

III. General Comments

Comment: An individual commenter noted that the proposed rule did not cite to section 1097(m) of the National Defense Authorization Act for Fiscal Year 2018, Public Law 115–91.

OSC Response: In the Proposed Rule, OSC set forth the statutory authority for issuing the Rule. Under section 1097(m), OSC was ''to prescribe regulations as may be necessary to perform'' the functions of the office, including any functions that are required by changes in section 1097. OSC determined that no new regulations were necessary to perform the functions of the office.

Comment: The consortium asked that OSC convene a town hall to hear from stakeholders to ''improve'' the rule and to ''develop regulations reinforcing what has worked, and fixing what has not.''

OSC Response: The Administrative Procedure Act establishes the process for commenting on proposed rules. Accordingly, OSC respectfully declines the request to host a town hall meeting. OSC further notes that it maintains continual contact with stakeholders.

Comment: The consortium suggested that OSC expand its regulations to encompass its Alternate Dispute Resolution (ADR) program.

OSC Response: OSC has added § 1800.2(d) about its ADR program. OSC also refers interested persons to its public website—which includes a detailed description of OSC's ADR program—linked here: *https://osc.gov/Services/Pages/ADR.aspx.*

Comment: The consortium asked that the rule ''inform employees of the nature of available relief and the criteria to grant it . . . [and] include an assessment for damages caused by the pain and suffering of whistleblower retaliation and the traumatic stress it causes.''

OSC Response: OSC declines to include in its regulations information about remedies potentially available to employees who file Prohibited Practices Personnel (PPP) complainants with OSC because OSC does not have the authority to award relief—that authority rests with the Merit Systems Protection Board (MSPB). *See* 5 U.S.C. 1221. The MSPB has issued its own regulations that may be responsive to the consortium's request. OSC's website does include information about potentially available remedies. All agencies have an ongoing duty to inform their employees of the rights and remedies available to the employees under civil service and whistleblower protection laws. See 5 U.S.C. 2302(c).

Section IV below includes OSC's responses to comments targeted at specific provisions in the proposed rule.

IV. Specific Comments

Comments on Part 1800—Filing of Complaints and Allegations

Comments on § 1800.2(c)

Comment: The consortium objected to § 1800.2(c)'s requirement that filers use OSC's Form 14 to file complaints, alleging that this rule might unduly burden certain filers, and suggesting that OSC look to the Department of Labor's (DOL's) whistleblower complaint program within the Occupational Safety and Health Administration (OSHA) process as a model for accepting whistleblower complaints. It further argued that filers ''need tools and guidance that is accessible and valuable to them in a language that they can understand.''

OSC Response: OSC has successfully used Form 14 as its exclusive online complaint form for PPPs since August 26, 2019. OSC published Form 14 for public comment on October 15, 2019. *See* 84 FR 55188 (October 15, 2019). None of the commenters responding to this proposed rule commented on the proposed Form 14 at that time or to the 30-Day Notice and Request for Comments published at 85 FR 5725–26 (January 31, 2020). OSC prefers that individuals who file disclosures or Hatch Act complaints use the online Form 14 but will accept submissions in other formats. *See* §§ 1800.3 and 1800.4.

The structured OSC Form benefits PPP filers by eliciting key information and then guiding filers to organize facts and allegations in a useful and readable way. Prior to the use of Form 14, and its predecessor Form 11, OSC intake staff often found it inefficient and time-consuming to determine the nature of the PPP claim(s) involved leading to longer wait times before filers received a substantive response. Form 14 has improved OSC's ability to efficiently and effectively review PPP complaints at the intake stage because OSC's intake unit spends less time requesting and waiting for filers to provide additional information.

DOL's OSHA program is not analogous to OSC's process. OSHA handles complaints from non-Federal employees from broad and varied backgrounds/industries, investigates private and corporate entities, and administers 24 separate whistleblower laws. In contrast, OSC has a limited and unique mission to safeguard the merit system and to act as a safe channel for certain disclosures of wrongdoing within the Executive Branch. DOL's OSHA operations therefore should not be considered ''similarly situated'' and do not provide a good point of comparison for evaluating complaint filing systems.

As for any potential burden on non-professional or disabled persons, OSC also already successfully processes complaints from federal employees in or job applicants for ''nonprofessional'' jobs, and from disabled persons. If OSC needs additional information or clarification from the filer, OSC first opens a complaint file, and then seeks supplemental information and clarification from the filer once the file is opened.

Filers who prefer not to answer in the space provided on Form 14 itself may address the Form's questions and provide supplemental information in a separate letter or document, but in any event the complainant must include a signed Form 14 with their submission. OSC's website contains detailed instructions on how to file a PPP complaint along with ''Useful Tips'' if filers encounter difficulty accessing or submitting the Form. *See https://osc.gov/pages/file-complaint.aspx.* Also, § 1800.2(c) includes contact details for OSC's intake division. And, as OSC notes on the website and on Form 14, OSC's program specialists, who staff the Complaints Review Division (CRD), are available to answer inquiries and provide further assistance via *info@osc.gov* or CRD's telephone hotline, 202–804–7000. For example, CRD specialists assist filers who need help completing or accessing Form 14; clearing any errors in accessing or submitting the form; obtaining a PDF copy of the form; or submitting a completed form/attachments for manual processing.

OSC's ongoing IT improvements should further allay the commenters' concerns about challenges for some filers to use Form 14. OSC will be introducing a web-based Form 14 to increase ease of access to Form 14. OSC's web-based Form 14 will also comply with ADA/Rehabilitation Act requirements.

Comment: The consortium asserts that § 1800.2(c)(3) should ''tell complainants what is necessary for OSC to open a field investigation and explain the level of evidence needed.'' An individual commenter and the consortium also asked that the rule include greater detail regarding how OSC exercises discretion in carrying out its statutory authorities under 5 U.S.C. 1212.

OSC Response: By statute, OSC investigates all PPP complaints it receives. The proposed regulation is not intended to delimit how OSC exercises its discretion to determine when OSC's investigation has uncovered sufficient evidence to make statutorily required determinations. These decisions are inherently individualized and made on a case-by-case basis. The 14 PPPs enumerated at 5 U.S.C. 2302 address an array of prohibited actions across the breadth of the civil service. OSC cannot propose regulations that would capture all the factors OSC may rely on to evaluate each prospective PPP complaint—especially because many complainants include allegations of more than one PPP in their complaint. Generally, though, OSC considers the same factors as any law enforcement agency—namely, the statutory authority, relevant case law, the recency of the alleged PPP, seriousness of harm, impact on important government interest, likelihood for success, potential for meaningful remedies, available resources, and any other factors the Special Counsel deems pertinent.

Most importantly, though, these decisions are committed to the discretion of the Special Counsel, who is entrusted to protect the integrity of the merit system. A detailed, circumscribed regulation limiting the Special Counsel in exercising prosecutorial discretion would undermine the very independent judgment that the Special Counsel is required to exercise.

Courts have consistently declined to question or interfere with OSC's exercise of prosecutorial discretion. *See Carson* v. *U.S. Office of Special Counsel,* 633 F.3d 487, 493 (6th Cir. 2011) (district court has no jurisdiction to consider OSC's jurisdictional determinations or merits of its investigations); *DeLeonardis* v. *Weiseman,* 986 F.2d 725, 727 (5th Cir. 1993) (''We agree with our colleagues of the D.C. Circuit that when [OSC] decides to terminate an investigation that it began pursuant to a complaint, the decision is not reviewable.''); and *Wren* v. *Merit Sys. Prot. Bd.,* 681 F.2d 867, 876 n. 9 (D.C. Cir. 1982) (''It is also quite clear from the statutory language and corresponding legislative history that Congress did not mean to make [OSC's] decisions to terminate or conduct an investigation or bring a proceeding before the Board reviewable on the merits.'').

Comment: The consortium also complained that the regulations do not reflect what it describes as ''unpublished policies for case disposition,'' including regarding closing cases at the end of certain settlement negotiations.

OSC Response: OSC treats each PPP complaint individually and does not have ''unpublished policies for case disposition.'' Before OSC terminates any investigation, 5 U.S.C. 1214(a)(1)(D) requires OSC to provide the filer with a written status report of the proposed findings of fact and legal conclusions. The filer may then submit written comments about the report to the Special Counsel within 10 days. After the comment period passes and OSC terminates the investigation, section 1214(a)(2) requires that OSC provide the filer in writing: a notice that the investigation has been terminated; a summary of the relevant facts; the reasons for terminating the investigation; and a response to any comments submitted by the filer. These statements explain OSC's reasons for a case disposition, including when a complainant declined a settlement proposal that OSC considers a reasonable offer from the Agency that allegedly committed the PPP.

Comment: The comment alleging ''unpublished policies'' also asked that the final rule require OSC to inform the surviving family of deceased complainants of the survivors' ''rights as beneficiaries'' if a complainant dies during settlement negotiations.

OSC Response: In the sad, unfortunate circumstance the comment describes, OSC staff would not be able to inform survivors of their rights as beneficiaries because OSC cannot provide legal advice, but OSC has and will alert survivors to the possibility that they have legal rights.

Comment: The consortium requested that the regulations include ''an institutionalized right for complainants to testify and answer questions from an OSC representative on the full scope of supporting evidence'' for a PPP complaint, as well as to rebut agency responses, noting that DOL's OSHA regulations for the 24 corporate whistleblower laws provide this type of guidance.

OSC Response: As noted above, OSC considers the comparison to DOL's OSHA whistleblower protection inapposite. OSC's Form 14 is a thorough questionnaire that guides complainants to provide detailed information and support for their claims. OSC staff are skilled in assessing the need for additional information and, if necessary, soliciting relevant information. A mandatory requirement such as the one the consortium proposes would interfere with OSC's efficiency, effectiveness, and discretion. As discussed above, before OSC terminates any investigation, it provides ''a written status report to the person who made the allegation of the proposed findings of fact and legal conclusions'' and ''[t]he person may submit written comments about the report.'' 5 U.S.C. 1214(a)(1)(D). If OSC terminates an investigation, it explains to the complainant the reasons why. *See* 5 U.S.C. 1214(a)(2). OSC's case closure letters also inform PPP complainants asserting whistleblower reprisal complaints based on violations of 5 U.S.C. 2302(b)(8) and (b)(9) that the complainants may further pursue their claims at the MSPB as an Individual Right of Action (IRA) appeal. *See* 5 U.S.C. 1214(a)(3)(A) and 1221(a). If OSC has not completed its investigation within 120 days after the complainant filed with OSC, the complainant may file an IRA appeal directly with the MSPB. *See* 5 U.S.C. 1214(a)(3)(B).

Comment: The consortium stated that § 1800.2(c) allowing anyone to file a PPP complaint is too broad and needs further definition.

OSC Response: Under 5 U.S.C. 1214(a)(1)(A), OSC cannot limit who can file a PPP complaint. Instead, it requires the Special Counsel to receive any allegation of a PPP and to investigate. Section 1800.2(c) appropriately reflects this statutory provision. Further, the operative analysis does not turn on the identity of the complainant or even whether the complainant was harmed but rather on whether OSC has jurisdiction to investigate the employing entity and whether the complaint on its face states the elements of a PPP. OSC therefore declines to change this section.

Comments on § 1800.2

Comment: The consortium commented that the proposed rule ''does not even inform employees'' of OSC's option to negotiate with an agency to obtain a voluntary ''stay'' to temporarily halt an agency's proposed or final determination on an adverse action, or of OSC's statutory option to seek a formal stay.

OSC Response: As for formal stays, 5 U.S.C. 1214(b)(1)(A)(i) provides the authority for OSC to seek a formal stay from the Merit Systems Protection Board, so it is unnecessary to repeat it in the regulations. The statute also grants the discretionary authority to the Special Counsel in selecting cases appropriate for stays. In addition, an employee seeking corrective action from OSC based on allegations of whistleblower reprisal may request a stay directly from the MSPB without waiting for OSC to act. *See* 5 U.S.C. 1221(c)(1).

With respect to informal stays from agencies, OSC believes it is impractical to issue a regulation governing its use of informal stays. OSC may request that an agency temporarily stay an adverse action during the OSC investigation. This is one of many informal actions that OSC may seek when OSC has reasonable grounds to believe that the facts and circumstances warrant such a request.

OSC's website provides information about OSC's stay authority, including the availability of informal stays. *See, e.g., https://osc.gov/Documents/PPP/Policy%20Statements/Policy%20Statement%20on%20Stays%20of%20Personnel%20Actions.pdf.*

Comment: The consortium asked that the rule ''define standards for determining what and who will be redacted from the public record, such as agency reports, whistleblower comments, referral letters, etc.''

OSC Response: In determining how best to protect the privacy interests of persons whose names and/or identities might otherwise be exposed to unwarranted invasions of their personal privacy OSC follows: the Privacy Act, 5 U.S.C. 552a; exceptions to the Privacy Act set forth in OSC's Routine Uses, 82 FR 45076 (September 27, 2017); and OSC's governing statutes, 5 U.S.C. 1212(g)(1) and 1213(h).

Comments on § 1800.3

Comment: The consortium asked that § 1800.3 be clarified to identify who is eligible to file disclosures under 5 U.S.C. 1213.

OSC Response: OSC respectfully directs all commenters to the text of 5 U.S.C. 1213, which states that OSC accepts disclosures from federal employees, former federal employees, or applicants for federal employment.

Comment: The organizational commenters asked that OSC's regulations include a description of OSC's authority under 5 U.S.C. 1213(g) to refer disclosures for ''preliminary review'' when supported by the lesser standard of a ''reasonable belief'' and explain the difference between the ''reasonable belief'' and ''substantial likelihood'' standards.

OSC Response: OSC respectfully notes that the comment is based on an apparent misreading of the relevant statute. Section 1213(g) does not refer to a ''reasonable belief'' standard.

Comment: An individual commenter and the consortium asked that the rule include greater detail regarding how OSC exercises discretion in carrying out its statutory authorities ''investigating cases where a federal employee whistleblower discloses wrongdoing by the federal agency employer'' under section 1213.

OSC Response: These comments appear to mis-read OSC's statutory authorities. Section 1213 does not authorize OSC to investigate disclosures of wrongdoing, only to refer allegations to the appropriate agency head.

Comment: The organizational commenters asked that the regulations provide ''OSC's decision-making criteria for acceptance of agency reports'' and ''disclose all material Disclosure Unit procedures and standards.''

OSC Response: The requirements for agency reports are set forth in 5 U.S.C. 1213(d). OSC does not currently have any written procedures or standards that further define the statutory standard. OSC does have an Appendix that sets forth requirements and guidance for the agency creating the report, which is available on OSC's website and which OSC sends to the agency head when OSC refers a matter for investigation. When the Special Counsel receives a report, OSC forwards it to the complainant so the complainant may submit comments to the Special Counsel. The Special Counsel reviews the agency's report and determines whether ''the findings of the head of the agency appear reasonable.'' 5 U.S.C. 1213(e)(2)(A). The Special Counsel may require the head of the agency to submit a supplemental report if the Special Counsel concludes that additional information or documentation is needed to determine whether the report is ''reasonable and sufficient.'' 5 U.S.C. 1213(e)(5). Public examples of OSC referral letters with appendices, agency reports, whistleblower comments, and

agency supplemental reports can be found in the Public Files section of OSC's website at *https://osc.gov.*

Comment: The consortium critiqued how agency Offices of Inspectors General (OIG) conduct investigations of alleged wrongdoing, especially regarding some OIG's alleged failures to interview ''key witnesses'' and ''alleged wrongdoers'' who have left their respective agencies. The consortium then asked that OSC's proposed rule ''address both the standards for investigating agencies more specifically and the procedures for handling agency evasion of complete investigations and reports that respond to the issues identified by Special Counsel's referral letter.''

OSC Response: OSC, like OIGs, is limited by its statutory authority. OSC has the statutory authority to refer a disclosure of wrongdoing to the head of an Agency for investigation, but no authority to mandate that Agencies pursue witnesses who have left federal employment. Likewise, OIGs currently do not have statutory authority to compel testimony from employees that have resigned or otherwise left government service. OSC publishes its current investigation guidance document to Agencies (Appendix) on its website. *https://osc.gov/Documents/Public%20Files/1213%20Appendix.pdf.* This guidance directs Agencies to interview the whistleblower if the whistleblower has consented to disclosure of their identity.

Comment: The consortium also commented that the final regulation ''should disclose all OSC policies that are material for action on . . . whistleblowing procedures.''

OSC Response: OSC has added § 1800.3(a)(1) to the final rule to reflect the Disclosure Unit's deferral policy when OSC and the Agency receive overlapping information/disclosures.

Comments on Part 1820—Freedom of Information Act Requests; Production of Records or Testimony

Comments on § 1820.2

Comment: An organizational commenter objected to OSC's proposed change to § 1820.2(a)(2) and (b) to require the FOIA request letter or email to use the terms ''FOIA Request'' or ''FOIA/Privacy Request.''

OSC Response: OSC works to achieve the goals of FOIA, including promoting expeditious, efficient responses to requests for information. OSC must therefore ensure that communications are quickly forwarded to OSC's FOIA unit. This labeling requirement helps OSC achieve these aims and does not appear to overly burden the filer. OSC therefore declines to change § 1820.2(a)(2) and (b).

Comment: An organizational commenter objects that proposed § 1820.2(d) deems a FOIA requestor to have agreed to pay all applicable fees up to $25 ''unless the Special Counsel waives fees, the requestor is exempt, or the requestor otherwise qualifies for a waiver of fees.'' The organizational commenter argues that this proposed provision means that a FOIA requestor would automatically be deemed to have agreed to pay all applicable fees whenever OSC denies a fee waiver request. Moreover, in that case a FOIA requestor would further be deemed to have agreed to pay all applicable fees even if their FOIA request expressly limited the amount of fees they were willing to pay.

The commenter suggested that, instead, the final rule should require OSC to notify requestors of a fee waiver denial and provide the requestor the opportunity to specify or limit the amount of fees they are willing to pay before OSC begins processing the FOIA request—*i.e.,* before any fees are incurred. OSC would also honor any fee limitation the requestor specified in the FOIA request or in its response to OSC's fee waiver denial.

OSC Response: OSC has revised § 1820.7(d) to clarify its fee waiver provisions.

Comment on § 1820.4

Comment: A commenter wanted the rule to incorporate the statutory language ''Multiple requests involving unrelated matters shall not be aggregated.'' As stated in the General Provisions to part 1820, ''These rules and procedures should be read together with the FOIA . . .'', and the FOIA already precludes such aggregation of unrelated matters. OSC accordingly respectfully declines to adopt the proposed change to § 1820.4(d) and (f).

Comments on § 1820.7

Comment on § 1820.7(a): Two commenters puzzled over the sentence: ''In exceptional circumstances, OSC may charge fees after determining that unusual circumstances exist.''

OSC Response: OSC updated § 1820.7(a) to read, ''In exceptional circumstances, OSC may charge fees.''

Comment on § 1820.7(b): A commenter asked that OSC include a fee category included in the FOIA statute: ''All other requestors.''

OSC Response: OSC added a definition of ''all other requestors'' to § 1820.7(b).

Comment on § 1820.7(e): An organizational commenter also objects to the new 1820.7(e), which allows OSC to charge an additional fee if it needs to provide a special service, such as shipping records by other than ordinary mail. The commenter proposes that the new section require OSC to seek advance approval before charging for the special services if they ''are not necessary to respond to the request.''

OSC Response: OSC adopted the suggested change and revised § 1820.7(e) accordingly.

Comment: An organizational commenter objected to the provisions regarding public interest fee waivers in proposed § 1820.7(h)(2)(ii) and (h)(3)(ii) as overly narrow. The commenter argued that the final rule should exclude the reference to the ''releasable portions'' of the requested records in § 1820.7(h)(2)(ii) on the grounds that a requestor's entitlement to a public interest fee waiver ''should be evaluated based on the face of the request'' and should not turn on whether the records are ultimately found to be ''exempt from disclosure'' unless they are ''patently exempt documents. *Carney* v. *U.S. Dep't of Justice,* 19 F.3d 807, 815 (2d Cir. 1994); *see also, e.g., Citizens for Resp. & Ethics in Washington* v. *U.S. Dep't of Just.,* 602 F. Supp. 2d 121, 125–28 (D.D.C. 2009).''

OSC Response: OSC adopted the suggested change and revised § 1820.7(h)(2)(ii) and (h)(3)(ii) accordingly.

Comment: An organizational commenter noted that the relevant balancing test in § 1820.7(h)(3)(ii) should be whether the commercial interest outweighs the public interest, not whether the public interest outweighs the commercial interest. The commenter noted that, for disclosure to be ''not primarily in the commercial interest of the requester,'' the public interest in disclosure needs to be only equal to the commercial interest. The commenter asserted that the public interest in disclosure does not need to be ''greater in magnitude than'' the commercial interest and asked that OSC exclude that test from the final rule.

OSC Response: OSC adopted the suggested change and revised § 1820.7(h)(3)(ii) accordingly.

Comments on Part 1830—Privacy Act Regulations

Comment: An organizational commenter suggested changing ''physician'' to ''licensed health care professional'' in § 1830.4.

OSC Response: OSC adopted the suggested change and revised § 1830.4 accordingly.

Part 1850—Enforcement of Nondiscrimination on the Basis of Disability in Programs or Activities Conducted by the Office of Special Counsel

OSC received no comments on this part but has made a non-substantive change to § 1850.170(b)(2) by updating the contact information because OSC no longer accepts fax submissions.

Final Rule

Administrative Procedure Act (APA): This action is taken under the Special Counsel's authority at 5 U.S.C. 1212(e) to publish regulations in the **Federal Register**.

Executive Orders 12866 and 13771: This rule is not a regulatory action under Executive Order (E.O.) 13771 because OSC does not anticipate that proposed rule will have significant economic impact, raise novel issues, and/or have any other significant impacts. Thus, this rule is not a significant regulatory action under section 3(f) of E.O. 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order.

Congressional Review Act (CRA): OSC has determined that this rule is not subject to the CRA because it falls under the exception provided at 5 U.S.C. 804(3)(C).

Regulatory Flexibility Act (RFA): The RFA does not apply because this rule will not directly regulate small entities. OSC therefore need not perform a regulatory flexibility analysis of small entity impacts.

Unfunded Mandates Reform Act (UMRA): This rule does not impose any federal mandates on state, local, or tribal governments, or on the private sector within the meaning of the UMRA.

National Environmental Policy Act (NEPA): This rule will have no physical impact upon the environment and therefore will not require any further review under NEPA.

Paperwork Reduction Act (PRA): This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the PRA.

List of Subjects

5 CFR Parts 1800 and 1810

Administrative practice and procedure.

5 CFR Part 1811

Contracting with an inspector general.

5 CFR Parts 1820 and 1830

Archives and records, Reporting and recordkeeping requirements.

5 CFR Part 1850

Administrative practice and procedure, Buildings and facilities, Equal employment opportunity, Federal buildings and facilities, Individuals with disabilities.

Approved: October 6, 2022.

Travis G. Millsaps,

Deputy Special Counsel for Public Policy.

For the reasons stated in the preamble, OSC issues this final rule to amend chapter 18 of title 5 of the Code of Federal Regulations as follows:

■ 1. Revise part 1800 to read as follows:

PART 1800—FILING OF COMPLAINTS AND ALLEGATIONS

Sec.

Authority: 5 U.S.C. 301, 1212(e).

§ 1800.1 Scope and purpose.

The purpose of this part is to implement the U.S. Office of Special Counsel's (OSC) authorities at 5 U.S.C. 1212–1216 and should be read in concert with these statutory provisions. This part does not create new individual rights but instead is intended to inform individuals of filing options they may be entitled to under 5 U.S.C. 1212–1216, and 2302. Individuals are encouraged to go to OSC's website at *https://osc.gov* for more information about the OSC complaint form that should be used when filing with OSC.

§ 1800.2 Filing complaints of prohibited personnel practices or other prohibited activities.

(a) *Prohibited personnel practices.* Pursuant to 5 U.S.C. 1214 and 1215, OSC has investigative and prosecutorial jurisdiction over allegations that one or more of the prohibited personnel practices enumerated at 5 U.S.C. 2302 were committed against current or former Federal employees or applicants for Federal employment, including:

(1) Discrimination, including discrimination based on marital status or political affiliation (*see* § 1810.1 of this chapter for information about OSC's deferral policy for discrimination complaints);

(2) Soliciting or considering improper recommendations or statements about any individual requesting, or under consideration for, a personnel action;

(3) Coercing political activity, or engaging in retaliation for refusal to engage in political activity;

(4) Deceiving or obstructing any individual with respect to competition for employment;

(5) Influencing any individual to withdraw from competition to improve or injure the employment prospects of another individual;

(6) Granting an unauthorized preference or advantage to any individual to improve or injure the employment prospects of another individual;

(7) Nepotism involving a covered relative as defined at 5 U.S.C. 3110(a)(3);

(8) Retaliation for whistleblowing (whistleblowing is generally defined as the disclosure of information by an individual who reasonably believes that the information evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or the integrity of the scientific process if the censorship will cause one of the aforementioned categories of wrongdoing);

(9) Retaliation for:

(i) Exercising certain grievance, complaint, or appeal rights;

(ii) Providing testimony or other assistance to any individual exercising such grievance, complaint, or appeal rights;

(iii) Cooperating with the Special Counsel, an Inspector General, or any other agency component responsible for internal investigation or review; or

(iv) Refusing to obey an order that would require the violation of law, rule, or regulation;

(10) Discrimination based on conduct that would not adversely affect job performance;

(11) Violating a veterans' preference requirement;

(12) Taking or failing to take a personnel action in violation of any law, rule, or regulation implementing or directly concerning merit system principles at 5 U.S.C. 2301(b);

(13) Implementing or enforcing any nondisclosure policy, form, or agreement that fails to include the statement found at 5 U.S.C. 2302(b)(13) or fails to inform any individual that they retain their whistleblowing rights; and

(14) Accessing the medical record of any individual as part of, or otherwise in furtherance of, any other prohibited personnel practice.

(b) *Other prohibited activities.* Pursuant to 5 U.S.C. 1216, OSC also has

investigative and prosecutorial jurisdiction over any allegation concerning the following:

(1) Prohibited political activity by Federal employees covered by the Hatch Act at title 5 of the U.S. Code, chapter 73, subchapter III;

(2) Prohibited political activity by State and local officers and employees covered by the Hatch Act at title 5 of the U.S. Code, chapter 15;

(3) Arbitrary and capricious withholding of information that should be released pursuant to the Freedom of Information Act at 5 U.S.C. 552 (except for certain foreign and counterintelligence information);

(4) Activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decision-making;

(5) Involvement by any employee in any prohibited discrimination found by any court or appropriate administrative authority to have occurred in the course of any personnel action (unless OSC determines that the allegation may be resolved more appropriately under an administrative appeals procedure); and

(6) Pursuant to 38 U.S.C. 4324, violations of the Uniformed Services Employment and Reemployment Rights Act (USERRA), codified at 38 U.S.C. 4301, *et seq.*

(c) *Procedures for filing complaints alleging prohibited personnel practices or other prohibited activities (other than the Hatch Act).* (1) Anyone may file a complaint with OSC alleging one or more prohibited personnel practices, or other prohibited activities within OSC's investigative jurisdiction. The OSC complaint form must be used to file all such complaints.

(2) OSC will not process a complaint filed in any format other than the completed OSC complaint form designated in paragraph (c)(1) of this section. OSC will, however, accept material supplementing the contents of Form 14, as long as the filer also submits a signed form. If a filer does not use this form to submit a complaint, OSC will provide the filer with information about the form and obtain a signature on the form. The OSC complaint form will be considered to be filed on the date on which OSC receives a completed form.

(3) The OSC complaint form requests that the filer provide basic information about the alleged prohibited personnel practices or other prohibited activities. A complaint may be amended to clarify or include additional allegations. A complaint is sufficient for investigation when OSC receives information identifying the parties, identifying any relevant personnel action(s), and describing generally the practices or activities at issue.

(4) The OSC complaint form is available:

(i) Online at: *https://osc.gov* (to print out and complete on paper, or to complete online);

(ii) By writing to OSC at: U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505; or

(iii) By calling OSC at: (800) 872–9855 (toll-free), or (202) 804–7000 (in the Washington, DC area).

(5) A complainant can file a completed OSC complaint form:

(i) *Electronically at: https://osc.gov;*

(ii) *By email to: info@osc.gov;* or

(iii) *By mail to:* U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(d) *Alternate Dispute Resolution.* For selected cases, OSC may offer Alternative Dispute Resolution (ADR) pursuant to the voluntary Alternative Dispute Resolution Act of 1998, 5 U.S.C. 571–573. OSC provides information about its ADR program and process on its website at *https://osc.gov.*

§ 1800.3 Filing disclosures of information evidencing wrongdoing.

(a) *General.* Pursuant to 5 U.S.C. 1213, OSC is authorized to provide an independent and secure channel for use by current or former Federal employees and applicants for Federal employment to disclose information that they reasonably believe evidences wrongdoing by a Federal agency. Within 45 days of receipt of the disclosure, OSC must determine whether there is a substantial likelihood that the information discloses a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety; or censorship related to scientific research or the integrity of the scientific process if the censorship will cause one of the aforementioned categories of wrongdoing. If it does, the law requires OSC to refer the information to the appropriate agency head for an investigation and a written report on the findings; and the agency head must submit the report to the Special Counsel. OSC may not disclose the identity of an individual who makes the disclosure unless the individual consents or the Special Counsel determines that the disclosure of the identity is necessary because of an imminent danger to public health or safety or imminent violation of any criminal law. The law does not authorize OSC to investigate any disclosure.

(1) *Deferral policy for certain disclosures.* When OSC determines that a disclosure is being or has been investigated by an Agency, OSC will usually defer to such investigation rather than make a substantial likelihood determination.

(b) *Procedures for filing disclosures.* Current or former Federal employees and applicants for Federal employment may file with OSC a disclosure of the type of information described in 5 U.S.C. 1213(a)(1). Such disclosures must be filed in writing.

(1) Filers are encouraged to use the OSC complaint form, which is available online, to file a disclosure of the type of information described in 5 U.S.C. 1213(a)(1). OSC's complaint form provides more information about OSC jurisdiction and procedures for processing whistleblower disclosures. The OSC complaint form is available:

(i) Online at: *https://osc.gov* (may be completed online or printed out and completed on paper);

(ii) *By writing to OSC at:* U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505; or

(iii) *By calling OSC at:* (800) 572–2249 (toll-free), or (202) 804–7004 (in the Washington, DC area).

(2) Filers may use another written format to submit a disclosure to OSC, but the submission should include:

(i) The name, mailing address, and telephone number(s) of the individual(s) making the disclosure(s);

(ii) The department or agency, location, and organizational unit complained of; and

(iii) A statement as to whether the filer consents to disclosure of the filer's identity by OSC to the agency involved, in connection with any OSC referral to that agency.

§ 1800.4 Filing complaints of Hatch Act violations and requesting advisory opinions.

(a) Procedures for filing complaints alleging Hatch Act violations.

(1) Complainants are encouraged to use the OSC complaint form (Form 14) to file Hatch Act complaints. The OSC complaint form is available:

(i) Online at: *https://osc.gov* (to print out and complete on paper, or to complete online); or

(ii) *By writing to OSC at:* U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(2) Complaints alleging a violation of the Hatch Act not submitted on Form 14 may also be submitted in any written form, and should include:

(i) The complainant's name, mailing address, and telephone number (unless the matter is submitted anonymously);

(ii) The department or agency, location, and organizational unit complained of; and

(iii) A concise description of the actions complained about, names and positions of employees who took the actions, if known to the complainant, and dates of the actions, preferably in chronological order, together with any documentary evidence that the complainant can provide.

(3) Written Hatch Act complaints including the information in 1800.4(a)(2) above may be filed with OSC:

(i) *By email to: hatchact@osc.gov;* or

(ii) *By mail to:* U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(b) Procedures for requesting Hatch Act advisory opinions. Pursuant to 5 U.S.C. 1212(f), OSC is authorized to issue advisory opinions only about political activity of Federal officers and employees, and political activity of certain State or local officers and employees. An individual can seek an advisory opinion from OSC:

(1) *By email to: hatchact@osc.gov;*

(2) *By mail to:* U.S. Office of Special Counsel, Hatch Act Unit, 1730 M Street NW, Suite 218, Washington, DC 20036–4505; or

(3) *By phone at:* (800) 854–2824 (toll-free), or (202) 804–7002 (in the Washington, DC area).

■ 2. Revise part 1810 to read as follows:

PART 1810—INVESTIGATIVE AUTHORITY OF THE SPECIAL COUNSEL

Sec.

Authority: 5 U.S.C. 301 and 1212(e).

§ 1810.1 Investigative policy in certain discrimination and retaliation complaints.

OSC is authorized to investigate allegations of discrimination and retaliation prohibited by law, as defined in 5 U.S.C. 2302(b)(1) and (b)(9)(A)(ii). Because procedures for investigating discrimination and retaliation complaints have already been established in the agencies and the Equal Employment Opportunity Commission, OSC will usually avoid duplicating those procedures and will defer to those procedures rather than initiating an independent investigation.

§ 1810.2 Access to agency information in investigations.

(a) Pursuant to 5 U.S.C. 1212(b)(5), OSC is authorized to have timely access to all agency records, data, reports, audits, reviews, documents, papers, recommendations, information, or other material that relate to an OSC investigation, review, or inquiry.

(b) A claim of common law privilege, such as the attorney-client privilege, may not be used by any agency, or officer or employee of any agency, to withhold information from OSC. By providing such information to OSC, an agency will not be deemed to have waived the common law privilege against a non-Federal entity or against any individual in any other proceeding.

(c) In the event of contumacy or failure of an agency to comply with any request under this section, the Special Counsel shall submit a report to the committees of Congress with jurisdiction over OSC and the applicable agency.

§ 1810.3 Termination of certain OSC investigations.

(a) Pursuant to 5 U.S.C. 1214(a)(6), within 30 days of receiving a complaint alleging that a prohibited personnel practice occurred, OSC may terminate an investigation of the allegation without further inquiry if:

(1) The same allegation, based on the same set of facts and circumstances, had previously been:

(i) Made by the individual and investigated by OSC; or

(ii) Filed by the individual with the Merit Systems Protection Board;

(2) OSC does not have jurisdiction to investigate the allegation; or

(3) The individual knew or should have known of the alleged prohibited personnel practice more than 3 years before the allegation was received by OSC.

(b) Within 30 days of terminating an investigation described in paragraph (a), OSC shall notify the individual, in writing, of the basis for terminating the investigation.

§ 1810.4 Investigative policy regarding agency liaisons.

Agency liaisons facilitate their agency's cooperation with OSC's investigations by ensuring that agencies timely and accurately respond to OSC's requests for information and witness testimony, as well as by assisting with the resolution of complaints. To maintain the integrity of OSC's investigations and to avoid actual or perceived conflicts, agency liaisons should not have current or past involvement in the personnel actions at issue in the assigned case.

■ 3. Add part 1811 to read as follows:

PART 1811—OUTSIDE INSPECTOR GENERAL

Authority: 5 U.S.C. 1212(i).

§ 1811.1 Requirement to contract with an outside inspector general.

The Special Counsel shall enter into at least one agreement with the Inspector General of an agency under which—

(1) the Inspector General shall—

(A) receive, review, and investigate allegations of prohibited personnel practices or wrongdoing filed by employees of the Office of Special Counsel; and

(B) develop a method for an employee of the Office of Special Counsel to communicate directly with the Inspector General; and

(2) the Special Counsel—

(A) may not require an employee of the Office of Special Counsel to seek authorization or approval before directly contacting the Inspector General in accordance with the agreement; and

(B) may reimburse the Inspector General for services provided under the agreement.

■ 4. Revise part 1820 to read as follows:

PART 1820—FREEDOM OF INFORMATION ACT REQUESTS; PRODUCTION OF RECORDS OR TESTIMONY

Authority: 5 U.S.C. 552, 301, and 1212(e).

§ 1820.1 General provisions.

This part contains rules and procedures followed by the U.S. Office of Special Counsel (OSC) in processing requests for records under the Freedom of Information Act (FOIA), codified at 5 U.S.C. 552. These rules and procedures should be read together with the FOIA and the FOIA page of OSC's website (*https://osc.gov/FOIA*), which set forth additional information about access to agency records and information routinely provided to the public as part of a regular OSC activity. For example, forms, press releases, records published on OSC's website, or public lists maintained at OSC headquarter offices pursuant to 5 U.S.C. 1219, may be requested and provided to the public without following this part. This part also addresses responses to demands by a court or other authority to an OSC employee or former employee for production of official records or testimony in legal proceedings.

Subpart A—FOIA Regulations

§ 1820.2 Requirements for making FOIA requests.

(a) *Submission of requests.* (1) A request for OSC records under the FOIA must be made in writing. The request must be sent:

(i) *By email to: foiarequest@osc.gov* or other electronic means described on the FOIA page of OSC's website (*https://osc.gov/FOIA*);

(ii) *Electronically to:* The National FOIA Portal for the entire federal government at *www.foia.gov;* or

(iii) *By mail to:* U.S. Office of Special Counsel, FOIA Officer, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(2) Both the request letter and envelope or email subject line should be clearly marked ''FOIA Request.''

(3) A FOIA request will not be considered to have been received by OSC until it reaches the FOIA Officer.

(b) *Description of records sought.* Requests must state in the letter, email, or other prescribed electronic method the words ''FOIA Request'' or ''FOIA/Privacy Request.'' The request must also describe the records sought in enough detail for them to be located with a reasonable amount of effort. When requesting records about an OSC case file, the case file number, name, and type (for example, prohibited personnel practice (PPP), Hatch Act, USERRA, Hatch Act advisory opinion, or whistleblower disclosure) should be provided, if known. Whenever possible, requests should describe any particular record sought, such as the date, title or name, author, recipient, and subject matter. OSC requires proof of identification from requestors seeking their own case files. OSC requires a signed release of information from requestors seeking another individual's case file.

(c) *Agreement to pay fees.* By making a FOIA request the requestor agrees to pay all applicable fees chargeable under § 1820.7 unless the Special Counsel waives fees, the requestor is exempt, or the requestor otherwise qualifies for a waiver of fees.

§ 1820.3 Consultations and referrals.

When OSC receives a FOIA request for a record in its possession, it may determine that another Federal agency or entity is better able to decide whether the record is exempt from disclosure under the FOIA. If so, OSC will either respond to the request for the record after consulting with the other Federal agency or entity or refer the responsibility for responding to the request to the other Federal agency or entity deemed better able to determine whether to release it. OSC will ordinarily respond promptly to consultations and referrals from other Federal agencies or entities.

§ 1820.4 Timing of responses to requests.

(a) *In general.* OSC ordinarily will respond to FOIA requests in order of receipt. In determining which records are responsive to a request, OSC ordinarily will include only records in its possession on the date that it begins its search. OSC will inform the requestor if it uses any other date.

(b) *Multitrack processing.* (1) OSC may use two or more processing tracks to distinguish between simple and more complex requests based on the amount of work and/or time estimated to process the request.

(2) When using multitrack processing, OSC may provide requestors in its slower track(s) with an opportunity to limit the scope of their requests in order to qualify for faster processing within the specified limits of the faster track(s).

(c) *Expedited processing.* (1) OSC will take requests and appeals out of order and provide expedited treatment whenever OSC has established to its satisfaction that:

(i) Failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual;

(ii) An urgency exists to inform the public about an actual or alleged federal government activity and the requestor is primarily engaged in disseminating information; or

(iii) The requestor with a personal interest in a case for which they face an imminent filing deadline with the Merit Systems Protection Board or other administrative tribunal or court of law in an individual right of action, or in a USERRA case referred to OSC under title 38 of the U.S. Code. Expedited status granted under this provision will apply only to the following requested records: PPP case closure and notice of appeal rights letters sent to the complainant by OSC and the official complaint form submitted to OSC by a USERRA complainant or the original referred USERRA complaint if referred to OSC under title 38 of the U.S. Code.

(2) A request for expedited processing must be made in writing and sent to OSC's FOIA Officer. The expedited request is deemed received when it reaches the FOIA Officer.

(3) A requestor who seeks expedited processing must submit a statement, certified to be true and correct to the best of that individual's knowledge and belief, explaining in detail the basis for requesting expedited processing. OSC may waive a certification as a matter of administrative discretion.

(4) OSC shall decide whether to grant a request for expedited processing and notify the requestor of its decision within ten (10) calendar days of the FOIA Officer's receipt of the request. If OSC grants the request for expedited processing, it will process the request as soon as practicable. If OSC denies the request for expedited processing, OSC shall rule expeditiously on any administrative appeal of that decision.

(d) *Aggregated requests.* OSC may aggregate multiple requests by the same requestor, or by a group of requestors acting in concert, if it reasonably believes that such requests actually constitute a single request that would otherwise create ''unusual circumstances'' as defined in § 1820.5, and that the requests involve clearly related matters.

§ 1820.5 Responses to requests.

(a) *General.* Ordinarily, OSC has twenty (20) business days from receipt to determine whether to grant or deny a FOIA request.

(1) In unusual circumstances, OSC may extend the twenty (20) business-day deadline by written notice to the requestor setting forth the unusual circumstances justifying the extension. OSC shall notify the requestor if OSC cannot process the request in 20 days

and provide the requestor an opportunity to modify the request so that OSC can process the request within the 20-day time limit. OSC and the requestor can also negotiate an alternative time frame for processing the request or modified request. OSC's FOIA Public Liaison is available to assist in the resolution of any disputes between the requestor and OSC. OSC must also advise the requestor of the requestor's right to seek dispute resolution services from the National Archives and Records Administration's (NARA) Office of Government Information Services (OGIS). OSC may consider a requestor's refusal to reasonably modify the request or to negotiate an alternative time frame as a factor in determining whether unusual and/or exceptional circumstances exist.

(2) *Unusual circumstances* means—

(i) The need to search for and collect the requested records from OSC field offices, NARA storage facilities, or other locations away from OSC's FOIA office;

(ii) The need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records demanded in a single request; or

(iii) The need for consultation and/or referral with another OSC unit where the information concerns two or more components of OSC or with a Federal entity that has an interest in the information requested.

(3) *Exceptional circumstances* means—

(i) OSC has a backlog of pending requests and is making reasonable progress in reducing the backlog; and

(ii) OSC estimates a search yield of more than 5000 pages.

(b) OSC will notify the requestor in writing of its determination to grant or deny in full or in part a FOIA request.

(c) *Adverse determinations.* Adverse determinations, or denials of requests, consist of: A determination to withhold any requested record in whole or in part; that a requested record does not exist or cannot be located; that a record is not readily reproducible in the form or format sought by the requestor; that the request does not seek a record subject to the FOIA; a determination on any disputed fee matter; or a denial of a request for expedited treatment. A notification to a requestor of an adverse determination on a request shall include:

(1) A brief statement of the reason(s) for the denial of the request, including any FOIA exemption applied by OSC in denying the request; and

(2) A statement that the denial may be appealed under § 1820.6(a), with a description of the requirements of that subsection.

(d) *Dispute resolution program.* OSC shall inform FOIA requestors at all stages of the FOIA process of the availability of dispute resolution services provided by the FOIA Public Liaison or by NARA's OGIS.

§ 1820.6 Appeals.

(a) *Appeals of adverse determinations.* A requestor may appeal an adverse determination to OSC's Office of General Counsel. The appeal must be in writing, and must be submitted either:

(1) *By email to: foiaappeal@osc.gov,* or other electronic means as described on the FOIA page of OSC's website (*https://osc.gov/FOIA*); or

(2) *By mail to:* U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(b) *Submission and content.* The Office of General Counsel must receive the appeal within ninety (90) calendar days of the date of the adverse determination letter. The appeal letter and envelope or email subject line should be clearly marked ''FOIA Appeal.'' The appeal must clearly identify the OSC determination (including the assigned FOIA request number, if known) being appealed. OSC will not ordinarily act on a FOIA appeal if the request becomes a matter of FOIA litigation.

(c) *Responses to appeals.* Ordinarily, OSC must issue a written appeal decision within twenty (20) business days from receipt of the appeal. A decision affirming a denial in whole or in part shall inform the requestor of the provisions for judicial review of that decision, and of the availability of dispute resolution services. If OSC's appeal decision reverses or modifies its denial, OSC's notice will state that OSC will reprocess the request in accordance with that appeal decision.

§ 1820.7 Fees.

(a) *In general.* OSC provides the first two hours of search time and the first 100 pages of duplication free of charge to all requestors. In exceptional circumstances, OSC may charge fees. At the discretion of the Special Counsel, OSC may exempt certain requestors from search and duplication fees, including PPP complainants and subjects; Hatch Act complainants and subjects; Hatch Act advisory opinion requestors; whistleblowers; and USERRA complainants. OSC charges commercial users for search, review, and duplication fees under the FOIA in accordance with paragraph (c) of this section, except where a waiver or reduction of fees is granted under paragraph (h) of this section. OSC charges duplication fees, but not search fees, to educational or non-commercial scientific institutions; and to representative of the news media or news media requestors. OSC charges both search fees and duplication fees to all other requestors. If an exempted requestor abuses its exempt fee status to file numerous, duplicative, and/or voluminous FOIA requests, OSC may suspend the requestor's exempt status and charge search and duplication fees. OSC may require up-front payment of fees before sending copies of requested records to a requestor. Requestors must pay fees by submitting to OSC's FOIA Officer a check or money order made payable to the Treasury of the United States. *See generally Uniform Freedom of Information Act Fee Schedule and Guidelines* (hereinafter *OMB Fee Guidelines*), 52 FR 10,012, 10,017–18 (Mar. 27, 1987).

(b) *Definitions.* For purposes of this section:

All other requestors means all requestors who do not fall into the categories of commercial use, educational institution, noncommercial scientific institution, and representatives of the news media.

Commercial use request means a request from or on behalf of an individual who seeks information for a use or purpose that furthers commercial, trade, or profit interests, which can include furthering those interests through litigation. If OSC determines that the requestor seeks to put the records to a commercial use, either because of the nature of the request or because OSC has reasonable cause to doubt a requestor's stated use, OSC shall provide the requestor with a reasonable opportunity to clarify.

Direct costs mean those expenses that OSC incurs in searching for and duplicating (and, in the case of commercial use requests, reviewing) records to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating equipment. Direct costs do not include overhead expenses such as rent, heating, or lighting the record storage facility.

Duplication means the reasonable direct cost of making copies of documents.

Educational institution means any school that operates a program of scholarly research. *See* OMB Fee Guidelines, 52 FR at 10,019. To be in

this category, a requestor must show that the request is authorized by and is made under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought to further scholarly research.

Non-commercial scientific institution means an entity that is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry and are not for commercial use.

Representative of the news media or *news media requestor* means any individual or entity that gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw materials into a distinct work, and distributes that work to an audience. A non-exhaustive list of news media entities includes print newspapers, electronic outlets for print newspapers, broadcast and cable television networks and stations, broadcast and satellite radio networks and stations, internet-only outlets, and other alternative media as methods of news delivery evolve. For ''freelance'' journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization, whether print or electronic. A requestor seeking to qualify as a news media requestor must not be seeking the requested records for a commercial use. The requestor's news-dissemination function is not considered to be a commercial use.

Review means the process of examining a record located in response to a request in order to determine whether any portion of the record is exempt from release. Review includes redacting exempt material, and otherwise evaluating and preparing the records for release. Review includes time spent obtaining and considering any formal objection to release made by a business submitter under § 1820.8(f). Review does not include time spent resolving general legal or policy issues about the application of exemptions. OSC may charge for review costs in connection with commercial use requests even if a record ultimately is not released.

Search means the process of looking for and retrieving records or information responsive to a FOIA request, as well as page-by-page or line-by-line identification of responsive information within records.

(c) *Fees.* OSC charges the following fees for responding to FOIA requests:

(1) *Search.* (i) The first two hours of search are free. OSC may charge for time spent searching even if it fails to locate responsive records, or even if OSC determines that located records are exempt from release.

(ii) OSC charges $5.50 per quarter hour spent by clerical personnel in searching for and retrieving a requested record; $9.00 per quarter hour of search time spent by professional personnel; and $17.50 per quarter hour for search assistance from managerial personnel.

(iii) OSC charges the direct costs of conducting electronic searches, including the costs of operator or programmer staff time apportionable to the search.

(iv) OSC may charge additional costs in accordance with the applicable billing schedule established by NARA for requests requiring the retrieval of records from any Federal Records Center.

(2) *Duplication.* OSC charges all non-exempt requestors duplication fees after the first 100 pages. OSC's duplication fee for a standard paper photocopy of a record will be 25 cents per page. For copies produced by computer, such as discs or printouts, OSC will charge the direct costs, including staff time, of producing the copy. For other forms of duplication, OSC will charge the direct costs of that duplication.

(3) *Review.* OSC charges review fees to commercial use requestors. OSC will not charge for review at the administrative appeal level.

(d) *Notice of anticipated fees in excess of $25.00.* OSC shall notify the requestor of the actual or estimated fees when OSC determines or estimates that fees charged under this section would exceed $25.00, unless the requestor has indicated a willingness to pay fees at that level or if OSC waived fees before undertaking the search. OSC will not conduct a search or process responsive records until OSC and the requestor reach an agreement on the fees. If a requestor wants to pay a lower amount than $25.00, the fee notice will offer the requestor an opportunity to work with OSC to reformulate or narrow the request to try to lower the anticipated fees.

(e) *Charges for other services.* OSC will notify requestors in advance if OSC intends to charge additional fees to provide special services, such as shipping records by other than ordinary mail.

(f) *Aggregating separate requests.* OSC may aggregate requests and charge appropriate fees where OSC reasonably believes that a requestor or a group of requestors seek to avoid fees by dividing a request into a series of requests. OSC may presume that multiple such requests made within a 30-day period were divided in order to avoid fees. OSC will aggregate requests separated by more than 30 days only where a reasonable basis exists for determining that aggregation is warranted under the circumstances involved.

(g) *Advance payments.* (1) For requests other than those described in paragraphs (g)(2) and (3) of this section, OSC will not require the requestor to make an advance payment before work is begun or continued on a request. Payment owed for work already completed (that is, pre-payment after processing a request but before copies are sent to the requestor) is not an advance payment.

(2) OSC may require advance payment up to the amount of the entire anticipated fee before beginning to process the request if OSC determines or estimates that a total fee to be charged under this section will exceed $250.00.

(3) OSC may require the requestor to make an advance payment in full of the anticipated fee where a requestor has previously failed to pay a properly charged FOIA fee within 30 business days of the date of billing.

(h) *Requirements for waiver or reduction of fees.* (1) OSC will furnish records responsive to a request without charge or at a charge reduced below that established under paragraph (c) of this section where OSC determines, based on all available information, that the requestor has demonstrated that:

(i) Release of the requested records is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government; and

(ii) Release of the records is not primarily in the commercial interest of the requestor.

(2) To determine whether the first fee waiver requirement is met, OSC will consider the following factors:

(i) Whether the subject of the requested records concerns a direct and clear connection to ''the operations or activities of the government,'' not remote or attenuated.

(ii) Whether the release is ''likely to contribute'' to an understanding of government operations or activities. The requested records must be meaningfully informative about government operations or activities in order to be ''likely to contribute'' to an increased public understanding of those operations or activities. The release of records already in the public domain is unlikely to contribute to such understanding.

(iii) Whether release of the requested records will contribute to ''public understanding.'' The release must contribute to the understanding of a reasonably broad audience of

individuals interested in the subject. OSC shall consider a requestor's expertise in the subject area and ability and intention to effectively convey information to the public. A representative of the news media presumptively satisfies this consideration.

(iv) Whether the release is likely to contribute ''significantly'' to public understanding of government operations or activities. The requestor must demonstrate that the release would significantly enhance the public's understanding of the subject in question.

(3) To determine whether the second fee waiver requirement is met, OSC will consider the following factors:

(i) Whether the requestor has a commercial interest that would be furthered by the requested release. OSC shall consider any commercial interest of the requestor (with reference to the definition of ''commercial use'' in paragraph (b)(1) of this section), or of any individual on whose behalf the requestor may be acting, that would be furthered by the requested release. Requestors shall be given an opportunity to provide explanatory information about this consideration.

(ii) Whether any identified commercial interest in the disclosure, is equal to or less than that of any identified public interest. OSC ordinarily shall presume that a news media requestor has satisfied the public interest standard. Release to data brokers or others who primarily compile and market government information for direct economic return shall be presumed not to primarily serve the public interest.

(4) Where only a portion of the records to be released satisfies the requirements for a waiver of fees, a waiver shall be granted for that portion.

(5) Requests for the waiver or reduction of fees should address the factors listed in paragraphs (h)(1), (2), and (3) of this section, insofar as they apply to each request. OSC fee reduction or waiver decisions may consider the cost-effectiveness of its allocation of administrative resources.

(i) *No assessment of fees.* OSC may not assess any search fees if it misses the statutory 20-business-day deadline to respond to the request, except under paragraphs (i)(1) and (2) of this section.

(1) If OSC determined that unusual circumstances apply and OSC provided a timely written notice to the requestor, OSC may extend the 20-day deadline by 10 business days. OSC may not assess any search fees, however, if it misses the extended deadline.

(2) OSC may charge search fees if the search yield would exceed 5,000 pages, and if OSC provides a timely written notice to the requestor.

§ 1820.8 Business information.

(a) *In general.* Business information obtained by OSC from a submitter may be released only pursuant to this section.

(b) *Definitions.* For purposes of this section:

Business information means trade secrets and commercial or financial information obtained by OSC from a submitter that may be protected from release under FOIA Exemption 4. 5 U.S.C. 552(b)(4).

Submitter means any individual or entity from whom OSC obtains business information, directly or indirectly.

(c) *Designation of business information.* A submitter of business information must use good-faith efforts to designate, by appropriate markings, any portion of its submission that it considers to be protected from release under FOIA Exemption 4.

(d) *Notice to submitters.* OSC shall provide a submitter with prompt written notice of a FOIA request or administrative appeal that appears to seek confidential business information wherever required under paragraph (e) of this section, except as provided in paragraph (h) of this section, in order to give the submitter an opportunity to object to release of any specified portion of those records under paragraph (f) of this section. The notice shall either describe the confidential business information requested or include copies of the requested records or record portions containing the information.

(e) *When notice is required.* Notice shall be given to a submitter whenever:

(1) The submitter designated the records in good faith as considered protected from release under FOIA Exemption 4; or

(2) OSC has reason to believe that the records or portions of records may be protected from release under FOIA Exemption 4.

(f) *Opportunity to object to release.* OSC will allow a submitter a reasonable time to respond to the notice described in paragraph (d) of this section and will specify that time period within the notice. The submitter must submit any objections to release in a detailed written statement. The statement must specify all grounds for withholding any portion of the records under any exemption of the FOIA and, in the case of Exemption 4, it must show why the information contained in the record is privileged or confidential. Submitters who fail to respond timely to the notice are deemed to have consented to release of the records. Information provided by a submitter under this paragraph may itself be subject to release under FOIA.

(1) *Notice of intent to release.* OSC shall consider a submitter's objections and specific grounds for non-release in deciding whether to release business information. If OSC decides to release business information over the objection of a submitter, OSC shall provide written notice including the reason(s) why OSC overruled the submitter's objections; a description of the business information to be released; and a reasonable specified release date.

(g) *Exceptions to notice requirements.* The notice requirements of paragraphs (d) and (e) of this section shall not apply if:

(1) OSC determines that the information should not be released;

(2) The information has been lawfully published or has been officially made available to the public;

(3) Release of the information is required by statute (other than the FOIA) or by a regulation issued in accordance with the requirements of Executive Order 12600; or

(4) The designation made by the submitter under paragraph (c) of this section appears obviously frivolous—except that, in such a case, OSC shall, within a reasonable time prior to a specified release date, give the submitter written notice of any final decision to release the information.

(h) *Notice of FOIA lawsuit.* OSC shall promptly notify a submitter if a requestor files a lawsuit seeking to compel the release of the submitter's business information.

(i) *Corresponding notice to requestors.* OSC shall notify requestor(s): that it provided submitters the opportunity to object to release under paragraph (d) of this section; if OSC subsequently releases the requested records under paragraph (g) of this section; and whenever a submitter files a lawsuit seeking to prevent OSC's release of business information.

§ 1820.9 Other rights and services.

This subpart does not create a right or entitlement for any individual to any service or to the release of any record other than those available under FOIA.

Subpart B—Production of Records or Testimony

§ 1820.10 Scope and purpose.

(a) This part establishes policy, assigns responsibilities, and prescribes procedures with respect to the production of official information, records, or testimony by current and

former OSC employees, contractors, advisors, and consultants in connection with federal or state litigation or administrative proceedings in which OSC is not a party.

(b) OSC intends this part to:

(1) Conserve OSC employee time for conducting official business;

(2) Minimize OSC employee involvement in issues unrelated to OSC's mission;

(3) Maintain OSC employee impartiality in disputes between non-OSC litigants; and

(4) Protect OSC's sensitive, confidential information and deliberative processes.

(c) OSC does not waive the sovereign immunity of the United States when allowing OSC employees to provide testimony or records under this part.

§ 1820.11 Applicability.

This part applies to demands and requests from non-OSC litigants for testimony from current and former OSC employees, contractors, advisors, and consultants relating to official OSC information and/or for production of official OSC records or information in legal proceedings in which OSC is not a party.

§ 1820.12 Definitions.

The following definitions apply to this part.

Demand means an order, subpoena, or other command of a court or other competent authority for OSC's production or release of records or for an OSC employee's appearance and testimony in a legal proceeding.

General Counsel means OSC's General Counsel or an individual to whom the General Counsel has delegated authority under this part.

Legal proceeding means any matter before a court of law, administrative board or tribunal, commission, administrative law judge, hearing officer, or other body that conducts a legal or administrative proceeding.

OSC employee or *employee* means any current or former OSC employee or contractor, including but not limited to OSC: temporary employees, interns, volunteers, consultants, and/or other advisors.

Records or *official records and information* means all information in OSC's custody and control, relating to information in OSC's custody and control, or acquired by an OSC employee in the performance of official duties.

Request means any request, by whatever method, for the production of records and information or for testimony which has not been ordered by a court or other competent authority.

Testimony means any written or oral statements, including depositions, answers to interrogatories, affidavits, declarations, and interviews made by an individual in connection with a legal proceeding.

§ 1820.13 General prohibition.

No OSC employee may testify or produce official records or information in response to a demand or request without the General Counsel's prior written approval.

§ 1820.14 Factors OSC will consider.

The General Counsel has discretion to grant an employee permission to testify on matters relating to official information or produce official records and information, in response to a demand or request, with the general proviso that OSC's release of information is subject to the Privacy Act, 5 U.S.C. 552a, and applicable privileges including but not limited to the attorney work product and deliberative process privileges. See especially §§ 1830.1(e)(2)(ii) and 1830.10(a) below. The General Counsel may also consider whether:

(a) The purposes of this part are met;

(b) Allowing such testimony or production of records would be necessary to prevent a miscarriage of justice; would assist or hinder OSC in performing its statutory duties; or would be in the best interest of OSC or the United States;

(c) The records or testimony can be obtained from other sources;

(d) The demand or request is unduly burdensome or otherwise inappropriate under the applicable rules of discovery or the rules of procedure governing the case or matter in which the demand or request arose;

(e) Release would violate a statute, Executive Order, or regulation; would reveal trade secrets, confidential, sensitive, or privileged information, or information that would otherwise be inappropriate for release; or would impede or interfere with an ongoing law enforcement investigation or proceeding, or compromise constitutional rights or national security interests;

(f) Allowing such testimony or production of records would result in OSC appearing to favor one litigant over another;

(g) A substantial government interest is implicated;

(h) The demand or request is within the authority of the party making it; and/or

(i) The demand or request is sufficiently specific to be answered.

§ 1820.15 Service of requests or demands.

Requests or demands for official records or information or testimony under this subpart must be served by mail to the U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505; or by email to *ogc@osc.gov*. The subject line should read ''Touhy Request.''

§ 1820.16 Requirements for litigants seeking documents or testimony.

A litigant must comply with the following requirements when submitting a request for testimony or official records and information under this part. A request should be submitted before a demand is issued.

(a) The request must be in writing (email suffices) and must be submitted to the General Counsel.

(b) The written request must contain the following information:

(1) The caption of the legal or administrative proceeding, docket number, and name and address of the court or other administrative or regulatory authority involved;

(2) A copy of the complaint or equivalent document setting forth the assertions in the case and any other pleading or document necessary to show relevance;

(3) A list of categories of records sought, a detailed description of how the information sought is relevant to the issues in the legal or administrative proceeding, and a specific description of the substance of the testimony or records sought;

(4) A statement addressing the factors set out in § 1820.14;

(5) A statement indicating that the information sought is not available from another source;

(6) If testimony is requested, the intended use of the testimony, and a showing that no document could be provided and used in lieu of testimony;

(7) A description of all prior decisions, orders, or pending motions in the case that bear upon the relevance of the requested records or testimony;

(8) The name, address, and telephone number of counsel to each party in the case; and

(9) An estimate of the amount of time that the requestor and other parties will require of each OSC employee for time spent by the employee to prepare for testimony, in travel, and for attendance in the legal proceeding.

(c) OSC reserves the right to require additional information to complete the request where appropriate.

(d) The request should be submitted at least 14 days before the date that records or testimony is required.

(e) The General Counsel may deny a request for records or testimony based on a requestor's failure to cooperate in good faith to enable the General Counsel to make an informed decision.

(f) The request should state that the requestor will provide a copy of the OSC employee's testimony free of charge and that the requestor will permit OSC to have a representative present during the employee's testimony.

§ 1820.17 Processing requests or demands.

(a) Absent exigent circumstances, OSC will issue a determination within 10 business days after the General Counsel received the request or demand.

(b) The General Counsel may grant a waiver of any procedure described by this subpart where a waiver is considered necessary to promote a significant interest of OSC or the United States, or for other good cause.

(c) On request, OSC may certify that records are true copies in order to facilitate their use as evidence.

§ 1820.18 Restrictions that apply to testimony.

(a) The General Counsel may impose conditions or restrictions on OSC employee testimony including, for example:

(1) Limiting the areas of testimony;

(2) Requiring the requestor and other parties to the legal proceeding to agree that the transcript of the testimony will be kept under seal;

(3) Requiring that the transcript will be used or made available only in the particular legal proceeding for which testimony was requested.

(b) OSC may offer the employee's written declaration in lieu of testimony.

(c) If authorized to testify under this part, employees may testify as to facts within their personal knowledge, but, unless specifically authorized to do so by the General Counsel, the employee shall not:

(1) Reveal confidential or privileged information; or

(2) For a current OSC employee, testify as an expert or opinion witness with regard to any matter arising out of the employee's official duties or the functions of OSC unless testimony is being given on behalf of the United States (see also 5 CFR 2635.805).

(d) The scheduling of an employee's testimony, including the amount of time that the employee will be made available for testimony, will be subject to OSC's approval.

§ 1820.19 Restrictions that apply to released records.

(a) The General Counsel may impose conditions or restrictions on the release of official OSC records and information, including the requirement that parties to the proceeding obtain a protective order or execute a confidentiality agreement to limit access and any further disclosure.

(b) If the General Counsel so determines, original OSC records may be presented for examination in response to a request, but they may not be presented as evidence or otherwise used in a manner by which they could lose their identity as official OSC records, nor may they be marked or altered.

§ 1820.20 Procedure in the event a decision is not made prior to the time a response is required.

If a requestor needs a response to a demand or request before the General Counsel makes a determination whether to grant the demand or request, the employee upon whom the demand or request is made, unless otherwise advised by the General Counsel, will appear, if necessary, at the stated time and place, produce a copy of this part, state that the employee has been advised by counsel not to provide the requested testimony or produce documents at this time, and respectfully decline to comply with the demand or request, citing *United States ex rel. Touhy* v. *Ragen,* 340 U.S. 462 (1951).

§ 1820.21 Fees.

(a) *Witness fees.* OSC may assess fees for attendance by a witness. Such fees will include fees, expenses, and allowances prescribed by the court's rules. If no such fees are prescribed, witness fees will be determined based on 28 U.S.C. 1821, and upon the rule of the federal district closest to the location where the witness will appear. Such fees will include the costs of time spent by the witness to prepare for testimony, in travel, and for attendance in the legal proceeding, plus travel costs.

(b) *Payment of fees.* A requestor must pay witness fees for current OSC employees and any record certification fees by submitting to the General Counsel a check or money order for the appropriate amount made payable to the United States Department of Treasury.

§ 1820.22 Final determination.

The General Counsel will notify the requestor and, when appropriate, the court or other body of the final determination, the reasons for the response to the request or demand, and any conditions that the General Counsel may impose on the testimony of an OSC employee or the release of OSC records or information. The General Counsel has the sole discretion to make the final determination regarding requests to employees for testimony or production of official records and information in litigation in which OSC is not a party. The General Counsel's decision exhausts administrative remedies for purposes of release of the information.

§ 1820.23 Penalties.

(a) An employee who releases official records or information or gives testimony relating to official information, except as expressly authorized by OSC, or as ordered by a court after OSC has had the opportunity to be heard, may face the penalties provided under applicable laws. Additionally, former OSC employees are subject to the restrictions and penalties of 18 U.S.C. 207 and 216.

(b) A current OSC employee who testifies or produces official records and information in violation of this part may be subject to disciplinary action.

§ 1820.24 Conformity with other laws and regulations; other rights.

This regulation is not intended to conflict with 5 U.S.C. 2302(b)(13) or with any statutory or common law privilege against the release of protected information. This part does not create any right, entitlement, or benefit, substantive or procedural, that a party may rely upon in any legal proceeding against the United States.

■ 5. Revise part 1830 to read as follows:

PART 1830—PRIVACY ACT REGULATIONS

Sec.

Authority: 5 U.S.C. 552a(f), 301, and 1212(e).

§ 1830.1 Scope and purpose.

(a) This part contains rules and procedures followed by OSC in processing requests for records under the Privacy Act. Further information about access to OSC records generally is available on OSC's website at *https://osc.gov/Privacy.*

(b) This part implements the Privacy Act of 1974, codified at 5 U.S.C. 552a, by establishing OSC policies and procedures for the release of records and maintenance of certain systems of records. *See* 5 U.S.C. 552a(f). This part also establishes policies and procedures for an individual to correct or amend their record if they believe it is not accurate, timely, complete, or relevant or necessary to accomplish an OSC function.

(c) OSC personnel protected by the Privacy Act include all staff, experts, contractors, consultants, volunteers, interns, and temporary employees.

(d) Other individuals engaging with OSC protected by the Privacy Act include, but are not limited to, PPP complainants, subjects of PPP complaints, Hatch Act complainants, subjects of Hatch Act complaints, Hatch Act advisory opinion requesters, whistleblowers filing disclosures under 5 U.S.C. 1213, and USERRA complainants, and the subjects of USERRA complaints.

(e) This part does not:

(1) Apply to OSC record systems that are not Privacy Act Record Systems.

(2) Make any records available to individuals other than:

(i) individuals who are the subjects of the records (''subject individuals'');

(ii) individuals who can prove they have the consent of the subject individual; or

(iii) individuals acting as legal representatives on behalf of such subject individuals.

(3) Make available information compiled by OSC in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such information, including to any subject individual or party to such litigation or proceeding, shall be governed by applicable constitutional principles, rules of discovery, privileges, and part 1820 of this chapter; or

(4) Apply to personnel records maintained by the Human Capital Office of OSC. Those records are subject to regulations of the Office of Personnel Management in 5 CFR parts 293, 294, and 297.

§ 1830.2 Definitions.

As used in this part:

Access means availability of a record to a subject individual.

Disclosure means the availability or release of a record.

Maintain means to maintain, collect, use, or disseminate when used in connection with the term ''record;'' and to have control over or responsibility for a system of records when used in connection with the term ''system of records.''

Notification means communication to an individual whether or not they are a subject individual.

Record means any item, collection, or grouping of information about an individual that is maintained by OSC, including, but not limited to, the individual's education, financial transactions, medical history, criminal, or employment history, that contains a name or an identifying number, symbol, or other identifying particular assigned to the individual. When used in this part, record means only a record that is in a system of records.

Release means making available all or part of the information or records contained in an OSC system of records.

Responsible OSC official means the officer listed in a notice of a system of records as the system manager or another individual listed in the notice of a system of records to whom requests may be made, or the designee of either such officer or individual.

Subject individual means that individual to whom a record pertains.

System of records means any group of records under the control of OSC from which a record is retrieved by personal identifier such as the name of the individual, number, symbol or other unique retriever assigned to the individual. Single records or groups of records which are not retrieved by a personal identifier are not part of a system of records. See 5 U.S.C. 552a(a)(5).

§ 1830.3 Requirements for making Privacy Act requests.

(a) *Submission of requests.* A request for OSC records under the Privacy Act must be made in writing. The request must be sent:

(1) *By email to: foiarequest@osc.gov;* or

(2) *By mail to:* U.S. Office of Special Counsel, Chief Privacy Officer, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(3) Both the request letter and envelope or email should clearly be marked ''Privacy Act Request.'' A Privacy Act request is deemed received by OSC when it reaches the Chief Privacy Officer.

(b) *Description of records sought.* Requestors must describe the records sought in enough detail for OSC to locate them with a reasonable amount of effort, including, where known, data such as the date, title or name, author, recipient, and subject matter of the requested record.

(c) *Proof of identity.* OSC requires proof of identity from requestors seeking their own files, preferably a government-issued document bearing the subject individual's photograph. OSC requires a signed consent from the subject individual to release records to an individual's representative.

(d) *Freedom of Information Act processing.* OSC also processes all Privacy Act requests for access to records under the Freedom of Information Act, 5 U.S.C. 552, by following the rules contained in part 1820 of this chapter.

§ 1830.4 Medical records.

When a request for access involves medical records that are not otherwise exempt from disclosure, OSC may advise the requesting individual that OSC will only provide the records to a licensed health care professional the individual designates in writing. Upon receipt of the designation, the licensed health care professional will be permitted to review the records or to receive copies by mail upon proper verification of identity.

§ 1830.5 Requirements for requesting amendment of records.

(a) *Submission of requests.* Individuals may request amendment of records pertaining to them that are subject to amendment under the Privacy Act and this part. The request must be sent:

(1) *By email to: foiarequest@osc.gov;* or

(2) *By mail to:* Chief Privacy Officer, U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(3) Both the request letter and envelope or email should be clearly marked ''Privacy Act Amendment Request.'' Whether sent by mail or email, a Privacy Act amendment request is considered received by OSC when it reaches the Chief Privacy Officer.

(b) *Description of amendment sought.* Requests for amendment should include the identification of the records together with a statement of the basis for the requested amendment and all available supporting documents and materials. The request needs to articulate whether information should be added, deleted, or substituted with another record and clearly articulate the reason for believing that the record should be corrected or amended.

(c) *Proof of identity.* Rules and procedures set forth in § 1830.3 apply to requests made under this section.

(d) *Acknowledgement and response.* Requests for amendment shall be acknowledged by OSC no later than ten (10) business days after receipt by the Chief Privacy Officer and a

determination on the request shall be made promptly.

(e) *What will not change.* The Privacy Act amendment or correction process will not be used to alter, delete, or amend information which is part of a determination of fact or which is evidence received in the record of a claim in any form of an administrative appeal process. Disagreements with these determinations are to be resolved through the assigned OSC Program Office.

(f) *Notice of error.* If the record is wrong, OSC will correct it promptly. If wrong information was disclosed from the record, we will tell those of whom we are aware received that information that it was wrong and will give them the correct information. This will not be necessary if the change is not due to an error—*e.g.,* a change of name or address.

(g) *Record found to be correct.* If the record is correct, OSC will inform the requestor in writing of the reason why we refuse to amend the record, the right to appeal the refusal, and the name and address of the official to whom the appeal should be sent.

(h) *Record of another government agency.* If you request OSC to correct or amend a record governed by the regulation of another government agency, we will forward your request to such government agency for processing and we will inform you in writing of the referral.

§ 1830.6 Appeals.

(a) *Appeals of adverse determinations.* A requestor may appeal a denial of a Privacy Act request for access to or amendment of records to OSC's Office of General Counsel. The appeal must be in writing and be sent:

(1) *By email to: foiarequest@osc.gov;* or

(2) *By mail to:* U.S. Office of Special Counsel, Office of General Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036–4505.

(3) The appeal must be received by the Office of General Counsel within 45 calendar days of the date of the letter denying the request. Both the appeal letter and envelope or email should be clearly marked ''Privacy Act Appeal.'' An appeal is considered received by OSC when it reaches the Office of General Counsel. The appeal letter may include as much or as little related information as the requestor wishes, as long as it clearly identifies OSC's determination (including the assigned request number, if known) being appealed. An appeal ordinarily will not be acted on if the request becomes a matter of litigation.

(b) *Responses to appeals.* OSC's decision on an appeal will be made in writing. A final determination will be issued within 20 business days—unless OSC shows good cause to extend the 20-day period.

§ 1830.7 Exemptions.

OSC exempts investigatory material from records subject to Privacy Act record requests or requests to amend records. This exemption aims to prevent interference with OSC's inquiries into matters under its jurisdiction, and to protect identities of confidential sources of information. OSC also reserves the right to assert exemptions for records received from another agency that could be properly claimed by that agency. OSC may exempt any information compiled in reasonable anticipation of a legal action or proceeding.

§ 1830.8 Fees.

Requests for records under this section shall be subject to the fees set forth in part 1820 of this chapter.

§ 1830.9 Accounting for releases.

OSC will maintain an accounting of all releases of a record for six (6) years or for the life of the record in accordance with the General Records Schedule, whichever is longer—except that, we will not make an accounting for releases:

(a) Of a subject individual's records record made with the subject individual's consent;

(b) To employees of OSC who have a need for the record to perform their duties; and

(c) Required under the Freedom of Information Act, 5 U.S.C. 552, and part 1820 of this chapter.

§ 1830.10 Conditions of release.

OSC shall not release any record that is contained in a system of records to any individual or to another agency, except as follows:

(a) *Consent to release by the subject individual.* Except as provided in paragraphs (b) and (c) of this section authorizing releases of records without consent, no release of a record will be made without the consent of the subject individual. The consent shall be in writing and signed by the subject individual. The consent shall specify the individual, agency, or other entity to whom the record may be released, which record may be released and, where applicable, during which time frame the record may be released. The subject individual's identity and, where applicable, the identity of the individual to whom the record is to be released shall be verified as set forth in § 1830.3(c).

(b) *Releases without the consent of the subject individual.* The releases listed in this paragraph may be made without the consent of the subject individual, including:

(1) To employees and contractors of the Office of Special Counsel who have a need for the record to perform their duties.

(2) As required by the Freedom of Information Act, 5 U.S.C. 552, and part 1820 of this chapter.

(3) To the entities listed in in the Privacy Act at 5 U.S.C. 552a(b)(1) through (12).

■ 6. Revise part 1850 to read as follows:

PART 1850—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF SPECIAL COUNSEL

Sec.

Authority: 29 U.S.C. 794.

§ 1850.101 Purpose.

The purpose of this part is to implement section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended Section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by Executive agencies or the United States Postal Service.

§ 1850.102 Application.

This part applies to all programs or activities conducted by OSC, except for programs or activities conducted outside the United States that do not involve individuals with disabilities in the United States.

§ 1850.103 Definitions.

Auxiliary aids means services or devices that enable individuals with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by OSC. For example, auxiliary aids useful for individuals with impaired vision include readers, Braille materials, audio recordings, and other similar services and devices. Auxiliary aids useful for individuals with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf individuals (TDDs), interpreters, notetakers, written materials, and other similar services and devices.

Complete complaint means a written statement that contains the complainant's name and address and describes OSC's alleged discriminatory action in sufficient detail to inform OSC of the nature and date of the alleged violation of Section 504. It shall be signed by the complainant or by someone authorized to do so on the complainant's behalf. Complaints filed on behalf of classes or third parties shall describe or identify (by name, if possible) the alleged victims of discrimination.

Days means calendar days, unless otherwise stated.

Facility means all or any portion of buildings, structures, equipment, roads, walks, parking lots, rolling stock or other conveyances, or other real or personal property.

Historic properties means those properties that are listed or eligible for listing in the National Register of Historic Places or properties designated as historic under a statute of the appropriate State or local government body.

Individual with a disability means any individual who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. The following phrases used in this definition are further defined as follows:

Physical or mental impairment includes—

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

(3) Also, physical and mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, and drug addiction and alcoholism.

Major life activities include functions such as—

(1) Caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, sitting, reaching, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, writing, communicating, interacting with others, and working; and

(2) The operation of a *major bodily function,* such as the functions of the immune system, special sense organs and skin, normal cell growth, and digestive, genitourinary, bowel, bladder, neurological, brain, respiratory, circulatory, cardiovascular, endocrine, hemic, lymphatic, musculoskeletal, and reproductive systems. The operation of a major bodily function includes the operation of an individual organ within a body system.

Qualified individual with a disability means—

(1) With respect to any OSC program or activity under which an individual is required to perform services or to achieve a level of accomplishment, an individual with a disability who meets the essential eligibility requirements and who can achieve the purpose of OSC's program or activity without modifications in the program or activity that OSC can demonstrate would result in a fundamental alteration in its nature;

(2) With respect to any other program or activity, an individual with a disability who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) Qualified individuals with disabilities as that term is defined for purposes of employment in *29* CFR 1614.203, which is made applicable to this part by § 1850.130.

Has a record of such an impairment means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.

Is regarded as having an impairment means—

(1) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(3) Has none of the impairments defined in paragraph (1) of this definition but is treated by the agency as having such an impairment.

Section 504 means Section 504 of the *Rehabilitation Act of 1973* (*Pub. L.* No. 93–112, *87 Stat. 394* (*29 U.S.C. 794*)), as amended by the *Rehabilitation Act Amendments of 1974* (*Pub. L.* No. 93–516, *88 Stat. 1617*); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (*Pub. L.* No. 95-*602, 92 Stat. 2955*); and the *Rehabilitation Act Amendments of 1986* (Pub. L. 99–506, *100 Stat. 1810*). As used in this part, Section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 1850.104–1850.109 [Reserved]

§ 1850.110 Notice.

OSC shall make available to all interested individuals information regarding the provisions of this part and its applicability to the programs or activities conducted by OSC as necessary to apprise such individuals of the protections assured them by Section 504 and this part.

§§ 1850.111–1850.119 [Reserved]

§ 1850.120 General prohibitions against discrimination against individuals with disabilities.

(a) No qualified individual with a disability shall, on the basis of such disability, be excluded from participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by OSC.

(b) OSC, in providing any aid, benefit, or service, may not, directly or through contractual, licensing, or other arrangements, on the basis of disability—

(1) Deny a qualified individual with a disability the opportunity to participate in or benefit from the aid, benefit, or service;

(2) Afford a qualified individual with a disability an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(3) Provide a qualified individual with a disability with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain

the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(4) Provide different or separate aid, benefits, or services to individuals with disabilities or to any class of individuals with disabilities than is provided to others unless such action is necessary to provide qualified individuals with disabilities with aid, benefits, or services that are as effective as those provided to others;

(5) Deny a qualified individual with a disability the opportunity to participate as a member of planning or advisory boards;

(6) Otherwise limit a qualified individual with a disability in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(7) OSC may not exclude a qualified individual with a disability from participation in any of OSC's programs or activities, even though permissibly separate or different programs or activities exist.

(c) OSC may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(1) Subject qualified individuals with disabilities to discrimination on the basis of disability; or

(2) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(d) OSC may not, in determining the site or location of a facility, make selections the purpose or effect of which would—

(1) Exclude individuals with disabilities from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by OSC, or;

(2) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with disabilities.

(e) OSC, in the selection of procurement contractors, may not use criteria that subject qualified individuals with disabilities to discrimination on the basis of disability.

(f) OSC may not administer a licensing or certification program in a manner that subjects qualified individuals with disabilities to discrimination on the basis of disability, nor may OSC establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with disabilities to discrimination on the basis of disability. However, the programs or activities of entities that are licensed or certified by OSC are not, themselves, covered by this part.

(g) This part does not prohibit the exclusion of nondisabled individuals from the benefits of a program limited by Federal statute or Executive order to individuals with disabilities or the exclusion of a specific class of individuals with disabilities from a program limited by Federal statute or Executive order to a different class of individuals with disabilities.

(h) OSC shall administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.

§§ 1850.121–1850.129 [Reserved]

§ 1850.130 Employment of qualified individuals with disabilities.

OSC shall not subject any qualified individual with a disability, on the basis of such disability, to discrimination in employment under any program or activity OSC conducts. The definitions, requirements, and procedures of Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR part 1614, shall apply to employment in federally conducted programs or activities.

§§ 1850.131–1850.139 [Reserved]

§ 1850.140 Program accessibility: Discrimination against qualified individuals with disabilities prohibited.

Except as otherwise provided in § 1850.150, no qualified individual with disabilities shall, because OSC's facilities are inaccessible to or unusable by individuals with disabilities, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by OSC.

§§ 1850.141–1850.149 [Reserved]

§ 1850.150 Program accessibility: Existing facilities.

(a) *General.* OSC shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. This paragraph does not—

(1) Necessarily require OSC to make each of its existing facilities accessible to and usable by individuals with disabilities;

(2) In the case of historic preservation programs, require OSC to take any action that would result in a substantial impairment of significant historic features of an historic property; or

(3) Require OSC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where OSC personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, OSC has the burden of proving that compliance with this paragraph (a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Special Counsel or the Special Counsel's designee after considering all OSC resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, OSC shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with disabilities receive the benefits and services of the program or activity.

(b) *Methods*—(1) *General.* OSC may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with disabilities. OSC is not required to make structural changes in existing facilities where other methods are effective in achieving compliance with this section. OSC, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, OSC shall give priority to those methods that offer programs and activities to qualified individuals with disabilities in the most integrated setting appropriate.

(2) *Historic preservation programs.* In meeting the requirements of paragraph (a) of this section in historic preservation programs, OSC shall give priority to methods that provide physical access to individuals with disabilities. In cases where a physical alteration to an historic property is not required because of paragraphs (a)(2) or (3) of this section, alternative methods

of achieving program accessibility include—

(i) Using audio-visual materials and devices to depict those portions of an historic property that cannot otherwise be made accessible;

(ii) Assigning individuals to guide individuals with disabilities into or through portions of historic properties that cannot otherwise be made accessible; or

(iii) Adopting other innovative methods.

§ 1850.151 Program accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of OSC shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with disabilities. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151–4157), as established in *41 CFR* 101-*19*.600 to 101–19.607, apply to buildings covered by this section.

§§ 1850.152–1850.159 [Reserved]

§ 1850.160 Communications.

(a) OSC shall take appropriate steps to ensure effective communication with applicants, participants, personnel of other Federal entities, and members of the public.

(1) OSC shall furnish appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by OSC.

(i) In determining what type of auxiliary aid is necessary, OSC shall give primary consideration to the requests of the individual with a disability.

(ii) OSC need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature.

(2) Where OSC communicates with parties by telephone, telecommunication devices for deaf individuals or equally effective telecommunication systems shall be used to communicate with individuals with impaired hearing.

(b) OSC shall ensure that interested individuals, including individuals with impaired vision or hearing, can obtain information as to the existence and location of accessible services, activities, and facilities.

(c) OSC shall provide signage at a primary entrance to each of its inaccessible facilities, if any, directing users to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require OSC to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens. In those circumstances where OSC personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, OSC has the burden of proving that compliance with this section would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the Special Counsel or the Special Counsel's designee after considering all OSC resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, OSC shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with disabilities receive the benefits and services of the program or activity.

§§ 1850.161–1850.169 [Reserved]

§ 1850.170 Compliance procedures.

(a) OSC shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR part 1614 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(b) All complaints of discrimination on the basis of disability in programs and activities conducted by OSC shall be filed under the procedures described in this paragraph.

(1) *Who may file.* Any individual who believes that they have been subjected to discrimination prohibited by this part, or an authorized representative of such individual, may file a complaint. Any individual who believes that any specific class of individuals has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint. A charge on behalf of an individual or member of a class of individuals claiming to be aggrieved may be made by any individual, agency, or organization.

(2) *Where and when to file.* Complaints shall be filed with the Director, Office of Equal Employment Opportunity (EEO Director), U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036 within 35-calendar days of the alleged act of discrimination. A complaint filed by personal delivery is considered filed on the date it is received by the EEO Director. The date of filing by email is the date the email is sent. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the agency is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service.

(3) *Acceptance of complaint.* (i) OSC shall accept a complete complaint that is filed in accordance with paragraph (b) of this section and over which it has jurisdiction. The EEO Director shall notify the complainant of receipt and acceptance of the complaint.

(ii) If OSC receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate entity.

(iii) If the EEO Director receives a complaint that is not complete, the Director shall notify the complainant that additional information is needed. If the complainant fails to complete the complaint and return it to the EEO Director within 15 days of the complainant's receipt of the request for additional information, the EEO Director shall dismiss the complaint with prejudice and shall inform the complainant.

(4) Within 180 days of the receipt of a complete complaint, the EEO Director shall notify the complainant of the results of the investigation in an initial decision containing—

(i) Findings of fact and conclusions of law;

(ii) When applicable, a description of a remedy for each violation found; and

(iii) A notice of the right to appeal.

(5) Any appeal of the EEO Director's initial decision must be filed with the Principal Deputy Special Counsel (PDSC), U.S. Office of Special Counsel, 1730 M Street NW, Suite 218, Washington, DC 20036 by the complainant within 35 days of the date the EEO Director issues the decision required by paragraph (b)(4) of this section. OSC may extend this time for good cause when a complainant shows that circumstances beyond the

complainant's control prevented the filing of an appeal within the prescribed time limit. An appeal filed by personal delivery is considered filed on the date it is received by the PDSC. The date of filing by mail is determined by the postmark date; if no legible postmark date appears on the mailing, the submission is presumed to have been mailed five days (excluding days on which the agency is closed for business) before its receipt. The date of filing by commercial overnight delivery is the date the document was delivered to the commercial overnight delivery service. The appeal should be clearly marked ''Appeal of Section 504 Decision'' and must contain specific objections explaining why the complainant believes the initial decision was factually or legally wrong. A copy of the initial decision being appealed should be attached to the appeal letter.

(6) The PDSC shall notify the complainant of the results of the appeal within 60 days of the receipt of the request. If the PDSC needs additional information from the complainant, the PDSC shall have 60 days from the date the additional information is received to make a determination on the appeal.

(7) The time limits cited in paragraphs (b)(2) and (5) of this section may be extended for an individual case when the PDSC determines there is good cause, based on the particular circumstances of that case.

(8) OSC may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with a nongovernmental investigator to perform the investigation, but the authority for making the final determination may not be delegated to another entity.

(c) OSC shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151–4157), is not readily accessible to and usable by individuals with disabilities.

§§ 1850.171–1850.999 [Reserved]

[FR Doc. 2022–22155 Filed 10–18–22; 8:45 am]

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DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1740

[Docket No. RUS–20–Telecom–0023]

RIN 0572–AC51

Rural eConnectivity Program

AGENCY: Rural Utilities, USDA.

ACTION: Final rule; confirmation and response to comments.

SUMMARY: The Rural Utilities Service (RUS or Agency), an agency in the United States Department of Agriculture (USDA) Rural Development Mission area, published a final rule with comment in the **Federal Register** on February 26, 2021, to establish the Rural eConnectivity Program (ReConnect Program). The final rule described the eligibility requirements, the application process, the criteria that RUS uses to assess applicants' creditworthiness and outlined the application process. Through this action, RUS is confirming the final rule as it was published and providing responses to the public comments that addressed the broadband speed used to determine eligibility.

DATES: The final rule published February 26, 2021, at 86 FR 11609, is confirmed as of April 27, 2021.

FOR FURTHER INFORMATION CONTACT: Laurel Leverrier, Assistant Administrator; Telecommunication Program; Rural Development; U.S. Department of Agriculture; 1400 Independence Avenue SW; Room 4121–S; Washington, DC 20250; telephone 202–720–3416, email *laurel.leverrier@usda.gov.* Persons with disabilities or who require alternative means for communication should contact the USDA Target Center at 202–720–2600.

SUPPLEMENTARY INFORMATION: The ReConnect Program was authorized by the Consolidated Appropriations Act, 2018 (Pub. L. 115–141), which directed the program to be conducted under the Rural Electrification Act of 1936 (7 U.S.C. 901 *et seq).* The program has received successive appropriations by Congress and has matured due to Agency experience and feedback provided by stakeholders. Since its establishment in 2018, the ReConnect Program has been implemented by issuing four Funding Opportunity Announcements (FOA).

The ReConnect Program provides loans, grants, and loan/grant combinations to facilitate broadband deployment in rural areas. In facilitating the expansion of broadband services and infrastructure, the program fuels long-term rural economic development and opportunities across rural America.

The final rule that published February 26, 2021 (86 FR 11603), included a 60-day comment period that ended on April 27, 2021. The final rule specifically requested comments on the speed used to determine eligibility. The Agency received comments from 73 respondents. Respondents included industry associations, engineering firms, individuals, education providers, Tribes and Tribal organizations, economic development and municipal organizations, manufacturers, telecommunications providers and nonprofits. Thirty-five of the respondents provided constructive feedback on the regulation and the remaining 38 were supportive of the program.

As requested in the rule, several of the constructive comments included suggestions to increase the standard of sufficient access from 10/1 Mbps to at least 25/3 Mbps. One respondent requested that RUS acknowledge that the current definition of broadband, 25/3 Mbps, does not correspond with the requisite download and upload speeds for many businesses, education, and health care applications. Two recommended that RUS use a weighted priority scale to allow funds to go first to 10/1 areas, and then to areas up to 25/3 or even higher. Two others requested that RUS prioritize areas with speeds slower than 25/3 Mbps and suggested that sufficient access should be defined at 100/20 Mbps.

Agency response: As provided in 7 CFR part 1940, ''Sufficient Access to Broadband'' is set forth in each funding announcement. No change to the rulemaking is necessary. Comments provided in response to the rule were taken into account for the funding announcement issued on October 25, 2021, at 86 FR 58860.

The RUS appreciates comments from interested parties. The Agency confirms the final rule without change.

Andrew Berke,

Administrator, Rural Utilities Service.

[FR Doc. 2022–22677 Filed 10–18–22; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 327, 351, 354, 381, 500, 590 and 592

[Docket No. FSIS 2019–0001]

RIN 0583–AD76

Establishing a Uniform Time Period Requirement and Clarifying Related Procedures for the Filing of Appeals of Agency Inspection Decisions or Actions

AGENCY: Food Safety and Inspection Service (FSIS), U.S. Department of Agriculture (USDA).

ACTION: Final rule.

SUMMARY: FSIS is amending its regulations to establish a uniform time period requirement for the filing of appeals of certain Agency inspection decisions or actions.

DATES: Effective December 19, 2022.

FOR FURTHER INFORMATION CONTACT: Rachel Edelstein, Assistant Administrator, Office of Policy and Program Development, Food Safety and Inspection Service, U.S. Department of Agriculture; Telephone: (202) 205–0495.

SUPPLEMENTARY INFORMATION:

Background

On July 15, 2021, FSIS proposed to amend its regulations to establish a uniform time period requirement for the filing of appeals of certain Agency inspection decisions or actions (86 FR 37251). As FSIS explained in the proposed rule, current regulatory requirements for appeals of FSIS decisions or actions related to inspection activities appear across multiple subsections of the FSIS regulations. FSIS regulations also provide varied information about appeals requirements and procedures, such as who may file an appeal, where to file an appeal, what information may be submitted with the appeal, and whether the appellant must bear the cost of the appeal if it is determined to be frivolous.

To clarify and simplify inspection appeals procedures, FSIS proposed the following changes to the regulations:

1. Requiring eligible persons to appeal decisions or actions related to inspection activities within 30 calendar days after receiving notification, either orally or in writing (via electronic or hard copy communication), of the initial decision or action.

2. Clarifying and simplifying the following Agency requirements and procedures concerning such appeals:

a. Any establishment subject to mandatory Federal inspection or any facility receiving voluntary inspection services under the regulations that believes it has been adversely affected by an applicable decision or action may file an appeal;

b. Such appeal must be submitted to the immediate supervisor of the inspector or other Agency employee who undertook the contested decision or action;

c. The appellant may support the appeal by any argument or evidence as to why the appeal should be granted; and

d. Eliminating the requirement, currently prescribed in several subsections of the regulations, that the appellant must bear the cost of an appeal of an Agency decision or action if the appeal is determined to be frivolous.

3. Revising several sections of the regulations (9 CFR 327.10(d)(2), 327.24, 351.21, 354.134, 355.39, 381.35, 381.202(d), 381.204(f)(2), and 592.400) to state that appeals of relevant Agency decisions or actions must be made in accordance with the new Rules of Practice subsection, 9 CFR 500.9.

After considering the comments received on the proposed rule, discussed below, FSIS is finalizing the proposed rule with four changes. First, in response to public comment, the final rule clarifies that the 30-day time period to file an appeal of an applicable Agency decision or action will apply to the initial appeal and all subsequent appeals for the same issue within the FSIS chain of command.

Second, in response to public comment, the final rule clarifies that the time period to appeal an applicable Agency decision or action starts after the appellant receives *written* (rather than oral) notification of the contested inspection decision or action.

Third, due to an amendment to the FSIS regulations that was made after the proposed rule was published, this final rule removes one revision concerning appeals of certified pet food decisions or actions. On May 20, 2022, FSIS amended its regulations to remove the certified pet food provisions from its regulations because they were outdated and no companies use the voluntary service (87 FR 30773). Therefore, this final rule does not include the proposed change to the removed section 9 CFR 355.39—Appeals from decisions made under this part.

Finally, due to a second amendment to the FSIS regulations that was made after the proposed rule was published, this final rule includes one revision concerning appeals of egg products inspection decisions or actions. On October 29, 2020, FSIS amended its regulations to modernize egg products inspection under the Egg Products Inspection Act (21 U.S.C. 1031, *et seq.*) (85 FR 68640). To align that egg products final rule with the new uniform appeals process requirements, this final rule revises 9 CFR 590.300 and 9 CFR 590.310 to state that appeals of Agency decisions or actions concerning egg products inspections must be filed in accordance with 9 CFR 500.9.

Comments and Responses

FSIS received five comments on the proposed rule. FSIS received four comments from trade associations representing the meat and poultry industries and one comment from a firm providing consultancy services to the meat and poultry industries. A summary of the comments and FSIS' responses follows.

Time Period To File an Initial Appeal

Comment: Four commenters stated that the time period for filing an initial appeal should be longer than the proposed 30 calendar days to provide appellants sufficient time to access the relevant Agency decision or action and decide whether to appeal. Two industry groups recommended a time period of at least 90 days. Two other industry groups recommended a time period of 120 days.

Response: FSIS disagrees. Thirty calendar days will provide prospective appellants sufficient time to gather necessary information and respond to applicable Agency actions and decisions while ensuring the regulatory intent to provide for a consolidated, streamlined appeals process. Prospective appellants should be able to readily access relevant Agency decisions or actions because they are provided written notice of such decisions or actions when they are issued. Further, each quarter the Agency publishes to the FSIS website a summary of the enforcement actions FSIS has taken to ensure that products that reach consumers are safe, wholesome, and properly labeled.[1] The 30-day time period requirement will ensure that the Agency publishes timely data.

Time Period To File Subsequent Appeals

Comment: Three industry groups stated that appellants should be provided equal time to file subsequent appeals of a specific Agency decision or

[1] The Quarterly Enforcement Reports are available at: *https://www.fsis.usda.gov/inspection/regulatory-enforcement/quarterly-enforcement-reports.*

action to the next level in the FSIS chain of command if the initial appeal of the underlining decision or action is denied, in order to provide appellants sufficient time to prepare such filings and to avoid inconsistent or arbitrary time period requirements imposed by FSIS personnel.

Response: FSIS agrees. The scope of this final rule includes the 30-day time period requirement for the filing of all appeals in the FSIS chain of command of an applicable Agency decision or action.

Written Notification of Agency Action or Decision

Comment: Three industry groups stated that the start of the time period for filing an appeal should be based on the appellant's receipt of written notification (rather than oral notification) of an applicable Agency decision or action.

Response: FSIS agrees. This final rule clarifies that the appeal filing time period will be based on the prospective appellant's receipt of written notification of the applicable Agency action or decision.

Waiver of Time Period Requirement

Comment: One industry group stated that the time period requirement for filing appeals should be waived or reopened in certain circumstances, such as when the Agency issues a noncompliance record (NR) that is directly related to a previous NR. This commenter also stated that FSIS should establish a process for waiving or restarting the appeals time period under such circumstances.

Response: FSIS disagrees. The regulations provide persons the opportunity to appeal after each applicable Agency decision or action. As mentioned above, 30 days should be sufficient time to file an appeal. FSIS is not establishing a separate process to waive or reopen the time period for appeals.

Time Period Requirements for Agency Appeal Responses and Related Procedures

Comment: Four industry groups stated that FSIS should establish and enforce time period requirements for the Agency's responses to appeals of its actions and decisions, as well as other procedures related to the administration of the appeals process.

Response: FSIS disagrees. FSIS will issue instructions to personnel to ensure the Agency responds to appeals in a timely manner but will not codify requirements for FSIS personnel.

''*Adversely Affected*'' *Standard*

Comment: Two industry groups questioned the proposed requirement that a person must be ''adversely affected'' by a relevant Agency decision or action to file an appeal. The commenters stated that the impact on the prospective appellant should not be a determining factor concerning whether a person should be able to appeal.

Response: FSIS disagrees. There is no basis to file an appeal of an Agency inspection decision or action that did not adversely affect the appellant. When there is no adverse effect involved, industry may resolve differences of opinion in FSIS memoranda of interview, in other Agency documents, and through discussions with field personnel. The requirement that an appellant be adversely affected by the relevant Agency action or decision will ensure that persons directly and materially impacted by such actions or decisions are able to seek relief. This regulatory provision will also facilitate a timely, streamlined appeals process, as the Agency will be able to focus its resources on reviewing actions and decisions that have tangible, consequential impacts on involved persons.

Final Rule Effective Date

Comment: One industry group stated that the effective date of any regulatory changes to the appeals process should provide industry sufficient time to adjust to the new requirements.

Response: FSIS agrees. The Agency recognizes the need to provide industry time to comply with the regulatory changes to the appeals process. Consistent with other FSIS regulations, the requirements established by the final rule are effective 60 days after publication in the **Federal Register**, which is December 19, 2022.

Applicability To Recall Decisions

Comment: One commenter asked whether the time period requirement for appeals would apply to recall decisions.

Response: The requirements established by this final rule, including the uniform time period for filing appeals of certain Agency actions and decisions, will not apply to FSIS requests for recall of meat, poultry, or egg products. As the recall of such product is a voluntary decision made by the relevant establishment or facility, rather than an Agency decision or action, it is not applicable to this final rule. However, if industry decided to appeal any NRs related to the recall, those appeals would be subject to this rule.

Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety benefits, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule has been designated a ''non-significant'' regulatory action under section 3(f) of E.O. 12866. Accordingly, the rule has not been reviewed by the Office of Management and Budget under E.O. 12866.

Economic Impact Analysis

The final rule is expected to economically benefit industry by providing a harmonized, streamlined appeals process. Consolidating the inspection appeals procedures from multiple subsections of the CFR, simplifying the process, eliminating charges for frivolous appeals, and setting a uniform time period requirement will reduce the regulatory burden placed on industry.

Similarly, clarifying and simplifying Agency inspection appeals procedures is expected to benefit the Agency by reducing inefficiencies and facilitating better use of Agency personnel and resources. The actions will also increase the likelihood that relevant physical evidence, as well as directly involved personnel, will be available during the appeals process.

The uniform time period requirement is not expected to increase industry's labor or capital costs. Currently, the majority of appeals of FSIS decisions or actions related to inspection activities mandated under the Federal Meat Inspection Act (FMIA) (21 U.S.C. 601, *et seq.*), the Poultry Products Inspection Act (PPIA)(21 U.S.C. 451, *et seq.*), and the Egg Products Inspection Act (EPIA)(21 U.S.C. 1031, *et seq.*) are filed within several months of the appellant's notification of the contested decision or action. For example, between June 2020 and May 2022, the Agency received 1,499 appeals from official establishments to contest NRs issued to address findings of regulatory violations. Of these appeals, sixty-nine (69) percent were filed within 30 calendar days, twenty-six (26) percent were filed between 31 and 180 calendar days, and five (5) percent were filed after 180 calendar days. Further, the

time period requirement will lengthen the amount of time that an appeal may be filed for certain types of Agency decisions or actions. Therefore, the uniform time period requirement will encourage the timely filing of appeals without imposing substantial cost burdens on current industry practices.

Regulatory Flexibility Act

The FSIS Administrator has made a determination that this final rule will not have a significant economic impact on a substantial number of small entities in the United States, as defined by the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). The final rule is not expected to increase costs to the industry. The final rule may provide some cost savings to industry related to the uniform filing of appeals of certain Agency decisions or actions, but any benefits from the final rule would not be significant.

Paperwork Reduction Act

There are no paperwork or recordkeeping requirements associated with this final rule under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

E-Government Act

FSIS and USDA are committed to achieving the purposes of the E-Government Act (44 U.S.C. 3601, *et seq.*) by, among other things, promoting the use of the internet and other information technologies and providing increased opportunities for citizen access to Government information and services, and for other purposes.

Executive Order 12988, Civil Justice Reform

This final rule has been reviewed under E.O. 12988, Civil Justice Reform. Under this rule: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) no administrative proceedings will be required before parties may file suit in court challenging this rule. However, parties may be required to exhaust their administrative remedies, including the appeals process established in this rule, before challenging in court any specific agency action that is the subject of an appeal pursuant to this rule.

Executive Order 13175

This rule has been reviewed in accordance with the requirements of E.O. 13175, ''Consultation and Coordination with Indian Tribal Governments.'' E.O. 13175 requires Federal agencies to consult and coordinate with tribes on a government-to-government basis on policies that have tribal implications, including regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

FSIS has assessed the impact of this rule on Indian tribes and determined that this rule does not, to our knowledge, have tribal implications that require tribal consultation under E.O. 13175. If a tribe requests consultation, FSIS will work with the Office of Tribal Relations to ensure meaningful consultation is provided where changes, additions, and modifications identified herein are not expressly mandated by Congress.

USDA's Non-Discrimination Statement

In accordance with Federal civil rights law and USDA civil rights regulations and policies, USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; the USDA TARGET Center at (202) 720–2600 (voice and TTY); or the Federal Relay Service at (800) 877–8339.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.ocio.usda.gov/document/ad-3027,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

(1) *Mail:* U.S. Department of Agriculture, Office of the Assistant Secretary for Civil Rights, 1400 Independence Avenue SW, Washington, DC 20250–9410; or

(2) *Fax:* (833) 256–1665 or (202) 690–7442; or

(3) *Email: program.intake@usda.gov*

USDA is an equal opportunity provider, employer, and lender.

Environmental Impact

Each USDA agency is required to comply with 7 CFR part 1b of the Departmental regulations, which supplements the National Environmental Policy Act regulations published by the Council on Environmental Quality. Under these regulations, actions of certain USDA agencies and agency units are categorically excluded from the preparation of an Environmental Assessment (EA) or an Environmental Impact Statement (EIS) unless the agency head determines that an action may have a significant environmental effect (7 CFR 1b.4 (b)). FSIS is among the agencies categorically excluded from the preparation of an EA or EIS (7 CFR 1b.4 (b)(6)).

FSIS has determined that this final rule, which establishes a uniform time period requirement for the filing of appeals of certain Agency inspection decisions or actions, and clarifies and simplifies appeals procedures generally, will not create any extraordinary circumstances that would result in this normally excluded action having a significant individual or cumulative effect on the human environment. Therefore, this action is appropriately subject to the categorical exclusion from the preparation of an environmental assessment or environmental impact statement provided under 7 CFR 1b.4(6) of the U.S. Department of Agriculture regulations.

Congressional Review Act

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

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, FSIS will announce this **Federal Register**

publication on-line through the FSIS web page located at: *https://www.fsis.usda.gov/federal-register.*

FSIS will also announce and provide a link through the FSIS *Constituent Update,* which is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, and other types of information that could affect or would be of interest to our constituents and stakeholders. The *Constituent Update* is available on the FSIS web page. Through the web page, FSIS is able to provide information to a much broader, more diverse audience. In addition, FSIS offers an email subscription service which provides automatic and customized access to selected food safety news and information. This service is available at: *https://www.fsis.usda.gov/subscribe.* Options range from recalls to export information, regulations, directives, and notices. Customers can add or delete subscriptions themselves and have the option to password protect their accounts.

List of Subjects

9 CFR Part 327

Imported products.

9 CFR Part 351

Certification of technical animal fats for export.

9 CFR Part 354

Voluntary inspection of rabbits and edible products thereof.

9 CFR Part 381

Poultry products inspection regulations.

9 CFR Part 500

Rules of practice.

9 CFR Part 590

Inspection of eggs and egg products (Egg Products Inspection Act).

9 CFR Part 592

Voluntary inspection of egg products.

For the reasons set forth in the preamble, FSIS is amending 9 CFR parts 327, 351, 354, 381, 500, 590 and 592 as follows:

PART 327—IMPORTED PRODUCTS

■ 1. The authority citation for part 327 continues to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53.

■ 2. In § 327.10, revise paragraph (d)(2) to read as follows:

§ 327.10 Samples; inspection of consignments; refusal of entry; marking.

* * * * *

(d) * * *

(2) An official import establishment's controlled pre-stamping privilege may be cancelled orally or in writing by the inspector or other Agency employee who is supervising its enforcement whenever the employee finds that the official import establishment has failed to comply with the provisions of this part or any conditions imposed pursuant thereto. If the cancellation is oral, the decision or action and the reasons therefor will be confirmed in writing, as promptly as circumstances allow. Any person whose controlled pre-stamping privilege has been cancelled may appeal the decision or action in accordance with 9 CFR 500.9. The appeal must state all of the facts and reasons upon which the person relies to show that the controlled pre-stamping privilege was wrongfully cancelled.

* * * * *

■ 3. Revise § 327.24 to read as follows:

§ 327.24 Appeals; how made.

Any appeal of a decision or action of any program employee will be made to his/her immediate supervisor having responsibility over the subject matter of the appeal in accordance with 9 CFR 500.9.

PART 351—CERTIFICATION OF TECHINCAL ANIMAL FATS FOR EXPORT

■ 4. The authority citation for part 351 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

■ 5. Revise § 351.21 to read as follows:

§ 351.21 Certification of certain animal fat for export.

Any person receiving inspection service may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

PART 354—VOLUNTARY INSPECTION OF RABBITS AND EDIBLE PRODUCTS THEREOF

■ 6. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624; 7 CFR 2.17 (g) and (i), 2.55.

■ 7. Revise § 354.134 to read as follows:

§ 354.134 Appeal inspections; how made.

Any person receiving inspection service may, if dissatisfied with any decision of an inspector relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

■ 8. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 1633, 1901–1906; 21 U.S.C. 451–472; 7 CFR 2.18, 2.53.

■ 9. Revise § 381.35 to read as follows:

§ 381.35 Appeal inspections; how made.

Any person receiving inspection service may, if dissatisfied with any decision or action of an inspector or other Agency employee relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

■ 10. In § 381.202, revise paragraph (d) to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

* * * * *

(d) Any person receiving inspection service may, if dissatisfied with any decision or action of an inspector or other Agency employee relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9. The poultry or poultry products involved in any appeal must be identified by U.S. retained tags and segregated in a manner approved by the inspector or other Agency employee pending completion of an appeal inspection.

* * * * *

■ 11. In § 381.204, revise paragraph (f)(2) to read as follows:

§ 381.204 Marking of poultry products offered for entry; official import inspection marks and devices.

* * * * *

(f) * * *

(2) An official import establishment's controlled pre-stamping privilege may be cancelled orally or in writing by the inspector or other Agency employee who is supervising its enforcement whenever the employee finds that the official import establishment has failed to comply with the provisions of this part or any conditions imposed pursuant thereto. If the cancellation is oral, the decision or action and the reasons therefor will be confirmed in writing, as promptly as circumstances allow. Any person whose controlled pre-stamping privilege has been cancelled may appeal the decision or action in accordance with 9 CFR 500.9.

The appeal must state all of the facts and reasons upon which the person relies to show that the controlled pre-stamping privilege was wrongfully cancelled.

* * * * *

PART 500—RULES OF PRACTICE

■ 12. The authority citation for part 500 continues to read as follows:

Authority: 21 U.S.C. 451–470, 601–695, 1031–1056; 7 U.S.C. 450, 1901–1906; (33 U.S.C. 1251 *et seq.*); 7 CFR 2.18, 2.53.

■ 13. In § 500.1, revise paragraph (c) to read as follows:

§ 500.1 Definitions.

* * * * *

(c) A ''suspension'' is an interruption in the assignment of program employees to all or part of an establishment; and (d) An establishment subject to Federal inspection or facility receiving voluntary inspection services under the regulations is ''adversely affected'' when that person has a legally cognizable interest, and the decision or action has caused or is substantially likely to cause injury to that interest.

■ 14. Add § 500.9 to read as follows:

§ 500.9 Procedures for the filing of appeals.

(a) Any establishment subject to Federal inspection or facility under voluntary inspection and adversely affected by a decision or action of an inspector or other Agency employee related to an inspection activity mandated under the FMIA, PPIA, or EPIA or related to voluntary reimbursable inspection services allowed under the AMA may appeal the decision or action. Initial appeals of an applicable decision or action, as well as subsequent appeals of denied appeals through final Agency action, must be made within 30 calendar days after receipt of written notification of the contested decision or action. Appeals may be supported by any argument or evidence that the appellant may wish to offer as to why the contested decision or action should be reconsidered.

(b) Any initial appeal of a decision or action of an inspector or other Agency employee must be made to his/her immediate supervisor having jurisdiction over the subject matter of the appeal.

PART 590—INSPECTION OF EGGS AND EGG PRODUCTS (EGG PRODUCTS INSPECTION ACT)

■ 15. The authority citation for part 590 continues to read as follows:

Authority: 21 U.S.C. 1031–1056; 7 CFR 2.18, 2.53.

■ 16. Revise § 590.300 to read as follows:

§ 590.300 Appeal inspections.

Any person receiving inspection service may, if dissatisfied with any decision or action of an inspector or other Agency employee relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

■ 17. Revise § 590.310 to read as follows:

§ 590.310 Appeal inspections; how made.

Any appeal from the inspection decision by inspection program personnel must be made to the immediate supervisor having jurisdiction over the subject matter of the appeal in accordance with 9 CFR 500.9.

PART 592—VOLUNTARY INSPECTION OF EGG PRODUCTS

■ 18. The authority citation for part 592 continues to read as follows:

Authority: 7 U.S.C. 1621–1627.

■ 19. Revise § 592.400 to read as follows:

§ 592.400 How to file an appeal.

Any person receiving inspection service may, if dissatisfied with any decision or action of an inspector or other Agency employee relating to any inspection, file an appeal from such decision or action in accordance with 9 CFR 500.9.

§§ 592.410, 592.420, 592.430, and 592.440 [Removed]

■ 20. Remove §§ 592.410, 592.420, 592.430, and 592.440.

Done in Washington, DC.

Paul Kiecker,

Administrator.

[FR Doc. 2022–22666 Filed 10–18–22; 8:45 am]

BILLING CODE 3410–DM–P

POSTAL SERVICE

39 CFR Part 20

International Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, International Mail Manual* (IMM®) dated July 10, 2022, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This final rule is effective on October 19, 2022. The incorporation by reference of the IMM is approved by the Director of the Federal Register as of October 19, 2022.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy, (202) 268–6592.

SUPPLEMENTARY INFORMATION: The *International Mail Manual* (IMM) provides our standards for all international mailing services and references for the applicable prices. It was issued on July 10, 2022, and was updated with *Postal Bulletin* revisions through June 2, 2022. It replaces all previous editions.

The IMM continues to enable the Postal Service to fulfill its long-standing mission of providing affordable, universal mail service. It continues to: (1) increase the user's ability to find information; (2) increase the user's confidence that he or she has found the information they need; and (3) reduce the need to consult multiple sources to locate necessary information. The provisions throughout this issue support the standards and mail preparation changes implemented since the version of July 1, 2022. The *International Mail Manual* is available to the public on the Postal Explorer® internet site at *https://pe.usps.com.*

List of Subjects in 39 CFR Part 20

Administrative practice and procedure, Foreign relations; Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 20 as follows:

PART 20—INTERNATIONAL POSTAL SERVICE

■ 1. The authority citation for part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401, 403, 404, 407, 414, 416, 3001–3011, 3201–3219, 3403–3406, 3621, 3622, 3626, 3632, 3633, and 5001.

■ 2. Revise § 20.1 to read as follows:

§ 20.1 Incorporation by reference; Mailing Standards of the United States Postal Service, International Mail Manual.

(a) *Mailing Standards of the United States Postal Service, International Mail Manual* (IMM) is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51.

(1) *Subscriptions.* Subscriptions to the IMM can be purchased by the public

from the Superintendent of Documents, Washington, DC 20402–9375.

(2) *Inspection—USPS.* (i) Copies of the IMM, both current and previous issues, are available during regular business hours for reference and public inspection at the U.S. Postal Service Library, National Headquarters in Washington, DC. For access contact 202–268–2906.

(ii) Copies of only the current issue are available during regular business hours for public inspection at area and district offices of the Postal Service and at all post offices, classified stations, and classified branches. The IMM is available for examination on the internet at *https://pe.usps.gov.*

(3) *Inspection—NARA.* For information on the availability of this material at NARA, contact the Office of the Federal Register—email: *fr.inspection@nara.gov;* website: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) The Director of the Federal Register approved the IMM, updated July 10, 2022, for incorporation by reference as of October 19, 2022.

■ 3. Revise § 20.2 to read as follows:

§ 20.2 Effective date of the International Mail Manual.

The provisions of the *International Mail Manual* issued July 10, 2022, (incorporated by reference, see § 20.1) are applicable with respect to the international mail services of the Postal Service.

■ 4. Amend § 20.4 by:

■ a. In paragraph (b):

■ i. Removing the website ''*http://pe.usps.gov*'' and adding in its place the website ''*https://pe.usps.gov*'';

■ ii. Removing the website ''*http://usps.com/cpim/ftp/bulletin/pb.htm*'' and adding in its place the website ''*https://usps.com/cpim/ftp/bulletin/pb.htm*''; and

■ b. Adding a new entry at the end of table 1 to § 20.4.

The addition reads as follows:

§ 20.4 Amendments to the International Mail Manual.

* * * * *

TABLE 1 TO § 20.4—INTERNATIONAL MAIL MANUAL

International Mail Manual	Date of issuance
* * * * *	
IMM	July 10, 2022.

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–22490 Filed 10–18–22; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 111

Domestic Mail Manual; Incorporation by Reference

AGENCY: Postal Service™.

ACTION: Final rule.

SUMMARY: The Postal Service announces the issuance of the *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM®) dated July 10, 2022, and its incorporation by reference in the *Code of Federal Regulations.*

DATES: This final rule is effective on October 19, 2022. The incorporation by reference of the DMM dated July 10, 2022, is approved by the Director of the Federal Register as of October 19, 2022.

FOR FURTHER INFORMATION CONTACT: Dale Kennedy (202) 268–6592.

SUPPLEMENTARY INFORMATION: The *Mailing Standards of the United States Postal Service, Domestic Mail Manual* (DMM) provides the United States Postal Service's official prices and standards for all domestic mailing services. The most recent issue of the DMM is dated July 10, 2022. This issue of the DMM contains all Postal Service domestic mailing standards and continues to: (1) increase the user's ability to find information; (2) increase confidence that users have found all the information they need; and (3) reduce the need to consult multiple chapters of the Manual to locate necessary information. The issue dated July 10, 2022, sets forth specific changes, including new standards throughout the DMM to support the standards and mail preparation changes implemented since the version issued on July 1, 2020.

Changes to mailing standards will continue to be published through **Federal Register** documents and the *Postal Bulletin* and will appear in the next online version available via the Postal Explorer® website at: *https://pe.usps.com.*

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Incorporation by reference.

In view of the considerations discussed above, the Postal Service hereby amends 39 CFR part 111 as follows:

PART 111—GENERAL INFORMATION ON POSTAL SERVICE

■ 1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 13 U.S.C. 301–307; 18 U.S.C. 1692–1737; 39 U.S.C. 101, 401–404, 414, 416, 3001–3018, 3201–3220, 3401–3406, 3621, 3622, 3626, 3629, 3631–3633, 3641, 3681–3685, and 5001.

■ 2. Amend § 111.1 (b) by:

■ a. In paragraph (a)(2),

■ i. Removing the text ''Mailing Standards of the United States Postal Service, Domestic Mail Manual'', wherever it appears, and adding, in its place, the text ''DMM''; and

■ ii. Removing the Web address ''*http://pe.usps.gov*'' and adding, in its place, the Web address ''*https://pe.usps.gov*''; and

■ b. Revising paragraphs (a)(3) and (b).

The revisions read as follows:

§ 111.1 Incorporation by reference; Mailing Standards of the United States Postal Service, Domestic Mail Manual.

(a) * * *

(3) *Inspection—NARA.* For information on the availability of this material at NARA, contact the Office of the Federal Register—email: *fr.inspection@nara.gov;* website: *www.archives.gov/federal-register/cfr/ibr-locations.html.*

(b) The Director of the Federal Register approved DMM, updated July 10, 2022, for incorporation by reference as of October 19, 2022.

■ 3. Amend § 111.3 by adding a new entry to the end of table 1 to § 111.3 to read as follows:

* * * * *

TABLE 1 TO § 111.3—DOMESTIC MAIL MANUAL

Transmittal letter for issue	Dated	**Federal Register** publication
* * * * * * * *		
DMM	July 10, 2022	[INSERT **Federal Register** CITATION FOR THIS FINAL RULE].

Sarah E. Sullivan,

Attorney, Ethics and Legal Compliance.

[FR Doc. 2022–22491 Filed 10–18–22; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R08–RCRA–2022–0485; FRL 9896–02–R8]

North Dakota: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The State of North Dakota Department of Environmental Quality (NDDEQ) has applied to the Environmental Protection Agency (EPA) for final authorization of certain changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The EPA has reviewed North Dakota's application and determined that North Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. EPA is authorizing the State program revision through this direct final rule. EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial action and does not anticipate adverse comments. However, in the proposed rules section of this issue of the **Federal Register**, EPA is publishing a separate document that will serve as a proposal to authorize the revision should the Agency receive adverse comment. Unless EPA receives adverse written comments during the review and comment period, the decision to authorize North Dakota's hazardous waste program revision will take effect as provided below.

DATES: This final rule is effective on December 19, 2022 unless EPA receives adverse written comment by November 18, 2022. Should EPA receive such comments, it will publish a timely document by either: withdrawing the direct final publication or affirming the publication and responding to comments.

ADDRESSES: Submit your comments by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Email: lin.moye@epa.gov.*
- *Fax:* (303) 312–6341 (prior to faxing, please notify the EPA contact listed below).
- *Mail, Hand Delivery or Courier:* Moye Lin, Resource Conservation and Recovery Act Branch, EPA Region 8, Mail Code 8LCR–RC, 1595 Wynkoop Street, Denver, Colorado 80202–1129. Courier or hand deliveries are only accepted during the Regional Office's normal hours of operation. The public is advised to call in advance to verify business hours. Special arrangements should be made for deliveries of boxed information.

Instructions: EPA must receive your comments by November 18, 2022. Direct your comments to EPA–R08–RCRA–2022–0485; FR 9896–02–R8. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information where disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through *https://www.regulations.gov* or email. The Federal website *https://www.regulations.gov* is an ''anonymous access'' system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of encryption and be free of any defects or viruses.

Docket: All documents in the docket are listed in the *http://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CBI or other information where disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available electronically through *https://www.regulations.gov.* For alternative access to docket materials, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

FOR FURTHER INFORMATION CONTACT: Moye Lin, Land, Chemicals and Redevelopment Division, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129; phone number (303) 312–6667; Email address: *lin.moye@epa.gov.*

SUPPLEMENTARY INFORMATION:

A. Why are revisions to State programs necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260 through 268, 270, 273 and 279.

B. What decisions has EPA made in this rule?

On October 29, 2021, the State of North Dakota submitted a final complete program revision application seeking authorization of changes to its

hazardous waste program that correspond to certain Federal rules promulgated between July 1, 2016 through June 30, 2020, which includes RCRA Cluster XXV through RCRA Cluster XXVIII (Revision Checklists 236, 237, 238, 239, 240, and 242), as well as State-initiated changes to the State's previously authorized program. The EPA has reviewed North Dakota's application to revise its authorized program and concludes that it meets all of the statutory and regulatory requirements established by RCRA, except for the final rule addressed by Revision Checklist 241 (Management Standards for Hazardous Waste Pharmaceuticals and Amendment to the P075 Listing for Nicotine) (84 FR 5816, February 22, 2019). EPA cannot authorize North Dakota for Revision Checklist 241 because the State has not correctly adopted the Federal changes addressed by this final rule. Therefore, we grant North Dakota final authorization to operate its hazardous waste program with the changes described in the authorization application with the exception of Revision Checklist 241.

The State of North Dakota will continue to have responsibility for permitting treatment, storage and disposal facilities (TSDFs) within its borders (except in Indian country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, the EPA will implement those requirements and prohibitions in the State of North Dakota, including issuing permits, until the State is granted authorization to do so.

C. What is the effect of this authorization decision?

If the State of North Dakota is authorized for these changes, a facility in North Dakota subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Additionally, such facilities will have to comply with any applicable Federal requirements such as, for example, HSWA regulations issued by the EPA for which the State has not received authorization. The State of North Dakota will continue to have enforcement responsibilities under its State hazardous waste program for violations of such program, but the EPA retains its authority under RCRA sections 3007, 3008, 3013 and 7003, which include, among others, authority to:

- Conduct inspections and require monitoring, tests, analyses, or reports;
- Enforce RCRA requirements and suspend or revoke permits, and
- Take enforcement actions after notice to and consultation with the State.

The action to approve these provisions would not impose additional requirements on the regulated community because the regulations for which the State of North Dakota is requesting authorization are already effective under State law and are not changed by the act of authorization.

D. For what has North Dakota previously been authorized?

North Dakota initially received final authorization on October 5, 1984, effective October 19, 1984 (49 FR 39328) to implement the RCRA hazardous waste management program. We granted authorization for changes to their program on: June 25, 1990, effective August 24, 1990 (55 FR 25836); May 4, 1992, effective July 6, 1992 (57 FR 19087); April 7, 1994, effective June 6, 1994 (59 FR 16566); January 19, 2000, effective March 20, 2000 (65 FR 02897); September 26, 2005, effective November 25, 2005 (70 FR 56132), February 14, 2008, effective April 14, 2008 (73 FR 8610), October 30, 2018, effective October 30, 2018 (83 FR 64521) and December 19, 2018, effective April 30, 2019 (83 FR 65101, as revised on March 7, 2019, 84 FR 8260).

The EPA incorporated by reference into the Code of Federal Regulations the authorized North Dakota RCRA program on: February 14, 2008, effective April 14, 2008 (73 FR 8610); October 30, 2018, effective October 30, 2018 (83 FR 54521), and December 12, 2019, effective January 13, 2020 (84 FR 67875).

E. What changes is the EPA authorizing with this action?

On October 29, 2021, the State of North Dakota submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We have determined that the North Dakota Department of Environmental Quality's (NDDEQ's) hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. We now make a Final decision, subject to receipt of written comments that oppose this action, that North Dakota's hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. The NDDEQ revisions consist of regulations which specifically govern Federal hazardous waste revisions promulgated between July 1, 2016 through June 30, 2020 (RCRA Clusters XXV through RCRA Cluster XXVIII), as well as State-initiated changes to the State's previously authorized program. The North Dakota provisions are from the North Dakota Administrative Code (N.D.A.C.) Article 33.1–24, Hazardous Waste Management Rules, as amended effective through July 1, 2021. We have determined that North Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant North Dakota DEQ final authorization for the following changes:

1. Program Revision Changes for Federal Rules

North Dakota seeks authority to administer the Federal requirements that are listed below (the Federal rule citation is followed by the analogs from the North Dakota Administrative Code (NDAC), Article 33.1–24, as revised July 1, 2021):

Import and Exports of Hazardous Waste (81 FR 85696, November 28, 2016; 82 FR 41015, August 29, 2017; and 83 FR 38263, August 6, 2018) (Checklist 236)/33.1–24–01–04 ''AES filing compliance date,'' 33.1–24–01–04 ''Electronic import-export reporting compliance date'', 33.1–24–01–04 ''Recognized trader'', 33.1–24–01–05(7) introductory paragraph, 33.1–24–01–05(7)(a), 33.1–24–01–05(7)(b) [Reserved], 33.1–24–02–04(4)(a), 33.1–24–02–04(4)(d), 33.1–24–02–04(5)(a), 33.1–24–02–04(5)(d), 33.1–24–02–06(1)(c)(1), 33.1–24–02–06(1)(e), 33.1–24–02–25(1)(e)(2), 33.1–24–02–25(1)(e)(5) introductory paragraph, 33.1–24–02–25(1)(e)(5)(a)–(c)(7), 33.1–24–02–25(1)(e)(6), 33.1–24–02–25(1)(e)(9)–(10), 33.1–24–03–01(5), 33.1–24–03–03(5), 33.1–24–03–14(3), 33.1–24–03–17 [Repealed], 33.1–24–03–18 [Repealed], 33.1–24–03–19 [Repealed], 33.1–24–03–20 [Repealed], 33.1–24–03–21 [Repealed], 33.1–24–03–22 [Repealed], 33.1–24–03–23 [Repealed], 33.1–24–03–24 [Repealed], 33.1–24–03–25 [Repealed], 33.1–24–03–30 [Repealed], 33.1–24–03–50(1)–(2), 33.1–24–03–51, 33.1–24–03–52, 33.1–24–03–53(1), 33.1–24–03–53(2)(a) introductory paragraph, 33.1–24–03–53(2)(a)(1)–(13), 33.1–24–03–53(2)(b)–(c), 33.1–24–03–53(2)(d), 33.1–24–03–53(2)(e)–(f), 33.1–24–03–53(2)(g), 33.1–24–03–53(2)(h), 33.1–24–03–53(3)–(4)(b)(14), 33.1–24–03–53(4)(b)(15),

33.1–24–03–53(5), 33.1–24–03–53(6)(a)–(c) introductory paragraph, 33.1–24–03–53(6)(c)(1), 33.1–24–03–53(c)(2), 33.1–24–03–53(6)(d)–(e), 33.1–24–03–53(6)(f) introductory paragraph–(f)(1), 33.1–24–03–53(6)(f)(2), 33.1–24–03–53(6)(g)–(i), 33.1–24–03–53(7)–(9), 33.1–24–03–55 [Removed and replaced], 33.1–24–03–56 [Repealed], 33.1–24–03–57 [Repealed], 33.1–24–03–59 [Repealed], 33.1–24–04–01(4) introductory paragraph, 33.1–24–04–04(1)(b), 33.1–24–04–04(3), 33.1–24–04–04(5)(b), 33.1–24–04–04(6)(b) and Note, 33.1–24–04–04(7), 33.1–24–05–03(1), 33.1–24–05–38(1)(c), 33.1–24–05–230(2), 33.1–24–05–235 Table (a)(6)–(10), 33.1–24–05–720, 33.1–24–05–739(1)–(2), 33.1–24–05–740, 33.1–24–05–756, 33.1–24–05–762(1), 33.1–24–05–770 introductory paragraph–(3), 33.1–24–05–770(4) [Removed], 33.1–24–05–1011(1)(d)–(f), 33.1–24–05–1011(4), 33.1–24–06–16(5);

Hazardous Waste Generator Improvements Rule (81 FR 86732, November 28, 2016) (Checklist 237)/ 33.1–24–01–04(5) ''Acute hazardous waste,'' 33.1–24–01–04(23) ''Central accumulation area,'' 33.1–24–01–04(90) ''Large quantity generator,'' 33.1–24–01–04(107) ''Non-acute hazardous waste,'' 33.1–24–01–04(134) ''Small quantity generator,'' 33.1–24–01–04(167) ''Very small quantity generator,'' 33.1–24–01–05(4)(a), 33.1–24–02–01(1) introductory paragraph–(1)(a), 33.1–24–02–01(3)(f), 33.1–24–02–04(1)(g), 33.1–24–02–05 [Repealed], 33.1–24–02–06(3)(b)(4), 33.1–24–02–18(5) introductory paragraph, 33.1–24–02–18(6) introductory paragraph, 33.1–24–02–129(7), 33.1–24–03–01(1) introductory paragraph–(b)(3), 33.1–24–03–01(1)(b)(4), 33.1–24–03–01(1)(b)(5)–(c)(3), 33.1–24–03–01(1)(c)(4), 33.1–24–03–01(1)(c)(5)–(5), 33.1–24–03–01(11), 33.1–24–03–02, 33.1–24–03–03(1)–(5), 33.1–24–03–03(13), 33.1–24–03–03(14), 33.1–24–03–10(2)–(4), 33.1–24–03–14, 33.1–24–03–16, 33.1–24–03–26, 33.1–24–03–27, 33.1–24–03–28, 33.1–24–03–29, 33.1–24–03–34, 33.1–24–03–61(1) ''Central accumulation area'' [Removed], 33.1–24–03–61(11) ''Trained professional,'' 33.1–24–03–62(1)–(2), 33.1–24–03–63(1)–(2), 33.1–24–03–64(1), 33.1–24–03–64 (2)(b), 33.1–24–03–65, 33.1–24–03–69(1)(a)–(b), 33.1–24–03–69(4)(b), 33.1–24–03–70(2), 33.1–24–03–71(4)(b), 33.1–24–03–72(3)–(4), 33.1–24–03–72(5)(c), 33.1–24–03–74(1)(a)–(c), 33.1–24–03–74(2)(b), 33.1–24–03–75(2)(e), 33.1–24–03–77(1)–(2), 33.1–24–04–03, 33.1–24–05–01(6), 33.1–24–05–01(6)(c), 33.1–24–05–06(2)(d), 33.1–24–05–15, 33.1–24–05–16, 33.1–24–05–17, 33.1–24–05–18, 33.1–24–05–19, 33.1–24–05–20, 33.1–24–05–26, 33.1–24–05–27, 33.1–24–05–28, 33.1–24–05–29 introductory paragraph, 33.1–24–05–29(2)–(3), 33.1–24–05–31, 3.1–24–05–32, 33.1–24–05–38(3), 33.1–24–05–42, 33.1–24–05–89, 33.1–24–05–93, 33.1–24–05–104(1), 33.1–24–05–183(1), 33.1–24–05–250(5)(a), 33.1–24–05–56(1)(e), 33.1–24–05–290(1)(a), 33.1–24–05–290(1)(b)(1), 33.1–24–05–400(2)(b)–(c), 33.1–24–05–476(3)(d), 33.1–24–05–610(2)(c), 33.1–24–05–708(1)(b), 33.1–24–05–781(2), 33.1–24–05–875(1), 33.1–24–05–1011(3), 33.1–24–06–16(5);

Confidentiality Determinations for Hazardous Waste Export and Import Document (82 FR 60894, December 26, 2017) (Checklist 238)/33.1–24–01–16 introductory paragraph, 33.1–24–01–16(2)(c), 33.1–24–02–25(1)(e)(4), 33.1–24–03–53(2)(e), 33.1–24–03–53(6)(i), 33.1–24–03–55(2)(d), 33.1–24–03–55(6)(h);

Hazardous Waste Electronic Manifest User Fee Rule (83 FR 420, January 3, 2018) (Checklist 239)/33.1–24–03–04(7)(a)–(d), 33.1–24–03–04(8), 33.1–24–03–04(1)–(1)(a), 33.1–24–03–05(6)(e)–(h), 33.1–24–03–07(8)(c), 33.1–24–03–07(8)(e), 33.1–24–03–07(8)(g), 33.1–24–04–04(1)(h), 33.1–24–04–05, 33.1–24–05–38(1)(b) introductory paragraph, 33.1–24–05–38(1)(b)(1)–(6), 33.1–24–05–38(10), 33.1–24–05–38(12), 33.1–24–05–456(3)(d)(1), 33.1–24–05–45, 33.1–24–06–16(5);

Safe Management of Recalled Airbags (83 FR 61552, November 30, 2018) (Checklist 240)/33.1–24–01–04(8) ''Airbag waste'', 33.1–24–01–04(9) ''Airbag waste collection facility'', 33.1–24–01–04(10) ''Airbag waste handler'', 33.1–24–02–04(10);

Universal Waste Regulations: Addition of Aerosol Cans (84 FR 67202, December 9, 2019) (Checklist 242)/33.1–24–01–04(161) ''Universal waste'' (c)–(e), 33.1–24–01–04(162) ''Universal waste handler'' (b)(1), 33.1–24–05–701(1)(c)–(e), 33.1–24–05–01(6)(j)(3)–(5), 33.1–24–06–16(5), 33.1–24–05–250(6)(c)–(e), 33.1–24–05–703(2)(b), 33.1–24–05–706, 33.1–24–05–709(4) ''Large quantity handler of universal waste,'' 33.1–24–01–04(117) ''Pesticide'' (a)–(c), 33.1–24–05–709(1) ''Aerosol can,'' 33.1–24–05–709(5) ''Small quantity handler of universal waste,'' 33.1–24–05–713(3)(b)(3)–(4), 33.1–24–05–713(5)–(6), 33.1–24–05–732(2)(d), 33.1–24–05–733(3)(b)(3)–(6).

2. State-Initiated Changes

North Dakota has made amendments to its regulations that are not directly related to any of the Federal rules addressed in Item E.1 above. These State-initiated changes are either conforming changes made to existing authorized provisions or the adoption of provisions that clarify and make the State's regulations internally consistent. The State's regulations, as amended by these provisions, provide authority which remains equivalent to and no less stringent than the Federal laws and regulations. These State-initiated changes are submitted under the requirements of 40 CFR 271.21(a) and include the following provisions from the North Dakota Administrative Code (NDAC), Article 33.1–24, as revised July 1, 2021: 33.1–24–01–05(1), and 33.1–24–05–42 introductory paragraph [analogs to 40 CFR 260.11(a) and 264.75 introductory paragraph, respectively].

The State-initiated changes also include a conforming change to an internal reference at the following citation: 33.1–24–02–04(5)(a) [analog to 40 CFR 261.4(e)(1)].

F. Where are the revised State rules different from the Federal rules?

When revised State rules differ from the Federal rules in the RCRA State authorization process, EPA determines whether the State rules are equivalent to, more stringent than, or broader in scope than the Federal program. Pursuant to RCRA section 3009, 42 U.S.C. 6929, State programs may contain requirements that are more stringent than the Federal regulations. Such more stringent requirements can be federally authorized and, once authorized, become federally enforceable. Although the statute does not prevent States from adopting regulations that are broader in scope than the Federal program, States cannot receive Federal authorization for such regulations, and they are not federally enforceable.

We consider the following State requirements to be more stringent than the Federal requirements: 33.1–24–02–25(1)(e)(6) [analog to 40 CFR 261.39(a)(5)(vi)], 33.1–24–03–53(2)(a) introductory paragraph [analog to 40 CFR 262.83(b)(1) introductory paragraph], 33.1–24–03–53(2)(d) [analog to 40 CFR 262.83(b)(4)], 33.1–24–03–53(2)(g) [analog to 40 CFR 262.83(b)(7)], 33.1–24–03–53(4)(b)(15) [analog to 40 CFR 262.83(d)(2)(xv)], 33.1–24–03–53(5) [analog to 40 CFR 262.83(e)], 33.1–24–03–53(6)(c)(1) [analog to 40 CFR 262.83(f)(3)(i)], 33.1–24–03–53(6)(d) [analog to 40 CFR 262.83(f)(4)], 33.1–24–03–53(6)(e) [analog to 40 CFR 262.83(f)(5)], and 33.1–24–03–53(6)(f)(2) [analog to 40 CFR 262.83(f)(6)(ii)], because North Dakota requires documentation such as manifests be submitted to the State in addition to the EPA; 33.1–24–03–14 [in lieu of analogs to 40 CFR 262.18, 262.41, 262.44],

because North Dakota subjects both small and large quantity generators to the biennial reporting requirements where the Federal allows small quantity generators to comply with the less frequent re-notification requirements; and 33.1–24–03–69(1)(a) and (1)(b) [analogs to 40 CFR 262.208(a)(1) and (a)(2)], because North Dakota requires academic labs to remove containers of unwanted material in an interval not to exceed six months rather than 12 as in the Federal program.

There are no requirements that are broader in scope than the Federal program in these revisions.

G. Who handles permits after the authorization takes effect?

The State of North Dakota will continue to issue permits for all the provisions for which it is authorized and will administer the permits it issues. The EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization. EPA will continue to implement and issue permits for HSWA requirements for which North Dakota is not yet authorized.

H. How does today's action affect Indian country (18 U.S.C. 1151) in North Dakota?

North Dakota is not authorized to carry out its hazardous waste program in Indian country, as defined in 18 U.S.C. 1151. This includes, but is not limited to:

1. Lands within the exterior boundaries of the following Indian Reservations located within or abutting the State of North Dakota:
a. Fort Totten Indian Reservation
b. Fort Berthold Indian Reservation
c. Standing Rock Indian Reservation
d. Turtle Mountain Indian Reservation
2. Any land held in trust by the U.S. for an Indian tribe, and
3. Any other land, whether on or off a reservation, that qualifies as Indian country within the meaning of 18 U.S.C. 1151.

Therefore, this program revision does not extend to Indian country where EPA will continue to implement and administer the RCRA program in these lands.

I. What is codification and is the EPA codifying North Dakota's hazardous waste program as authorized in this rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart JJ for this authorization of North Dakota's program changes until a later date. In this authorization application the EPA is not codifying the rules documented in this **Federal Register** document.

J. Administrative Requirements

The Office of Management and Budget (OMB) has exempted this action (RCRA State Authorization) from the requirements of Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011). Therefore, this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006, and imposes no additional requirements beyond those imposed by State law. Accordingly, this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this action authorizes preexisting requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it 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). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely serves to authorize State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA.

This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant, and it does not make decisions based on environmental health or safety risks. This direct final rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), the EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for the EPA, when it reviews a State authorization application; to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, the EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. The EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the ''Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings'' issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Executive Order 12898 (59 FR 7629, February 16, 1994) establishes federal executive policy on environmental justice. Its main provision directs Federal agencies, to the greatest extent practicable and permitted by law, to make environmental justice part of their mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of their programs, policies, and activities on minority populations and low-income populations in the United States. Because this rule authorizes pre-existing State rules which are at least equivalent to, and no less stringent than existing Federal requirements, and imposes no additional requirements beyond those imposed by State law, and there are no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

List of Subjects in 40 CFR Parts 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Incorporation by reference, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006, and

7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 11, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–22715 Filed 10–18–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 220216–0049; RTID 0648–XC473]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Cod by Catcher Vessels Using Trawl Gear in the Central Regulatory Area of the Gulf of Alaska

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

ACTION: Temporary rule; modification of a closure; request for comments.

SUMMARY: NMFS is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to fully use the 2022 total allowable catch of Pacific cod allocated to catcher vessels using trawl gear in the Central Regulatory Area of the GOA.

DATES: Effective 1200 hours, Alaska local time (A.l.t.), October 17, 2022, through 2400 hours, A.l.t., December 31, 2022. Comments must be received at the following address no later than 4:30 p.m., A.l.t., November 3, 2022.

ADDRESSES: You may submit comments on this document, identified by docket number NOAA–NMFS–2021–0097, by any of the following methods:

Electronic Submission: Submit all electronic public comments via the Federal e- Rulemaking Portal. Go to *https://www.regulations.gov* and enter NOAA–NMFS–2021–0097 in the Search box. Click on the ''Comment'' icon, complete the required fields, and enter or attach your comments.

Mail: Submit written comments to Josh Keaton, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region NMFS. Mail comments to P.O. Box 21668, Juneau, AK 99802–1668.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, may not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (*e.g.,* name, address, *etc.*), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter ''N/A'' in the required fields if you wish to remain anonymous).

FOR FURTHER INFORMATION CONTACT: Obren Davis, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

NMFS closed directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA on September 1, 2022. NMFS has determined that as of October 13, 2022, approximately 2,000 metric tons of Pacific cod remain in the 2022 Pacific cod apportionment for catcher vessels using trawl gear in the Central Regulatory Area of the GOA. Therefore, in accordance with § 679.25(a)(1)(i), (a)(2)(i)(C), and (a)(2)(iii)(D), and to fully use the 2022 total allowable catch (TAC) of Pacific cod allocated to catcher vessels using trawl gear in the Central Regulatory Area of the GOA, NMFS is terminating the previous closure and is opening directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. The Administrator, Alaska Region, NMFS, (Regional Administrator) considered the following factors in reaching this decision: (1) the current catch of Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA and, (2) the harvest capacity and stated intent on future harvesting patterns of vessels in participating in this fishery.

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR part 679, which was issued pursuant to section 304(b), and is exempt from review under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b)(B), there is good cause to waive prior notice and an opportunity for public comment on this action, as notice and comment would be impracticable and contrary to the public interest, as it would prevent NMFS from responding to the most recent fisheries data in a timely fashion and would delay the opening of directed fishing for Pacific cod by catcher vessels using trawl gear in the Central Regulatory Area of the GOA. NMFS was unable to publish a notice providing time for public comment because the most recent, relevant data only became available as of October 13, 2022.

The Assistant Administrator for Fisheries, NOAA also finds good cause to waive the 30-day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice.

Without this inseason adjustment, NMFS could not allow the fishery for Pacific cod by catcher vessels catcher vessels using trawl gear in the Central Regulatory Area of the GOA to be harvested in an expedient manner and in accordance with the regulatory schedule. Under § 679.25(c)(2), interested persons are invited to submit written comments on this action to the above address until November 3, 2022.

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

Dated: October 14, 2022.

Jennifer M. Wallace,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 2022–22717 Filed 10–14–22; 4:15 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 87, No. 201
Wednesday, October 19, 2022

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

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Doc. No. AMS–SC–22–0001]

Florida Citrus Marketing Order; Exemption for Pummelos

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement a recommendation from the Citrus Administrative Committee (Committee) to exempt pummelos from requirements prescribed under the Florida citrus marketing order. The proposed change would exempt pummelos from all requirements under the marketing order, including registration, assessment, and reporting requirements.

DATES: Comments must be received by November 18, 2022.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments can be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237. Comments can also be submitted to the Docket Clerk electronically by Email: *MarketingOrderComment@usda.gov* or via the internet at: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments submitted in response to this proposed rule will be included in the record and the identity of the individuals or entities submitting the comments will be made public on the internet at the address provided above.

FOR FURTHER INFORMATION CONTACT: Jennie M. Varela, Marketing Specialist, or Christian D. Nissen, Branch Chief, Southeast Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (863) 324–3375, Fax: (863) 291–8614, or Email: *Jennie.Varela@usda.gov* or *Christian.Nissen@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491, or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 905, as amended (7 CFR part 905), regulating the handling of oranges, grapefruit, tangerines, and pummelos grown in Florida. Part 905, (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of growers and handlers of fresh citrus operating within the production area, and a non-industry member.

The Agricultural Marketing Service (AMS) is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

This proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined that this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with Department of Agriculture (USDA) a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed no later than 20 days after the date of the entry of the ruling.

This proposed rule would exempt pummelos from all requirements under the Order, including registration, assessment, and reporting requirements. The Committee unanimously recommended this action at its November 30, 2021, meeting.

This proposed action would create the exemption under a new § 905.130. Section 905.7 provides the authority to require handlers to be registered with the Committee pursuant to rules recommended by the Committee and approved by the Secretary of Agriculture (Secretary). Section 905.41 authorizes the Committee to collect assessments, such that each handler shall pay the Committee a pro rata share of the expenses.

Sections 905.70 and 905.71 provide the authority for the Committee to collect reports from handlers including, information regarding the variety, grade, and size of each standard packed carton of fruit shipped, and any other information deemed necessary to administer the Order, with the approval of the Secretary. Section 905.80 of the Order allows the Committee to specify

additional types of shipments or purposes that would not be subject to regulation or payment of assessments, with the approval of the Secretary.

The regulations associated with these authorities include § 905.107 which outlines the registered handler requirements, § 905.171, which requires handlers to report the list of growers for whom they handled, and § 905.235, which requires handlers pay assessments of $0.015 per 4/5-bushel carton to the Committee.

The Florida citrus industry voted to incorporate pummelos into the Order when it was amended in 2016, as pummelos were being used to develop new citrus hybrids. However, there are not yet any pummelo hybrid varieties produced in commercial volume. The current market for pummelos is small, estimated at 100,000 boxes, or 200,000 cartons. In comparison, the entire Florida citrus industry shipped over 6 million cartons during the 2020–21 season.

The Order regulates shipments of fresh citrus leaving the State of Florida for grade and size. Intrastate shipments are covered by parallel State regulations. The Florida Department of Agriculture and Consumer Services inspects fresh citrus at packinghouses and provides shipment data to the Committee. The Committee then uses this data to bill for assessments and to issue industry reports. There are currently no quality requirements in effect for pummelos or pummelo hybrids under the Order, nor are there any State requirements. As a result, there is no inspection and therefore no established method of data collection for pummelos.

Since the Order was amended, Committee staff have been in contact with pummelo growers and handlers, working on a way to collect required information and assessments. Under the current Order requirements and industry practices, there is no uniform way to meet the requirements without creating a specific reporting requirement for pummelos. In addition, pummelo growers and shippers have communicated to the Committee that they would like to be excluded from Order requirements.

During the November 30, 2021, Committee meeting, members discussed the issues related to pummelo shipments, including whether to develop a new system for collecting information and assessments on pummelo fruit. The Committee reports that there are only six pummelo producers and three shippers, most of whom are small grower-shippers not handling any other citrus covered under the Order.

Committee members indicated that with the volume for pummelo and pummelo hybrids remaining stagnant, there is currently no desire to establish grade and size requirements on pummelo at the State or Federal level. Therefore, there would be no data from inspection. Consequently, if pummelo and pummelo hybrids remain subject to Order requirements for reporting and assessments, it would be necessary for the Committee to establish separate reporting procedures and documentation for pummelo movement.

The Committee expressed uncertainty that creating requirements specifically for pummelo would add value to the industry. Even if the shipment data were collected, because of confidentiality concerns, the Committee may not be able to report out the results due to the small number of handlers. Further, at the estimated volume shipped, additional assessments would total $3,000. This amount may not be sufficient to cover the cost of developing the necessary reports and ensuring compliance.

The Committee has previously recommended, and AMS approved, exemptions for gift packages, minimum shipments, and animal feed. These are shipping channels or volumes that would not affect overall demand for fresh fruit. Similarly, the Committee believes demand would not be harmed if pummelo shipments continued without being subject to the requirements of the Order.

This proposed change would exempt pummelos from all requirements under the marketing order, including registration, assessment, and reporting requirements. This exemption would be codified in a new § 905.130. If a handler ships pummelo as well as other regulated citrus, the handler will still have to meet all requirements related to the other citrus covered by the Order. Further, the Committee could consider removing this exemption if conditions change over time. Thus, the Committee unanimously recommended exempting pummelo fruit from all Order requirements. After consideration of all relevant material presented, including the information and recommendations submitted by the Committee and other available information, AMS has determined that this proposed rule is consistent with and will effectuate the purposes of the Act.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 500 producers of Florida citrus in the production area and about 15 handlers subject to regulation under the Order. The Committee reports there are six pummelo producers and three shippers. Small agricultural producers of orange groves are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of $3,500,000 or less, and small agricultural service firms are defined as those whose annual receipts are $30,000,000 or less (13 CFR 121.201).

According to data from the National Agricultural Statistics Service (NASS) and the Committee, the weighted average packing house door equivalent price for fresh Florida citrus for the 2020–21 season was approximately $6.52 per carton with total shipments of 6,022,426 cartons. Using the number of handlers, the majority of handlers have average annual receipts of less than $30,000,000 ($6.52 times 6,022,426 cartons equals $39,266,217.52 divided by 15 handlers equals $2,617,747.83 per handler).

In addition, based on the NASS data, the weighted average grower price for the 2020–21 season was estimated at $4.95 per carton of fresh citrus. Based on grower price, shipment data, and the total number of Florida citrus growers, the average annual grower revenue is below $3,500,000 ($4.95 times 6,022,426 million cartons equal $29,811,008.70 divided by 500 growers equals $59,622.02 per grower). Thus, the majority of Florida citrus handlers and growers may be classified as small entities.

This proposed rule would exempt pummelos from all requirements under the marketing order, including assessment and reporting requirements. Without this exemption, it would be necessary for the Committee to establish separate reporting procedures for pummelos. This proposed rule would create § 905.130 to establish the pummelo exemption. Authority for this change is provided in §§ 905.7, 905.41, 905.70, 905.71, and 905.80.

This action is not expected to increase the costs associated with the Order's

requirements. Rather, it is anticipated this action would have a beneficial impact by exempting pummelo handlers, primarily small entities, from regulation, assessment, and reporting requirements.

Exemption from assessments would create a minimal loss of revenue. Using the current assessment rate and pummelo shipments estimated by Committee members (200,000 cartons), there would be about $3,000 lost per year. Developing an alternative reporting process and maintaining compliance would likely cost the Committee more than that amount in staff time. Pummelo growers and handlers should benefit from this change regardless of their size.

The Committee discussed an alternative to this action. It considered whether there was a need to establish grade and size requirements for pummelo and track the shipments as they do for other citrus fruits. Committee members indicated the pummelo market is not experiencing quality concerns, and there is no industry interest in creating such requirements. Therefore, the Committee rejected this alternative.

Committee meetings were widely publicized throughout the citrus industry. All interested persons were invited to attend Committee meetings and participate in Committee deliberations on all issues. Like all Committee meetings, the November 30, 2021, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Interested persons are invited to submit comments on this proposed rule, including the regulatory and informational collection impacts of this action on small businesses.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by the OMB and assigned OMB No. 0581–0189, Fruit Crops. No changes in those requirements would be necessary as a result of this proposed rule. Should any changes become necessary, they would be submitted to OMB for approval.

This proposed rule would not impose any additional reporting or recordkeeping requirements on either small or large citrus handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. AMS has not identified any relevant Federal rules that duplicate, overlap, or conflict with this proposed rule.

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

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. All written comments timely received will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Pummelos, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, the Agricultural Marketing Service proposes to amend 7 CFR part 905 as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND PUMMELOS GROWN IN FLORIDA

■ 1. The authority citation for part 905 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Add § 905.130 to read as follows:

§ 905.130 Exemptions for Pummelo.

The handling of pummelo fruit or pummelo hybrids shall be exempt from the provisions of §§ 905.7, 905.41, 905.70, 905.71 and the regulations issued thereunder: Provided, That, if the handler ships other fruit subject to Order requirements, the handler must comply with all sections of the Order applicable to such fruit, including handler registration.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–22702 Filed 10–18–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 922

[Doc. No. AMS–SC–21–0061]

Washington Apricots; Termination of Marketing Order

AGENCY: Agricultural Marketing Service, Department of Agriculture (USDA).

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on a recommendation from the Washington Apricot Marketing Committee (Committee) to terminate the Federal marketing order regulating the handling of apricots grown in designated counties in Washington (Marketing Order No. 922). The Committee determined the marketing order is no longer necessary to maintain orderly marketing conditions and unanimously recommended its termination. Following the Committee's recommendation, the Agricultural Marketing Service (AMS) suspended the remaining reporting and assessment collection requirements under the marketing order while it considered termination of the marketing order. After reviewing the Committee's recommendation and other information submitted, AMS determined that the marketing order no longer tends to effectuate the declared policy of the Agricultural Marketing Agreement Act of 1937. If implemented, this proposed rule would remove Marketing Order No. 922 from the Code of Federal Regulations.

DATES: Comments must be received by December 19, 2022.

ADDRESSES: Interested persons are invited to submit written comments concerning this proposed rule. Comments must be sent to the Docket Clerk, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Fax: (202) 720–8938; or via internet at: *https://www.regulations.gov.* Comments should reference the document number and the date and page number of this issue of the **Federal Register**. All comments will be made available for public inspection in the Office of the Docket Clerk during regular business hours, or can be viewed at: *https://www.regulations.gov.* All comments submitted in response to this proposed rule will be included in the record and will be made available to the public on the internet at the address provided above. Please be advised that the

identity of individuals or entities submitting comments will be made public.

FOR FURTHER INFORMATION CONTACT: Joshua R. Wilde, Marketing Specialist, or Gary Olson, Regional Director, Western Region Branch, Market Development Division, Specialty Crops Program, AMS, USDA; Telephone: (503) 326–2724 or Email: *Joshua.R.Wilde@usda.gov* or *GaryD.Olson@usda.gov.*

Small businesses may request information on complying with this regulation by contacting Richard Lower, Market Development Division, Specialty Crops Program, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; Telephone: (202) 720–2491 or Email: *Richard.Lower@usda.gov.*

SUPPLEMENTARY INFORMATION: This action, pursuant to 5 U.S.C. 553, proposes an amendment to regulations issued to carry out a marketing order as defined in 7 CFR 900.2(j). This proposed rule is issued under Marketing Order No. 922, as amended (7 CFR part 922), regulating the handling of apricots grown in designated counties in Washington. Part 922 (referred to as the ''Order'') is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the ''Act.'' The Committee locally administers the Order and is comprised of producers and handlers operating within the production area.

AMS is issuing this proposed rule in conformance with Executive Orders 12866 and 13563. Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This action falls within a category of regulatory actions that the Office of Management and Budget (OMB) exempted from Executive Order 12866 review.

In addition, this proposed rule has been reviewed under Executive Order 13175—Consultation and Coordination with Indian Tribal Governments, which requires agencies to consider whether their rulemaking actions would have tribal implications. AMS has determined this proposed rule is unlikely to have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This proposed rule is not intended to have retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to a marketing order may file with the Department of Agriculture (USDA) a petition stating that the marketing order, any provision of the marketing order, or any obligation imposed in connection with the marketing order is not in accordance with law and request a modification of the marketing order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule would terminate the Order regulating the handling of apricots grown in designated counties in Washington. Following its meeting on May 11, 2021, the Washington Apricot Marketing Committee (Committee) unanimously recommended this action after determining the Order is no longer necessary to maintain orderly marketing conditions. AMS suspended, indefinitely, reporting and assessment collection requirements under the Order while it considered the Committee's recommendation and information submitted (87 FR 21741). After reviewing the Committee's recommendation, years without marketing program activity, the decline in apricot production, and the decision to indefinitely suspend reporting and assessment collection requirements, AMS determined that the Order no longer tends to effectuate the declared policy of the Act. This proposed rule invites comments on proposed termination of the Order and, if implemented, would remove the Order from the Code of Federal Regulations.

Section 922.64(b) of the Order provides that United States Secretary of Agriculture (Secretary) may terminate or suspend any or all provisions of the Order when a finding is made that the Order does not tend to effectuate the declared policy of the Act. In addition, section 608c(16)(A) of the Act provides that the Secretary terminate or suspend the operation of any order whenever the order or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act.

The Order has been in effect since 1957 and has provided the apricot industry in Washington with authority for grade, size, quality, maturity, pack, and container regulations, as well as authority for mandatory product inspection.

The Committee, which locally administers the Order, meets regularly to consider recommendations for modification, suspension, or termination of the Order's regulatory requirements. Committee meetings are open to the public and interested persons may express their views at these meetings. AMS reviews Committee recommendations, including information provided by the Committee and from other available sources, and determines whether modification, suspension, or termination would tend to effectuate the declared policy of the Act.

In 2006, the Committee unanimously recommended AMS suspend container regulations after determining they were no longer necessary to ensure orderly marketing and that suspension would provide greater flexibility to handlers for packing and shipping apricots. Following the Committee's recommendation, AMS suspended container regulations for apricots for one year in 2006 (71 FR 16979), and subsequently extended that suspension indefinitely in 2007 (72 FR 16263).

In 2013, the Committee unanimously recommended AMS suspend handling regulations after determining the cost of complying with the Order's handling and inspection requirements outweighed its benefits to both producers and handlers of apricots. Based on the Committee's recommendation, AMS issued an interim rule suspending the handling regulations for apricots on October 23, 2013 (78 FR 62963). A final rule affirming the indefinite suspension published in the **Federal Register** on March 20, 2014 (79 FR 15539).

Following these regulatory suspensions, the Committee continued to levy assessments to maintain its functionality. The Committee believed that it should continue to fund its full operational capability, collect industry statistics on an ongoing basis, and maintain the program in the event market conditions warranted regulation.

On May 11, 2021, the Committee met and discussed current market dynamics, budget and assessments, and deliberated

the continuance of the Order. During the meeting, the Committee discussed that the volume of apricots produced in Washington has declined over the years, and in 2020, the industry experienced a significant drop in crop produced from the prior year's production. In addition, management and administrative costs to maintain the Order have also increased. Staff management hours includes a greater quantity of hours worked than in previous years.

The Committee discussed the alternative, that to maintain the Order would require an assessment rate increase of approximately over 300 percent, from $2.86 to $13.30 per ton. However, the Committee determined that the decrease in the 2020 crop suggests an overall decline in apricot production, and an assessment rate increase of over 300 percent would not benefit apricot producers and handlers. The Committee discussed that the industry has functioned without container and handling regulations for a combined period of more than 14 years. It was the belief of the Committee that the suspension of container and handling requirements had not adversely affected the marketing of Washington apricots and, therefore, terminating the Order would not negatively impact the industry. The Committee concluded that the Order is no longer necessary to maintain orderly marketing conditions and that the cost to maintain the Order outweighs its benefit to industry. Following this meeting, the Committee voted unanimously to terminate the Order.

On July 7, 2021, the Committee formally recommended AMS terminate the Order. In preparing to terminate the Order, the Committee recommended AMS suspend the collection of assessments and reporting requirements. The Committee also recommended a budget of expenditures of $5,508 for the period beginning April 1, 2021, and ending with the termination of the Order. Following the Committee's recommendation, AMS suspended, indefinitely, the remaining reporting and assessment collection requirements under the Order while it considered the recommendation and information submitted by the Committee to terminate the Order. A proposed rule to suspend reporting and assessment collection requirements published in the **Federal Register** on November 23, 2021 (86 FR 66462). AMS received one comment that did not address the merits of the rule. Accordingly, no changes were made to the rule as proposed and the final rule published on April 13, 2022 (87 FR 21741). The suspension of regulations, reporting requirements, and assessment collections continued while AMS evaluated the Committee's recommendation for terminating the Order. After reviewing the Committee's recommendation, years without marketing program activity, the decline in apricot production, and the decision to indefinitely suspend reporting and assessment collection requirements, AMS determined that the Order no longer tends to effectuate the declared policy of the Act.

This proposed rule is intended to solicit input and any additional information available from interested parties regarding whether the Order should be terminated. AMS will evaluate all available information prior to making a final determination on this matter. If implemented, this proposed rule would terminate the Order and the rules and regulations issued thereunder.

Initial Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), AMS has considered the economic impact of this proposed rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act are unique in that they are brought about through group action of essentially small entities acting on their own behalf.

There are approximately 315 growers of Washington apricots and approximately 8 apricot handlers in the production area subject to regulation under the Order. Small agricultural service firms (postharvest crop activities (except cotton ginning), NAICS code 115114) are defined by the Small Business Administration (SBA) as those having annual receipts of $30,000,000 or less, and small agricultural producers (other non-citrus fruit farming, NAICS code 111339) are defined as those having annual receipts of $3,000,000 or less (13 CFR 121.201).

Based on USDA National Agricultural Statistics Service (NASS) data, and given the number of Washington apricot growers, average grower revenue is well below $3,000,000. NASS's 2020 value of utilized Washington apricot crop production was $3.866 million. Dividing the $3.866 million crop value by 315 growers equals average annual receipts per grower of $12,273. Thus, most Washington apricot growers would be considered small businesses under the SBA definition.

In addition, according to data from AMS's Market News, the estimated Washington apricot 2020 season average Free on Board (f.o.b.) shipper (handler) price per carton was approximately $31.59 (for Washington apricots, 2-layer tray pack carton, all sizes, June–July 2020, midpoint of the ''mostly low'' and ''mostly high'' prices). With a standard Market News weight of 18 pounds per tray pack carton of apricots, the f.o.b. price was approximately $1.755 per pound, ($31.59 divided by 18 pounds), or $3,510 per ton. The Committee reported that the industry shipped 1,628 tons for the 2020 season. Total 2020 estimated handler receipts are $5.714 million (1,628 tons times $3,510 per ton). Average annual receipts per handler are approximately $714,000 ($5.714 million divided by 8 handlers). Thus, most Washington apricot handlers would be considered small businesses under the SBA definition.

This rule proposes to terminate the Order, and the rules and regulations issued thereunder. Termination would remove the Order from the Code of Federal Regulations.

On July 7, 2021, the Committee made the recommendation to terminate the Order. The alternative, to maintain the Order, would require the Committee to increase the assessment rate by approximately 300%, from $2.86 to $13.30 per ton. However, the 2020–2021 crop production was the smallest crop on record, and evidence suggests that this decline is a continuation of an industry trend.

In addition, the prior suspension of the container and handling regulations, effectuated by a separate rulemaking published on April 5, 2006 (71 FR 16979), has not adversely affected the marketing of Washington apricots in any of the subsequent years. AMS confirmed data from the past 7 years shows that apricots can be marketed from the production area in the absence of the Order's requirements without a negative economic impact on the industry.

After considering the alternative, the Committee concluded that regulating the handling of apricots under the Order is no longer necessary to ensure orderly marketing of Washington apricots, that the costs associated with the administration of the Order outweigh the benefits, and that termination of the Order would not have a negative impact on industry. Therefore, following its meeting on May 11, 2021, the Committee unanimously voted to terminate the Order. The suspension of regulations, reporting requirements, and assessments collections continued for an indefinite period while USDA evaluated the Committee's

recommendation to proceed with the termination of the Order.

This proposed rule is intended to solicit input and other available information from interested parties on whether the Order should be terminated. AMS will evaluate all available information prior to making a final determination on this matter.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Order's information collection requirements have been previously approved by OMB and assigned OMB No. 0581–0189 Fruit Crops. AMS will extract the remaining apricot marketing order-related forms from the forms package during the next three-year renewal process, should the Order be terminated.

This rule would effectuate the removal of reporting and recordkeeping requirements on apricot handlers, both small and large. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, AMS has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule.

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

The Committee's meetings were widely publicized throughout the Washington apricot industry, and all interested persons were invited to attend the meetings and participate in Committee deliberations on all issues. Meetings were held virtually or in a hybrid style with participants having a choice on whether to attend in person or virtually.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *https://www.ams.usda.gov/rules-regulations/moa/small-businesses.* Any questions about the compliance guide should be sent to Richard Lower at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

This rule invites comments on the proposed termination of Marketing Order No. 922, which regulates the handling of apricots grown in designated counties in Washington. A 60-day comment period is provided to allow interested persons to respond to this proposal. All written comments timely received will be considered before a final determination is made on this matter.

Based on the foregoing, and pursuant to § 608c(16)(A) of the Act and § 922.64 of the Order, AMS is considering termination of the Order. If AMS decides to terminate the Order, trustees would be appointed to conclude and liquidate the Committee affairs and would continue in that capacity until discharged by AMS. In addition, AMS would notify Congress 60 days in advance of termination pursuant to § 608c(16)(A) of the Act.

List of Subjects in 7 CFR Part 922

Apricots, Marketing agreements, Reporting and recordkeeping requirements.

PART 922—[REMOVED]

For the reasons set forth in the preamble, and under the authority of 7 U.S.C. 601–674, the Agricultural Marketing Service proposes to remove part 922.

Erin Morris,

Associate Administrator, Agricultural Marketing Service.

[FR Doc. 2022–22695 Filed 10–18–22; 8:45 am]

BILLING CODE P

SMALL BUSINESS ADMINISTRATION

13 CFR Parts 107 and 121

RIN 3245–AH90

Small Business Investment Company Investment Diversification and Growth

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (''SBA'' or ''Agency'') is proposing to revise the regulations for the Small Business Investment Company (''SBIC'') program to significantly reduce barriers to program participation for new SBIC fund managers and funds investing in underserved communities and geographies, capital intensive investments, and technologies critical to national security and economic development. This proposed rule introduces an additional type of SBIC (''Accrual SBICs'') to increase program investment diversification and patient capital financing for small businesses and modernize rules to lower financial barriers to program participation. This proposed rule will help SBA implement the Executive Order (''E.O.''), Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, by reducing financial and administrative barriers to participate in the SBIC program and modernizing the program's license offerings to align with a more diversified set of private funds investing in underserved small businesses. The proposed rule also incorporates the statutory requirements of the Spurring Business in Communities Act of 2017, which was enacted on December 19, 2018.

DATES: Comments must be received on or before December 19, 2022.

ADDRESSES: You may submit comments, identified by RIN 3245–AH90, by any of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail or Hand Delivery/Courier:* Bailey G. DeVries, Associate Administrator for the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416.

SBA will post all comments on *https://www.regulations.gov*. If you wish to submit confidential business information (''CBI''), as defined in the User Notice at *https://www.regulations.gov,* please submit the information to Bailey G. DeVries, Associate Administrator of the Office of Investment and Innovation, U.S. Small Business Administration, 409 Third Street SW, Washington, DC 20416, or send an email to *oii.frontoffice@sba.gov* with ''RIN 3245–AH90 Proposed Rule'' in the subject heading. Highlight the information that you consider to be CBI and explain why you believe SBA should hold this information as confidential. SBA will review the information and make the final determination on whether it will publish the information.

FOR FURTHER INFORMATION CONTACT:

Policy: Bailey G. DeVries, Associate Administrator of the Office of Investment and Innovation, Small Business Administration, *oii.frontoffice@sba.gov,* 202–941–6064. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

*Regulatory Comments/**Federal Register** Docket:* Louis Cupp, Office of Investment and Innovation, Small Business Administration, *oii.frontoffice@sba.gov,* 202–699–1746. This phone number can also be reached by individuals who are deaf or hard of hearing, or who have speech

disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711.

SUPPLEMENTARY INFORMATION:

I. Background Information

A. Small Business Investment Company Program

The mission of the Small Business Investment Company (SBIC) program is to enhance small business access to capital by stimulating and supplementing ''the flow of private equity capital and long-term loan funds which small-business concerns need for the sound financing of their business operations and for their growth, expansion, and modernization, and which are not available in adequate supply.'' SBA carries out this mission by licensing and monitoring privately owned and managed investment funds that raise capital from private investors (''Private Capital'') and issue SBA-guaranteed Debentures (''Debentures'') to make private long-term equity and debt investments = into qualifying small businesses.

SBA currently has two types of Debentures available for private funds that have received an SBIC license: a current pay (or ''Standard'') Debenture and a ''Discount'' Debenture. The vast majority of licensed SBICs applying for SBA leverage use the Standard Debenture with a ten-year maturity and interest due and payable on a semi-annual basis. This structure aligns with the cash flows of a subset of private fund strategies, including funds with mezzanine, private credit, and leveraged buyout strategies. The Standard Debenture aligns with these strategies because private funds utilizing such mezzanine, private credit, or leveraged buyout strategies typically generate fund-level cash liquidity within the time period required to meet semi-annual interest payments. The Discount Debenture is issued at a steep discount to face value and accrues to face value over five years, at which time the SBICs must pay current interest; this Debenture is only available for low and moderate income (LMI) investments and Energy Saving Qualified Investments (as defined in 13 CFR 107.50). Although SBICs have invested almost 20% of their investments in LMI areas, as of December 31, 2021, less than 0.5% of Debentures committed and issued since Fiscal Year (''FY'') 2000 used the Discount Debenture to make such investments. (*Note:* The Federal Government FY is the period of October 1 through September 30, where the FY is designated by the calendar year in which the FY ends.) No SBIC has used the Discount Debenture for Energy Saving Qualified Investments. Market feedback suggests that the reason SBICs do not utilize the Discount Debenture is due to the steep discount at issue and the misalignment of the required interest payments commencing at year five to the typical cash flow patterns of patient capital investors, such as long-duration private equity funds. Between FYs 1994 through 2004, SBA was authorized to issue Participating Securities, which were an SBIC Program instrument designed to support equity investors. The program ceased due to losses in that program.

Based on SBA's analysis of SBICs licensed for the legacy Participating Securities instrument, SBA found widespread evidence that participating security SBIC losses were largely due to the instruments' statutorily mandated structural flaws and regulations which enabled high risk portfolio construction decisions. These issues were further exacerbated by macro-economic conditions, concentration in early-stage venture (which, at the time, was an emerging alternative investment strategy), and pervasive information asymmetry in the venture market in the early 2000s. One of the major flaws in the participating security was that SBA advanced interest payments (known as ''prioritized payments'') on behalf of the Licensee and was only repaid out of the Licensee's capped profits. Once the Licensee achieved the capped time-based return, SBA could no longer meaningfully ''participate'' in the profit distributions of the Licensee. As a result of the cap and the time dependency, less than half of the $2.8 billion in prioritized payments advanced by SBA were reimbursed by SBICs licensed in the participating securities program. Further, statutory complexities created further unnecessary complexities in the distribution waterfall. Due to the complexities associated with the statutory distribution waterfall, computing a single distribution required a significant amount of time and effort on the part of the Licensee and SBA. For example, Licensees were required to file hard copies of the computation documents with the SBA for regulatory monitoring and examination purposes. These complications increased the workload on SBA to calculate each distribution, increased fund administration expenses for the Licensee, and created loopholes whereby Licensees could sequence profits distributions such that SBA would receive only its capped share of profits (typically less than 10%). In several cases, private investors received substantial returns based on early profit distributions and the SBIC would subsequently incur losses, resulting in SBA being the only party not fully repaid. Further, Licensees in the Participating Securities program typically did not have diverse portfolios and SBA did not consider portfolio diversification at the fund-of-fund level as a means to mitigate risk, an important consideration in modern portfolio theory. As a result, about half of the participating securities financings prior to 2001 were in computers, information technology, and related professional technical services. Additionally, almost half of the participating securities financings prior to 2001 were in companies under 2 years of age at first financing. As a result, when the ''Dot Com'' bubble financial downturn arrived in 2000, the SBIC portfolio was not appropriately diversified for sustained portfolio financial performance.

Between October 1, 2016, and September 30, 2021, SBICs provided over $29 billion in financings to small businesses. However, only 18% of Debenture SBIC financings were in the form of patient capital equity investments, and less than a quarter of SBICs licensed were focused on equity. Over 75% of all financings of small businesses by Debenture SBICs included a debt component. During this same timeframe, SBA licensed 116 SBICs with almost $7.8 billion in initial Private Capital, and two-thirds of licenses were approved for subsequent funds from asset management firms that had previously received an SBIC license. As of December 31, 2021, SBA had 298 operating SBICs across 207 asset management firms with almost $35 billion in Regulatory Capital and Debentures, including undrawn commitments.

B. Underserved Focus

SBA is proposing changes to 13 CFR part 107 to reduce barriers to program participation for new SBIC fund managers and funds investing in (i) underserved communities and geographies, (ii) capital intensive investments, and (iii) technologies critical to national security and economic development. This proposed rule will help SBA implement Executive Order (''E.O.'') 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government by reducing financial and administrative barriers to participation in the SBIC program and modernizing the program's license offerings to align with a more diversified set of new funds

investing in underserved small businesses. SBA notes that newly managed funds are consistently among top performers based on net total value to paid-in capital as of June 30, 2019, data from Cambridge Associates, LLC.

One of the key proposed changes is the implementation of a new type of Debenture (''Accrual Debenture'') designed to align with the cash flows of long-term, equity-oriented funds (''Accrual SBICs''). As evidenced by a December 2020 Fairview Capital study, among private market funds, the largest opportunity set to invest in a manner that advances racial and gender equity exists among new equity-oriented funds. This is even more pronounced in the universe of private venture equity strategies. Equity-oriented funds currently account for 18% of SBA leverage and credit/debt-oriented strategies account of ~82% of capital from Debenture SBICs. In order to promote E.O. 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government, it is essential that SBA offer SBICs an opportunity to issue Debentures capable of aligning with the financial structure of equity strategies.

To further promote E.O. 13985, SBA is proposing to revise the existing prohibited investment requirements under § 107.720 that permit SBICs to invest in relenders or reinvestors under specific circumstances. As evidenced by consistent and broad industry feedback, SBA expects this revision should improve the SBIC program's investment diversification and likely mitigate default risk across the SBIC program while creating more program entry points for new fund managers. According to a 2017 Preqin study (Preqin-Special-Report-Private-Equity-Funds-of-Funds-November-2017), institutional fund-of-funds and similar pooled primary fund investment structures are almost twice as likely to invest in first-time funds as other institutional investors. Furthermore, fund-of-funds and similar pooled investment vehicles, which diversify investment across underlying funds, can limit investment performance volatility and protect against downside risk through benefits of enhanced diversification. It should also be noted that fund-of-funds and similar pooled vehicles frequently require additional fees to compensate for the construction, implementation, and management of the portfolio of primary fund investments. Investors in such vehicles, as with any investment, must contemplate the net-of-fee risk/return potential of the investment rather than its gross-of-fee risk/return potential. The proposed revisions under § 107.720 will provide greater clarity to the market, and additional capital to underserved markets, while fostering a more inclusive and equitable asset management industry, capable of supporting access to capital for a broader base of small businesses across all corners of the U.S. while enhancing the diversification of SBA's invested capital and reducing risk of default or losses to SBA.

SBA is also proposing to modernize the licensing, operations, and examinations rules to lower cost and administrative barriers faced by new funds applying to the SBIC program. These proposed changes include reducing licensing fees for first- and second-time funds, adding an exception to the conflict-of-interest rules for follow-on financings in small businesses, reducing regulatory examinations fees for non-Debenture and smaller funds, and permitting Leveraged funds to access a qualified line of credit without SBA approval, subject to certain conditions. SBA is also proposing measures to strengthen SBIC program investment and operational risk controls to safeguard the program's ability to operate at zero subsidy across market cycles. These modernization activities include implementing a formal licensee ''enhanced monitoring'' process and a consistent approach to investor and SBA distributions to help (a) ensure that Debentures are repaid and (b) reduce the time to repayment. This proposed rule also includes several technical corrections and clarifications to increase SBIC program accessibility for new funds.

C. Spurring Business in Communities Act of 2017 (Pub. L. 115–333)

On December 19, 2018, the Spurring Business in Communities Act, Public Law 115–333, was enacted. This legislation gives priority in licensing to SBIC applicants located in under licensed States with below median financing. In September 2019, SBA issued a notice that gives priority in licensing to such applicants. This proposed rule implements Public Law 115–333 and provides an opportunity for the public to comment.

D. Modernization Improvements

On August 15, 2017 (82 FR 38617), SBA published a request for information seeking input from the public on SBA regulations that should be repealed, replaced or modified because they are obsolete, unnecessary or burdensome. On October 13, 2017 (82 FR 47645), SBA extended the comment period. SBA received one set of comments regarding the SBIC program. During 2018, SBA held three roundtables with SBIC program stakeholders (May 22, July 17, and August 7) to solicit additional feedback regarding SBIC program regulations. Based on the feedback from these round tables and subsequent discussions with industry since that time, SBA is also proposing changes to reduce burden for SBICs.

II. Section by Section Analysis

A. Section 107.50 Definition of Terms

SBA proposes to add two terms associated with the new Accrual Debenture discussed in paragraph I.B. of this rule: ''Accrual Debenture'' and ''Accrual SBIC.'' The Accrual Debenture would mean a Debenture issued at face value that would accrue interest over its ten-year term where SBA guarantees all principal and unpaid accrued interest. As discussed in the preamble, SBA believes that the Standard Debenture does not align with the cash flows needed for patient capital strategies solely investing in the equity of small businesses. Although SBA considered a zero coupon (an instrument issued at a steep discount from face value that then matures over its term to full value), SBA believes issuing the leverage at full face value (subtracting only the 2% draw fee) is far more attractive to potential applicants. The Accrual Debenture would only be available to Accrual SBICs to align with the types of equity investing they perform. Standard SBICs may only issue Standard Debentures and Discount Debentures. The proposed definition also provides that if a Licensee that issued an Accrual Debenture is unable to pay the principal and accrued interest at its ten-year maturity, that Licensee may apply for a roll-over Accrual Debenture which would have a five-year term. Approval would be subject to SBA credit procedures and statutory limitations. SBA proposes this to provide a longer horizon for private funds seeking to make longer term investments that might require more patient capital.

The proposed rule defines an Accrual SBIC as a Section 301(c) Licensee that will (a) invest at least 75% of its total financings (based on dollar amount) in Equity Capital Investments (as defined in § 107.50); (b) will generally own no more than 50% of the small business concern at initial Financing; and (c) elect at the time of licensing to issue Accrual Debentures. SBA expects that Accrual SBICs will most commonly be formed as limited partnerships that are subject to 13 CFR 107.160. Given SBA's additional risk associated with the

Accrual Debentures, SBA proposes to limit the Accrual Debenture to SBICs that focus on Equity Capital Investments. SBA believes that a 75% equity investment threshold for Accrual SBIC's financings reasonably describes an equity focus.

SBA is reserving the Accrual Debenture only for those Licensees that generally will own no more than 50% of a small business concern at initial Financing. SBA believes that its Standard Debenture fully supports Licensees performing private credit, mezzanine, and buyout transactions. While Licensees performing buyout transactions may perform a high percentage of equity, based on program licensing and cash flow data, SBA believes its Standard Debenture already supports these investment strategies.

SBA recognizes that some multi-strategy funds that include venture and growth equity investments might want more flexibility than will be afforded by the terms of the Accrual Debenture. One such limitation is the percentage of equity investment required. Some multi-strategy funds may want to do a more balanced blend between equity and debt. Another limitation is a fund's investment strategy which contemplates the performance of buyout transactions in which the fund would take 50% or more ownership of a small business concern at initial financing. Still another limitation is the amount of SBA leverage available to Accrual SBICs. In order to determine the maximum amount of leverage that Accrual SBICs may have outstanding, SBA will aggregate the total principal leverage plus ten years of accrued interest on such principal to determine the total Accrual Debentures that the Accrual SBIC may issue. For example, if an Accrual SBIC has $100 million in Regulatory Capital, the total Accrual Debenture principal they may be approved for may be only $118 million if the forecast interest would accrue to approximately $57 million over a ten-year timeframe at a 4% interest rate, since higher amounts would result in total SBA guaranteeing outstanding leverage amounts in excess of $175 million. It is not SBA's intent to discourage such funds from applying if they can make a case for their business plan as a standard SBIC. SBIC Applicants will be required to identify whether they intend to use Standard or Discount Debentures or if they intend to use the Accrual Debenture as an Accrual SBIC. SBA will evaluate and approve a license as either a standard SBIC or as an Accrual SBIC.

SBA proposes to revise the definition of ''Associate'' regarding the status of an entity Institutional Investor based on its ownership interest in a Partnership. Currently an entity Institutional Investor whose ownership represents over 33 percent of the Licensee's private capital is considered an ''Associate''. SBA proposes to change this to 50 percent or more to align with the financing practices of Community Development Corporations and other institutional investors seeking patient capital investment funds and first-time funds. Under this proposal, an entity Institutional Investor, as a limited partner in a partnership Licensee, will not be considered an Associate solely because that entity's investment in the Partnership, including commitments, represents 10 percent or more but less than 50 percent of the Licensee's Private Capital, provided that such investment also represents no more than five percent of the entity's net worth.

The proposed rule defines the term ''Annual Charge'' that is currently defined as ''Charge'' in the current 13 CFR 107.50. SBA proposes this change because this is typically the term used to refer to the annual fee associated with SBA-guaranteed Leverage in both its website and much of its documentation and more appropriately refers to the recurring payment associated with this Leverage fee. SBA would maintain the term ''Charge'' in its regulations for backwards compatibility, but indicate it has the same meaning as ''Annual Charge''. Currently, the term ''Charge'' is defined as the annual fee on Leverage issued to or after October 1, 1996. Since there is no outstanding Leverage issued prior to October 1, 1996, this language would be removed from the definition. The current definition also states that the Leverage is subject to the terms and conditions set forth in § 107.1130(d). This proposed rule adds a reference to § 107.585. Although current § 107.585 identifies restrictions regarding reductions in Regulatory Capital (which are typically performed in conjunction with a distribution to its private investors), this proposed rule expands § 107.585 to define new distribution requirements for SBICs issuing leverage. (See § 107.585 later in this proposed rule.)

SBA proposes amending the definition of ''Control Person'' under section 107.50 to clarify what constitutes a controlling relationship over a Limited Partnership Licensee with a government sponsored non-profit management company relationship. Section 107.50 would be amended to state that when over 30% of the private capital managed by the licensee comes from unaffiliated and unassociated entities (outside of their association as an investor in the Licensee), the management company of the Licensee is a government sponsored non-profit entity and the general partners of the licensee are bound by a fiduciary duty to the investors in the licensee, the management of the licensee can be determined to be free from outside control.

The term ''Equity Capital Investments'' refers to equity and equity-like investments, defined in § 107.50 to include common or preferred stocks, limited partnership interests, certain subordinated debt, and warrants. SBA recognizes that venture capital and private equity transactions continue to evolve and is seeking public input for any suggested changes to ''Equity Capital Investments'' that SBA should consider.

The proposed rule includes under § 107.50 the terms ''Final Licensing Fee'' and ''Initial Licensing Fee,'' as these terms have been defined in § 107.300 and used in § 107.410.

SBA also proposes to define the term ''GAAP'' as ''Generally Accepted Accounting Principles'' as established by the Financial Accounting Standards Board (FASB), which refer to financial accounting and reporting standards for public and private companies and not for profit organizations in the United States. The U.S. Securities and Exchange Commission has recognized the financial accounting and reporting standards of the FASB as ''generally accepted'' under section 108 of the Sarbanes-Oxley Act. SBA is proposing to define this term as the proposed rule will refer to GAAP in various locations in the proposed regulations.

SBA proposes to amend the term ''Leverage'' to remove the inclusion of ''Participating Securities'' and ''Preferred Securities'' which are no longer available in the SBIC program and no longer outstanding in operating SBICs. While SBICs with outstanding Participating Securities Leverage remain in the Office of SBIC Liquidation, those Licensees are subject to the regulations at the time that Leverage was issued. SBA also proposes to clarify that Leverage and SBA's guarantee would apply to both the principal and unpaid accrued interest associated with the Accrual Debenture. This definition would clarify SBA's guarantee in relation to the new security and the Leverage maximum restrictions regarding Accrual Leverage. For example, SBA will not approve Accrual Debentures for an amount in which the principal balance and ten years of accrued interest exceed $175 million. This definition also clarifies the total capital that SBA is guaranteeing at any

time. For example, if an Accrual SBIC had $20 million principal in Accrual Debentures that accrued $4 million in interest, SBA's guarantee would be $24 million, as SBA's guarantee extends to the accrued interest. SBA would also consider this in its overall commitment authorization level. SBA is required under statute to guarantee both principal and interest on outstanding leverage. This proposed rule requires SBA to estimate the interest rate associated with any Accrual Debenture commitment in a conservative manner to ensure that the total capital that SBA guarantees does not exceed its overall authority set forth in the Small Business Investment Act of 1958, as amended (the ''Act''), or other applicable federal laws. For example, if SBA has a $5 billion Debenture authorization and has approved $4 billion in Standard Debentures for regular SBICs, SBA would need to estimate the interest rate for the Accrual Debentures over the 10-year accrual period in a manner that safeguards the SBA from exceeding its authorization ceiling.

SBA is proposing the terms ''Leveraged Licensee'' and ''Non-leveraged Licensee'' in § 107.50. Current regulations provide greater flexibility to Licensees that do not have outstanding leverage and do not intend to issue leverage since SBA has no credit risk. This proposed rule would provide further benefits and flexibility to such Licensees. In order to simplify the regulations, Leveraged Licensees would include any Licensee with outstanding Leverage, Leverage commitments, Earmarked Assets (which are only associated with Licensees that issued Participating Securities), and any Licensee that intends to issue Leverage in the future. The intent of the certification is to ensure that SBA applies the appropriate scrutiny to any Licensee that intends to seek SBA Leverage in the future. This regulation is not intended to prohibit subsequent SBIC funds from seeking Leverage. This proposed rule also defines Non-leveraged Licensee as a Licensee that has no outstanding Leverage or Leverage commitment, certifies (in writing) that such Licensee will not seek Leverage throughout the life of the fund, and has no Earmarked Assets. For example, if ABC, LP has outstanding Leverage of $10 million and subsequently (a) fully repays its outstanding Leverage, (b) has no further Leverage commitments, (c) has no Earmarked Assets, and (d) certifies that it will not seek any Leverage in the future, ABC, LP would be considered a Non-leveraged Licensee, even if the management company of ABC, LP also has a Leveraged Licensee (ABC II, LP) with outstanding Leverage of $20 million. As another example, if DEF, LP is granted an SBIC License and certifies to SBA (in writing) that it does not intend to issue Leverage, SBA would consider DEF, LP to be a Non-leveraged Licensee.

SBA proposes to define the term ''Qualified Line of Credit'', which would be as defined in the proposed § 107.550(c). (See Section 107.550 under this Part II.)

SBA proposes to modify the term ''Retained Earnings Available for Distribution'' to include the acronym ''READ'' and to clarify that READ distributions must be performed in accordance with proposed § 107.585. As discussed in that section, SBA will propose clarifications to distributions for existing Licensees and new distribution rules for Licensees licensed on or after October 1, 2023. (See § 107.585 under this Part II.)

SBA proposes to add the terms ''SBIC'' or ''Small Business Investment Company'' to have the same meaning as Licensee. SBA uses the terms ''SBIC'' and ''Licensee'' interchangeably throughout the regulations and in its policies and documents.

SBA proposes to add the term ''SBIC website'' as *www.sba.gov/sbics* which is the public website that SBA maintains all information on the SBIC program, including all standard operating procedures, policies, SBIC forms, and any reports that SBA publishes from time to time. Regulations refer to this site throughout the regulations.

This proposed rule adds the terms ''State'' and ''Underlicensed State'' in § 107.50 to support implementation of Public Law 115–333 which gives priority in Licensing to applicants headquartered in underlicensed states with below median SBIC financing. The term ''State'' would include all of the fifty States, the Commonwealth of Puerto Rico, the District of Columbia, and all U.S. territories with permanent populations (Guam, U.S. Virgin Islands, Northern Mariana Islands, and American Samoa). The term ''Underlicensed State'' means a State in which the number of operating licensees per capita is fewer than the median number for all States. To determine the per capita per State, SBA would use the most recent resident population from the U.S. Census as of the date of the calculation. SBA would publish the list of Underlicensed States periodically on the SBIC website.

SBA is proposing to add the term ''Total Leverage Commitment'' to have the meaning as defined in proposed § 107.300. As discussed under that section, SBA proposes to approve the Total Leverage Commitment at the time of licensing.

SBA proposes to add the term ''Enhanced Monitoring'' as defined in the proposed § 107.1850. As discussed under that section, SBA is implementing an Enhanced Monitoring process to better monitor its SBICs.

SBA proposes to change the term ''Wind-up'' Plan to ''Wind-down'' plan throughout part 107 because SBA believes that it better reflects the wind-down of a fund at the end of its life cycle.

B. Section 107.150 Management Ownership Diversification Requirements

This regulation identifies the SBIC ownership diversification requirement under section 302(c) of the Act (also referenced in Part 107 as the ''diversification requirement''). That section requires SBIC ownership be ''sufficiently diversified from and unaffiliated with the ownership of the licensee in a manner that ensures independence and objectivity in the financial management and oversight of the investments and operations of the licensee.'' To ensure independence per statute, current § 107.150 paragraph (b) requires that ''no Person or group of Persons who are Affiliates of one another may own or control, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.'' SBA proposes to remove the ''indirectly'' requirement to provide greater clarification as to sources of Regulatory Capital available to an SBIC.

As an exception to the diversification ownership requirement under § 107.150(b)(1), SBA allows an investor that is a Traditional Investment Company (a term defined in 13 CFR 107.150(b)(2)) to own and control more than 70 percent of the Licensee's Regulatory Capital. Such SBICs are essentially drop-down funds for that Traditional Investment Company and are structured exclusively to pool capital from more than one source for the purpose of investing and generate profits. SBA proposes also to include non-profit entities to also own more than 70 percent of the Licensee's Regulatory Capital to facilitate capital raising efforts, particularly for first-time funds and funds targeting investments in underserved geographies and critical technologies.

By meeting the requirements of § 107.150(c)(2), such non-profit entities would be exempt from requirements under § 107.150(c)(1) which state that the management of the Licensee must be unaffiliated from the sources of Regulatory Capital. It should be noted

that SBA will continue to review and monitor such entities to ensure that the SBIC is a for-profit vehicle for the non-profit, the management of the Licensee is bound by a fiduciary duty to investors, and to ensure such entities do not pose undue investment or operational risk to SBA.

C. Section 107.210 Minimum Capital Requirements for Licensees

This section identifies minimum private capital requirements for SBICs. SBA proposes to amend the term ''Wind-up'' to ''Wind-down'' as previously discussed in paragraph II.A discussing § 107.50. SBA also proposes to remove all references to ''Participating Securities'' since SBA no longer issues such leverage and any SBICs in SBA's portfolio that issued such leverage are either in Wind-down or are monitored by the Office of SBIC Liquidations.

Paragraph (a)(1) requires SBICs (with the exception of Early Stage SBICs) to have Regulatory Capital of at least $5 million, but provides an exception for SBA, in its sole discretion and based on a showing special circumstances and good cause, to license an applicant with only $3 million if the applicant: (i) meets its licensing standards with the exception of minimum capital; (ii) has a viable business plan reasonably projecting profitable operations; and (iii) has a reasonable timetable for achieving Regulatory Capital of at least $5 million. Public Law 115–333 specifically allows an applicant licensed under this exception and located in an Underlicensed State to receive up to 1 tier of Leverage until the Licensee meets the $5 million minimum Regulatory Capital requirement. SBA proposes to specify that one example of ''good cause'' would be the applicant is headquartered in an Underlicensed State. If licensed, Leveraged Licensees from Underlicensed States would be eligible for up to 1 tier of Leverage until they raise the $5 million minimum Regulatory Capital requirement.

D. Section 107.300 License Application Form and Fee

This regulation identifies the process and rules regarding applying for a License and the associated Licensing Fees. SBA proposes to amend the introductory paragraph to give priority to applicants headquartered in Underlicensed States with below median SBIC financing dollars, in accordance with Public Law 115–333. Applicants may have branch offices in other locations, but the headquarters for the applicant must be in an Underlicensed State with below median SBIC financing dollars to receive priority. The proposed regulation provides that SBA will publish the list of states in a notice on the SBIC website, which was previously discussed under II.A. of this rule. SBA also proposes that once priority is established, such applicants will continue to receive priority throughout the licensing process. For example, if Iowa is identified as an Underlicensed State with below median financing and an applicant headquartered in Iowa applies to receive an SBIC license, SBA would give them priority in licensing. If SBA then published a new list of states qualifying for licensing priority after the applicant was given priority, the applicant would continue to have priority in both phases of the licensing process (initial review and final licensing) even if Iowa is no longer identified as an Underlicensed State with below median SBIC financing dollars.

SBA proposes to amend paragraph (b) to identify that SBA will approve the total leverage commitments for the life of the Licensee at licensing. SBA believes that similar to private investors, SBA should approve the entire leverage commitment at licensing, based on the evaluation criteria set forth in § 107.305 and the maximum leverage commitment limits set forth in § 107.1150. This change is intended to (1) reduce the burden associated with separate commitment requests performed after the fund has been licensed and (2) reduce the uncertainty with regard to SBA's leverage commitment and consequently reduce the private capital raise timeframe for a prospective Licensee. SBA recognizes that Licensees often raise capital after licensing. However, SBA notes that it is important for Licensees to raise their capital prior to submitting their Licensing application for Final Review, as this practice will help SBA better evaluate applicants, monitor for potential risks, and process applications faster. SBA will continue to maintain its right to deny any new issuance of Leverage at draw and other rights and remedies as discussed in part 107, subpart J in the event of regulatory violations, including capital impairment. SBA is also seeking to better diversify its leverage portfolio for maximum impact across underserved sectors as proposed under § 107.320.

SBA proposes to modify its Licensing fees to lower financial barriers for new funds. Effective October 1, 2022, the Initial Licensing Fee is $11,500 and the Final Licensing Fee is $40,200 for a combined Licensing Fee of $51,700. Each year, SBA adjusts these fees based on the Consumer Price Index. Although larger more established funds can easily afford these fees, smaller funds and new fund managers view the fees as prohibitive to SBIC program participation given their smaller size. Additionally, SBA charges the same fee for applicants seeking to issue Debentures as those who do not intend to issue Debentures. SBA is proposing to revise the Initial Licensing Fees based on its fund sequence (meaning the order of succession of the fund) as follows:

Fund sequence	Initial licensing fee
Fund I	$5,000
Fund II	10,000
Fund III	15,000
Fund IV+	20,000

SBA will determine the applicant's Fund Sequence based on the applicant's management team composition and experience as a team, including the business plan (also known as the strategy) of the fund provided in Phase I of the application process. For example, if the management team of applicant DEF I consists primarily of the same team members of funds ABC I and ABC II, SBA will consider the fund sequence of DEF I as a Fund III, regardless of the number in the applicant's name.

SBA proposes to change the Final Licensing Fee as the Final Licensing Base Fee plus 1.25 basis points multiplied by the Leverage dollar amount requested by the applicant, where the Final Licensing Base Fee would be as follows:

Fund sequence	Final licensing base fee
Fund I	$10,000
Fund II	15,000
Fund III	25,000
Fund IV+	30,000

For example, a fourth time fund seeking $175 million in Leverage would pay a Final Licensing Base Fee of $51,875, computed as $30,000 plus 1.25 basis points (or .0125%) times $175 million.

SBA believes that its Non-leveraged Licensees present less credit risk to SBA, while accomplishing the SBIC mission of providing equity and long-term loans to small business concerns. SBA's proposed changes would effectively lower the combined Licensing Fee for all Non-leveraged applicants and lower the fees for applicants with less SBA capital at risk and new funds. Fund managers seeking a 4th or later fund and seeking leverage

would pay a higher fee and the fee would scale with the dollar amount of SBA's capital commitment. SBA notes that SBA's licensing costs are substantially higher than even the highest proposed combined Licensing Fee. SBA believes this modernized licensing fee model, which is designed to make fees commensurate with years of participation in the SBIC program and the dollar amount of SBA's capital at risk, will reduce cost barriers for small funds and new funds applying to the SBIC program.

SBA is also proposing an application resubmission penalty fee of $10,000 for any applicant that has previously withdrawn or otherwise is not approved for a license that must be paid in addition to the Initial and Final Licensing Fees. SBA's proposed licensing fees remain below SBA's expenses required to process such applications. The intent of the resubmission fee is to impose a penalty for each time an applicant resubmits its application to offset the requirement of additional SBA time and resources. Applicants can request SBA approval to waive the resubmission penalty fee that SBA may consider on a case-by-case basis.

E. Section 107.305 Evaluation of License Applicants

Current § 107.305 discusses how SBA evaluates an applicant to the program. Paragraph (a) describes management qualifications. SBA is proposing to amend paragraph (a) to include two additional management qualifications. The first is relevant industry operational experience, which may be combined with investment skill to demonstrate managerial capacity. The second, if applicable, is the applicant's experience in managing a regulated business, including but not limited to an SBIC. Paragraph (b) describes how SBA evaluates an applicant's track record. SBA is amending paragraph (b) to include two additional performance qualifications. The first is the inclusion of an applicant's operating experience, which when combined with an investment team's prior relevant industry investing experience, is relevant in assessing an applicant's investment performance. The second addition, when applicable, is the applicant's past adherence to statutory and regulatory SBIC program requirements. This addition will be considered for applicants with past SBIC program experience.

Paragraph (c) describes how SBA evaluates the applicant's investment strategy. SBA is amending paragraph (c) to clarify that the applicant's investment strategy is to be contained in its business plan, as well as to underscore the importance of section 102 ''Statement of Policy'' of the Act which describes the public purpose of the SBIC program.

F. Section 107.320 Leverage Portfolio Diversification

Current § 107.320 discusses how SBA evaluates Early Stage SBICs and reserves the right for SBA to maintain diversification among Early Stage SBICs with respect to the year they commence operations and their geographic location. In light of the fact that SBA used its entire Leverage authorization in FY 2021, SBA proposes to modify this regulation to reserve SBA's right to maintain Leverage Portfolio Diversification in approving Leverage commitments with respect to the year in which they commenced, the SBIC's geographic location, giving first priority to Licensees from Underlicensed States with below median SBIC financing dollars, their asset class and investment strategy. SBA's intent is to maximize the SBIC program's economic impact to underserved small business concerns while managing risk through portfolio diversification. SBA notes that SBA will continue to license all qualified applicants based on its evaluation criteria and will not take into consideration any projected shortage or unavailability of leverage when reviewing and processing SBIC license applications.

G. Section § 107.503 Licensee's Adoption of an Approved Valuation Policy

This regulation requires Licensees to prepare and maintain a valuation policy that must be approved by SBA for use in determining the value of its investments. Current regulations require that Licensees adopt without change the model valuation policy set forth in SBA's Valuation Guidelines for SBICs or obtain SBA's prior approval of an alternative valuation policy. SBA established this requirement to ensure it could adequately monitor the SBIC portfolio, that valuations were performed in a reasonable and standard fashion, and to minimize Leverage losses in order to maintain zero subsidy cost. SBA recognizes that private equity typically uses valuations performed in accordance with GAAP and that many SBIC private investors require GAAP. This causes many SBICs to maintain two sets of valuations. SBA is currently working to re-evaluate this requirement for Leveraged Licensees. SBA is requiring both valuations based on SBA Valuation guidelines and those reported to their private investors in accordance with GAAP to assess the potential impact. SBA is also working with its valuation contractor to evaluate what changes to SBA's Valuation Guidelines would be necessary to make them GAAP compliant and the impact to SBA's monitoring and risk should SBA adopt GAAP compliant guidelines. SBA is seeking input from the public on this issue as part of this proposed rule. However, SBA recognizes that Non-leveraged Licensees pose no credit risk to SBA. SBA is therefore proposing that Non-leveraged Licensees (which include both those licensed as Non-leveraged Licensees and Licensees that fully repay Leverage and seek no further Leverage) may adopt a Valuation Policy in accordance with GAAP. SBA believes this will lower the burden associated with current regulations.

Current paragraph (d) requires licensees with outstanding Leverage or Earmarked assets to value their portfolio twice a year (at the end of the second quarter and the end of the fiscal year). SBA is proposing to clarify that this requirement applies to all Leveraged Licensees and increase reporting from semi-annually to quarterly, commensurate with the required quarterly reporting of the Form 468.

H. Section § 107.504 Equipment and Office Requirements

This regulation identifies the equipment and office requirements needed by SBICs to operate within the program. The current regulation requires a personal computer with a modem and internet access under paragraph (a) and the need for a facsimile capability under paragraph (b). SBA received industry comments that this regulation was outdated. Some SBICs indicated that they bought facsimile machines to ensure they complied with the requirement. The intent of this regulation is to ensure that SBICs can properly communicate with SBA, receive official correspondence, prepare and provide electronic reporting, and apply for Leverage. The proposed changes would eliminate the modem requirement under paragraph (a); eliminate the facsimile requirement under paragraph (b); and modify paragraph (a) to more broadly require that SBICs must have technology to securely send and receive emails, scan documents, and prepare and submit electronic information and reports required by SBA. This language would allow for reasonable changes in technology without the need to modify regulations. All SBICs already utilize this technology in their day-to-day operations. This change should reduce

costs by eliminating unnecessary equipment.

I. Section 107.550 Prior Approval of Secured Third-Party Debt of Leveraged Licensees

This regulation requires SBICs to obtain prior SBA approval for secured third-party debt for Leveraged Licensees.

Section 107.550(a) defines secured third-party debt to include Temporary Debt, a defined term in § 107.570 that applies only to SBICs with outstanding Participating Securities. Since there are no operating SBICs with outstanding Participating Securities, except in the Office of SBIC Liquidation, SBA proposes to remove § 107.570 and references to Temporary Debt and Participating Securities throughout this section.

Section 107.550(c) identifies rules associated with secured lines of credit in existence on April 8, 1994. This proposed rule would remove that requirement since it is obsolete.

This proposed rule would replace § 107.550(c) with a secured ''Qualified Line of Credit'' which SBICs could utilize without SBA prior approval. Current § 107.550(b) requires Licensees with Leverage to obtain SBA approval for any secured third-party debt, including lines of credit secured by unfunded commitments. Any third-party debt (secured and unsecured) increases SBA's credit risk because SBA leverage is generally never senior to the claims of other creditors: under § 107.560, the first $10 million of SBA leverage is generally subordinated to other debt of an SBIC, and leverage above $10 million is *pari passu* (on equal footing) with other debt. Nonetheless, SBA recognizes that it is typical practice for investment funds to use a line of credit to help bridge capital needs for financings and can generally draw on a line of credit more quickly than investors pay in capital when called. SBA regularly approves third party debt for lines of credit as discussed under TechNote 5—Credit Management Procedures, issued in November 2000 (*www.sba.gov/document/technote-5-technote-number-5*). In order to streamline this process, based on those lines of credit SBA has historically regularly approved, SBA is proposing a new ''Qualified Line of Credit'' that would be exempt from mandatory SBA prior approval if it meets certain requirements regarding the overall size, term, the holder, and the borrowings under the credit facility as follows:

(1) The line of credit is limited to 20% of total unfunded binding commitments from Institutional Investors. The 20% of unfunded commitments was based on the Institutional Limited Partnership Association's document, ''Subscription Lines of Credit and Alignment of Interests: Considerations and Best Practices for Limited and General Partners'' published in June 2017 which recommended the line of credit be limited to between 15–25% of unfunded commitments. Although this proposed rule would allow up to 20%, this is a maximum only and limited partners may further reduce this amount in the SBIC's limited partnership agreement.

(2) *The term of the line of credit does not exceed 12 months.* Based on feedback from industry, SBA understands that most lines of credit are renewed on an annual basis and generally have a duration of 12 months. In this proposed rule, SBA is proposing a 12-month limitation on the duration of the line of credit, which may be renewable on an annual basis if it remains in compliance with this regulation.

(3) *The line of credit is held by a federally regulated financial institution.* SBA proposes this requirement, that the lender be regulated by a federal financial institution regulator (*e.g.,* the FDIC, OCC, or NCUA) to ensure that the lender is creditworthy, that the credit terms are reasonable and customary, and that the lender will not seek unusual remedies in the event of a default.

(4) *All borrowings under the line of credit meet certain conditions:* (i) Are only secured by unfunded Regulatory Capital up to 100 percent of the amount of the borrowing and 90 days of interest; (ii) Are for the purpose of maintaining the SBIC's operating liquidity or providing funds for a particular Financing of a Small Business; (iii) Must be fully repaid within 90 days after the date they are drawn; and (iv) Must be fully paid off for at least 30 consecutive days during the SBIC's fiscal year so that the outstanding third-party debt is zero for at least 30 consecutive days. SBA proposes these requirements to ensure that such debt is unsecured except for the amount of the borrowing and interest which may only be secured by unfunded Regulatory Capital, since secured third party debt presents a higher credit risk to SBA and must be approved by SBA under § 107.550. Further, the third-party debt must be solely for the purpose of maintaining the SBIC's operating liquidity or providing funds for a particular financing of a small business. Finally, since such borrowings are temporary in nature, the line of credit should be repaid quickly and not continuously refinanced. SBA believes these requirements are typical or provide greater latitude than for a typical line of credit and would provide SBICs with access to a standard industry tool while minimizing SBA's credit risk. SBA is seeking comments from industry as to whether these requirements present any issues.

SBA notes that SBIC investors may negotiate more stringent rules regarding how its SBIC may use a line of credit as part of its limited partnership agreement. These proposed regulations only present the minimum standards which SBICs must utilize to avoid requiring SBA prior approval. For example, the limited partnership agreement may specify that the line of credit may be no greater than 15 percent of uncalled private capital. Although the proposed regulations allow for a line of credit up to the total uncalled private capital, private investors may establish a lower level.

Since this rule would provide an exemption for most instances of third-party debt that SBA would likely approve, the proposed rule eliminates paragraphs (d) and (e) which discuss conditions for SBA approval and automatic approval. The proposed Qualified Line of Credit obviates the need for these requirements. Any other third-party debt would require SBA review to ensure that such line of credit does not increase the risk to repayment of SBA-guaranteed Leverage.

J. Section 107.570 Restrictions on Third-Party Debt of Issuers of Participating Securities

This regulation identifies restrictions on third-party debt for SBICs that issued Participating Securities. As discussed under paragraph II.J, no operating SBICs have outstanding Participating Securities and SBA is no longer authorized to provides such Leverage. SBA proposes to remove this regulation.

K. Section 107.585 Distributions and Reductions in Regulatory Capital

This section is currently titled, ''Voluntary decrease in Licensee's Regulatory Capital'' and requires Licensees to obtain SBA's prior written approval to reduce Regulatory Capital by more than two percent in any fiscal year. Current § 107.1000(b)(2) exempts Non-Leveraged Licensees from § 107.585 if the decrease does not result in Regulatory Capital below what is required by the Act and the regulations and is reported to SBA within 30 days. Typically, reductions in capital are performed in conjunction with a distribution that represents a return of capital, to its private investors. SBA

allows profit distributions, also known as ''Retained Earnings Available for Distribution'' or ''READ'' without SBA prior approval, unless the Licensee was licensed as an Early Stage SBIC or if the SBIC issued Participating Securities.

SBA received comments from private investors that the regulations were unclear as to when a Licensee could distribute to its investors. SBA has also had instances in which Leveraged Licensees made ''READ'' distributions, and subsequently wrote down assets that would have reduced or removed ''READ''. Leveraged Licensees must consider such write-downs before making such distributions to avoid ''improper'' distributions. SBA is also concerned that Licensees may distribute profits without repaying Leverage. In particular, equity investors often have returns that are less consistent than private creditor or mezzanine funds. SBA has incurred losses in several Licensees that returned profits to its private investors through early profit distributions and then wrote down assets later in the fund's life.

SBA is proposing to retitle this regulation to ''Distributions and Reductions in Regulatory Capital'' and modify the requirements to address these concerns. SBA proposes to separate distribution requirements based on three categories of SBICs: (1) Non-Leveraged Licensees; (2) Leveraged Licensees licensed prior to October 1, 2023, and Leveraged Licensees wholly owned by Business Development Companies (''BDCs'') that are not Accrual SBICs; and (3) Leveraged Licensees licensed on or after October 1, 2023, not wholly owned by BDCs and Accrual SBICs. The rationale for these categories and the specific requirements follows.

(1) *Non-leveraged Licensees.* SBA proposes a separate set of requirements for Non-leveraged Licensees because they pose no credit risk to SBA. Proposed rules would allow Non-leveraged Licensees to distribute to their private investors without SBA prior approval as long as they retain sufficient Regulatory Capital to meet minimum capital requirements under § 107.210, unless such amounts are in accordance with their SBA approved Wind-up Plan. If a Non-leveraged Licensee does not have an SBA approved Wind-up Plan, they may make distributions, as long as such Non-leveraged Licensees retain sufficient Regulatory Capital to meet minimum capital requirements under 107.210. If a Non-leveraged Licensee has an SBA-approved Wind-down Plan, their Regulatory Capital can drop below the minimum capital requirements if such amounts are in accordance with that plan. This requirement should provide even greater flexibility to Non-leveraged Licensees. In accordance with current policies, the proposed rule would clarify that Non-leveraged Licensees must report any reductions in Regulatory Capital to SBA within 30 days on an updated Capital Certificate, which is Exhibit K in SBA form 2181.

(2) *Leveraged Licensees licensed prior to October 1, 2023, and Leveraged Licensees wholly owned by BDCs that are not Accrual SBICs.* SBA recognizes that existing licensees and current applicants to the program expect to be able to distribute READ based on current regulations. SBA also recognizes that SBICs wholly owned by BDCs (''BDC–SBICs'') must distribute profits to their investors. SBA proposes that SBICs licensed prior to October 1, 2023, and BDC–SBICs should remain under the current rules with some clarifications, as long as they are not Accrual SBICs. Since Accrual SBICs perform at least 75% in equity, which has the highest variance in returns, SBA proposes that any Accrual SBIC be excluded from this category. For SBICs licensed prior to October 1, 2023, and BDC–SBICs, SBA proposes substantively the same requirements as in the current regulations except to clearly identify that such SBICs may distribute READ only after considering any material adverse changes to its portfolio. In accordance with current policies, the proposed rule would clarify that these Licensees must report any reductions in Regulatory Capital to SBA within 30 days on an updated Capital Certificate.

(3) *Leveraged Licensees licensed on or after October 1, 2023, and not wholly owned by a BDC and Accrual SBICs.* SBA proposes for these SBICs a distribution waterfall that repays SBA the principal balance on outstanding Leverage on at least a pro rata basis with private investors. SBICs must repay Leverage at its ten-year maturity and may prepay Leverage at any time. SBA proposes the following waterfall:

a. Payment of Annual Charges and accrued interest associated with Leverage. (Interest will be paid to the bond holders based on the Leverage terms.)

b. Calculate SBA's share based on the ratio of Total Leverage Commitments and Initial Regulatory Capital established as follows: SBA Share = Total Distributions × [Total Leverage Commitment/(Total Leverage Commitment + Initial Regulatory Capital)].

c. Repay SBA Leverage to bond holders in an amount no less than SBA's Share to the extent of outstanding Leverage. If SBA's share is more than the outstanding Leverage held by the Licensee and the Licensee has unfunded Leverage Commitments, the Licensee must submit a Leverage Commitment cancellation equal to SBA's share minus the SBA Leverage redemptions. The rationale for this cancellation requirement is to minimize the risk that the SBIC will distribute significant profits to its private investors, then issue additional SBA leverage that results in losses, leaving SBA with losses after the private investors made significant profits.

d. Distribute to private investors the remaining amount.

e. Report the distribution to SBA. You must report the distribution and calculations to SBA on your Form 468 submission(s).

If permitted under a Licensee's partnership agreement, a Licensee may choose to reserve capital or reinvest all or a portion of it instead of distributing to the SBA and investors. In this circumstance, a Licensee would decrease the amount to its investors so that the private investors receive no more on a pro rata basis as the repayment of SBA Leverage and interest due. SBA is only concerned that private investors have at least the same risk for loss as SBA.

L. Section 107.590 Licensee's Requirement To Maintain Active Operations

This regulation identifies requirements for Licensees to maintain active operations and submit a Wind-up Plan when they decide they are no longer making any new investments. SBA proposes to change the name to ''Wind-down Plan'' as discussed under II.A.

M. Section 107.620 Requirements To Obtain Information From Portfolio Concerns

This regulation specifies the threshold of information requested by SBICs from Portfolio Concerns. The SBA proposes to amend specified information collections for Financings after the effective date of the rule to provide certain optional demographic information on Portfolio Concerns. The SBA is amending information collections to enhance reporting accuracy and consistency around the small business demographic impact of the SBIC program.

N. Section 107.630 Requirement for Licensees To File Financial Statements With SBA (Form 468)

This regulation identifies requirements associated with Licensee's

financial statements on Form 468. Paragraph (a) requires the annual Form 468 to be submitted on or before the last day of the third month following the end of the fiscal year, except for information in paragraph (e). This is not consistent with § 107.650 which requires portfolio valuations which are submitted on the Form 468 within 90 days following the end of the fiscal year. Current § 107.630 also does not have a paragraph (e). SBA believes the entire Form 468 should be due at the same time. SBA therefore proposes to make the annual Form 468 due date consistent with § 107.650.

Paragraph (d) requires certain economic information regarding each Licensee's portfolio companies, so that SBA can assess the program's economic impact. SBA proposes adding information to help SBA determine net jobs created and total jobs created or retained, including identifying the number of jobs added due to a business acquisition versus growth in the business.

SBA is also proposing to add fund management contact information and optional demographic information. SBA is seeking to collect management contact information in order to improve its customer relationship management and to better assess relationships between its Licensees. Demographic information regarding fund management is requested for reporting purposes only and on a voluntary basis.

O. Section 107.640 Requirement To File Portfolio Financing Reports (SBA Form 1031)

This regulation currently requires Licensees to submit a Portfolio Financing Report on SBA Form 1031 within 30 days of the closing date of the Financing. In response to comments received as part of its modernization improvement efforts (see I.D), SBA is proposing to make this a quarterly submission in which the Licensee must report the financing within 30 calendar days of the calendar year quarter following the closing date of the Financing. For example, if a Licensee closes a financing on February 10, 2023, the Licensee will need to submit the related Form 1031 no later than April 30, 2023. If the Licensee is identified as requiring Enhanced Monitoring, as proposed under § 107.1850, SBA may require more frequent reporting.

P. Section 107.650 Requirement To Report Portfolio Valuations to SBA

This regulation currently requires Licensees to report portfolio valuations within 90 days of the end of the Licensee's fiscal year and quarterly valuations 30 days following the close of each quarter. SBA proposes to clarify that only Leveraged Licensees are required to report for quarterly reporting periods. All Licensees must report at least annually. In response to comments received as part of its modernization improvement efforts (see I.D), SBA proposes to expand the timeframe for quarterly valuations, including material adverse changes, to 45 calendar days following the close of each quarter. This is intended to give Licensees additional time to prepare reports.

Q. Section 107.660 Other Items Required To Be Filed by Licensee With SBA

This regulation identifies other items required by the Licensee. Paragraph (a) requires the Licensee to provide to SBA a copy of any report it gives to its private investors. Although the Licensee is required under current regulations to provide to SBA report they provide to their private investors, SBA proposes to specify valuation data items to improve clarity. SBA also proposes to specify that Licensees should submit to SBA any report it gives to its private investors no later than 30 days after the date these sent the report to its private investors. This requirement is intended to keep SBA aware of any important communications regarding the licensee in a timely fashion.

R. Section 107.692 Examination Fees

This regulation identifies how SBA calculates examination fees. Currently under paragraph (b), SBA charges a Minimum Base Fee + .024% of assets at cost up, not to exceed a Maximum Base Fee. SBA adjusts the Minimum Base Fee and the Maximum Base Fee annually. Although current regulations give Non-leveraged Licensees a lower Maximum Base Fee, this formula does not fully address the risk and additional monitoring required associated with Leveraged Licensees. SBA proposes to change and streamline this formula to $10,000 + .035% of their Total Leverage Commitment established at Licensing (see paragraph II.D.). By establishing the examination fee up front, SBA believes this will reduce uncertainty in cashflows. Because SBICs licensed prior to this proposed rule may not have a Total Leverage Commitment, SBA proposes that the formula for existing licensees be $10,000 + .035% of their outstanding Leverage plus SBA's undrawn commitment amount. Since this proposed formula would give all Non-leveraged licensees a flat rate of $10,000 and SBA incurs more costs based on the assets of the Licensee, SBA proposes that any Non-leveraged Licensee with over $50 million in assets at cost pay an additional $20,000. Although SBA recognizes that a Leveraged Licensee with over $50 million in assets at cost and $30 million in leverage commitments would only pay $20,500 in exam fees versus $30,000 for a Non-leveraged Licensee, SBA is nevertheless proposing this additional fee for larger Non-leveraged Licensees with over $50 million in assets based on the infrequency of requests for less than one tier of leverage.

S. Section 107.720 Small Businesses That May Be Ineligible for Financing

This regulation identifies small businesses in which Licensees may not invest. Paragraph (a) restricts Licensees from making investments into relenders or reinvestors as defined under paragraph (a)(1). Paragraph (a)(2) currently gives an exception for Venture Capital Financings to relenders or reinvestors that qualify as Disadvantaged Businesses unless the Disadvantaged Business is a bank or savings and loans not insured by agencies of the Federal Government and agricultural credit companies. SBA is proposing to modify this exception to equity investments in ''underserved'' relenders or reinvestors that make financings solely to Small Business Concerns that a Licensee may directly finance under part 107. SBA believes expanding this provision will significantly help improve its footprint to underserved communities. By more broadly defining ''underserved,'' SBA can more quickly adapt to the changing markets by clarifying what constitutes ''underserved'' through policy notices and increase its economic impact to underserved communities. While Disadvantaged Business would continue to be considered underserved, rural and low-and-moderate-income areas, as well as businesses owned by women or veterans may also be applicable to this group. To ensure that capital continues to be directed to SBIC's mission, SBA also proposes to restrict relender and reinvestor investments to those that existing SBICs could finance. This proposal also helps SBA grow its emerging fund manager pipeline.

T. Section 107.730 Financings Which Constitute Conflicts of Interest

Current § 107.730 prohibits Licensees from transactions that constitute conflicts of interest, as required by the Act. Paragraph (a) provides a general rule that Licensees may not self-deal to the prejudice of a Small Business, the Licensee, its shareholders or partners, or SBA, and must obtain prior written exemptions for transactions that may

constitute a conflict of interest and specifies certain transactions in paragraphs (a)(1) through (5) that would constitute a conflict of interest. Paragraph (a)(1) identifies (as one specific prohibition) a Financing to a Licensee's Associate, as defined in § 107.50, unless the Small Business being financed is only an Associate because another the Licensee's Associate investment fund holds a 10% or greater interest in the Small Business, the Associate investment fund previously invested in the Small Business at the same time and on the same terms and conditions, and the Associate investment fund is providing a follow-on financing to the Small Business at the same time and on the same terms and conditions as the Licensee.

Based on market feedback and an analysis of conflict-of-interest approval requests from Licensees, the current safe harbor provisions for follow-on financings to small business portfolio companies are resulting in delays providing capital to small businesses. This potentially hurts the small businesses and increases the burden on Licensees and SBA. SBA proposes introducing a safe harbor for financing a portfolio concern by an Associate when an outside third-party participates in the equity financing of the Licensee's portfolio concern.

Paragraph (d) identifies that Financings with Associates also constitutes a conflict of interest requiring SBA prior approval but provides exceptions under paragraph (d)(3). Paragraph (d)((3)(iii) identifies exceptions for SBICs with outstanding Participating Securities. Since no operating Licensees remain in SBA's portfolio, SBA proposes to remove this exception. Paragraph (d)(3)(iv) identifies exceptions involving Non-leveraged Licensees. SBA proposes to revise this exception to incorporate the new Non-leveraged Licensee term and simplify this regulation.

U. Section 107.830 Minimum Duration/Term of Financing

Paragraph (c)(2) discusses ''prepayments'' and states: ''You [Licensee] must permit voluntary prepayment of Loans and Debt Securities by the Small Business. You must obtain SBA's prior written approval of any restrictions on the ability of the Small Business to prepay other than the imposition of a reasonable prepayment penalty under paragraph (c)(3) of this section.

SBA is considering whether it should make changes to § 107.830(c)(2) regarding prepayment restrictions for Loans and Debt Securities. Currently, any restriction on the ability of a small business to prepay (other than the imposition of a reasonable prepayment penalty) requires SBA's prior written approval. Recently, SBA has become concerned that certain terms in unitranche or multi-lender transactions that require voluntary prepayments to be distributed on a pro rata basis to all lenders in a transaction could be considered a prepayment restriction. Generally, SBA does not view a financing term that requires a portfolio concern to make prepayment distributions on a pro rata basis to all lenders in a transaction to be considered a prepayment restriction. To ensure that there is a consistent understanding of the appropriate treatment of such provisions, SBA is soliciting comments from the public on whether § 107.830(c)(2) should be modified to clarify pro rata distributions of prepayments in unitranche or multi-lender transactions (Loan and Debt Securities) do not require SBA's prior written approval.

Furthermore, SBA is considering providing safe harbor from pre-payment restrictions for SAFEs and convertible notes.

V. Section 107.865 Control of a Small Business by a Licensee

This regulation identifies limitations on the ability a Licensee to take ''Control'' as defined in Section 107.50, over a Small Business. In general, the regulations permit Licensees to take Control for up to 7 years. Although buyout funds often take control of a small business at first Financing, SBA believes that Accrual SBICs should limit ownership at first Financing to less than 50%. SBA is proposing to add this restriction to Accrual SBICs to ensure that such SBICs are performing growth and venture capital Financings and not buyout transactions. SBA recognizes that after financing a Portfolio Concern, the Licensee may need to own a higher percentage of the Small Business Concern to help protect its initial investment. SBA is proposing this restriction only at the initial Financing. SBA proposes that the less-than-50% ownership requirement restriction at Initial Financing would not apply to Financings of a re-lender or re-investor performed under § 107.720(a)(2). SBA recognizes that the relender/reinvestor may be a private equity or venture capital fund that is underserved based on the ownership and management or its geographic location. Regardless, if a Licensee is one of the first investors into the fund, serving as the anchor investor, initially it may own more than 50% of the fund. SBA does not want to discourage this practice, since such anchor investors have been cited as playing an important role in establishing Impact Funds that may be directed to critical underserved areas and attracting other investors into the fund. (See Harvard Business School: ''Anchors Aweigh: Analysis of Anchor Limited Partner Investors in Impact Investment Funds'', by Shawn Cole, T. Robert Zochowski, Fanele Mashwama, and Heather McPherson, 2020. Final-Anchors-Aweigh.pdf (*hbs.edu*)). SBA is seeking public comment.

W. Section 107.1000 Non-Leveraged Licensees—Exceptions to the Regulations

This regulation identifies exceptions to the regulations for Licensees without Leverage. SBA proposes to incorporate the term Non-leveraged Licensee as proposed in II.A.

X. Section 107.1120 General Eligibility Requirements for Leverage

This regulation identifies general requirements to be eligible for Leverage. Paragraph (c) references § 107.210 concerning minimum private capital requirements. SBA proposes to amend paragraph (c) to incorporate Public Law 115–133 by adding an exception to the $5 million minimum Regulatory Capital requirement if the SBIC was licensed because they are headquartered in an Underlicensed State. As identified in § 107.1150, such Licensees will be limited to Leverage up to 100% of Regulatory Capital until they raise $5 million in Regulatory Capital.

Y. Section 107.1130 Leverage Fees and Annual Charges

This regulation identifies the fees and charges associated with SBA guaranteed Leverage. Currently the title identifies Annual Charges as ''additional charges''. SBA proposes to change the title to clarify that the additional charge refer to the Annal Charge as discussed in § 107.50.

Paragraph (d)(1) discusses the Annual Charge required for Debentures, noting that it only applies to Debentures issued on or after October 1, 1996, and that it does not apply to Leverage issued prior to that date. Since all Debentures outstanding were issued on or after October 1, 1996, SBA proposes to remove this language.

SBA further proposes to set the minimum Annual Charge to 0.5% or 50 basis points. The fiscally responsible administration of the program requires a minimum Annual Charge on outstanding leverage be established to address the long-term variances in

losses. The historical losses vary greatly as a result of national economic health and private equity and venture fund vintage year performance. As a consequence, SBA experiences many years in which there are zero or minimal SBIC transfers to liquidation status and a few years in which there are numerous failures with resulting losses to SBA.

The change will protect the government from significant losses, increase the prospects of preserving a zero or negative subsidy cost across program cohorts, enhance the long-term ability of SBA to provide guarantees to SBICs, license more applicants, and indirectly provide greater patient capital to qualifying small businesses.

Z. Section 107.1150 Maximum Amount of Leverage

Current § 107.1150 identifies the maximum amount of a Leverage for a section 301(c) Licensee. SBA approves Leverage commitments for those Licensees that were licensed under the now repealed Section 301(d) for Specialized SBICs. SBA proposes to correct the language to apply to all Leveraged Licensees.

Paragraph (a) sets forth the maximum Leverage for an ''Individual Licensee.'' SBA proposes to clarify that per the proposed definition of ''Leverage,'' the maximum Leverage includes both the principal and accrued interest associated with the Accrual Debenture. SBA also proposes to add that if a Licensee is headquartered in an Underlicensed State and has less than $5 million in Regulatory Capital, they are limited to one tier of Leverage.

Paragraph (b) sets the maximum Leverage for multiple licensees under Common Control, as defined under § 107.50. SBA proposes to clarify that similar to the requirements for an ''Individual Licensee,'' the interest associated with the Accrual Debenture will be used to calculate the maximum Leverage across all Licensees under Common Control.

AA. Section 107.1220 Requirement for Licensee To File Quarterly Financial Statements

This regulation currently requires SBICs with outstanding Leverage commitments to submit quarterly Form 468s within 30 days after the close of each quarter. SBA proposes to clarify that this requirement pertains to all Leveraged Licensees and to allow 45 days after each quarter, commensurate with portfolio valuation due dates as proposed under § 107.503 and § 107.650.

BB. Section 107.1830 Licensee's Capital Impairment—Definition and General Requirements

This regulation currently requires Leveraged Licensees to calculate their capital impairment percentage (''CIP''), identifies the maximum CIP allowable, and requires them to report to SBA if they have a condition of capital impairment. Paragraph (a) currently identifies that this section only applies to leverage issued on or after April 25, 1994, and identifies alternate requirements for Leverage issued prior to that date. Since all Leverage currently held by operating SBICs was issued after April 25, 1994, SBA is removing obsolete language in this paragraph. Section 107.1850 applies to all Leveraged Licensees with outstanding Leverage.

Paragraph (e) requires Licensees to calculate their CIP and notify SBA if they have a condition of capital impairment. Paragraph (f) gives SBA the right to redetermine the CIP at any time. SBA is proposing to change this requirement such that SBA will calculate the Licensee's CIP each quarter and notify the SBIC if they are capitally impaired. Since SBA is calculating the CIP, SBA also proposes to remove paragraph (f).

CC. Section 107.1840 Computation of Licensee's Capital Impairment Percentage

This regulation defines how to compute a Licensee's CIP. Since SBA is proposing to calculate the CIP and notify Licensees if they have a condition of Capital Impairment, SBA proposes to make related changes to this regulation.

DD. Section 107.1845 Determination of Capital Impairment Percentage for Early Stage SBICs

This regulation defines how to compute an Early Stage SBIC's CIP. Since SBA is proposing to calculate the CIP and notify Licensees if they have a condition of Capital Impairment, SBA proposes to make related changes to this regulation.

EE. Section 107.1850 Enhanced Monitoring

For more than twenty years, Licensee Leverage default rates have averaged less than 16%. While this is a relatively small percentage of Licensees, these Licensees introduce risk to the sustainability of the SBIC program and SBA. In an effort to proactively identify and manage risk, SBA proposes to introduce Enhanced Monitoring. A Licensee can be added to Enhanced Monitoring status for a series of actions, bottom quartile performance relative to the Licensee's stated benchmark for more than four consecutive quarters, or reporting failures defined in SBIC program policies and procedures. While on Enhanced Monitoring status, the Licensee will be required to file Form 1031 on a more frequent basis, and upon request, conduct portfolio review meetings with the SBA. The Licensee will be notified of their Enhanced Monitoring status upon determination. Once the events that warranted Enhanced Monitoring are addressed to SBA's satisfaction, Licensees will be notified that they are removed from Enhanced Monitoring. A series of performance metrics will be reviewed collectively to assess a holistic picture of performance. Of those metrics, TVPI or DPI metrics in the bottom quartile for four consecutive quarters relative to the Licensee's primary benchmark for the applicable vintage year can result in a Licensee being added to the Enhanced Monitoring status.

FF. Section 121.103 Small Business Size Regulations: How does SBA determine affiliation?

In 13 CFR part 121, SBA sets forth size standards and defines a business's size to include the size of the affiliates of the business, subject to certain exceptions. One of these exceptions, § 121.103(b)(5)(vi), applies only to financial, management, and assistance under the Act and is intended to exclude Traditional Investment Companies from affiliation coverage. The term Traditional Investment Companies generally includes issuers that would be ''investment companies,'' as defined under the Investment Company Act of 1940 (the ''1940 Act''). It also includes all 3(c)(1) private funds ''not registered under the 1940 Act because they are beneficially owned by less than 100 persons, if the company's sales literature or organizational documents indicate that its principal purpose is investment in securities rather than the operation of commercial enterprises.'' This exception to the SBA affiliation requirement was provided to allow SBIC Financings with other private equity, private credit, and venture capital funds since co-investment and syndication between such funds is typical and increases the amount of private capital available for small businesses. Under its modernization and improvement efforts (see I.D.), SBA received comments suggesting that this exception be expanded to include private funds that are exempt from registration requirements under 3(c)(7) of the 1940 Act. SBA's regulations and determinations are not determinative as

to whether a licensed Traditional Investment Company must comply with the 1940 Act. SBA invites public comment.

III. Compliance With Executive Orders 12866, 12988, 13132, 13563, and 13175, the Paperwork Reduction Act (44 U.S.C., Ch. 35), and the Regulatory Flexibility Act (5 U.S.C. 601–612)

A. Executive Order 12866

The Office of Management and Budget has determined that this proposed rule constitutes a ''significant regulatory action'' under Executive Order 12866. SBA has drafted a Regulatory Impact Analysis for the public's information below. SBA requests comments on the data and methods used to estimate the impact of this regulatory action. Each section begins with a core question.

1. Regulatory Objective of the Proposal

Is there a need for this regulatory action?

This proposed rule is intended to reduce barriers to program participation for funds investing in (i) underserved communities and geographies, (ii) capital intensive investments, and (iii) technologies critical to national security and economic development. In this proposed rule, SBA would introduce an additional type of SBICs (''Accrual'' SBICs) to increase program investment diversification and patient capital financing for small businesses and modernize rules to lower financial barriers to program participation. The new Accrual Debenture allows more flexibility in financing to increase participation of SBICs capable of addressing identified capital access gaps and vulnerability in the U.S. small business segment. Additionally, this proposed rule introduces a Qualified Line of Credit that does not require SBA approval while enabling greater access to a capital call line to fund commitments. The aforementioned benefits and attractiveness of the proposed Accrual Debenture will also reduce some of the previously perceived disadvantages to being an SBIC, as opposed to the non-SBIC private market. The proposed revisions to § 107.720 should improve the SBIC program's investment diversification and create more program entry points for new fund managers. This proposed rule also reduces barriers by revising reporting requirements that may allow increased use of valuation policies that are consistent with GAAP. This proposed rule will help SBA implement Executive Order (''E.O.'') 13985, Advancing Racial Equity and Support for Underserved Communities Through the Federal Government by reducing financial and time barriers to participate in the SBIC program and modernizing the program's license offerings to align with a more diversified set of funds investing in underserved small businesses. The proposed rule would also incorporate the statutory requirements under Public Law 115–333, titled ''Spurring Business in Communities Act of 2017'', enacted on December 19, 2018.

The Agency believes it is necessary to reduce barriers to participation and diversify its patient capital and long-term loan program for long-term program stability and mission effectiveness. This will simultaneously diversify the sources and types of financing available to underserved small businesses and small businesses manufacturing products and technologies critical to national security and U.S. economic competitiveness. The Agency also believes that to be effective in delivery, it needs to streamline and reduce regulatory burdens to facilitate robust participation in its patient capital and long-term loan program which are responsible for enabling access to capital for underserved U.S. small businesses across the country.

By offering an alternative to a semi-annual interest payment Debenture structure for all SBIC licensees not taking a control-position in small businesses, and to licensees with over 75% of capital earmarked for long-term equity investment in small businesses to help them grow and scale, SBA strives to increase equity funding available to underserved small business owners and unlock equity as a source of funding for many small business owners while still maintaining an expected zero subsidy cost in the program. This alternative structure accommodates a longer horizon for investments in small businesses that might require more patient capital. SBA has confidence this goal will be achieved while continuing to maintain a zero-subsidy based on extensive analysis of the performance of private funds over the last 20 years from Pitchbook and as supported by the *2021 Knight Diversity of Asset Manager Research Series* [1] which found that, ''diverse-owned firms have low levels of representation across each asset class; however, they exhibit returns that are not significantly different than non-diverse-owned firms.'' SBA is revising its Debenture and license regulations in response to continuing requests by SBA's participating SBIC licensees and the public. SBA believes that revising its Debenture and license regulations will result in expansion of access to capital for those who cannot obtain adequate patient capital from traditional sources of funding, while decreasing time and cost associated with applying for an SBIC license. Greater access to capital is bolstered by the revisions enabling SBA to offer a debenture with terms and regulations aligned to the cash flows of a broader base of private funds as well as a reduction in cost burden to apply for and participate in the SBIC Program.

2. Benefits and Costs of the Rule

What are the potential benefits and costs of this regulatory action?

SBA does not anticipate significant additional costs or impact on the subsidy to operate the SBIC program under these proposed regulations. Since the SBA has existing authority to license and provide funding to equity-oriented and debt-oriented private funds, there is no request for additional funding.

Currently SBICs distribute about $1.5 billion or more per year in profit distributions to Limited Partners. SBA's regulations permit SBICs to distribute profits to Limited Partners without any corresponding repayment of SBA Leverage. SBA is proposing that SBICs first pay all accrued interest and annual charges, then repay its Leverage on a pro rata basis (in step) with its Limited Partners. Based on analysis of average cash flows regarding private funds, our expectation is that this will improve the likelihood that SBA will be repaid on the same schedule as Limited Partners regardless of the investment strategy of the SBIC fund. SBA invites public comment.

Under these proposed regulations, the SBA anticipates SBIC program administrative costs to decline over time due to streamlining of regulatory filing and reduction in duplicative data reporting across multiple filings. Furthermore, the proposed regulations include changes which reduce bureaucratic processes, such as approving the SBIC's total commitment at licensing, reducing SBA approvals for certain conflicts of interest by creating additional safe harbors, and approving GAAP compliant valuations for Non-leveraged licensees. SBA believes such changes will help SBA improve its response times and enable personnel to focus on customer relationships and monitoring its funds. In revising the SBIC Debenture offering into two categories of Debentures, ''Debenture'' and ''Accrual Debenture'' available to eligible SBIC licensees under 13 CFR 107.50, SBA anticipates de minimis impact on the subsidy for the SBIC

[1] Knight Diversity of Asset Managers Research Series: Industry—Knight Foundation.

program. Currently, as part of its licensing process, SBA reviews approximately 70 license requests annually and declines 10 to 15 percent, or 8 to 10 requests, due to poor performance, negative diligence and/or regulatory conflict issues. These 70 applications represent the total annual license applications for non-levered and Debenture SBICs combined. Two-thirds of these applications are submitted by entities with existing SBIC licensees requesting a license for a subsequent licensed SBIC fund. The approximate total number of licenses approved annually in the SBIC program is 25. Additionally, federally regulated private equity funds must comply with the requirements from relevant Federal regulating entities. Private equity funds must also abide by the terms of their investor agreements, such as a limited partnership agreement, and fulfill their fiduciary obligation to their investors. Because of these requirements, the SBA anticipates these licensed SBIC funds will continue making investment decisions based on their fiduciary responsibility and terms of their investor agreements which limits risk to the SBA. Regulated SBIC licensees must comply with the business plan and investor agreements submitted to SBA while operating an SBIC license. Licensees will benefit by no longer being required to submit 1031 financing reports within 30-days of financing pursuant to § 107.640, instead filing at the end of each quarter, unless the licensee is subject to Enhanced Monitoring, as previously mentioned. This will reduce paperwork and the reporting burden on SBIC licensees. As a result of this revision, SBA expects a decrease in the time for small businesses to access capital at critical moments which will in turn help more small businesses grow and scale. Furthermore, this will decrease SBA's administrative costs.

SBA does not anticipate significant additional costs or impact on the subsidy to operate the SBIC program under the proposed regulations at 13 CFR 107.50 regarding the accrual license and accrual Debenture. One Debenture structure limits accessibility to SBA's patient equity and long-term private loan program, with an outsized impact on underserved small business owners who may struggle to access traditional sources of capital. SBA anticipates that providing clear and streamlined regulatory guidance, regulatory fees aligned with the size and scale of SBIC applicants and licensees, and a second Debenture structure to capital access gaps will result in an increase in the number of and diversity of participating SBIC licensees and will result in more underserved small business owners obtaining access to patient equity capital or long-term loans and invites public comment on this matter.

3. Alternatives

What alternatives have been considered?

SBA considered eliminating additional regulatory burdens, such as shifting entirely to FASB GAAP-compliant valuation reports and determined that the proposed rules strike the right balance in responsibly streamlining regulations without substantially increasing the risk of waste, fraud, or abuse of the programs or otherwise threatening the integrity of the SBIC program or taxpayer dollars. Possible alternatives included eliminating more regulatory burdens, but such a course would require more time for SBA to consider the impact of these eliminations. After considering feedback from stakeholders, SBA qualitatively determined that benefits of a timely issuance of a rule with the included regulatory relief and measures to implement Executive Order 13985 outweighed the benefits of a delay to give the agency more time to consider further eliminations of regulatory burdens. Regarding Debenture instrument structure and license type, SBA has implemented several variations of its SBIC Debentures to increase program alignment and accessibility for new patient capital funds in the past as discussed above, and SBA has determined from these past experiences the simplest rules proposed herein were the least burdensome.

B. Executive Order 12988

This action meets applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The action does not have preemptive effect or retroactive effect.

C. Executive Order 13132

This proposed rule does not have federalism implications as defined in Executive Order 13132. 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, as specified in the Executive order. As such it does not warrant the preparation of a federalism assessment.

D. Executive Order 13175

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would 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. Executive Order 13563

1. Did the agency use the best available techniques to quantify anticipated present and future costs when responding to E.O. 12866 (*e.g.,* identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes)?

A description of the need for this regulatory action and benefits and costs associated with this action, including possible distributional impacts that relate to Executive Order 13563, are included above in the Regulatory Impact Analysis under Executive Order 12866.

2. *Public participation:* Did the agency: (a) Afford the public a meaningful opportunity to comment through the internet on any proposed regulation, with a comment period that should generally consist of not less than 60 days; (b) provide for an ''open exchange'' of information among Government officials, experts, stakeholders, and the public; (c) provide timely online access to the rulemaking docket on *Regulations.gov;* and (d) seek the views of those who are likely to be affected by rulemaking, even before issuing a notice of proposed rulemaking?

The proposed rule will have a 60-day comment period and will be posted on *www.regulations.gov* to allow the public to comment meaningfully on its provisions.

F. Paperwork Reduction Act, 44 U.S.C., Ch. 35

SBA has determined that this proposed rule would impose additional reporting and recordkeeping requirements under the Paperwork Reduction Act. Generally, this rule proposes changes to two information collections used in the SBIC program: (1) SBA Form 468 ''SBIC Financial Reports'' to include GAAP financial performance metrics, the number of jobs sustained and created, and voluntary demographic information at the SBIC management level; and, (2) SBA Form 1031 ''Portfolio Financing Report'' to decrease the current frequency of

reporting on a per-financing basis as-of the date of a financing's close to quarterly reporting of all SBIC financings within a given quarter, no less than 30 days after the calendar year quarter-end.

The title, summary description of the information collection, and the proposed changes to SBA Form 468 and SBA Form 1031 are discussed below with an estimate of the revised annual burden. Included in the estimates are time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

Title: Portfolio Financing Report, SBA Form 468 (OMB Control Number 3245–0063).

Description of Respondents: Small Business Investment Companies.

Estimated Number of Respondents: 406.

Estimated Annual Responses: 1,002.

Estimated Annual Hour Burden: 24,708.

Summary: To obtain the information needed to carry out its oversight responsibilities under the Small Business Investment Act of 1958 (the ''Act''), SBA requires SBICs to submit financial statements and supplementary information on SBA Form 468. SBA uses this information to monitor SBIC financial condition and regulatory compliance, for credit analysis when considering SBIC leverage applications, and to evaluate financial risk and economic impact for individual SBICs and the program as a whole.

Section 310(d)(1)(C)(i) of the Act requires SBICs to submit audited financial statements to SBA at least annually. SBA regulations at 13 CFR 107.630 requires the use of SBA Form 468 when submitting the financial statements and supporting documentation. The information collected is used to determine the creditworthiness of an SBIC when considering its leverage application and to monitor its financial condition after assistance is provided. The information is also used to evaluate an SBIC's compliance with certain regulations, such as the activity requirements in 13 CFR 107.590 and the portfolio diversification requirements in 13 CFR 107.740.

To date, SBA's Form 468 reporting requirements have been tailored to satisfy SBA's specific regulatory and credit risk analytical requirements using SBA's guidelines on accounting principles and valuations. Many SBIC investors request GAAP financial information from SBICs, and SBA understands that all or substantially all SBICs currently prepare data under GAAP principles in addition to under SBA's accounting and valuation guidelines applicable to the SBA Form 468. Therefore, SBA anticipates the addition of GAAP financials in general to have a de minimis impact on calculating burden, as this information would be readily available to SBICs as part of the normal course of business.

Specifically, SBA will be requesting from SBICs on SBA Form 468 the following metrics that SBICs already calculate using GAAP-audited financial data for reports to their private investors: (1) Net Total Value to Paid In Capital (TVPI)—the total distributions, including both cash and distributed securities (valued as of the distribution date) plus the net asset value of a private fund's portfolio net of carried interest and expenses, divided by the capital that has been paid in by investors; (2) Net Distributions to Paid In Capital (DPI)—total distributions, including both cash and distributed securities (valued as of distribution date), a private fund has returned to investors net of fund expenses and carried interest, divided by the amount of money investors have paid into the fund; (3) Multiple on Invested Capital (MOIC)—the total gross realized and unrealized value generated by a private fund's portfolio, divided by the total amount of capital invested into the portfolio concerns by the fund; and, (4) Net Internal Rate of Return (IRR)—the rate at which the private investor cashflows and the unrealized net asset value minus any fund expenses and carried interest are discounted so that the net present value of cashflows equals zero.

Similarly, under this proposed rule, SBA seeks to obtain GAAP financial data related to valuations in SBA Form 468 supplemental valuation reports, which are currently requested semiannually. Under this proposed rule, the reporting frequency would increase from semiannually to quarterly to supplement the valuations data SBICs must already report on SBA Form 468 Short Form for quarterly reporting. Many SBIC investors request portfolio company valuations from SBICs using GAAP principles, and SBA understands that all or substantially all SBICs currently prepare such data under GAAP principles in addition to under SBA's valuation guidelines applicable to the SBA Form 468. Therefore, SBA anticipates the addition of GAAP financials in general to have minimal impact on calculating increase to burden, as this information should already be available to SBICs as part of the normal course of business.

Additionally, this proposed rule would add three new reporting requirements to the SBA Form 468. First, SBA will request the number of jobs sustained and the number of new jobs created per each portfolio company. Currently SBA request the number of employees per financing on SBA Form 1031 with updates per follow-on financings. Under this proposed rule, SBA seeks to ask for the number of jobs at the time of initial financing (*i.e.,* jobs sustained) with annual updates of new jobs created (or lost) to obtain numbers of net new jobs created as a result of SBIC financings. Second, under this proposed rule, SBA seeks to request annual management contact and optional demographic information at the SBIC management level. SBA seeks the mandatory updates to management contact information in order to maintain and improve customer relationship between Licensees and SBA Operations Analysts. SBA seeks the voluntary information for reporting purposes to assess the current SBIC program as related to efforts undertaken in this proposed rule to promote reducing barriers to program participation for new funds and promoting the diversification of SBIC investments. Third, SBA proposed to require Leveraged SBICs licensed on or after October 1, 2023, to provide a distribution waterfall that repays SBA the principal balance on outstanding Leverage on at least a pro rata basis with private investors. In order to provide consistency on the distribution calculations, SBA seeks to collect the information in a new ''Distribution Schedule'' from Leveraged SBICs licensed on or after October 1, 2023. These new reporting requirements to the SBA Form 468 seek information that SBICs would have readily available under the normal course of business and therefore should have a de minimis impact on burden per SBIC.

The current annual burden for SBA Form 468 is estimated at 24,708 hours. Based on the current size of the SBIC program, SBA estimates the new reporting requirements to increase the annual hourly burden by 1,950 hours for a total estimated annual burden of 26,658 hours.

Title: Portfolio Financing Report, SBA Form 1031 (OMB Control Number 3245–0078).

Description of Respondents: Small Business Investment Companies.

Estimated Number of Respondents: 316.

Estimated Annual Responses: 2,695.

Estimated Annual Hour Burden: 728.

Summary: To obtain the information needed to carry out its program

evaluation and oversight responsibilities, SBA requires SBICs to provide information on SBA Form 1031 each time financing is extended to a small business concern. SBA uses this information to evaluate how SBICs fill market financing gaps and contribute to economic growth and monitor the regulatory compliance of individual SBIC. Currently, SBA regulations require all SBICs to submit a Portfolio Financing Report using SBA Form 1031 for each financing that an SBIC provides to a Small Business Concern within 30 days after closing an investment. Under this proposed rule, the reporting deadline for SBICs (except those subject to Enhanced Monitoring) would change to 30 days after the end of the calendar year quarter (March, June, September, and December) following the closing date of a financing that an SBIC provides to a Small Business Concern, rather than 30 days after the date of each financing. Therefore, there would be no change to the annual burden estimated at 728 hours.

In addition to the reporting and recordkeeping changes proposed under this rule, in an effort to ease burden, remove redundant or no longer necessary data elements, and improve overall SBIC customer experience, SBA will be submitting for OMB review and approval revisions to both information collections. SBA invites comments on: (1) whether the proposed changes to the SBA Form 468 and SBA Form 1031 adequately provide information for the assessment of SBIC program performance, including whether the information will have practical utility; (2) the accuracy of SBA's estimate of the burden of the proposed collections 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, when appropriate, and other forms of information technology.

Please send comments by the closing date for comment for this proposed rule to the address set forth above in the **ADDRESSES** section and to Desk Officer for the Small Business Administration, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, DC 20503.

G. Regulatory Flexibility Act, 5 U.S.C. 601–612

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601, requires administrative agencies to consider the effect of their actions on small businesses, small organizations, and small governmental jurisdictions. According to the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, when an agency issues a rulemaking, it must prepare a regulatory flexibility analysis to address the impact of the rule on small entities. However, section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

This proposed rule likely will not impact a substantial number of small entities relative to the population of existing private market funds and private market asset management companies. Based on U.S. capital inflows to private markets funds, SBIC Licensees represent only about 1.4% of approximately 21,000 U.S. private equity, credit and venture funds launched in the last calendar year.[2] This rulemaking will likely affect only a limited population of these entities, specifically a limited population of existing and potential SBIC Licensees. Small entities affected by this proposed rule are a unique class comprised of SBIC Licensees. As of March 31, 2022, 294 SBIC Licensees were in operation.[3] SBA estimated that approximately 98 percent of these Licensees were small businesses based on NAICS subsector code 523 (Securities, Commodity Contracts, and Other Financial Investments and Related Activities) with annual receipts less than $41.5 million. Of these 294 SBICs, 57 were Non-Leveraged Licensees. The proposed rule distinguishes between Leveraged and Non-Leveraged Licensees in applicability of some of its changes and other proposed changes apply to all SBICs.

The proposed rule applies to all SBICs, 98 percent of which SBA estimates are small businesses. SBA estimates that the proposed rule may affect all of these small businesses. If SBICs are considered as a separate category from the other entities operating in the private equity, credit, and venture funds sector, then the rule does affect a substantial number of small businesses. However, the estimated burden of this proposed rule, detailed below, of a maximum of approximately $823 per SBIC before consideration of the offsetting cost savings of this proposed rule, would likely not constitute a significant economic impact on these small businesses, even where the significance threshold is as low as one percent of revenue impacted.

The proposed rule increases the frequency of filing Form 468 from semiannually to quarterly and requests more information on Form 468. SBA does not expect that these changes related to Form 468 will impose a significant burden because much of the required information is kept in the normal course of business. SBA also notes that the changes related to Form 468 are offset by reductions in other recordkeeping and compliance costs. The first proposed offset is the facilitation of non-leveraged SBICs' use of valuation policies that meet GAAP, which decreases costs of reporting, recordkeeping, and compliance. The proposed rule's second offset is the ''Qualified Line of Credit'' that provides an exemption from the SBA prior approval requirement for some lines of credit, thus reducing those SBICs' compliance costs.

Importantly, this proposed rulemaking does not directly impact small businesses receiving investments, nor any investors or small banks participating in the SBIC Licensee. This proposed rulemaking regulates the relevant SBIC Licensees. The courts have held that the RFA does not require a regulatory flexibility analysis for entities not directly regulated by the agency's proposed rulemaking. Thus, SBA is not required to conduct a reflexibility flexibility analysis on potential downstream benefits or costs to those entities.

Even so, this proposed rulemaking also does not have a significant economic impact on those small entities directly regulated under this rulemaking. SBA expects the changes in this proposed rule to increase program participation, access to capital, and diversity of investment strategies. The proposed rule does not impose significant new compliance requirements to SBIC program participants. The proposed rule introduces some measures to strengthen risk controls that may impose some reporting and compliance requirements to some program participants. However, these reporting and compliance requirements comprise nominal changes to frequency and content, particularly compared to existing industry standards apart from the SBIC program. The

[2] Data from Pitchbook May 31, 2022 and includes all U.S. private equity, credit and venture funds launched in the last calendar year. This includes large and small businesses. Please note that the non-SBIC inflows and asset management companies will be *understated by an estimated 15–20%* due to smaller firms not reporting publicly. As a result, the percentage of inflows and asset management companies in the industry that hold SBIC licenses are likely even smaller than reported in statements above.

[3] Small Business Investment Company (SBIC) Program Overview Report for the Quarter Ending March 31, 2022 (*sba.gov*).

current annual burden for SBA Form 468 is estimated at 24,708 hours. Based on the current size of the SBIC program, SBA estimates the new reporting requirements to increase the annual hourly burden by 1,950 hours for a total estimated annual burden of 26,658 hours. The current annual burden for SBA Form 1031 is estimated at 728 hours and because the deadline for reporting would only change to the quarter after the date of financing, rather than 30 days after the date of each financing, there would be no change.

This proposed rule also defines a new class of Debentures, called accrual Debentures, that align with cash flows of equity-focused strategies. SBA expects benefits to program participants from this ability to align cash flows but is not able to quantify these benefits.

While SBA is unable to quantify the benefits and costs from these various changes, it reasonably expects these changes to not have significant impacts to the small entities that are program participants.

Based on the foregoing, the Administrator of the SBA hereby certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. The SBA invites comments from the public on this certification.

List of Subjects

13 CFR Part 107

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

13 CFR Part 121

Investment companies, Loan programs—business, Reporting and recordkeeping requirements, Small businesses.

Accordingly, for the reasons stated in the preamble, SBA proposes to amend 13 CFR parts 107 and 121 as follows:

PART 107—SMALL BUSINESS INVESTMENT COMPANIES

■ 1. The authority citation for part 107 is revised to read as follows:

Authority: 15 U.S.C. 662, 681–687, 687b–h, 687k–m.

■ 2. Amend § 107.50 by:
■ a. Adding in alphabetical order the definitions of ''Accrual Debenture'', ''Accrual Small Business Investment Company (''Accrual SBIC'')'', and ''Annual Charge'';
■ b. Revising paragraph (2) of the definition of ''Associate'', the definition of ''Charge'', and paragraph (3)(i) of the definition of ''Control Person'';
■ c. Adding in alphabetical order the definitions of ''Enhanced Monitoring'', ''Final Licensing Fee'', ''GAAP'', and ''Initial Licensing Fee'';
■ d. Revising the definition of ''Leverage'';
■ e. Adding in alphabetical order the definitions of ''Leveraged Licensee'', ''Non-Leveraged Licensee'', and ''Qualified Line of Credit'';
■ f. Revising the definition of ''Retained Earnings Available for Distribution'';
■ g. Adding in alphabetical order the definitions of ''SBIC'', ''SBIC website'', ''State'', ''Total Leverage Commitment'', ''Underlicensed State'', and ''Wind-down Plan''; and
■ h. Removing the definition of ''Wind-up Plan''.

The additions and revisions read as follows:

§ 107.50 Definition of terms.

Accrual Debenture means a Debenture issued at face value and accrues interest over its ten-year term of which SBA guarantees both the principal and unpaid accrued interest. Licensees that issue an Accrual Debenture which remains due at its ten-year maturity may apply to SBA for a roll-over five-year Accrual Debenture which has a five-year term.

Accrual Small Business Investment Company (''Accrual SBIC'') means a Section 301(c) Partnership Licensee, licensed under § 107.300 that performs or will perform at least 75% of its total financings in Equity Capital Investments in small businesses and elects at the time of licensing to issue Accrual Debentures.

* * * * *

Annual Charge means an annual fee on Leverage which is payable to SBA by Licensees, subject to the terms and conditions set forth in §§ 107.585 and 107.1130(d).

* * * * *

Associate * * *

(2) Any Person who owns or controls, or who has entered into an agreement to own or control, directly or indirectly, at least 10 percent of any class of stock of a Corporate Licensee or a limited partner's interest of at least 10 percent of the partnership capital of a Partnership Licensee. However, an entity Institutional Investor, as a limited partner in a Partnership Licensee, is not considered an Associate solely because such Person's investment in the Partnership, including commitments, represents 10 percent or more but less than 50 percent of the Licensee's partnership capital, provided that such investment also represents no more than five percent of such Person's net worth.

* * * * *

Charge has the same meaning as Annual Charge.

* * * * *

Control Person * * *

(3) * * *

(i) Controls or owns, directly or through an intervening entity, at least 30 percent of a Partnership Licensee or any entity described in paragraphs (1) or (2) of this definition; and

* * * * *

Enhanced Monitoring has the meaning set forth in § 107.1850.

* * * * *

Final Licensing Fee has the meaning set forth in § 107.300.

* * * * *

GAAP means Generally Accepted Accounting Principles as established by the Financial Accounting Standards Board (FASB) and refers to established financial accounting and reporting standards for public and private companies and not-for-profit organizations.

* * * * *

Initial Licensing Fee has the meaning set forth in § 107.300.

* * * * *

Leverage means financial assistance provided to a Licensee by SBA, either through the purchase or guaranty of a Licensee's Debentures, and any other SBA financial assistance evidenced by a security of the Licensee. For the Accrual Debenture, Leverage includes principal and accrued unpaid interest.

* * * * *

Leveraged Licensee means a Licensee which has outstanding Leverage, Leverage commitments, or intends to issue Leverage in the future.

* * * * *

Non-leveraged Licensee means a Licensee which has no outstanding Leverage or Leverage commitment, no earmarked assets, and certifies to SBA (in writing) that it will not seek Leverage in the future.

* * * * *

Qualified Line of Credit has the meaning as set forth in § 107.550(c).

* * * * *

Retained Earnings Available for Distribution (READ) means Undistributed Net Realized Earnings less any Unrealized Depreciation on Loans and Investments (as reported on SBA Form 468) and represents the amount that a Licensee may distribute to investors (including SBA) in accordance with § 107.585 as a profit Distribution, or transfer to Private Capital.

* * * * *

SBIC means Small Business Investment Company and has the same

meaning as ''Licensee'' as set forth in this section.

SBIC website means the website maintained by SBA at *www.sba.gov/sbic,* which contains information on the SBIC program, including notices, policies, procedures, and forms pertaining to the program.

* * * * *

State means one of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, the United States Virgin Islands, the Northern Mariana Islands, and American Samoa.

* * * * *

Total Leverage Commitment has the meaning set forth in § 107.300.

* * * * *

Underlicensed State means a State in which the number of operating licensees per capita is less than the median number of operating licensees per capita for all States, where the per capita per State is based on the most recent resident population published by the U.S. Census as of the date of the calculation. SBA publishes a notice with the current list of Underlicensed States on the SBIC website.

* * * * *

Wind-down Plan has the meaning set forth in § 107.590.

■ 3. Amend § 107.150 by revising the paragraph (a) heading, paragraphs (b)(1) and (2), the second sentence of paragraph (c)(1), and paragraph (c)(2) to read as follows.

§ 107.150 Management-ownership diversification requirement.

(a) *Diversification requirement. (Also referenced in this part as the ''diversity requirement.'')* * * *

(b) * * *

(1) *General rule.* Except as provided in paragraph (b)(2) of this section, no Person or group of Persons who are Affiliates of one another may own, directly or indirectly, more than 70 percent of your Regulatory Capital or your Leverageable Capital.

(2) *Exception.* An investor that is a Traditional Investment Company, as determined by SBA, may own and control more than 70 percent of your Regulatory Capital and your Leverageable Capital. For purposes of this section, a Traditional Investment Company must be either a non-profit entity or a professionally managed firm. Such entity must be organized exclusively to pool capital from multiple sources for the purpose of investing in businesses that are expected to generate substantial returns to the firm's investors. Such sources must provide, in SBA's sole discretion, sufficient ownership diversification, in terms of number of owners and concentration of ownership. In determining whether a firm is a Traditional Investment Company for purposes of this section, SBA will also consider:

(i) The degree to which the managers of the firm are unrelated to and unaffiliated with the investors in the firm or non-profit entity.

(ii) Whether the managers of the firm are authorized and motivated to make investments that, in their independent judgment, are likely to produce significant returns to all investors in the firm or non-profit entity.

(iii) Whether the firm or non-profit entity benefits from the use of the SBIC only through the financial performance of the SBIC.

(iv) Other related factors.

(c) * * *

(1) * * * Such Persons must not be your Associates (except for their status as your shareholders, limited partners, or members). * * *

(2) *Look-through for Traditional Investment Company investors.* SBA, in its sole discretion, may consider the requirement in paragraph (c)(1) of this section to be satisfied if at least 30 percent of your Regulatory Capital and Leverageable Capital is owned and controlled indirectly, through a Traditional Investment Company, by Persons unaffiliated with your management.

* * * * *

■ 4. Amend § 107.210 by:

■ a. Removing the phrase ''Wind-Up Plan'' in paragraph (a) introductory text and adding in its place the phrase ''Wind-down Plan'';

■ b. Revising paragraph (a)(1) introductory text;

■ c. Removing paragraph (a)(2); and

■ d. Redesignating paragraph (a)(3) as paragraph (a)(2).

The revision reads as follows:

§ 107.210 Minimum capital requirements for Licensees.

(a) * * *

(1) *Licensees other than Early Stage SBICs.* Except for Early Stage SBICs, a Licensee must have Regulatory Capital of at least $5,000,000. As an exception to this general rule, SBA in its sole discretion and based on a showing of special circumstances and good cause, which includes applicants that are headquartered in an Underlicensed State, may license an applicant with Regulatory Capital of at least $3,000,000, but only if the applicant:

* * * * *

■ 5. Revise § 107.300 to read as follows:

§ 107.300 License application form and fee.

SBA evaluates license applicants, giving first priority to applicants headquartered in Underlicensed States with below median SBIC Financing dollars per state, as determined by SBA and published periodically in a notice on the SBIC website. Once priority is established, such applicants will continue to receive priority throughout the licensing process. SBA reviews and processes applications in two review phases (initial review and final licensing), as follows:

(a) *Initial review.* Except as provided in this paragraph, SBIC applicants must submit a Management Assessment Questionnaire (''MAQ'') consisting of SBA Form 2181 and Part I of SBA Form 2182 and the Initial Licensing Fee, as defined in paragraph (c) of this section. An applicant under Common Control with one or more Licensees must submit a written request to SBA, and the Initial Licensing Fee, to be considered for a license and is exempt from the requirement in this paragraph to submit a MAQ unless otherwise determined by SBA in SBA's discretion.

(b) *Final licensing.* An applicant may proceed to the final licensing phase only if notified in writing by SBA that it may do so. Following receipt of such notice, in order to proceed to the final licensing phase, the applicant must submit a complete license application, including SBA Forms 2181, 2182, and 2183 which are available on the SBIC website, within the timeframe identified by SBA and the Final Licensing Fee, as defined in paragraph (c) of this section. If you are seeking to be licensed as a Leveraged Licensee and SBA approves your License, SBA will also approve your Total Leverage Commitment, which means the total Leverage commitments available to you for the life of your SBIC, subject to the provisions of §§ 107.320 and 107.1150.

(c) *Licensing Fees.* SBIC Initial and Final Licensing Fees are non-refundable fees determined as set forth below in paragraphs (c)(1) and (c)(2).

(1) *Initial Licensing Fee.* The Initial Licensing Fee is based on the applicant's fund sequence, where the fund sequence means the order of succession of private equity or private credit funds for the same fund management team and same strategy. SBA will determine the applicant's fund sequence based on the management team's composition and experience as a team. The Initial Licensing Fees are as follows:

TABLE 1 TO PARAGRAPH (c)(1)

Fund sequence	Initial licensing fee
Fund I	$5,000
Fund II	10,000
Fund III	15,000
Fund IV+	20,000

Example 1 to paragraph (c)(1): If the management team members of applicant DEF I consists primarily of the same team members of fund ABC II and ABC II represented the second fund for those team members, SBA will consider the fund sequence of DEF I as a Fund III, regardless of the number in the applicant's name.

(2) *Final Licensing Fee.* The Final Licensing Fee is calculated as the Final Licensing Base Fee plus 1.25 basis points multiplied by the Leverage dollar amount requested by the applicant, where the Final Licensing Base Fee is based on the applicant's Fund Sequence as follows:

TABLE 1 TO PARAGRAPH (c)(2)

Fund sequence	Final licensing base fee
Fund I	$10,000
Fund II	15,000
Fund III	25,000
Fund IV+	30,000

(3) *Resubmission Penalty Fee.* The Resubmission Penalty Fee means a $10,000 penalty fee assessed to an applicant that has previously withdrawn or is otherwise not approved for a license that must be paid *in addition* to the Initial and Final Licensing Fees at the time the applicant resubmits its application.

(4) *Inflation adjustments.* SBA annually adjusts the Initial Licensing Fee, Final Licensing Base Fee, and Resubmission Penalty Fee using the Inflation Adjustment and will publish notification prior to such adjustment in the **Federal Register** identifying the amount of the fees.

■ 6. Amend § 107.305 by revising paragraphs (a), (b), and (c) to read as follows:

§ 107.305 Evaluation of license applicants.

* * * * *

(a) Management qualifications, including demonstrated investment skills and experience as a principal investor, or a combination of investment skill and relevant industry operational experience; business reputation; adherence to legal and ethical standards; record of active involvement in making and monitoring investments and assisting portfolio companies; managing a regulated business, if applicable; successful history of working as a team; and experience in developing appropriate processes for evaluating investments and implementing best practices for investment firms.

(b) Performance of proposed investment team's prior relevant industry investments as well as any supporting operating experience, including investment returns measured both in percentage terms and in comparison to appropriate industry benchmarks; the extent to which investments have been realized as a result of sales, repayments, or other exit mechanisms; evidence of previous investment or operational experience contributing to U.S. domestic job creation and, when applicable, demonstrated past adherence to statutory and regulatory SBIC program requirements.

(c) Applicant's proposed investment strategy as presented in its business plan, including adherence to the Statement of Policy as stated in Section 102 of the Act, clarity of objectives; strength of management's rationale for pursuing the selected strategy; compliance with this part 107 and applicable provisions of part 121 of this chapter; fit with management's skills and experience; and the availability of sufficient resources to carry out the proposed strategy.

* * * * *

■ 7. Revise § 107.320 to read as follows:

§ 107.320 Leverage Portfolio Diversification.

SBA reserves the right to maintain diversification in approving Total Leverage Commitments for Leveraged Licensees with respect to:

(a) The year in which they commence operations;

(b) The geographic location (giving first priority to applicants from Underlicensed States with below median SBIC Financing dollars per state); and

(c) The asset class and investment strategy.

■ 8. Amend § 107.503 by:

■ a. Revising the last sentence of paragraph (a);

■ b. Adding a second sentence in paragraph (b)(2); and

■ c. Revising paragraphs (d)(1) and (4).

The revisions and addition read as follows:

§ 107.503 Licensee's adoption of an approved valuation policy.

(a) * * * These guidelines may be obtained from the SBIC website.

(b) * * *

(2) * * * If you are or applying to be a Non-leveraged Licensee, SBA will generally approve a valuation policy that meets GAAP.

* * * * *

(d) * * *

(1) If you are a Leveraged Licensee, you must value your Loans and Investments at the end of each quarter of your fiscal year, and at the end of your fiscal year.

* * * * *

(4) You must report material adverse changes in valuations at least quarterly, within forty-five days following the close of the quarter.

* * * * *

■ 9. Revise § 107.504 to read as follows:

§ 107.504 Equipment and office requirements.

(a) *Technology.* You must have access to technology to securely send and receive emails, scan documents, and prepare and submit electronic information and reports required by SBA.

(b) *Accessible office.* You must maintain an office that is open to the public during normal working hours.

■ 10. Revise § 107.550 to read as follows:

§ 107.550 Prior approval of secured third-party debt of Leveraged Licensees.

(a) *Definition.* In this section, ''secured third-party debt'' means any non-SBA debt secured by any of your assets, including secured guarantees and other contingent obligations that you voluntarily assume, and secured lines of credit.

(b) *General rule.* If you are a Leveraged Licensee, you must get SBA's written approval before you incur any secured third-party debt or refinance any debt with secured third-party debt, including any renewal of a secured line of credit, increase in the maximum amount available under a secured line of credit, or expansion of the scope of a security interest or lien. For purposes of this paragraph (b), ''expansion of the scope of a security interest or lien'' does not include the substitution of one asset or group of assets for another, provided the asset values (as reported on your most recent annual Form 468) are comparable.

(c) *Qualified Line of Credit.* Without obtaining SBA's prior written approval, a Leveraged Licensee may have, incur, or refinance third party debt that meets all of the following conditions:

(1) The third-party debt is a line of credit with maximum availability limited to 20% of total unfunded

binding commitments from Institutional Investors.

(2) The term of the line of credit does not exceed 12 months, but may be renewable, provided that each renewal does not exceed 12 months and you remain in compliance with the conditions of this section.

(3) The line of credit is held by a Federally regulated financial institution.

(4) All borrowings under the line of credit:

(i) Are only secured by unfunded Regulatory Capital up to 100 percent of the amount of the borrowing and 90 days of interest;

(ii) Are for the purpose of maintaining your operating liquidity or providing funds for a particular Financing of a Small Business;

(iii) Must be fully repaid within 90 days after the date they are drawn; and

(iv) Must be fully paid off for at least 30 consecutive days during your fiscal year so that you have no outstanding third-party debt for at least 30 consecutive days.

§ 107.570 [Removed and Reserved]

■ 11. Remove and reserve § 107.570.

■ 12. Revise the undesignated center heading directly preceding § 107.585 and revise § 107.585 to read as follows:

Distributions and Reductions in Regulatory Capital

§ 107.585 Distributions and Reductions in Regulatory Capital.

(a) *Non-Leveraged Licensees.* If you are a Non-leveraged Licensee, you may make distributions to your private investors without SBA prior approval. At all times, you must retain sufficient Regulatory Capital to meet the minimum capital requirements in the Act and in § 107.210, unless such amounts are in accordance with your SBA approved Wind-Down Plan (see § 107.590). You must report any reductions of Regulatory Capital to SBA within 30 days via an updated Capital Certificate, Exhibit K in SBA Form 2183 (see § 107.300).

(b) *Leveraged Licensees licensed prior to October 1, 2023, and Leveraged Licensees wholly owned by Business Development Companies that are not Accrual SBICs.* If you are a Leveraged Licensee and an Early Stage SBIC, you are subject to the distributions identified in § 107.1180. If you are either a Leveraged Licensee wholly owned by a Business Development Company or a Leveraged Licensee licensed prior to October 1, 2023, and are not an Accrual SBIC, you may distribute READ to your private investors without SBA approval only after considering any material adverse changes to your portfolio. You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. In seeking SBA's prior written approval, you must disclose any material adverse changes or certify that you have no material adverse changes and provide an updated Wind-down Plan. You must retain sufficient Regulatory Capital to meet the minimum capital requirements of § 107.210 and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and § 107.1150. You must report any reductions of Regulatory Capital to SBA within 30 days via an updated Capital Certificate, Exhibit K in SBA Form 2183 (see § 107.300).

(c) *Leveraged Licensees not wholly owned by a Business Development Company licensed on or after October 1, 2023, and Accrual SBICs.* If you are a Leveraged Licensee licensed after October 1, 2023, or an Accrual SBIC, unless you receive prior approval from the SBA for the purposes of covering a tax distribution you may only distribute as follows:

(1) *Payment of Annual Charges and Accrued Interest.* Prior to any distribution to your private investors, you must pay any Annual Charges owed to SBA and all accrued interest on your outstanding Leverage.

(2) *Calculate SBA's share of Distribution.* You must make payments to SBA on a pro rata basis with any distributions to your private investors based on your Total Leverage Commitment relative to your Initial Regulatory Capital calculated as follows: SBA's Share = Total Distributions x [Total Leverage Commitment/(Total Leverage Commitment + Initial Regulatory Capital)] where:

(i) Total Distributions means the total amount of distributions you intend to make after paying accrued interest and Annual Charges.

(ii) Total Leverage Commitment is as defined in § 107.300.

(iii) Initial Regulatory Capital means the Regulatory Capital established at Licensing (see § 107.300).

(3) *Apply SBA Share.* You must repay SBA Leverage in an amount no less than SBA's Share to the extent of outstanding Leverage and report the SBA calculation to SBA. If SBA's Share is greater than outstanding Leverage and you have unfunded Leverage Commitments, you must submit a Leverage Commitment cancellation equal to SBA's Share minus the SBA Leverage redemption up to the unfunded Leverage Commitments.

(4) *Distribute to Private Investors.* After repaying accrued interest, Annual Charges, and Leverage calculated as SBA's Share, you may distribute READ to your private investors without SBA approval only after considering any adverse changes to your portfolio. You must obtain SBA's prior written approval to reduce your Regulatory Capital by more than two percent in any fiscal year. In seeking SBA's prior written approval, you must disclose any material adverse changes or certify that you have no material adverse changes and provide an updated Wind-down Plan. You must retain sufficient Regulatory Capital to meet the minimum capital requirements of § 107.210 and sufficient Leverageable Capital to avoid having excess Leverage in violation of section 303 of the Act and § 107.1150. You must report any reductions of Regulatory Capital to SBA within 30 days.

(5) *Report distribution to SBA.* You must report to SBA the distribution, the calculations, and the amounts distributed to each party as part of your annual and quarterly Form 468 (see §§ 107.630 and 107.1220).

Example 1 to [§ 107.585(c)]: Your Total Leverage Commitments is $50 million, and your Initial Regulatory Capital is $25 million. You currently have $25 million in outstanding Leverage, $25 million in unfunded Leverage Commitments, and $15 million in Leverageable Capital. You owe $1 million in accrued interest and Annual Charges. You have $61 million to distribute.

Step 1: Payment of Annual Charges and Accrued Interest. You would first pay the $1 million in accrued interest and Annual Charges.

Step 2: Calculate SBA's Share of Distribution. SBA's share is calculated as $60 million × [$50 million/($50 million + $25 million)] = $40 million.

Step 3: Apply SBA Share. You would repay $25 million in outstanding Leverage and cancel $15 million of your outstanding Leverage Commitments.

Step 4: Distribute to Private Investors. You would distribute $35 million to Private Investors.

Step 5: Report Distribution to SBA. You would then report the distribution to SBA, detailing the amounts and calculations from each of the above steps.

§ 107.590 [Amended]

■ 13. Amend § 107.590(c) by removing the phrase ''Wind-up Plan'' wherever it appears and adding in its place the phrase ''Wind-down Plan''.

■ 14. Amend § 107.620 by redesignating paragraphs (b)(2) through (4) as paragraphs (b)(3) through (5), respectively, and adding a new paragraph (b)(2) to read as follows:

§ 107.620 Requirements to obtain information from Portfolio Concerns.

* * * * *

(b) * * *

(2) Demographic information on the portfolio concern's ownership is requested for reporting purposes only and is on a voluntary basis.

* * * * *

■ 15. Amend § 107.630 by revising the last sentence of paragraph (a) introductory text, revising paragraph (d), and adding paragraph (e) to read as follows:

§ 107.630 Requirement for Licensees to file financial statements with SBA (Form 468).

(a) * * * You must file Form 468 within 90 calendar days of the end of your fiscal year.

* * * * *

(d) *Reporting of economic impact information on Form 468.* Your annual filing of SBA Form 468 must include an assessment of the economic impact of each Financing, specifying the full-time equivalent net jobs created and total jobs created or retained, and the impact of the Financing on the revenues and profits of the business and on taxes paid by the business and its employees.

(e) *Fund management contact and optional demographic information.* The Licensee shall provide and update management contact information. Demographic information is requested for reporting purposes only and on a voluntary basis.

■ 16. Revise § 107.640 to read as follows:

§ 107.640 Requirement to file Portfolio Financing Reports (SBA Form 1031).

For each Financing of a Small Business (excluding guarantees), you must submit a Portfolio Financing Report on SBA Form 1031 within 30 calendar days of the end of the calendar year quarter (March, June, September, and December) following the closing date of the Financing. If you are on the Watchlist, SBA may require more frequent reporting (see § 107.1850).

■ 17. Revise § 107.650 to read as follows:

§ 107.650 Requirement to report portfolio valuations to SBA.

You must determine the value of your Loans and Investments in accordance with § 107.503. You must report such valuations to SBA within 90 calendar days of the end of the fiscal year in the case of annual valuations, and if you are a Leveraged Licensee within 45 calendar days following the close of other reporting periods. You must report material adverse changes in valuations at least quarterly, within 45 calendar days following the close of the quarter.

■ 18. Amend § 107.660 by revising paragraph (a) to read as follows:

§ 107.660 Other items required to be filed by Licensee with SBA.

(a) *Reports to owners.* You must give SBA a copy of any report you furnish to your investors, including any prospectus, quarterly or annual valuation data, fund management demographic information, letter, or other publication concerning your financial operations or those of any Portfolio Concern no later than 30 calendar days after you submit the report to your private investors.

* * * * *

■ 19. Amend § 107.692 by revising paragraphs (b)(1) and (2) to read as follows:

§ 107.692 Examination fees.

* * * * *

(b) * * *

(1) The Base Fee is calculated as $10,000 plus 0.035% of Total Leverage Commitments (see § 107.300), rounded to the nearest dollar, with two exceptions:

(i) Non-leveraged Licensees with assets over $50 million at cost will be charged an additional $20,000; and

(ii) Leveraged Licensees licensed prior to [DATE 60 DAYS AFTER DATE OF FINAL RULE PUBLICATION IN THE **FEDERAL REGISTER**] will have a Base Fee calculated as $10,000 + .035% multiplied by (outstanding Leverage + SBA undrawn Leverage commitments).

(2) SBA annually adjusts the Base Fee using the Inflation Adjustment and will publish notification prior to such adjustment in the **Federal Register** identifying the amount of the fees.

* * * * *

■ 20. Amend § 107.720 by revising paragraph (a)(2) to read as follows:

§ 107.720 Small Businesses that may be ineligible for financing.

(a) * * *

(2) *Exception.* You may provide Equity Securities to underserved relenders or reinvestors (except banks or savings and loans not insured by agencies of the Federal Government, and agricultural credit companies) that make financings solely to Small Business Concerns that a Licensee may directly finance under this part. Without SBA's prior written approval, total Financings under this paragraph (a)(2) that are outstanding as of the close of your fiscal year must not exceed your Regulatory Capital.

* * * * *

■ 21. Amend § 107.730 by revising paragraphs (a)(1) and (d)(3)(iii) and removing paragraph (d)(3)(iv).

The revisions read as follows:

§ 107.730 Financings which constitute conflicts of interest.

(a) * * *

(1) Provide Financing to any of your Associates, except for when the Small Business that receives the Financing is your Associate, pursuant to paragraph (8)(ii) of the definition of ''Associate'' in § 107.50, only because an investment fund that is your Associate holds a 10% or greater equity interest in the Small Business and either of the following conditions is met:

(i) You and the Associate investment fund previously invested in the Small Business at the same time and on the same terms and conditions; and you and the Associate investment fund are providing follow-on financing to the Small Business at the same time, on the same terms and conditions, and in the same proportionate dollar amounts as your respective investments in the previous round(s) of financing.

Example 1 to paragraph (a)(1)(i): If you invested $2 million and your Associate invested $1 million in the previous round, your respective follow-on investments would be in the same 2:1 ratio.

(ii) An independent third party is investing in the Small Business at the same time, on the same terms and conditions as you, and represents a significant portion of the Financing.

* * * * *

(d) * * *

(3) * * *

(iii) You are a Non-leveraged Licensee, and your Associate either is not a Licensee or is a Non-leveraged Licensee.

* * * * *

■ 22. Amend § 107.865 by revising the first sentence of paragraph (a) and by adding paragraph (f) to read as follows:

§ 107.865 Control of a Small Business by a Licensee.

(a) * * * You, or you and your Associates (in the latter case, the ''Investor Group''), may exercise Control over a Small Business for purposes connected to your investment, through ownership of voting securities, management agreements, voting trusts, majority representation on the board of directors, or otherwise, except as identified under paragraph (f) of this section. * * *

* * * * *

(f) *Financings for Accrual SBICs.* Accrual SBICs may not own more than 50% of a Small Business at initial

Financing, unless the Financing is an Equity Capital Investment in a re-lender or re-investor pursuant to § 107.720(a)(2).

■ 23. Amend § 107.1000 by revising the section heading and introductory text to read as follows:

§ 107.1000 Non-leveraged Licensees—exceptions to the regulations.

The regulatory exceptions in this section apply to Non-leveraged Licensees.

* * * * *

■ 24. Amend § 107.1120 by revising paragraph (c)(1) to read as follows:

§ 107.1120 General eligibility requirements for Leverage.

* * * * *

(c) * * *

(1) If you were licensed after September 30, 1996, under the exception in § 107.210(a)(1), you will not be eligible for Leverage until you have Regulatory Capital of at least $5,000,000, unless you were licensed because you are headquartered in an Underlicensed State.

* * * * *

■ 25. Amend § 107.1130 by revising the section heading and paragraph (d)(1) to read as follows:

§ 107.1130 Leverage fees and Annual Charges.

* * * * *

(d) * * *

(1) *Debentures.* You must pay to SBA an Annual Charge, not to exceed 1.38 percent per annum, on the outstanding amount of your Debentures, payable under the same terms and conditions as the interest on the Debentures. For Leverage issued pursuant to Leverage Commitments approved on or after October 1, 2023, the Annual Charge, established and published annually, shall not be less than 0.50 percent per annum.

* * * * *

■ 26. Amend § 107.1150 by:

■ a. Revising the section heading;

■ b. Removing the phrase ''Section 301(c) Licensee'' in the introductory text and adding in its place the phrase ''Leveraged Licensee''; and

■ c. Revising paragraphs (a) and (b).

The revisions read as follows:

§ 107.1150 Maximum amount of Leverage.

* * * * *

(a) *Individual Licensee.* Subject to SBA's credit policies, if you are a Leveraged Licensee and not an Accrual SBIC, the maximum amount of Leverage you may have outstanding at any time is the Individual Maximum. If you are an Accrual SBIC, the maximum amount of Leverage and accrued interest you may have outstanding at any time is the Individual Maximum. The Individual Maximum means the lesser of

(1) 300 percent of your Leverageable Capital;

(2) 100 percent of your Leverageable Capital if you have less than $5 Million in Regulatory Capital and you were Licensed because you are headquartered in an Underlicensed State; or

(3) $175 million.

(b) *Multiple Licensees under Common Control.* Subject to SBA's credit policies, two or more Licenses under Common Control may have maximum aggregate outstanding Leverage of $350 million. For any Accrual SBIC under Common Control, the aggregate accrued interest associated with Accrual Debentures will be included in determining whether this maximum has been exceeded. However, for any Leverage draw(s) by one or more such Licensees that would cause the aggregate outstanding Leverage to exceed the Individual Maximum, each of the Licensees under Common Control must certify that it does not have a condition of Capital Impairment. *See* also § 107.1120(d).

Example 1 to paragraph (b): If a fund manager has both a regular Leveraged Licensee with $250 million in outstanding Leverage and an Accrual SBIC with $50 million in Accrual Debentures that could accrue interest of $25 million at maturity, SBA will apply the principal from the regular Leverage plus the $50 million from the Accrual Debenture plus the $25 million in potential accrued interest for a combined total of $325 million.

* * * * *

■ 27. Revise § 107.1220 to read as follows:

§ 107.1220 Requirement for Licensee to file quarterly financial statements.

Leveraged Licensees must submit to SBA a Financial Statement on SBA Form 468 (Short Form) as of the close of each quarter of your fiscal year (other than the fourth quarter, which is covered by your annual filing of Form 468 under § 107.630(a)). You must file this form within 45 days after the close of the quarter. You will not be eligible for a draw if you are not in compliance with this § 107.1220.

§ 107.1540 [Amended]

■ 28. Amend § 107.1540 by removing paragraphs (a) and (b).

■ 29. Revise the subpart J heading to read as follows:

Subpart J—Licensee's Noncompliance

* * * * *

■ 30. Amend § 107.1830 by revising paragraph (e) to read as follows:

§ 107.1830 Licensee's Capital Impairment—definition and general requirements.

* * * * *

(e) *Quarterly computation requirement and procedure.* SBA will determine whether you have a condition of Capital Impairment as of the end of each fiscal quarter. If SBA finds you capitally impaired, they will notify you.

* * * * *

■ 31. Amend § 107.1840 by revising paragraph (a), paragraph (b) introductory text, paragraph (c) subject heading, paragraph (c)(1), and paragraph (d)(6) to read as follows:

§ 107.1840 Computation of Licensee's Capital Impairment Percentage.

(a) *General.* This section contains the procedures SBA will use to determine your Capital Impairment Percentage. SBA will compare your Capital Impairment Percentage to the maximum permitted under § 107.1830(c) to determine whether you have a condition of Capital Impairment.

(b) *Preliminary impairment test.* If you satisfy the preliminary impairment test, your Capital Impairment Percentage is zero and SBA will not have to perform any more procedures in this § 107.1840. Otherwise, SBA will continue with paragraph (c) of this section. You satisfy the test if the following amounts are both zero or greater:

* * * * *

(c) *How to compute Capital Impairment Percentage.* (1) If you have an Unrealized Gain on Securities Held, SBA will compute your Adjusted Unrealized Gain using paragraph (d) of this section. If you have an Unrealized Loss on Securities Held, SBA will continue with paragraph (c)(2) of this section.

* * * * *

(d) * * *

(6) If any securities that are the source of either Class 1 or Class 2 Appreciation are pledged or encumbered in any way, SBA will reduce the Adjusted Unrealized Gain computed in paragraph (d)(5) of this section by the amount of the related borrowing or other obligation, up to the amount of the Unrealized Appreciation on the securities.

■ 32. Amend § 107.1845 by revising paragraph (a) introductory text to read as follows:

§ 107.1845 Determination of Capital Impairment Percentage for Early Stage SBICs.

* * * * *

(a) To determine your Class 2 Appreciation under § 107.1840(d)(3), SBA will use the following provisions instead of § 107.1840(d)(3)(iii):

* * * * *

■ 33. Revise § 107.1850 to read as follows:

§ 107.1850 Enhanced Monitoring.

Under certain circumstances, SBA may place Licensees on Enhanced Monitoring. ''Enhanced Monitoring'' means that SBA has determined, based on certain triggers discussed in this section, a Licensee requires a heightened level of reporting and monitoring.

(a) *Enhanced Monitoring triggers.* SBA may place you on Enhanced Monitoring for any of the following:

(1) You perform an investment that is a direct violation of your fund's stated investment policy as identified in its limited partnership agreement (LPA) or as presented to SBA in its License Application under § 107.300.

(2) The key person clause in your LPA is invoked, due to a change in personnel of management team members identified as key persons.

(3) You or your General Partner has been named as a party in litigation proceedings.

(4) You have violated a material provision in your LPA or any Side Letter.

(5) You rank in the bottom quartile for your primary benchmark and vintage year after 3 years based on the private investor's Total Value to Paid-In capital (TVPI), where TVPI is calculated as (cumulative distributions to private investors plus net asset value minus expenses and carried interest)/ cumulative private investor paid in capital, where net asset value is based on GAAP valuations.

(6) Your Leverage Coverage Ratio (LCR) falls below 1.25, where LCR is calculated as (unfunded Regulatory Capital commitments plus net asset value minus outstanding Leverage)/ outstanding Leverage.

(7) You default on your interest payment and fail to pay within 30 days of the date it is due. (Note: This event represents an event of default under § 107.1810(f) for which SBA maintains its rights under § 107.1810(g) if the Licensee does not cure within 15 days.).

(b) *Requirements for Licensees on Enhanced Monitoring.* If SBA places you on Enhanced Monitoring, you will be required to comply with any or all of the following:

(1) You must submit Portfolio Company Financing Reports (SBA Form 1031s), required under § 107.640, within 30 calendar days of the financing date.

(2) You must participate in monthly portfolio reviews with SBA.

(3) You must file quarterly valuation reports on specific or all of your portfolio company holdings, as requested by SBA.

(4) You must submit a letter formally requesting whether you may submit a request for a subsequent fund if you are currently on Enhanced Monitoring or have managed any Licensee on Enhanced Monitoring within the last 12 months. If you have already submitted a request or are otherwise in the Licensing process (see § 107.300), SBA may suspend processing your request until it is satisfied that its concerns are resolved or disapprove your request for a subsequent fund. SBA maintains the right to deny approval of any request to submit a subsequent fund request or any subsequent fund request submitted under § 107.300.

(c) *Removal from Enhanced Monitoring.* SBA will remove you from Enhanced Monitoring if the event that triggered your addition to Enhanced Monitoring (see paragraph a in this section) is resolved to SBA's satisfaction. Accordingly, SBA may require any or all of the following resolutions:

(1) Successful completion of a portfolio review to confirm compliance of your adherence to your investment policy.

(2) SBA's written approval of your key person resolution.

(3) SBA's written acknowledgement of pending litigation.

(4) SBA's written consent to the resolution of the LPA or side letter violation.

(5) Two quarters of performance above bottom quartile based on the TVPI, as calculated under paragraph (a) of this section.

(6) Two quarters of consistent reporting of your LCR, as calculated under paragraph a, exceeding 1.25.

(7) You are current on your Leverage interest payments.

(d) *Enhanced Monitoring Communications*—(1) *Notification to Licensee.* If you trigger any of the events under paragraph a, SBA will notify you in writing that you have been placed on Enhanced Monitoring, identify the event(s) which triggered your placement on Enhanced Monitoring status, the actions you must take as noted under paragraph b, and the remedies as identified under paragraph (c) of this section.

(2) *Enhanced Monitoring Status Disclosure.* SBA will not disclose your Enhanced Monitoring status publicly.

(3) *Removal from Enhanced Monitoring Status Notification.* SBA will provide you with written notice after SBA determines that you have completed all remedies identified in your notification letter after it is satisfied you complied with the requirements of paragraph (c) of this section.

PART 121—SMALL BUSINESS SIZE REGULATIONS

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

Authority: 15 U.S.C. 632, 634(b)(6), 636(a)(36), 662, and 694a(9); Pub. L. 116–136, Section 1114.

■ 35. Amend § 121.103 by revising paragraph (b)(5)(vi) to read as follows:

§ 121.103 How does SBA determine affiliation?

* * * * *

(b) * * *

(5) * * *

(vi) Entities determined by SBA to be Traditional Investment Companies under 13 CFR 107.150(b)(2) and private funds exempt from registration under the 1940 Act under section 3(c)(7) or 3(c)(1) of the 1940 Act.

* * * * *

Isabella Casillas Guzman,

Administrator.

[FR Doc. 2022–22340 Filed 10–18–22; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 203 and 206

[Docket No. FR–6151–P–02]

RIN 2502–AJ51

Adjustable Rate Mortgages: Transitioning From LIBOR to Alternate Indices

AGENCY: Office of Housing, U.S. Department of Housing and Urban Development (HUD).

ACTION: Proposed rule.

SUMMARY: HUD is proposing to remove the London Interbank Offered Rate (LIBOR) as an approved index for adjustable interest rate mortgages (ARMs), and replace LIBOR with the Secured Overnight Financing Rate (SOFR) as a Secretary-approved index for newly originated forward ARMs. HUD also proposes to codify its removal of LIBOR and approval of SOFR as an index for newly-originated Home Equity Conversion Mortgage (HECM or reverse mortgage) ARMs. In addition, HUD is proposing to establish a spread-adjusted SOFR index as the Secretary-approved

replacement index to transition existing forward and HECM ARMs off LIBOR. HUD also proposes to make clarifying changes to its HECM Monthly ARM regulation and establish a lifetime five percent interest rate cap for monthly adjustable rate HECMs.

DATES: Public comment due date: November 18, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Department of Housing and Urban Development, 451 7th Street SW, Room 10276, Washington, DC 20410–0500. Communications must refer to the above docket number and title. There are two methods for submitting public comments. All submissions must refer to the above docket number and title.

1. *Submission of Comments by Mail.* Comments may be submitted 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.*

2. *Electronic Submission of Comments.* Interested persons may submit comments electronically through the Federal eRulemaking Portal at *www.regulations.gov.* HUD strongly encourages commenters to submit comments electronically. Electronic submission of comments allows the commenter 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 *www.regulations.gov* website can be viewed by other commenters and interested members of the public. Commenters should follow the instructions provided on that site to submit comments electronically.

Note: To receive consideration as public comments, comments must be submitted through one of the two methods specified above. Again, all submissions must refer to the docket number and title of the rule.

No Facsimile Comments. Facsimile (FAX) comments are not acceptable.

Public Inspection of Public Comments. All properly submitted comments and communications submitted to HUD will be 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 202–402–3055 (this is not a toll-free number). 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 *www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Lisa Saunders, Office of Housing, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410–8000; telephone number 202–402–2378 (this is not a toll-free number); email address *sffeedback@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:

I. Background

Statutory Provisions

Section 251(a) of the National Housing Act (NHA) (12 U.S.C. 1715z–16(a)) authorizes HUD to insure ARMs and provides that adjustments to the interest rate shall correspond to a specified interest rate index approved in regulations by the Secretary, information on which must be readily accessible to mortgagors from generally available published sources. For HECMs, Section 255(d) of the NHA (12 U.S.C. 1715z–20(d)) authorizes FHA to insure variable rate HECMs and imposes additional eligibility requirements on HECMs, which include requirements for HECM ARMs.

Forward ARMs

HUD initially provided for mortgage insurance of ARMs for single family forward mortgages under 24 CFR part 203 and for part 234 condominium mortgages in 1984.[1] As provided in the statute at that time, the interest rate on ARMs had to be adjusted annually, and there was a 1 percent cap on annual adjustments and an overall cap of 5 percent above the initial interest rate over the term of the mortgage. The index originally used by HUD was the U.S. Constant Maturity Treasury (CMT). In 2001 and 2003, statutory changes to Section 251 of the NHA, 12 U.S.C. 1715z–16 allowed HUD to insure ARMs that have fixed interest rates for 3 years or more and are not subject to interest rate caps if the interest rate remains fixed for more than 3 years.[2] In 2004, HUD issued a rule (''the 2004 rule'') implementing these statutory changes and providing mortgage insurance for forward ARMs with interest rates first adjustable in 1 year, 3 years, 5 years, 7 years, and 10 years.[3]

Under the 2004 rule, 1, 3, and 5-year ARMs were capped, for each adjustment, in either direction at one percentage point from the interest rate in effect for the period immediately preceding the adjustment. For the life of the mortgage, the overall 5 percent cap in either direction remained. For 7 and 10-year ARMs, HUD raised the per-adjustment cap to 2 percent of the rate in effect for the immediately preceding period, and the life-of-mortgage cap to 6 percent. In all cases, changes that exceeded these amounts could not be carried over for inclusion in an adjustment for the subsequent year. In 2005, HUD revised the regulation to allow for annual adjustments of 2 percent change in either direction, and a life-of-mortgage cap of 6 percent in either direction for 5-year ARMs in 2005, conforming 5-year ARMs to HUD's 7 and 10-year ARM products.[4]

In 2007 (''the 2007 rule''), HUD added LIBOR, along with the CMT, as an acceptable index for ARM adjustments for its ARM products.[5] For forward mortgages, the applicability of these indices is codified at 24 CFR 203.49. The cap on 1 and 3-year ARMs (no more than 1 percent in either direction per single adjustment, with a 5 percent from initial contract rate cap over the life of the loan) is codified at § 203.49(f)(1). The caps for the 5, 7 and 10-year ARMs (2 percent in either direction per

[1] 49 FR 23580, June 6, 1984.

[2] Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2002 (Pub. L. 107–73, approved November 26, 2001); HOPE VI Program Reauthorization and Small Community Main Street Rejuvenation and Housing Act of 2003 (Pub. L. 108–186, 117 Stat. 2685, approved December 16, 2003).

[3] 69 FR 11500, March 10, 2004.

[4] 70 FR 16080, March 29, 2005.

[5] 72 FR 40047, July 20, 2007.

adjustment, with a 6 percent from initial contract rate cap for the life of the mortgage) are codified at § 203.49(f)(2). HUD also created model note and mortgage documents for forward ARMs and revised those model documents over the years. The 2015 Model ARM Note [6] contains a provision for the substitution of an index by the note holder based on ''comparable information,'' should the index specified in the note become unavailable.

Reverse Mortgages or HECMs

In 1989, the Home Equity Conversion Mortgage program rule (the HECM rule) provided for ARMs with both capped and uncapped interest rate adjustments.[7] For capped HECM ARMs, the HECM rule retained the 5 percentage point life-of-mortgage limit on interest rate increases and decreases in § 203.49, but increased the annual limit on rate increases and decreases from 1 percentage point to 2 percentage points. The HECM rule also provided for a HECM ARM that sets a maximum interest rate that could be charged without a cap on monthly or annual increases or decreases.

In the 2007 rule, in which LIBOR was added for forward mortgages, HUD also added LIBOR as an acceptable index for HECM ARM adjustments in current §§ 206.3 (definitions) and 206.21 (interest rate).[8] HUD's model HECM ARM note and mortgage documents have been revised over the years, but the 2015 version contains provisions for the substitution of a Secretary-prescribed index, should the index specified in the note become unavailable.[9]

For the capped option at § 206.21(b)(1), the interest rate cap structure is the same as provided in forward mortgages under § 203.49(a), (b), (d), and (f), except that under § 203.49(d), the reference to first debt service payment means the closing in the HECM ARM context, and under § 203.49(f)(1), the cap on adjustments for one- and three-year mortgages is 2 percentage points in the HECM ARM context. Section 206.21(b)(1)(ii) applies the LIBOR and CMT index options in the same manner as forward ARMs at § 203.49(b) for both the capped and uncapped options. In addition, the uncapped option at § 206.21(b)(2) includes options to adjust based on the one-month CMT or one-month LIBOR index. Section 206.21(b)(1)(iii) also includes ARM interest rate adjustment options for HECMs in the same manner as forward mortgages at § 203.49(d).

On March 11, 2021, in Mortgagee Letter 2021–08, HUD removed LIBOR as an approved index and approved the SOFR index for annually adjustable HECM ARMs closed on or after May 3, 2021.[10] A mortgagee may set rates using CMT or SOFR for annually adjustable HECM ARMs and CMT only for monthly adjustable HECM ARMs. Also, among other changes to the ARM requirements in the Mortgagee Letter, HUD published revised model mortgage documents with ''fallback'' language intended to address future interest rate index transition events. This language was modeled after the Alternative Reference Rates Committee's (ARRC) [11] published fallback language for residential ARMs.[12]

Phase-Out of LIBOR

The financial industry is transitioning from use of the LIBOR index given its increasing unreliability and speculative nature. As noted by the Financial Stability Oversight Council, the scarcity of underlying transactions makes LIBOR potentially unsustainable, as many banks have grown uncomfortable in providing submissions based on expert judgment and may eventually choose to stop submitting altogether.[13] The relatively small number of transactions underpinning LIBOR has been driven by changing market structure, regulatory capital, and liquidity requirements as well as changes in bank risk appetite for short-term funding, thereby creating uncertainty as to the integrity of the index.

In July of 2017, the U.K. Financial Conduct Authority (FCA), the financial regulator of LIBOR, announced that it would no longer persuade or compel contributing banks to submit rates used to calculate LIBOR after December 31, 2021, further heightening the uncertainty of LIBOR.[14] On November 30, 2020, the Federal Reserve Board announced that regulators had proposed clear end dates for the USD LIBOR immediately following the December 31, 2021 publication for the one week and two month USD LIBOR settings, and immediately following the June 30, 2023 publication for other USD LIBOR tenors.[15] On March 5, 2021, the ICE Benchmark Administration Limited (IBA) published the feedback it received to a December, 2020, consultation, and announced it would cease publication of the one month and one year USD LIBOR immediately following the LIBOR publication on June 30, 2023.[16]

With the uncertainty and upcoming phase-out of LIBOR, mortgagees have been working to transition to a new replacement interest rate index for existing ARM contracts. The ARRC, a group of private market participants convened by the Federal Reserve Board and the Federal Reserve Bank of New York to ensure the transition from USD LIBOR to a reliable reference rate, recommended the selection of SOFR for use in new USD contracts.[17] SOFR is published by the Federal Reserve Bank of New York in cooperation with the Office of Financial Research, an independent bureau with the U.S. Department of the Treasury, and ''. . . is a broad measure of the cost of borrowing cash overnight collateralized by U.S. Treasury securities in the repurchase agreement (repo) market.'' [18] HUD anticipates that a spread-adjusted SOFR will be published to minimize the

[6] The 2015 Model ARM Note is available on HUD's website at: *https://www.hud.gov/program_offices/housing/sfh/model_documents.*

[7] 54 FR 24822, June 9, 1989.

[8] 72 FR 40048, July 20, 2007.

[9] The 2015 Model ARM Note is available on HUD's website at: *https://www.hud.gov/program_offices/housing/sfh/model_documents.*

[10] As explained in Mortgagee Letter 2021–08, the changes made by the Mortgagee Letter revised the existing HECM regulations pursuant to the authority granted in the Reverse Mortgage Stabilization Act of 2013 (Pub. L. 113–29; Section 255(h)(3) of the National Housing Act (12 U.S.C. 1715z–20(h)(3)).

[11] The ARRC is a group of private-market participants convened by the Federal Reserve Board and the Federal Reserve Bank of New York to help ensure a successful transition from U.S. dollar (USD) LIBOR to a more robust reference rate, its recommended alternative, the Secured Overnight Financing Rate (SOFR). The ARRC is comprised of a diverse set of private-sector entities that have an important presence in markets affected by USD LIBOR and a wide array of official-sector entities, including banking and financial sector regulators, as ex-officio members. *https://www.newyorkfed.org/arrc.*

[12] ARRC Recommendations Regarding More Robust LIBOR Fallback Contract Language for New Closed-End, Residential Adjustable Rate Mortgages, newyorkfed.org (Nov. 15, 2019), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2019/ARM_Fallback_Language.pdf.*

[13] *See* Second Report, The Alternative Reference Rates Committee, p.6 (March 2018), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/2018/ARRC-Second-report.*

[14] Andrew Bailey, The Future of LIBOR, Fin. Conduct Authority (July 27, 2017), *https://www.fca.org.uk/news/speeches/the-future-of-libor.*

[15] See Federal Reserve Board Welcomes and Supports Release of Proposal and Supervisory Statements that Would Enable Clear End Date for U.S. Dollar (USD) LIBOR and Would Promote the Safety and Soundness of the Financial System, Board of Governors of the Federal Reserve System (Nov. 30, 2020), *https://www.federalreserve.gov/newsevents/pressreleases/bcreg20201130b.htm.*

[16] ICE LIBOR, Feedback Statement on Consultation on Potential Cessation, ICE Benchmark Admin. (March 5, 2021), *https://www.theice.com/publicdocs/ICE_LIBOR_feedback_statement_on_consultation_on_potential_cessation.pdf.*

[17] About, Alternative Reference Rates Comm., *https://www.newyorkfed.org/arrc/about* (last visited June 10, 2021).

[18] Transition from LIBOR, Alternative Reference Rates Comm., *https://www.newyorkfed.org/arrc/sofr-transition* (last visited June 10, 2021).

impact of the transition on legacy ARMs and other LIBOR-based contracts.

According to the ARRC, ''SOFR is suitable to be used across a broad range of financial products, including but not limited to, derivatives (listed, cleared, and bilateral-OTC), and many variable rate cash products that have historically referenced LIBOR.'' [19]

As part of the Consolidated Appropriations Act, 2022,[20] Congress passed the Adjustable Interest Rate (LIBOR) Act of 2021 (LIBOR Act) [21] to, in part, create a clear and uniform process, on a nationwide basis, for replacing LIBOR in existing contracts where the terms do not provide for the use of a clearly defined or practicable replacement benchmark rate, without affecting the ability of parties to use any appropriate benchmark rate in a new contract.[22] Generally, for LIBOR-based ARMs without language providing for a specific replacement index, the default replacement index will be a spread-adjusted SOFR as provided for under the LIBOR Act.

The LIBOR Act establishes that this spread-adjusted replacement index will replace LIBOR for existing contracts on the Replacement Date, specified in the LIBOR Act as the first London banking day after June 30, 2023, unless the Federal Reserve Board specifies another date (the ''Replacement Date'').[23] The LIBOR Act also established a one-year linear basis to transition the tenor spread adjustment from LIBOR to the SOFR spread-adjusted index.[24] For FHA-insured LIBOR-based ARMs, the LIBOR Act authorizes HUD to approve the spread-adjusted SOFR index, or another benchmark replacement index selected by HUD, as a replacement to LIBOR for existing ARMs starting on the Replacement Date.[25]

Advanced Notice of Proposed Rulemaking

On October 5, 2021, HUD published an advanced notice of proposed rulemaking (ANPR) to seek input from the public on the transition away from LIBOR.[26] HUD sought comment on how to address a Secretary-approved replacement index for existing loans and provide for a transition date consistent with the cessation of the LIBOR index. HUD also sought comment on replacing the LIBOR index with the SOFR interest rate index, with a compatible spread adjustment to minimize the impact of the replacement index for existing ARMs. The comment period closed on December 6, 2021. HUD received nine comments on the ANPR. Comments were mostly supportive of transitioning away from LIBOR and multiple commenters specifically suggested the use of SOFR as a replacement index. Commenters also provided suggestions on how to smoothly transition off LIBOR. HUD has considered these comments in drafting this proposed rule.

II. This Proposed Rule

HUD proposes three changes. First, HUD proposes to transition from LIBOR to a spread-adjusted SOFR index for existing forward and HECM ARMs, and to replace LIBOR with SOFR as a Secretary-approved index for new ARMs. Second, HUD proposes to clarify its regulations regarding the Monthly Adjustable Interest Rate HECMs at § 206.21(b)(2). Third, HUD proposes to establish a five percentage point lifetime cap on the adjustment of the HECM monthly ARM interest rate.

A. Transition From LIBOR to SOFR §§ 203.49, 206.21

This proposed rule addresses both the transition from LIBOR to SOFR for new forward ARM originations and the transition from LIBOR to a spread-adjusted SOFR index for existing forward and HECM ARMs. This proposed rule would also update the HECM ARM regulation consistent with changes already made through Mortgagee Letter 2021–08 regarding new originations.

New Originations for Forward and HECM ARMs §§ 203.49(b)(1), 206.21(b)(1)(ii)(A)

HUD is proposing to remove LIBOR and approve SOFR as a Secretary-approved interest rate index for FHA-insured ARMs. CMT would continue to be a Secretary-approved interest rate, and this rule would provide that both CMT and SOFR may be used for periodic adjustments for newly-originated forward ARMs.

As discussed above, HUD, through Mortgagee Letter 2021–08, has already removed LIBOR and approved SOFR as a Secretary-approved interest rate index for HECM ARMs closed on or after May 3, 2021. This proposed rule would align forward ARM indices with the change made by Mortgagee Letter 2021–08. HUD is also proposing to update § 206.21(b)(1)(ii)(A) so that HUD's HECM ARM regulations are consistent with the changes made by Mortgagee Letter 2021–08. These changes include establishing zero as the minimum for the index value used to determine the mortgage interest rate for all HECMs to prevent against below-zero interest rates in a negative interest rate environment.

This rule proposes to use the 30-day average SOFR tenor adjusted to a constant maturity of one year. However, HUD anticipates that it may decide to approve additional SOFR tenors besides the 30-day average when additional SOFR tenors are published or more information about existing tenors is made available. Therefore, for both forward and HECM mortgages, HUD is also proposing that HUD may approve alternative SOFR tenors for new originations through notice.

Transition From LIBOR for Existing Forward and HECM Mortgages §§ 203.49(b)(2), 206.21(b)(1)(ii)(B).

For existing forward and HECM ARMs using LIBOR, HUD proposes to require that, on the Replacement Date, ARMs currently using LIBOR for their annual or monthly adjustments, as applicable, transition to the spread-adjusted SOFR index as specified in the LIBOR Act. This spread-adjusted SOFR would be the only Secretary-approved replacement index for transitioning existing forward and HECM LIBOR-based ARMs. HUD also proposes requiring that mortgagees provide notice to the borrower of the replacement in accordance with the terms of the loan documents.

Before the Replacement Date, the loan documents for these mortgages govern the terms of the loan and, as long as the LIBOR index is available, mortgagees may not have flexibility to substitute a new index without a modification of the existing loan documents or executing new loan documents. However, the LIBOR Act specifies that, on the Replacement Date, mortgagees will no longer be required to use LIBOR and must instead use a replacement index.

HUD anticipates that possible fluctuations in the interest rate from the transition to the spread-adjusted SOFR would be tempered by FHA's existing per-adjustment or life of mortgage caps set forth in the mortgage documents or FHA regulations.[27] Additionally, using

[19] Frequently Asked Questions, Alternative Reference Rates Comm (April 21, 2021), *https://www.newyorkfed.org/medialibrary/Microsites/arrc/files/ARRC-faq.pdf*.

[20] Consolidated Appropriations Act, 2022, Public Law 117–103.

[21] *Id.* at Division U.

[22] *Id.* at Division U, Section 102(b)(1).

[23] *Id.* at Division U, Section 103(6), (17), (19) and Section 104(a)(3)).

[24] *Id.* at Division U, Section 104(e)(2).

[25] Id. at Division U, Section 103(10) and Section 104(c).

[26] 86 FR 54876.

[27] These caps are set forth in Section 251 of the National Housing Act (12 U.S.C. 1715z–16) for insured forward ARMs and Section 255 of the National Housing Act (12 U.S.C. 1715z–20) for annually adjustable HECMs. See also, §§ 203.49(f), § 206.21(b)(1)(iv).

the tenor spread adjustment as provided for in the LIBOR Act would further help to mitigate impacts due to the transition because this spread adjustment is intended to create as little disruption as possible during the transition. Furthermore, the applicable SOFR tenors will be identified by the Federal Reserve Board prior to the Replacement Date and HUD believes that the spread-adjusted SOFR will provide a comparable interest rate consistent with the rate that would have been generated by the LIBOR index.

HUD also proposes that the Secretary will publish through notice any additional requirements for transition of existing LIBOR-based ARMs to address technical aspects of the transition process, newly published SOFR tenors, and any developments arising from the transition.

B. Monthly Adjustable Interest Rate HECMs § 206.21(b)(2)

When HUD issued its HECM final rule in January 2017, HUD removed cross references to 24 CFR part 203 and added specific language to discuss the annual adjustments for HECM ARMs, but did not include the same level of specific structure for monthly adjustments.[28] HUD is proposing to restructure § 206.21(b)(2) to clarify the requirements applicable to monthly adjustments to align with those provided for annual adjustments.

C. Five Percent Lifetime Cap § 206.21(b)(2)(iii)

HUD proposes a limit on the adjustment of the HECM ARM monthly interest rate in either direction of no more than five percentage points from the initial contract interest rate. This change would align with similar ARM interest rate caps that are currently used for annual interest rate HECMs and forward ARMs in the mortgage industry. This proposal would reduce risk to the borrower and the Mutual Mortgage Insurance Fund (MMIF) by reducing potential loan balance growth.

III. 30-Day Public Comment Period

In accordance with HUD's regulations on rulemaking at 24 CFR part 10, it is HUD's policy that the public comment period for proposed rules should be 60 days. In the case of this proposed rule, however, HUD has determined there is good cause to reduce the public comment period to 30 days.

HUD's October 5, 2021, ANPR sought 60 days of public comment on alternate indexes and best methods of transitioning off LIBOR. HUD received nine comments in response to HUD's ANPR that were generally supportive of the course of action HUD now proposes in this rule.

After HUD published its ANPR, Congress passed and the President signed into law the LIBOR Act, which provides for a clear and uniform nationwide process for replacing LIBOR in existing contracts. The LIBOR Act answered many of the questions that were uncertain at the time when HUD published its ANPR.

HUD believes the LIBOR Act, which HUD's proposed rule would implement, creates such an overwhelming industry standard that few if any questions remain regarding how HUD should proceed. HUD also believes that the comments received in response to its ANPR indicate that 30 days is sufficient time for commenters to consider and respond to this proposed rule.

HUD also believes that, with the discontinuation of LIBOR due for June 30, 2023, a 30-day comment period would aid HUD in moving toward a final rule as quickly as possible. Providing more time between the final rule and the discontinuation of LIBOR would ease the transition off LIBOR by ensuring that the regulatory structure and necessary guidance is in place to transition existing forward and HECM ARMs to a spread-adjusted replacement index, and to allow for the origination of new forward ARMs on a replacement index by June 30, 2023.

Given the above justifications, HUD believes that good cause exists to reduce the public comment period to 30 days. All comments received during the 30-day public comment period will be considered in the development of the final rule.

IV. Findings and Certifications

Regulatory Review—Executive Orders 12866 and 13563

Under Executive Order 12866 (Regulatory Planning and Review), a determination must be made whether a regulatory action is significant and, therefore, subject to review by the Office of Management and Budget (OMB) in accordance with the requirements of the Order. Executive Order 13563 (Improving Regulations and Regulatory Review) directs executive agencies to analyze regulations that are ''outmoded, ineffective, insufficient, or excessively burdensome, and to modify, streamline, expand, or repeal them in accordance with what has been learned. Executive Order 13563 also directs that, where relevant, feasible, and consistent with regulatory objectives, and to the extent permitted by law, agencies are to identify and consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

The current rules providing for the use of LIBOR as an index for interest rate adjustments for ARMs in HUD's forward and reverse mortgage insurance programs are becoming obsolete as LIBOR is in the process of being phased out. HUD is required by statute to approve by regulation interest rate indices for its forward ARM products. HUD must also amend by regulation its permitted interest rate indices for HECM ARM products and permit lenders to transition from LIBOR to a replacement index for existing HECM ARMs. Therefore, this rule is necessary to prevent HUD's rules on ARMs from becoming obsolete as well as to avoid the risk of financial harm for all ARM lenders and borrowers, and the larger ARM market, and the MMIF.

HUD does not expect the rule to have an economic impact as a result of the transition to the alternative rate. For newly endorsed forward ARMs, SOFR will become an available index in addition to the one-year CMT index. HUD has already removed LIBOR and approved SOFR for new annually adjustable HECM ARM originations. As of the Effective Date or prior to the cessation of LIBOR, existing LIBOR indexed FHA-insured ARMs may transition to a spread-adjusted SOFR to make it a comparable rate for existing LIBOR-based ARMs. Transition to the spread-adjusted SOFR will align FHA-insured ARMs with other LIBOR contracts covered by the LIBOR Act.

For existing mortgages that transition to spread-adjusted SOFR, we do not anticipate a significant economic impact. For all existing FHA-insured ARMs, the per-adjustment and lifetime caps on total adjustments will continue to apply, minimizing the impact to borrowers or mortgagees as a result of the transition to SOFR.

This rule was not subject to OMB review. This rule is not a ''significant regulatory action'' as defined in Section 3(f) of Executive Order 12866, and is not an economically significant regulatory action.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4; approved March 22, 1995) (UMRA) establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments, and on the private sector. This proposed rule would not impose any federal mandates on any state, local, or tribal governments, or on

[28] 82 FR 7094, January 19, 2017.

the private sector, within the meaning of the UMRA.

Environmental Review

This proposed rule consists of ''[s]tatutorily required and/or discretionary establishment and review of interest rates, mortgage limits, building cost limits, prototype costs, fair market rent schedules, HUD-determined prevailing wage rates, income limits and exclusions with regard to eligibility for or calculation of HUD housing assistance or rental assistance, and similar rate and cost determinations and related external administrative or fiscal requirements or procedures which do not constitute a development decision that affects the physical condition of specific project areas or building sites.'' Accordingly, under 24 CFR 50.19(c)(6), this proposed rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule would provide for the removal of LIBOR as an allowable index rate for adjustments for new FHA-insured forward ARMs and establish SOFR as a new index along with the CMT for new forward ARMs, aligning it with the available indices for annually adjustable HECM ARMs. There would be a Secretary-approved spread-adjusted SOFR for existing FHA-insured ARMs transitioning from LIBOR.

The change of this proposed rule requires mortgagees to, where appropriate, utilize a new approved index. Mortgagees are already required to substitute an index under the terms of their existing loan documents when the index used becomes unavailable. Additionally, this proposed rule establishes a new index for origination of new forward ARMs, which mortgagees regularly provide when originating a loan. Therefore, the changes in this proposed rule should not have a significant economic impact on mortgagees. If there is an economic effect on mortgagees, it would fall equally on all mortgagees who originate or service ARMs. Further, HUD anticipates that allowing an additional index for newly originated ARMs would have a net positive economic impact on borrowers and mortgagees by providing additional market opportunities, decreasing the cost of credit associated with these ARMs.

Therefore, the undersigned certifies that the rule will not have a significant economic impact on a substantial number of small entities. Notwithstanding HUD's determination that this rule will not have a significant effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in the preamble to this rule.

Executive Order 13132, Federalism 64 FR 43255; August 10, 1999

Executive Order 13132 (entitled ''Federalism'') prohibits an agency from publishing any rule that has federalism implications if the rule either: (1) imposes substantial direct compliance costs on State and local governments and is not required by statute, or (2) preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

Paperwork Reduction Act

The information collection requirements contained in this proposed rule are currently approved by OMB and have been given OMB Control Number 2502–0322 and OMB Control Number 2502–0524 and 2502–0611. In accordance with the Paperwork Reduction Act, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

List of Subjects

24 CFR Part 203

Hawaiian Natives, Home improvement, Indians—lands, Loans programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

24 CFR Part 206

Aged, Condominiums, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, HUD proposes to amend 24 CFR parts 203 and 206 as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

■ 1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 1707, 1709, 1710, 1715b, 1715z–16, 1715u, and 1715z–21; 15 U.S.C. 1639c; 42 U.S.C. 3535(d).

■ 2. Amend § 203.49 by revising paragraph (b) to read as follows:

§ 203.49 Eligibility of adjustable rate mortgages.

* * * * *

(b) Interest-rate index. (1) *CMT and SOFR Indices.* Changes in the interest rate charged on an adjustable rate mortgage must correspond either to changes in the weekly average yield on U.S. Treasury securities, adjusted to a constant maturity of one year (CMT); to the 30-day average Secured Overnight Financing Rate (SOFR) published by the Federal Reserve Bank of New York (or a successor administrator), adjusted to a constant maturity of one year; or to an alternative SOFR tenor approved by the Secretary. The Secretary may publish approved SOFR tenors as alternatives to the 30-day SOFR tenor through notice.

(2) *Transition for existing mortgages indexed to LIBOR.* Mortgages with an existing adjustable interest rate indexed to the London Interbank Offered Rate (LIBOR) must be transitioned to the spread-adjusted SOFR replacement index approved by the Secretary by the next interest rate adjustment date for the mortgage on or after the Replacement Date, which means the first London banking day after June 30, 2023, unless the Board of Governors of the Federal Reserve System determines that any LIBOR tenor will cease to be published or cease to be representative on a different date. In such case, Replacement Date means the first business day following the date announced by the Board of Governors of the Federal Reserve System. Notice of the transition to the SOFR replacement index must be sent to the borrower in accordance with the mortgage documents. The Secretary will publish through notice any additional requirements for the transition of existing mortgages.

(3) *Changes in the mortgage interest rate.* Except as otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index.

* * * * *

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

■ 3. The authority citation for part 206 continues to read as follows:

Authority: 12 U.S.C. 1715b, 1715z–20; 42 U.S.C. 3535(d).

Subpart A—General

■ 4. Amend § 206.3 by revising the definition of ''Expected average mortgage interest rate'' and adding, in alphabetical order, definitions for ''Margin'', ''Replacement Date'', and ''SOFR'' to read as follows:

§ 206.3 Definitions.

* * * * *

Expected average mortgage interest rate means the interest rate used to calculate the principal limit established at closing.

(1) For fixed interest rate HECMs, the expected average mortgage interest rate is the same as the fixed mortgage (Note) interest rate and is set simultaneously with the fixed interest (Note) rate.

(2) For adjustable interest rate HECMs, the expected average mortgage interest rate is the sum of the mortgagee's margin plus the weekly average yield for U.S. Treasury securities (CMT) adjusted to a constant maturity of 10 years or an additional SOFR index as approved by the Secretary. Commingling the index type used to calculate the expected average mortgage interest rate and the index type used to calculate the adjustable mortgage interest (Note) rate and adjustments is only permissible as provided for by the Secretary.

(3) Mortgagees, with the agreement of the borrower, may simultaneously lock in the expected average mortgage interest rate and the mortgagee's margin prior to the date of mortgage closing or simultaneously establish the expected average mortgage interest rate and the mortgagee's margin on the date of mortgage closing.

* * * * *

Margin means the amount added to the index value to compute the expected average mortgage interest rate and the initial mortgage interest (Note) rate and periodic adjustments to the mortgage interest (Note) rate.

* * * * *

Replacement Date means the first London banking day after June 30, 2023, unless the Board of Governors of the Federal Reserve System determines that any LIBOR tenor will cease to be published or cease to be representative on a different date. In such case, Replacement Date means the first business day following the date announced by the Board of Governors of the Federal Reserve System.

SOFR means the Secured Overnight Financing Rate published by the Federal Reserve Bank of New York (or a successor administrator).

* * * * *

Subpart B—Eligibility; Endorsement

■ 5. Amend § 206.21 by revising paragraphs (b)(1)(ii) and (b)(2) to read as follows:

§ 206.21 Interest rate.

* * * * *

(b) * * *

(1) * * *

(ii) *Interest rate index.* (A) *CMT and SOFR Indices.* Changes in the mortgage interest rate charged on an adjustable interest rate mortgage must correspond to changes in the weekly average yield on U.S. Treasury securities (CMT) adjusted to a constant maturity of one year; to the 30-day average Secured Overnight Financing Rate (SOFR) adjusted to a constant maturity of one year; or to an alternative SOFR tenor approved by the Secretary. The Secretary may publish approved SOFR tenors as alternatives to the 30-day SOFR tenor through notice. The index type used to calculate the initial mortgage interest rate must be the same index type used to calculate the mortgage interest rate adjustments, except as provided in (B) of this section. Commingling of index types for the mortgage interest rate and adjustments is not otherwise allowed, unless approved by the Secretary. Unless otherwise provided in this section, each change in the mortgage interest rate must correspond to the upward and downward change in the index, except that downward changes in the index will not result in a mortgage interest rate that is less than zero.

(B) *Transition for existing mortgages indexed to LIBOR.* Mortgages with an existing adjustable interest rate indexed to the London Interbank Offered Rate (LIBOR) must be transitioned to the spread-adjusted SOFR replacement index approved by the Secretary by the next interest rate adjustment date for the mortgage on or after the Replacement Date. Notice of the transition to the SOFR replacement index must be sent to the borrower in accordance with the mortgage documents. The Secretary will publish through notice any additional requirements for the transition of existing mortgages.

* * * * *

(2) *Monthly adjustable interest rate HECMs.* If a mortgage meeting the requirements of paragraph (b)(1) of this section is offered, the mortgagee may also offer a mortgage which provides for monthly adjustments to the interest rate subject to the following requirements:

(i) *Interest Rate Index.* Changes in the interest rate charged on an adjustable interest rate mortgage shall correspond to changes in the weekly average yield on U.S. Treasury securities (CMT) adjusted to a constant maturity of one year, to the weekly average yield on CMT adjusted to one-month, or to an alternative SOFR index approved by the Secretary. The index type used to calculate the initial mortgage interest rate must be the same index type used to calculate the mortgage interest rate adjustments, except as provided in (b)(1)(ii)(B) of this section. Commingling of index types for the mortgage interest rate and adjustments is not otherwise allowed, unless approved by the Secretary. Unless otherwise provided in this section, each change in the Note rate must correspond to the upward and downward change in the index, except that downward changes in the index will not result in a Note rate that is less than zero.

(ii) *Frequency of interest rate changes.*

(A) The interest rate adjustments must occur monthly, calculated from the date of the closing, except that the first adjustment shall be no sooner than 30 days (28 days for February, as applicable) or later than three months from the date of the closing.

(B) To set the new interest rate, the mortgagee will determine the change between the initial (*i.e.,* base) index figure and the current index figure, or will add a specific margin to the current index figure. The initial index figure shall be the most recent figure available before the date of mortgage loan origination. The current index figure shall be the most recent index figure available 30 days (28 days for February, as applicable) before the date of each interest rate adjustment.

(iii) Magnitude of Changes. The initial mortgage interest rate shall be agreed upon by the mortgagee and the borrower. Adjustments in the effective rate of interest over the entire term of the mortgage may not result in a change in either direction of more than five percentage points from the initial contract interest rate.

* * * * *

Julia R. Gordon,

Assistant Secretary for Housing—FHA Commissioner.

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NATIONAL LABOR RELATIONS BOARD

29 CFR Part 103

RIN 3142–AA21

Standard for Determining Joint Employer Status

AGENCY: National Labor Relations Board.

ACTION: Notice of proposed rulemaking; extension of comment periods.

SUMMARY: The National Labor Relations Board (''NLRB'' or ''Board'') published a notice of proposed rulemaking in the **Federal Register** on September 7, 2022, seeking comments from the public regarding the revision of the standard for determining whether two employers, as defined in section 2(2) of the National Labor Relations Act (NLRA or Act), are joint employers of particular employees within the meaning of section 2(3) of the Act.

DATES: The comment periods for the notice of proposed rulemaking published September 7, 2022, at 87 FR 54641, are extended. Comments must be received by the Board on or before December 7, 2022, and reply comments to the initial comments must be received on or before December 21, 2022.

ADDRESSES: Comments should be submitted electronically through *https://www.regulations.gov.* Comments may be submitted by mail or hand delivery to: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001. Because of security precautions, the Board continues to experience delays in U.S. mail delivery. You should take this into consideration when preparing to meet the deadline for submitting comments. The Board encourages electronic filing. It is not necessary to send comments if they have been filed electronically with *regulations.gov.* If you send comments, the Board recommends that you confirm receipt of your delivered comments by contacting (202) 273–1940 (this is not a toll-free number). Individuals with hearing impairments may call 1–866–315–6572 (TTY/TDD).

Only comments submitted through *https://www.regulations.gov,* hand delivered, or mailed will be accepted; ex parte communications received by the Board will be made part of the rulemaking record and will be treated as comments only insofar as appropriate. Comments will be available for public inspection at *https://www.regulations.gov* and during normal business hours (8:30 a.m. to 5 p.m. EST) at the above address.

The Board will post, as soon as practicable, all comments received on *https://www.regulations.gov* without making any changes to the comments, including any personal information provided. The website *https://www.regulations.gov* is the Federal eRulemaking portal, and all comments posted there are available and accessible to the public. The Board requests that comments include full citations or internet links to any authority relied upon. The Board cautions commenters not to include personal information such as Social Security numbers, personal addresses, telephone numbers, and email addresses in their comments, as such submitted information will become viewable by the public via the *https://www.regulations.gov* website. It is the commenter's responsibility to safeguard his or her information. Comments submitted through *https://www.regulations.gov* will not include the commenter's email address unless the commenter chooses to include that information as part of his or her comment.

FOR FURTHER INFORMATION CONTACT: Roxanne L. Rothschild, Executive Secretary, National Labor Relations Board, 1015 Half Street SE, Washington, DC 20570–0001, (202) 273–1940 (this is not a toll-free number), 1–866–315–6572 (TTY/TDD).

SUPPLEMENTARY INFORMATION: The proposed changes are designed to explicitly ground the joint-employer standard in established common-law agency principles and provide relevant guidance to parties covered by the Act regarding their rights and responsibilities when more than one statutory employer possesses the authority to control or exercises the power to control particular employees' essential terms and conditions of employment.

Dated: October 14, 2022.

Roxanne L. Rothschild,

Executive Secretary.

[FR Doc. 2022–22690 Filed 10–18–22; 8:45 am]

BILLING CODE 7545–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[EPA–R03–OAR–2022–0776; FRL–10292–01–R3]

Outer Continental Shelf Air Regulations; Consistency Update for Maryland

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; consistency update.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update a portion of the Outer Continental Shelf (OCS) Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area (COA), as mandated by the Clean Air Act (CAA). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which Maryland is the designated COA. The State of Maryland's requirements discussed in this document are proposed to be incorporated by reference into the Code of Federal Regulations (CFR) and listed in the appendix to the OCS air regulations.

DATES: Written comments must be received on or before November 18, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2022–0776 at *www.regulations.gov,* or via email to *galarza-hernandez.arlin@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Gwendolyn Supplee, Permits Branch (3AD10), Air & 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) 814–2763. Ms. Supplee can also be reached via electronic mail at *Supplee.Gwendolyn@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain Federal and state ambient air quality standards and to comply with the provisions of part C of title I of the CAA. The regulations at 40 CFR part 55 apply to all OCS sources except those located in the Gulf of Mexico west of 87.5 degrees longitude. See 40 CFR 55.3(a). Section 328 of the CAA requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, Section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to 40 CFR 55.12, consistency reviews will occur: (1) at least annually where an OCS activity is occurring within 25 miles of a State seaward boundary; (2) upon receipt of a Notice of Intent (NOI) under 40 CFR 55.4; or (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in 40 CFR part 55. This proposed action is being taken in response to the submittal received by EPA on August 5, 2022, of a NOI, from US Wind, Inc., for the proposed installation of an up to 2-gigawatt offshore wind energy facility located approximately 10 nautical miles off the coast of Maryland. Public comments received in writing within 30 days of publication of this document will be considered by EPA before publishing a final rule.

Section 328(a) of the CAA requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of States' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into 40 CFR part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into 40 CFR part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the CAA. Consistency updates may result in the inclusion of state or local rules or regulations into 40 CFR part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the CAA for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

II. EPA Analysis

EPA reviewed Maryland's rules for inclusion in 40 CFR part 55 to ensure that they are rationally related to the attainment or maintenance of Federal or state ambient air quality standards and compliance with part C of title I of the CAA, that they are not designed expressly to prevent exploration and development of the OCS, and that they are potentially applicable to OCS sources. See 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. See 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules, and requirements that regulate toxics which are not related to the attainment and maintenance of Federal and state ambient air quality standards.[2]

III. Proposed Action

EPA last did a consistency update for Maryland on August 16, 2019 (84 FR 34065). In that action, EPA incorporated by reference into 40 CFR part 55 all of Maryland's regulations that EPA believed were relevant to the OCS requirements. For this action, EPA has reviewed changes that Maryland has made to its underlying regulatory programs. This action will have no effect on any provisions that were not subject to changes by Maryland and were also previously incorporated by reference into 40 CFR part 55 through EPA's August 16, 2019 rule. The rules that EPA proposes to incorporate are applicable provisions of the Code of Maryland Regulations (COMAR).

The intended effect of proposing approval of the OCS requirements for the Maryland Department of the Environment (MDE) is to regulate emissions from OCS sources in accordance with the requirements for onshore sources. The Maryland regulatory changes EPA proposes to incorporate are: (1) Chapter 8, Control of Incinerators—COMAR 26.11.08; (2) Chapter 17, Nonattainment Provisions for Major New Sources and Major Modifications General—COMAR 26.11.17; and (3) Chapter 20, Mobile Sources—COMAR 26.11.20. EPA is soliciting public comments on the issues discussed in this document. These comments will be considered before taking final action.

IV. Incorporation by Reference

In this proposed rule, EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, EPA is proposing to incorporate by reference the Code of Maryland Regulations air rules that are applicable to OCS sources and which are currently in effect. These regulations are described in Section III (''Proposed Action'') of this preamble. EPA has made, and will continue to make, these materials 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.

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore air pollution control requirements. To comply with this statutory mandate, the EPA must incorporate applicable onshore rules into 40 CFR part 55 as they exist onshore. See 42 U.S.C. 7627(a)(1); 40 CFR 55.12. Thus, in promulgating OCS consistency updates, EPA's role is to maintain consistency between OCS

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

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

regulations and the regulations of onshore areas, provided that they meet the criteria of the CAA. Accordingly, this action simply updates the existing OCS requirements that have been revised since the last consistency review to make them consistent with requirements onshore, without the exercise of any policy direction by EPA. For that reason, this proposed 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 (PRA) (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).

This proposed rulemaking incorporating by reference sections of COMAR does not apply on any Indian reservation land as defined in 18 U.S.C. 1151 or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, this rule incorporating by reference sections of COMAR does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action does not impose any new information collection burden under the PRA. Office of Management and Budget (OMB) has previously approved the information collection activities contained in the existing regulations at 40 CFR part 55 and, by extension, this update to part 55, and has assigned OMB control number 2060–0249. This action does not impose a new information burden under PRA because this action only updates the state rules that are incorporated by reference into 40 CFR part 55, appendix A.[3]

EPA is proposing to incorporate the rules potentially applicable to sources for which the State of Maryland will be the COA that have been revised since the last consistency review. The rules that EPA proposes to incorporate are applicable provisions of the Code of Maryland Regulations.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Adam Ortiz,

Regional Administrator, Region III.

For the reasons set out in the preamble, title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows.

PART 55—OUTER CONTINENTAL SHELF AIR REGULATIONS

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

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

■ 2. Section 55.14 is amended by revising paragraph (e)(10)(i)(A) to read as follows:

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

* * * * *

(e) * * *

(10) * * *

(i) * * *

(A) State of Maryland Requirements Applicable to OCS Sources, July 28, 2022.

* * * * *

[3] OMB's approval of the Information Collection Request (ICR) can be viewed at *www.reginfo.gov.*

■ 3. Appendix A to 40 CFR part 55 is amended by revising paragraph (a)(1) under the heading ''Maryland'' to read as follows:

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

* * * * *

Maryland

(a) State requirements.

(1) The following State of Maryland requirements are applicable to OCS Sources, July 28, 2022, State of Maryland—Department of the Environment.

The following sections of Code of Maryland Regulations (COMAR) Title 26 Subtitle 11:

COMAR 26.11.01—General Administrative Provisions (Effective as of December 6, 2018)
COMAR 26.11.02—Permits, Approvals, and Registrations (Effective as of February 12, 2018)
COMAR 26.11.03—Permits, Approvals, and Registration- Title V Permits (Effective as of November 12, 2010)
COMAR 26.11.05—Air Pollution Episode System (Effective as of November 12, 2010)
COMAR 26.11.06—General Emission Standards, Prohibitions, and Restrictions (Effective as of July 02, 2013)
COMAR 26.11.07—Open Fires (Effective as of November 12, 2010)
COMAR 26.11.08—Control of Incinerators (Effective as of May 4, 2020)
COMAR 26.11.09—Control of Fuel-Burning Equipment, Stationary Internal Combustion Engines and Certain Fuel-Burning Installations (Effective as of December 6, 2018)
COMAR 26.11.13—Control of Gasoline and Volatile Organic Compound Storage and Handling (Effective as of July 21, 2014)
COMAR 26.11.15—Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.16—Procedures Related to Requirements for Toxic Air Pollutants (Effective as of November 12, 2010)
COMAR 26.11.17—Nonattainment Provisions for Major New Sources and Major Modifications (Effective as of December 30, 2019)
COMAR 26.11.19—Volatile Organic Compounds from Specific Processes (Effective as of September 28, 2015)
COMAR 26.11.20—Mobile Sources (Effective as of February 7, 2022)
COMAR 26.11.26—Conformity (Effective as of November 12, 2010)
COMAR 26.11.35—Volatile Organic Compounds from Adhesives and Sealants (Effective as of November 12, 2010)
COMAR 26.11.36—Distributed Generation (Effective as of February 12, 2018)
COMAR 26.11.39—Architectural and Industrial Maintenance (AIM) Coatings (Effective as of April 2016)

* * * * *

[FR Doc. 2022–22393 Filed 10–18–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[EPA–R08–RCRA–2022–0485; FRL 9896–01–R8]

North Dakota: Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to grant authorization to the State of North Dakota for changes to its hazardous waste program under the Solid Waste Disposal Act, as amended, commonly referred to as the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for final authorization and is authorizing the State's changes through a direct final action, with the exception of Revision Checklist 241.

DATES: Send written comments by November 18, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R08–RCRA–2022–0485 by mail to Moye Lin, Resource Conservation and Recovery Act Branch, LCR–RC, EPA Region 8, 1595 Wynkoop Street, Denver, Colorado 80202–1129. You may also submit comments electronically or through hand delivery/courier by following the detailed instructions in the **ADDRESSES** section of the direct final rule located in the Rules and Regulations section of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Moye Lin at (303) 312–6667, *lin.moye@epa.gov.*

SUPPLEMENTARY INFORMATION: In the ''Rules and Regulations'' section of this issue of the **Federal Register**, the EPA is authorizing changes to the North Dakota program as a direct final rule. The EPA did not make a proposal prior to the direct final rule because we believe this action is not controversial and do not expect comments that oppose it. We have explained the reasons for this authorization in the preamble to the direct final rule.

Unless the EPA receives written comments that oppose the authorization during the comment period, the direct final rule will become effective on the date it establishes, and we will not take further action on this proposal. If EPA receives comments that oppose the authorization, we will withdraw the direct final rule and it will not take immediate effect. We will then respond to public comments in a later final rule based on this proposal. You may not have another opportunity for comment. If you want to comment on this action, you must do so at this time.

Dated: October 13, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–22714 Filed 10–18–22; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[FF09E21000 FXES1111090FEDR 234]

Endangered and Threatened Wildlife and Plants; 90-Day Findings for Four Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of petition findings and initiation of status reviews.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce 90-day findings on petitions to add four species to the Lists of Endangered and Threatened Wildlife and Plants under the Endangered Species Act of 1973, as amended (Act). Based on our review, we find that the petitions to list the southern population of bog turtle (*Glyptemys muhlenbergii*), Pedernales River Springs salamander (*Eurycea species* 1.), ghost orchid (*Dendrophylax lindenii*), and tall western penstemon (*Penstemon hesperius*) present substantial scientific or commercial information indicating that the petitioned actions may be warranted. Therefore, with the publication of this document, we announce that we are initiating status reviews of these species to determine whether the petitioned actions are warranted. To ensure that the status reviews are comprehensive, we request scientific and commercial data and other information regarding the species and factors that may affect their status. Based on the status reviews, we will issue 12-month petition findings, which will address whether the petitioned actions are warranted, in accordance with the Act.

DATES: These findings were made on October 19, 2022. As we commence our status reviews, we seek any new information concerning the status of, or threats to, the southern population of bog turtle, Pedernales River Springs salamander, ghost orchid, or tall western penstemon, or their habitats. Any information we receive during the course of our status reviews will be considered.

ADDRESSES: *Supporting documents:* Summaries of the basis for each of the petition findings contained in this document are available on *https://www.regulations.gov* under the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). In addition, this supporting information is available by contacting the appropriate person, as specified in **FOR FURTHER INFORMATION CONTACT**.

Status reviews: If you have new scientific or commercial data or other information concerning the status of, or threats to, the southern population of bog turtle, Pedernales River Springs salamander, ghost orchid, or tall western penstemon, or their habitats, please provide those data or information by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter the appropriate docket number (see table under **SUPPLEMENTARY INFORMATION**). Then, click on the ''Search'' button. After finding the correct document, you may submit information by clicking on ''Comment.'' If your information will fit in the provided comment box, please use this feature of *https://www.regulations.gov,* as it is most compatible with our information review procedures. If you attach your information as a separate document, our preferred file format is Microsoft Word. If you attach multiple comments (such as form letters), our preferred format is a spreadsheet in Microsoft Excel.

(2) *By hard* copy: Submit by U.S. mail to: Public Comments Processing, Attn: [Insert appropriate docket number; see table under **SUPPLEMENTARY INFORMATION**], U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send information only by the methods described above. We will post all information we receive on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Submitted for a Status Review, below).

FOR FURTHER INFORMATION CONTACT:

Species common name	Contact person
Bog turtle, southern population	Janet Mizzi, Field Supervisor, Asheville Ecological Services Field Office, telephone 828–258–3939, *janet_mizzi@fws.gov.*
Pedernales River Springs salamander.	Michael D. Warriner, Supervisory Fish and Wildlife Biologist, Austin Ecological Services Field Office, telephone 512–490–0057, x236, *michael_warriner@fws.gov.*
Ghost orchid	Lourdes Mena, Florida Classification and Recovery Division Manager, Florida Ecological Services Field Office, telephone 904–460–4970, *lourdes_mena@fws.gov.*
Tall western penstemon	Craig Rowland, Acting State Supervisor, Oregon Fish and Wildlife Office, telephone 503–231–6179, *craig_rowland@fws.gov.*

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Information Submitted for a Status Review

You may submit your comments and materials concerning the status of, or threats to, the southern population of bog turtle, Pedernales River Springs salamander, ghost orchid, or tall western penstemon, or their habitats, by one of the methods listed above in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**. Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing these findings, will be available for public inspection on *https://www.regulations.gov.*

Background

Section 4 of the Act (16 U.S.C. 1533) and its implementing regulations in title 50 of the Code of Federal Regulations (50 CFR part 424) set forth the procedures for adding species to, removing species from, or reclassifying species on the Federal Lists of Endangered and Threatened Wildlife and Plants (Lists or List) in 50 CFR part 17. Section 4(b)(3)(A) of the Act requires that we make a finding on whether a petition to add a species to the List (*i.e.,* ''list'' a species), remove a species from the List (*i.e.,* ''delist'' a species), or change a listed species' status from endangered to threatened or from threatened to endangered (*i.e.,* ''reclassify'' a species) presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, we are to make this finding within 90 days of our receipt of the petition and publish the finding promptly in the **Federal Register**.

Our regulations establish that substantial scientific or commercial information with regard to a 90-day petition finding refers to credible scientific or commercial information in support of the petition's claims such that a reasonable person conducting an impartial scientific review would conclude that the action proposed in the petition may be warranted (50 CFR 424.14(h)(1)(i)). A positive 90-day petition finding does not indicate that the petitioned action is warranted; the finding indicates only that the petitioned action may be warranted and that a full review should occur.

A species may be determined to be an endangered species or a threatened species because of one or more of the five factors described in section 4(a)(1) of the Act (16 U.S.C. 1533(a)(1)). The five factors are:

(a) The present or threatened destruction, modification, or curtailment of its habitat or range (Factor A);

(b) Overutilization for commercial, recreational, scientific, or educational purposes (Factor B);

(c) Disease or predation (Factor C);

(d) The inadequacy of existing regulatory mechanisms (Factor D); and

(e) Other natural or manmade factors affecting its continued existence (Factor E).

These factors represent broad categories of natural or human-caused actions or conditions that could have an effect on a species' continued existence. In evaluating these actions and conditions, we look for those that may have a negative effect on individuals of the species, as well as other actions or conditions that may ameliorate any negative effects or may have positive effects.

We use the term ''threat'' to refer in general to actions or conditions that are known to, or are reasonably likely to, affect individuals of a species negatively. The term ''threat'' includes actions or conditions that have a direct impact on individuals (direct impacts), as well as those that affect individuals through alteration of their habitat or required resources (stressors). The term ''threat'' may encompass—either together or separately—the source of the action or condition, or the action or condition itself. However, the mere identification of any threat(s) may not be sufficient to compel a finding that the information in the petition is substantial information indicating that the petitioned action may be warranted. The information presented in the petition must include evidence sufficient to suggest that these threats may be affecting the species to the point that the species may meet the definition of an endangered species or threatened species under the Act.

If we find that a petition presents such information, our subsequent status review will evaluate all identified threats by considering the individual-, population-, and species-level effects and the expected response by the species. We will evaluate individual threats and their expected effects on the species, then analyze the cumulative effect of the threats on the species as a whole. We also consider the cumulative effect of the threats in light of those actions and conditions that are expected to have positive effects on the species—such as any existing regulatory mechanisms or conservation efforts that may ameliorate threats. It is only after conducting this cumulative analysis of threats and the actions that may ameliorate them, and the expected effect on the species now and in the foreseeable future, that we can determine whether the species meets

the definition of an endangered species or threatened species under the Act.

If we find that a petition presents substantial scientific or commercial information indicating that the petitioned action may be warranted, the Act requires that we promptly commence a review of the status of the species, and we will subsequently complete a status review in accordance with our prioritization methodology for 12-month findings (81 FR 49248, July 27, 2016).

We note that designating critical habitat is not a petitionable action under the Act. Petitions to designate critical habitat (for species without existing critical habitat) are reviewed under the Administrative Procedure Act and are not addressed in this finding (see 50 CFR 424.14(j)). To the maximum extent prudent and determinable, any proposed critical habitat will be addressed concurrently with a proposed rule to list a species, if applicable.

Summaries of Petition Findings

The petition findings contained in this document are listed in the table below, and the basis for each finding, along with supporting information, is available on *https://www.regulations.gov* under the appropriate docket number.

TABLE—INTERNET SEARCH INFORMATION FOR STATUS REVIEWS FOR FOUR SPECIES PETITIONED FOR FEDERAL LISTING

Common name	Docket No.	URL to docket on *https://www.regulations.gov*
Bog turtle, southern population	FWS–R4–ES–2022–0042	*https://www.regulations.gov/docket/FWS-R4-ES-2022-0042.*
Pedernales River Springs salamander	FWS–R2–ES–2022–0014	*https://www.regulations.gov/docket/FWS-R2-ES-2022-0014.*
Ghost orchid	FWS–R4–ES–2022–0041	*https://www.regulations.gov/docket/FWS-R4-ES-2022-0041.*
Tall western penstemon	FWS–R1–ES–2022–0071	*https://www.regulations.gov/docket/FWS-R1-ES-2022-0071.*

Evaluation of a Petition To List the Southern Population of Bog Turtle

Species and Range

Bog turtle (southern population of *Glyptemys muhlenbergii*); Georgia, North Carolina, South Carolina, Tennessee, Virginia.

Petition History

On January 13, 2022, we received a petition from the Center for Biological Diversity (CBD), requesting that the southern population of the bog turtle (*Glyptemys muhlenbergii*) be listed as a threatened or an endangered species and critical habitat be designated for this species under the Act. On April 7, 2022, we received an additional petition from William Schultz requesting to join the CBD petition and that we list the southern population as threatened under the Act. Both petitions clearly identified themselves as such and included the requisite identification information for the petitioners, required at 50 CFR 424.14(c). This finding addresses these petitions.

Evaluation of Information Summary

In 1997, we listed the northern distinct population segment (DPS) of bog turtle (62 FR 59605, November 4, 1997). We concluded that the southern population of bog turtle did not meet the definition of a threatened or endangered species; however, we listed the southern population as a threatened species due to similarity of appearance to the northern population.

After reviewing the current information provided by the petitioners, we have determined that substantial new information exists indicating the southern population of bog turtle may warrant listing under the Act. The petitioners provided credible information indicating that there are potential threats to the species within the southern population due to loss and degradation of wetland habitat. The petitioners also presented information suggesting that threats to the species include development, vehicles and roads, overutilization (*i.e.,* poaching and collection for the pet trade), disease and predation, invasive species, climate change, succession and lack of wetland management, and small population size and other biological factors as well as information suggesting that existing regulatory mechanisms may be inadequate to address these potential threats. We will fully evaluate these potential threats during our 12-month status review for the species.

Finding

We reviewed the petitions, sources cited in the petitions, and other readily available information. Based on our review of the petitions and readily available information, we find that the petitions present substantial scientific or commercial information indicating the petitioned entity may qualify as a DPS and that listing the southern population of bog turtle (*Glyptemys muhlenbergii*) as a threatened or endangered species may be warranted due to loss and degradation of wetland habitat (Factor A). The petitioners also presented information suggesting that development, vehicles and roads, overutilization (*i.e.,* collection and poaching), disease and predation, invasive species, climate change, succession and lack of wetlands management, small population size and other biological factors may be threats to the southern population of bog turtle and regulatory mechanisms may be inadequate to address these potential threats (CBD 2022, pp. 30–49; Schultz 2022, pp. 3–7). We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best scientific and commercial information available when making that finding.

The basis for our finding on these petitions and other information regarding our overview of the petitions can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2022–0042 under the Supporting Documents section.

Evaluation of a Petition To List the Pedernales River Springs Salamander

Species and Range

Pedernales River Springs salamander (*Eurycea species* 1.); Texas.

Petition History

On September 20, 2021, we received a petition dated the same, from Save our Springs Alliance and Wimberley Valley Watershed Association, requesting that Pedernales River Springs salamander be emergency-listed as an endangered species or a threatened species and critical habitat be designated for this species under the Act. The Act does not provide for a process to petition for emergency listing; therefore, we are evaluating this petition under the normal process of determining if it presents substantial scientific or commercial information indicating that the petitioned action may be warranted. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

The petitioner provided credible information indicating there are potential threats to the Pedernales River Springs salamander due to water quantity and quality degradation, physical modification of surface habitat, disease, predation, and limited range. The petitioner also provided credible information that the existing regulatory mechanisms may be inadequate to address these potential threats (Factor D). While we found that the petition provided documentation of one example of salamanders being stolen from a fish hatchery, there is no credible information to support overutilization impacts to the Pedernales River Springs salamander such that the species may warrant listing.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the Pedernales River Springs salamander due to potential threats associated with the following: Water quantity and quality degradation and physical modification of surface habitat (Factor A); development activities leading to the introduction of predators and increased risk of disease (Factor C); and vulnerability due to the limited range of the species (Factor E).

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R2–ES–2022–0014 under the Supporting Documents section.

Evaluation of a Petition To List the Ghost Orchid

Species and Range

Ghost orchid (*Dendrophylax lindenii*); Florida and Cuba.

Previous Federal Actions

On January 24, 2022, we received a petition from The Institute for Regional Conservation, the National Parks Conservation Association, and CBD requesting that the ghost orchid be listed as a threatened species or an endangered species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information Summary

The petitioner provided credible information indicating past and current threats to individuals of the species within multiple subpopulations due to habitat destruction and alteration through hydrological change (Factor A) and other natural or manmade factors such as hurricanes (Factor E). The petition also provided information about threats from recreation and competition from invasive plants (Factor A); poaching and overutilization of recreational areas (Factor B); pest insects (Factor C); sea level rise (Factor E); and overall declining subpopulation numbers (Factor E), although these claims were not evaluated for this finding. The petition also claimed that the existing regulatory mechanisms may be inadequate to address these potential threats (Factor D). We found that the petition provided documentation of potential threats currently occurring within the range of the ghost orchid, and these threats are likely to impact not only individual orchids but also multiple subpopulations, particularly with regard to changes in hydrology.

Finding

Based on our review of the petition and sources cited in the petition, we find that the petition presents substantial scientific or commercial information indicating the petitioned action may be warranted for the ghost orchid due to potential threats associated with habitat destruction and alteration through hydrological change. The petitioners also presented additional information regarding threats due to recreation and competition from invasive plants; poaching and overutilization of recreational areas; pest insects; and sea level rise and hurricanes. We will fully evaluate these other potential threats during our 12-month status review pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R4–ES–2022–0041 under the Supporting Documents section.

Evaluation of a Petition To List the Tall Western Penstemon

Species and Range

Tall western penstemon (*Penstemon hesperius*) is an herbaceous perennial flowering plant found in wetlands in Washington County, Oregon, and Clark County, Washington.

Petition History

On December 4, 2020, we received a petition dated December 3, 2020, from CBD and the Native Plant Society of Oregon, requesting that tall western penstemon be listed as a threatened species or an endangered species and critical habitat be designated for this species under the Act. The petition clearly identified itself as such and included the requisite identification information for the petitioner, required at 50 CFR 424.14(c). This finding addresses the petition.

Evaluation of Information

Tall western penstemon is a valid recognized taxon (Hitchcock and Cronquist 2018, p. 461) with a limited range in Washington County, Oregon, and Clark County, Washington. The species is currently known from five sites, all of which occur on protected public lands. One small population appears to have been extirpated in 2009 as part of a road-widening project (Maffit 2012, p. 49). Although some additional populations may still exist outside of protected sites, any such populations would be vulnerable to ongoing development. The full historical range of the species is unknown, although substantially more suitable habitat likely occurred prior to large-scale habitat alteration for agriculture and urbanization in the Portland-Vancouver Metropolitan Area. Although the narrow range and limited number of populations of tall western penstemon on their own do not necessarily indicate that the species may be at risk of extinction now or in the foreseeable future, the petition presents substantial information indicating that the species faces ongoing potential risks associated with habitat alteration and conversion (Factor A), invasive species (Factor A), genetic isolation (Factor E), and climate change (Factor E).

Finding

We reviewed the petition, sources cited in the petition, and other readily available information. Based on our review of the petition regarding habitat loss or alteration due to wetland development and conversion to agriculture (Factor A), habitat alteration by invasive species (Factor A), effects of climate change (Factor E), and the possible inadequacy of existing regulatory mechanisms to address these threats (Factor D), we find that the petition presents substantial scientific or commercial information indicating that listing the tall western penstemon as a threatened or endangered species

may be warranted. We will fully evaluate these potential threats during our 12-month status review, pursuant to the Act's requirement to review the best available scientific information when making that finding.

The basis for our finding on this petition, and other information regarding our review of the petition, can be found as an appendix at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2022–0071 under the Supporting Documents section.

Conclusion

On the basis of our evaluation of the information presented in the petitions under section 4(b)(3)(A) of the Act, we have determined that the petitions summarized above for the southern population of bog turtle, Pedernales River Springs salamander, ghost orchid, and tall western penstemon present substantial scientific or commercial information indicating that the petitioned actions may be warranted. We are, therefore, initiating status reviews of these species to determine whether the actions are warranted under the Act. At the conclusion of the status reviews, we will issue findings, in accordance with section 4(b)(3)(B) of the Act, as to whether the petitioned actions are not warranted, warranted, or warranted but precluded by pending proposals to determine whether any species is an endangered species or a threatened species.

Authors

The primary authors of this document are staff members of the Ecological Services Program, U.S. Fish and Wildlife Service.

Authority

The authority for these actions is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–22643 Filed 10–18–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

[Docket No. FWS–R1–ES–2019–0096; FF09E21000 FXES1111090FEDR223]

Endangered and Threatened Wildlife and Plants; Withdrawal of the Not-Warranted Finding for Endangered or Threatened Status for the North Oregon Coast Distinct Population Segment of Red Tree Vole

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notification of withdrawal of petition finding and initiation of status review.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), notify the public that we are withdrawing our December 19, 2019, not-warranted 12-month finding for the north Oregon coast distinct population segment (DPS) of red tree vole (*Arborimus longicaudus*) under the Endangered Species Act of 1973, as amended (Act). This document returns the north Oregon coast DPS of red tree vole to our candidate list. We are initiating a new status review of the north Oregon coast DPS of red tree vole to determine whether it meets the definition of an endangered or threatened species under the Act and requesting new information on the DPS's distribution and abundance, its habitat, conservation efforts for it, or its threats for consideration in the new 12-month finding.

DATES: Although we welcome new information submissions at any time, to ensure that we can fully consider your information in the new status assessment, please submit it on or before November 18, 2022.

ADDRESSES:

Document availability: You may obtain copies of the December 19, 2019, 12-month finding and supporting documents on the internet at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2019–0096, or by mail from the Oregon Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

New information submission: You may submit new information regarding the north Oregon coast DPS of red tree vole by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R1–ES–2019–0096, which is the docket number for this document. Then, click on the Search button. On the resulting page, in the panel on the left side of the screen, under the Document Type heading, check the Proposed Rule box to locate this document. You may submit information by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R1–ES–2019–0096, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you submit new information only by the methods described above. We will post all submissions on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Public Availability of Comments, below, for more information).

FOR FURTHER INFORMATION CONTACT: Craig Rowland, Acting State Supervisor, Oregon Fish and Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266; telephone (503) 231–6179. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Species Information

Please refer to the 2019 not-warranted 12-month finding (84 FR 69707; December 19, 2019) and supporting documents available at *https://www.regulations.gov* under Docket No. FWS–R1–ES–2019–0096 for more detailed information about the Oregon coast DPS of red tree vole's taxonomy, life history, habitat and food requirements, and geographic range and distribution. Please also refer to our 2011 warranted-but-precluded 12-month finding (76 FR 63720; October 13, 2011) on a petition to list the north Oregon coast DPS of red tree vole for a detailed evaluation of this DPS under our DPS policy. Our DPS policy published in the **Federal Register** on February 7, 1996 (61 FR 4722).

Red tree voles (*Arborimus longicaudus*) are small, mouse-sized rodents that live in conifer forests and spend almost all their time in the tree canopy. They are one of the few animals that can persist on a diet of conifer needles, their principal food. Red tree voles are endemic to the humid, coniferous forests of western Oregon (generally west of the crest of the

Cascade Range) and northwestern California (north of the Klamath River). The north Oregon coast DPS of red tree vole comprises that portion of the Oregon Coast Range from the Columbia River south to the Siuslaw River. Red tree voles demonstrate strong selection for nesting in older conifer forests.

Previous Federal Actions

On June 18, 2007, we received a petition from Center for Biological Diversity, Oregon Chapter of the Sierra Club, Audubon Society of Portland, Cascadia Wildlands Project, and OregonWild to list the dusky tree vole (*Arborimus longicaudus silvicola*) as endangered or threatened throughout its range under the Act (16 U.S.C. 1531 *et seq.*). The petitioners also gave the Service two other listing options to consider if we determined that the subspecies was not a valid listable entity: (1) List the north Oregon coast population of the red tree vole (*A. longicaudus*) as a DPS, or (2) List the red tree vole throughout all its range because it is endangered or threatened in a significant portion of its range.

On October 28, 2008, we published a 90-day finding in the **Federal Register** (73 FR 63919) concluding that the petition presented substantial information indicating that listing the north Oregon coast DPS of the red tree vole may be warranted, and we initiated a status review. During that review, the best available scientific and commercial data led us to conclude that the dusky tree vole is not a valid subspecies for the purpose of our analysis, and we, therefore, focused our analysis on the north Oregon coast population of the red tree vole.

On October 13, 2011, we published in the **Federal Register** (76 FR 63720) a 12-month finding in which we stated that listing the north Oregon coast population of the red tree vole as a DPS was warranted primarily due to habitat loss. However, listing was precluded at that time by higher priority actions, and the DPS of the red tree vole was added to our candidate species list.

From 2012 through 2016, we addressed the status of the north Oregon coast DPS of the red tree vole annually in our candidate notice of review, with the determination that listing was warranted but precluded (see 77 FR 69994, November 21, 2012; 78 FR 70104, November 22, 2013; 79 FR 72450, December 5, 2014; 80 FR 80584, December 24, 2015; 81 FR 87246, December 2, 2016). Our 2019 candidate notice of review (84 FR 54732; October 10, 2019) retained that determination but also stated that we were working on a thorough review of all available data for the DPS.

On December 19, 2019, after completing a species status assessment, we published in the **Federal Register** (84 FR 69707) a 12-month finding determining that the north Oregon coast DPS of the red tree vole was not warranted for listing as endangered or threatened under the Act.

The petitioners filed a complaint in March 2021, challenging our December 19, 2019, not-warranted finding. We reached a settlement agreement with the petitioners, which was approved by the court on May 23, 2022, to reconsider our not-warranted finding and to develop a new 12-month finding as to whether the north Oregon coast DPS of the red tree vole warrants listing as an endangered or threatened species.

This Document

In accordance with the settlement agreement mentioned above, we are withdrawing our December 19, 2019, 12-month finding determining that the north Oregon coast DPS of the red tree vole is not warranted for listing as endangered or threatened under the Act (84 FR 69707). The withdrawal returns the north Oregon coast DPS of red tree vole to our candidate list, and the status of the DPS under the Act has, therefore, reverted to that of a candidate species for the purposes of consultation under section 7 of the Act.

We are initiating a new status review of the north Oregon coast DPS of the red tree vole to determine whether this DPS meets the definition of an endangered or threatened species under the Act, or whether the DPS is not warranted for listing. Under the settlement agreement, we will submit to the **Federal Register** a new 12-month finding on the status of the DPS by January 31, 2024.

Request for Information

We are requesting the submission of any further information pertaining to the north Oregon coast DPS of red tree vole that has become available since, or was not considered in, the 2019 status review. While we will accept new information on the red tree vole at any time, we request that new information be submitted no later than the date specified above under **DATES** to provide adequate time to incorporate it into our status review. We are particularly interested in the following types of information pertaining to the north Oregon coast DPS of red tree vole:

(1) Distribution, ecology, and life history of the DPS, including habitat needs and requirements for reproduction, growth, nutrition, and dispersal;

(2) Positive and negative survey information on the DPS;

(3) Potential stressors to the DPS or its habitat, including the threat of catastrophic wildfire;

(4) Ongoing and planned activities or projects in the areas occupied by the DPS, and possible impacts of these activities on the DPS;

(5) Whether there are any areas outside the area currently known to be occupied by the DPS that may be important to its conservation; and

(6) Past, current, and future conservation actions or management practices that may benefit the DPS or its habitat.

We will consider new information submitted to us in our new 12-month finding for the north coast DPS of the red tree vole. You may submit new information and materials by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

Public Availability of Comments

Before including your address, phone number, email address, or other personal identifying information in your submission, be advised that your entire submission—including your personal identifying information—may be made publicly available at any time. Although you can ask us in your submission to withhold from public review your personal identifying information, we cannot guarantee that we will be able to do so.

Authors

The primary authors of this notice are staff members of the Pacific Regional Office, U.S. Fish and Wildlife Service.

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Stephen Guertin,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 2022–22642 Filed 10–18–22; 8:45 am]

BILLING CODE 4333–15–P

Notices

Federal Register
Vol. 87, No. 201
Wednesday, October 19, 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; Notice of Request for Emergency Approval

In compliance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Department of Agriculture (USDA) has submitted a request to the Office of Management and Budget (OMB) for a six-month emergency approval of the following information collections: ICR 0596–NEW, Infrastructure Investment and Jobs Act Financial Assistance to Facilities that Purchase and Process Byproducts for Ecosystem Restoration (CFDA 10.725) Wood Products Infrastructure Assistance (WPIA) and the Temporary Bridge Funding Opportunity (TBFO) Program. The requested approval would enable the implementation of these programs to begin.

Forest Service

Title: Infrastructure Investment and Jobs Act Financial Assistance to Facilities that Purchase and Process Byproducts for Ecosystem Restoration (CFDA 10.725) Wood Products Infrastructure Assistance (WPIA).

OMB Control Number: 0596–NEW.

Summary of Collection: USDA Forest Service is delivering the Wood Products Infrastructure Assistance (WPIA) as part of the Bipartisan Infrastructure Law. Section 40804(b)3 of the Infrastructure Investment and Jobs Act Public Law 117–58 (11/15/2021) directs the USDA Forest Service to provide financial assistance to an entity seeking to establish, reopen, expand, or improve a sawmill or other wood processing facility in close proximity to a unit of federal or Indian land that has been identified as high or very high priority for ecological restoration. According to 2 CFR part 200 and Forest Service Handbook 1509.11, chapter 20, there is certain narrative and budget information required for the Agency to determine if the project meets the legislative requirements and if the costs are reasonable, allocable, allowable, and necessary for the project. In particular, collection of information is necessary to ascertain if applicants seeking financial assistance do in fact operate facilities in close proximity to a unit of federal or Indian land that has been identified as high or very high priority for ecological restoration.

Forest Service

Title: Temporary Bridge Funding Opportunity (TBFO) Program.

OMB Control Number: 0596–NEW.

Summary of Collection: USDA Forest Service is delivering the Temporary Bridge Funding Opportunity (TBFO) Program as part of the Bipartisan Infrastructure Law. Section 40804(b)5 of the Infrastructure Investment and Jobs Act Public Law 117–58 (11/15/2021) directs the Forest Service to provide funding for States and Indian Tribes to establish rental programs for portable skidder bridges, bridge mats, or other temporary water crossing structures, to minimize stream bed disturbance on non-Federal land and Federal land. According to 2 CFR part 200 and Forest Service Handbook 1509.11, chapter 20, prescribes administrative requirements and processes applicable to all Forest Service domestic and international Federal Financial Assistance awards to State and local governments, institutions of higher education, hospitals, private profit and nonprofit organizations, individuals, and foreign recipients. In particular, collection of information is necessary to ascertain the required needs of applicants to initiate a temporary bridge program to protect water resources and reduce water quality degradation during forestry related operations requiring temporary water resource crossings.

Levi S. Harrell,

Departmental Information Collection Clearance Officer.

[FR Doc. 2022–22641 Filed 10–18–22; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

[Docket No. RHS–22–SFH–0017]

60-Day Notice of Proposed Information Collection: Direct Single Family Housing Loans and Grants HB–1–3550, and HB–2–3550; OMB Control No.: 0575–0172

AGENCY: Rural Housing Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the United States Department of Agriculture (USDA) Rural Housing Service (RHS or Agency) announces its' intention to request a revision of a currently approved information collection and invites comments on this information collection.

DATES: Comments on this notice must be received by December 19, 2022 to be assured of consideration.

ADDRESSES: Comments may be submitted by the Federal eRulemaking Portal: Go to *http://www.regulations.gov* and, in the ''Search Field'' box, labeled ''Search for Rules, Proposed Rules, Notices, or Supporting Documents,'' enter the following docket number: (RHS–22–SFH–0017). To submit or view public comments, click the ''Search'' button, select the ''Documents'' tab, then select the following document title: (Direct Single Family Housing Loans and Grants HB–1–3550, and HB–2–3550)) from the ''Search Results,'' and select the ''Comment'' button. Before inputting your comments, you may also review the ''Commenter's Checklist'' (optional). Insert your comments under the ''Comment'' title, click ''Browse'' to attach files (if available). Input your email address and select ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link.

FOR FURTHER INFORMATION CONTACT: MaryPat Daskal, Chief, Branch 1, Rural Development Innovation Center—Regulations Management Division, United States Department of Agriculture, 1400 Independence Avenue SW, South Building, Washington, DC 20250–1522. Telephone: (202) 720–7853. Email *MaryPat.Daskla@usda.gov.*

SUPPLEMENTARY INFORMATION: The Office of Management and Budget's (OMB) regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies the following information collection that RHS is submitting to OMB as a revision to an existing collection with Agency adjustment.

Title: 7 CFR part 3550, Direct Single Family Housing Loans and Grant Programs, HB–1–3550, and HB–2–3550.

OMB Control Number: 0572–0172.

Expiration Date of Approval: February 28, 2025.

Type of Request: Revision of a currently approved information collection.

Estimate of Burden: Public reporting for this collection of information is estimated to average .5 hours per response.

Respondents: Individual applicants seeking direct single family housing loan and grants.

Estimated Number of Respondents: 647,777.

Estimated Number of Responses per Respondent: 1.

Estimated Total Number of Responses: 647,777.

Estimated Total Annual Burden on Respondents: 310,496 hours.

Abstract: Through its direct single family housing loan and grant programs (specifically the sections 502 and 504 programs), RHS provides eligible applicants with financial assistance to own adequate but modest homes in rural areas. The financing and servicing are provided directly by RHS. The section 502 direct loan program provides 100 percent loan financing to assist low- and very low-income applicants purchase modest homes in eligible rural areas by providing payment assistance to increase an applicant's repayment ability. The section 504 loan program provides one percent interest rate loans to very low-income homeowners in eligible rural areas to repair, improve, or modernize their home or to remove health and safety hazards. The section 504 grant program provides grants to elderly very low-income homeowners in eligible rural areas to remove health and safety hazards, or accessibility barriers from their home, often in conjunction with a section 504 loan.

This revision includes an increase in the number of burden hours from 305,646 hours to 310,496 hours. This change is attributed to the adding of a newly simplified section 504-intake form and prequalification process. This form is necessary and will increase program usage while relieving applicant's burden. The reporting burden covered by this collection of information consists of forms, documents, and written burden to support a request for funding for a Direct Single Family Housing Loan and Grant Program.

Applicants must provide the Agency with a uniform residential loan application and supporting documentation (*e.g.,* verification of income, assets, liabilities, etc.) when applying for assistance. The information requested regarding the applicant and the property is vital in order for the Agency to make sound eligibility and underwriting decisions that comply with the laws and regulations that govern the programs. The information requested is comparable to that required by any public or private mortgage lender.

When servicing loans, RHS offers servicing options that are standard to the industry. In addition, RHS offers unique servicing options (*e.g.,* payment subsidies and payment moratoriums) and is required to take unique servicing actions (*e.g.,* review borrowers for their ability to refinance with private credit). Borrowers must provide the Agency with pertinent information when a servicing option/action is requested/required in order for the Agency to make sound servicing decisions that comply with the laws and regulations that govern the programs.

Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

(b) the accuracy of the agency's estimate of the burden of the collection of information including the validity of the methodology and assumptions used.

(c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Copies of this information collection can be obtained from Arlette Mussington, Rural Development Innovation Center—Regulations Management Division, at (202) 720–7853. Email: *arlette.mussington@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2022–22669 Filed 10–18–22; 8:45 am]

BILLING CODE 3410–XV–P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1 p.m. MT on Thursday, December 1, 2022, to discuss the Committee's project proposal on housing discrimination in the state.

DATES: The meeting will take place on Thursday, December 1, 2022, from 1:00 p.m.–2:30 p.m. MT.

Link To Join (Audio/Visual): https://tinyurl.com/4uydj7yw.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 051 8547.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To

request additional accommodations, please email *kfajota@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Wyoming Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Discussion: Housing Discrimination
III. Next Steps
IV. Public Comment
V. Adjournment

Dated: October 13, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22650 Filed 10–18–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the Wyoming Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the Wyoming Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 1 p.m. MT on Monday, October 31, 2022, to discuss the Committee's project proposal on housing discrimination in the state.

DATES: The meeting will take place on Monday, October 31, 2022, from 1 p.m.–2:30 p.m. MT.

ADDRESSES:

Link to Join (Audio/Visual): https://tinyurl.com/5hetv5t3.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 161 552 0101.

FOR FURTHER INFORMATION CONTACT: Kayla Fajota, DFO, at *kfajota@usccr.gov* or (434) 515–2395.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *kfajota@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received in the regional office within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit Office, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, Wyoming Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Discussion: Housing Discrimination
III. Next Steps
IV. Public Comment
V. Adjournment

Dated: October 13, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22648 Filed 10–18–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 3:00 p.m. ET on Wednesday, November 2, 2022, to discuss their report on Legal Financial Obligations in the state.

DATES: The meeting will take place on Wednesday, November 2, 2022, from 3:00 p.m.–4:30 p.m. ET.

Link To Join (Audio/Visual): https://tinyurl.com/3uknn9e7.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 788 6212.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *vmoreno@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit,

as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: October 13, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22652 Filed 10–18–22; 8:45 am]

BILLING CODE P

COMMISSION ON CIVIL RIGHTS

Notice of Public Meeting of the North Carolina Advisory Committee to the U.S. Commission on Civil Rights

AGENCY: U.S. Commission on Civil Rights.

ACTION: Announcement of virtual business meeting.

SUMMARY: Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights (Commission) and the Federal Advisory Committee Act, that the North Carolina Advisory Committee (Committee) to the U.S. Commission on Civil Rights will hold a virtual business meeting via Zoom at 2 p.m. ET on Monday, December 5, 2022, to discuss their report on Legal Financial Obligations in the state.

DATES: The meeting will take place on Monday, December 5, 2022, from 2:00 p.m.–3:30 p.m. ET.

Link To Join (Audio/Visual): https://tinyurl.com/mrywssx2.

Telephone (Audio Only): Dial (833) 435–1820 USA Toll Free; Meeting ID: 160 690 9210.

FOR FURTHER INFORMATION CONTACT: Victoria Moreno, DFO, at *vmoreno@usccr.gov* or (434) 515–0204.

SUPPLEMENTARY INFORMATION: Committee meetings are available to the public through the conference link above. Any interested member of the public may listen to the meeting. An open comment period will be provided to allow members of the public to make a statement as time allows. If joining via phone, callers can expect to incur regular charges for calls they initiate over wireless lines, according to their wireless plan. The Commission will not refund any incurred charges. Individuals who are deaf, deafblind, and hard of hearing may also follow the proceedings by first calling the Federal Relay Service at (800) 877–8339 and providing the Service with the conference details found through registering at the web link above. To request additional accommodations, please email *vmoreno@usccr.gov* at least ten (10) days prior to the meeting.

Members of the public are also entitled to submit written comments; the comments must be received within 30 days following the meeting. Written comments may be emailed to Liliana Schiller at *lschiller@usccr.gov.* Persons who desire additional information may contact the Regional Programs Coordination Unit at (312) 353–8311.

Records generated from this meeting may be inspected and reproduced at the Regional Programs Coordination Unit, as they become available, both before and after the meeting. Records of the meeting will be available via *www.facadatabase.gov* under the Commission on Civil Rights, North Carolina Advisory Committee link. Persons interested in the work of this Committee are directed to the Commission's website, *http://www.usccr.gov,* or may contact the Regional Programs Coordination Unit at the above phone number.

Agenda

I. Welcome & Roll Call
II. Committee Discussion
III. Public Comment
IV. Next Steps
V. Adjournment

Dated: October 13, 2022.

David Mussatt,

Supervisory Chief, Regional Programs Unit.

[FR Doc. 2022–22651 Filed 10–18–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Order Temporarily Denying Export Privileges; URAL Airlines JSC, Utrenniy Lane 1-g, Yekaterinburg, Russia 620025

Pursuant to section 766.24 of the Export Administration Regulations, 15 CFR parts 730–774 (2021) (''EAR'' or ''the Regulations''),[1] the Bureau of Industry and Security (''BIS''), U.S. Department of Commerce, through its Office of Export Enforcement (''OEE''), has requested the issuance of an Order temporarily denying, for a period of 180 days, the export privileges under the Regulations of Russian airline URAL Airlines JSC (''URAL''). OEE's request and related information indicates that URAL is headquartered in Yekaterinburg, Russia.

I. Legal Standard

Pursuant to section 766.24, BIS may issue an order temporarily denying a respondent's export privileges upon a showing that the order is necessary in the public interest to prevent an ''imminent violation'' of the Regulations, or any order, license or authorization issued thereunder. 15 CFR 766.24(b)(1) and 766.24(d). ''A violation may be 'imminent' either in time or degree of likelihood.'' 15 CFR 766.24(b)(3). BIS may show ''either that a violation is about to occur, or that the general circumstances of the matter under investigation or case under criminal or administrative charges demonstrate a likelihood of future violations.'' *Id.* As to the likelihood of future violations, BIS may show that the violation under investigation or charge ''is significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' *Id.* A ''lack of information establishing the precise time a violation may occur does not preclude a finding that a violation is imminent, so long as there is sufficient reason to believe the likelihood of a violation.'' *Id.*

II. OEE's Request for a Temporary Denial Order (''TDO'')

The U.S. Commerce Department, through BIS, responded to the Russian Federation's (''Russia's'') further invasion of Ukraine by implementing a sweeping series of stringent export controls that severely restrict Russia's access to technologies and other items

[1] On August 13, 2018, the President signed into law the John S. McCain National Defense Authorization Act for Fiscal Year 2019, which includes the Export Control Reform Act of 2018, 50 U.S.C. 4801–4852 (''ECRA''). While section 1766 of ECRA repeals the provisions of the Export Administration Act, 50 U.S.C. app. 2401 *et seq.* (''EAA''), (except for three sections which are inapplicable here), section 1768 of ECRA provides, in pertinent part, that all orders, rules, regulations, and other forms of administrative action that were made or issued under the EAA, including as continued in effect pursuant to the International Emergency Economic Powers Act, 50 U.S.C. 1701 *et seq.* (''IEEPA''), and were in effect as of ECRA's date of enactment (August 13, 2018), shall continue in effect according to their terms until modified, superseded, set aside, or revoked through action undertaken pursuant to the authority provided under ECRA. Moreover, section 1761(a)(5) of ECRA authorizes the issuance of temporary denial orders. 50 U.S.C. 4820(a)(5).

that it needs to sustain its aggressive military capabilities. These controls primarily target Russia's defense, aerospace, and maritime sectors and are intended to cut off Russia's access to vital technological inputs, atrophy key sectors of its industrial base, and undercut Russia's strategic ambitions to exert influence on the world stage. Effective February 24, 2022, BIS imposed expansive controls on aviation-related (*e.g.,* Commerce Control List Categories 7 and 9) items to Russia, including a license requirement for the export, reexport or transfer (in-country) to Russia of any aircraft or aircraft parts specified in Export Control Classification Number (ECCN) 9A991 (section 746.8(a)(1) of the EAR).[2] BIS will review any export or reexport license applications for such items under a policy of denial. *See* section 746.8(b). Effective March 2, 2022, BIS excluded any aircraft registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia from being eligible for license exception Aircraft, Vessels, and Spacecraft (AVS) (section 740.15 of the EAR).[3] Accordingly, any U.S.-origin aircraft or foreign aircraft that includes more than 25% controlled U.S.-origin content, and that is registered in, owned, or controlled by, or under charter or lease by Russia or a national of Russia, is subject to a license requirement before it can travel to Russia.

OEE's request is based upon facts indicating that URAL engaged in conduct prohibited by the Regulations by operating multiple aircraft subject to the EAR and classified under ECCN 9A991, including but not limited to those below, on international flights, including from Bishkek, Kyrgyzstan; Dushanbe, Tajikistan; Khudzhand, Tajikistan and Tamchy, Kyrgyzstan to Russia after March 2, 2022, without the required BIS authorization. Pursuant to section 746.8 of the EAR, all of these flights would have required export or reexport licenses from BIS. URAL flights would not be eligible to use license exception AVS. No BIS authorizations were either sought or obtained by URAL for these exports or reexports to Russia.

The information about these international and domestic flights includes the following:

Tail No.	Serial No.	Aircraft type	Departure/arrival cities	Dates
RA–73817	5055	A320–232	Bishkek, KG/Samara, RU	October 6, 2022.
RA–73817	5055	A320–232	Dushanbe, TJ/Irkutsk, RU	September 10, 2022.
RA–73817	5055	A320–232	Khudzhand, TJ/Sochi, RU	September 6, 2022.
RA–73817	5055	A320–232	Tamchy, KG/Moscow, RU	September 5, 2022.
RA–73817	5055	A320–232	Bishkek, KG/Yekaterinburg, RU	September 3, 2022.
RA–73817	5055	A320–232	Dushanbe, TJ/Krasnoyarsk, RU	September 1, 2022.
RA–73818	2376	A320–232	Khudzhand, TJ/Yekaterinburg, RU	October 6, 2022.
RA–73818	2376	A320–232	Khudzhand, TJ/Yekaterinburg, RU	September 12, 2022.
RA–73818	2376	A320–232	Dushanbe, TJ/Mineralnye Vode, RU	September 9, 2022.
RA–73818	2376	A320–232	Tamchy, KG/Moscow, RU	September 9, 2022.
RA–73818	2376	A320–232	Dushanbe, TJ/Chelyabinsk, RU	September 5, 2022.
RA–73818	2376	A320–232	Bishkek, KG/Sochi, RU	September 5, 2022.
RA–73844	1941	A321–231	Khudzhand, TJ/Moscow, RU	October 5, 2022.
RA–73844	1941	A321–231	Bishkek, KG/Moscow, RU	September 12, 2022.
RA–73844	1941	A321–231	Khudzhand, TJ/Moscow, RU	September 11, 2022.
RA–73844	1941	A321–231	Bishkek, KG/Moscow, RU	September 8, 2022.
RA–73844	1941	A321–231	Bishkek, KG/Moscow, RU	August 29, 2022.
RA–73844	1941	A321–231	Bishkek, KG/Moscow, RU	August 25, 2022.

Based upon the on-going violations by URAL, there are heightened concerns of future violations of the EAR, especially given that any subsequent actions taken with regard to any of the listed aircraft, or other URAL aircraft exported or reexported to Russia after March 2, 2022, may violate the EAR. Such actions include, but are not limited to, refueling, maintenance, repair, or the provision of spare parts or services. *Id.*

Moreover, additional concerns of future violations of the Regulations are raised by public information on URAL's website, available as of the date of this order, indicating that URAL intends to continue its domestic and international flight routes. Specifically, URAL's website continues to advertise flights within Russia,[4] as well as international flights from Moscow, Russia to Bishkek and Osh, cities in Kyrgyzstan, and Kulyab, Tajikistan.[5] Given BIS's review policy of denial under section 746.8(a) of the Regulations for exports and reexports to Russia, it is foreseeable that URAL will attempt to evade the Regulations in order to obtain new or additional aircraft parts for or service its existing aircraft that were exported or reexported to Russia in violation of section 746.8 of the Regulations in order to continue operating on domestic routes in Russia.

III. Findings

Under the applicable standard set forth in section 766.24 of the Regulations and my review of the entire record, I find that the evidence presented by BIS convincingly demonstrates that URAL took actions in apparent violation of the Regulations by operating the aircraft cited above, among many others, on flights into Russia after March 2, 2022, without the required BIS authorization. Moreover, the continued operation of these aircraft by URAL and the company's on-going need to acquire replacement parts and components, many of which are U.S.-origin, presents a high likelihood of imminent violations warranting imposition of a TDO. I further find that such apparent violations have been ''significant, deliberate, covert and/or likely to occur again, rather than technical or negligent[.]'' Therefore, issuance of the TDO is necessary in the public interest to prevent imminent violation of the Regulations and to give notice to companies and individuals in the United States and abroad that they should avoid dealing with URAL, in connection with export and reexport transactions involving items subject to

[2] 87 FR 12226 (Mar. 3, 2022). Additionally, BIS published a final rule effective April 8, 2022, which imposed licensing requirements on items controlled on the Commerce Control List (''CCL'') under Categories 0–2 that are destined for Russia or Belarus. Accordingly, now all CCL items require export, reexport, and transfer (in-country) licenses if destined for or within Russia or Belarus. 87 FR 22130 (Apr. 14, 2022).

[3] 87 FR 13048 (Mar. 8, 2022).

[4] *https://www.uralairlines.ru/en/special_offers/#42905.*

[5] *https://www.uralairlines.ru/en/special_offers/#8188.*

the Regulations and in connection with any other activity subject to the Regulations.

This Order is being issued on an *ex parte* basis without a hearing based upon BIS's showing of an imminent violation in accordance with section 766.24 and 766.23(b) of the Regulations.

IV. Order

It is therefore ordered:

First, URAL Airlines JSC, Utrenniy Lane 1-g, Yekaterinburg, Russia 620025 when acting for or on their behalf, any successors or assigns, agents, or employees may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology (hereinafter collectively referred to as ''item'') exported or to be exported from the United States that is subject to the EAR, or in any other activity subject to the EAR including, but not limited to:

A. Applying for, obtaining, or using any license (except directly related to safety of flight), license exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations, or engaging in any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

C. Benefitting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations.

Second, that no person may, directly or indirectly, do any of the following:

A. Export, reexport, or transfer (in-country) to or on behalf of URAL any item subject to the EAR except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

B. Take any action that facilitates the acquisition or attempted acquisition by URAL of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby URAL acquires or attempts to acquire such ownership, possession or control except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from URAL of any item subject to the EAR that has been exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations;

D. Obtain from URAL in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and which is owned, possessed or controlled by URAL, or service any item, of whatever origin, that is owned, possessed or controlled by URAL if such service involves the use of any item subject to the EAR that has been or will be exported from the United States except directly related to safety of flight and authorized by BIS pursuant to section 764.3(a)(2) of the Regulations. For purposes of this paragraph, servicing means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any other person, firm, corporation, or business organization related to URAL by ownership, control, position of responsibility, affiliation, or other connection in the conduct of trade or business may also be made subject to the provisions of this Order.

In accordance with the provisions of sections 766.24(e) of the EAR, URAL may, at any time, appeal this Order by filing a full written statement in support of the appeal with the Office of the Administrative Law Judge, U.S. Coast Guard ALJ Docketing Center, 40 South Gay Street, Baltimore, Maryland 21202–4022.

In accordance with the provisions of section 766.24(d) of the EAR, BIS may seek renewal of this Order by filing a written request not later than 20 days before the expiration date. A renewal request may be opposed by URAL as provided in section 766.24(d), by filing a written submission with the Assistant Secretary of Commerce for Export Enforcement, which must be received not later than seven days before the expiration date of the Order.

A copy of this Order shall be provided to URAL and shall be published in the **Federal Register**.

This Order is effective immediately and shall remain in effect for 180 days.

Matthew S. Axelrod,

Assistant Secretary of Commerce for Export Enforcement.

[FR Doc. 2022–22675 Filed 10–18–22; 8:45 am]

BILLING CODE 3510–DT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice Requesting Nominations for the Advisory Committee on Commercial Remote Sensing

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Request for membership nominations.

SUMMARY: The Department of Commerce is seeking 3 to 5 representatives of key stakeholders in the commercial space-based remote sensing industry and among users of space-based remote sensing data to serve on the Advisory Committee on Commercial Remote Sensing (ACCRES). The Committee is comprised of representatives of leaders in the commercial space-based remote sensing industry, space-based remote sensing data users, government, and academia. The **SUPPLEMENTARY INFORMATION** section of this notice provides committee and membership criteria.

FOR FURTHER INFORMATION CONTACT: Tashaun Pierre, Commercial Remote Sensing Regulatory Affairs Office, NOAA Satellite and Information Services, telephone (301) 713–7047, email *Tashaun.pierre@noaa.gov.*

SUPPLEMENTARY INFORMATION: ACCRES was established by the Secretary of Commerce on May 21, 2002, to advise the Secretary, through the Under Secretary of Commerce for Oceans and Atmosphere, on matters relating to the U.S. commercial remote sensing industry and NOAA's activities to carry out responsibilities of the Department of Commerce as set forth in the National and Commercial Space Programs Act of 2010 (the Act), Title 51 U.S.C. 60101 *et seq.*

Committee members serve in a representative capacity for a term of two years and may serve additional terms, if reappointed. No more than 20 individuals at a time may serve on the Committee. ACCRES will have a fairly

balanced membership consisting of approximately 9 to 20 members. Nominations are encouraged from all interested U.S. persons and organizations representing interests affected by the regulation of remote sensing. Nominees must represent stakeholders in remote sensing, space commerce, space policy, or a related field and be able to attend committee meetings that are held usually two times per year. Membership is voluntary, and service is without pay. Each nomination that is submitted should include the proposed committee member's name and organizational affiliation, a brief description of the nominee's qualifications and interest in serving on the Committee, a curriculum vitae or resume of the nominee, and no more than three supporting letters describing the nominee's qualifications and interest in serving on the Committee. Self-nominations are acceptable. The following contact information should accompany each submission: the nominee's name, address, phone number, and email address.

Nominations should be sent to Alan Robinson, Acting Director, Commercial Remote Sensing Regulatory Affairs Office, email *CRSRA@noaa.gov.* Nominations must be emailed no later than 30 days from the publication date of this notice. Please include affiliation, home address and business address for each nominee. The full text of the Committee Charter and its current membership can be viewed at the Agency's web page at: *https://www.nesdis.noaa.gov/commercial-space/regulatory-affairs/advisory-committee-commercial-remote-sensing.*

Stephen M. Volz,

Assistant Administrator for Satellite and Information Services.

[FR Doc. 2022–22649 Filed 10–18–22; 8:45 am]

BILLING CODE 3510–HR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XC460]

Programmatic Environmental Impact Statement for the NMFS Saltonstall-Kennedy Research and Development Program

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

ACTION: Notice of availability.

SUMMARY: NOAA announces the availability of its Final Programmatic Environmental Impact Statement (PEIS) which analyzes the potential environmental impacts of the implementation of projects that foster the promotion, marketing, research, and development of U.S. Fisheries and their associated fishing sectors, as consistent with NOAA's Saltonstall-Kennedy Research and Development Program (S–K Program). The focus of this action is on activities and projects under the S–K Program, which interfaces with numerous programs within NOAA, and it is NOAA's intention that this PEIS may also cover those activities and projects implemented by other NOAA programs and offices that are consistent with the scope of the S–K Program. In preparing the Final PEIS, NOAA has considered public comments received on the Draft PEIS, which was published in April 2022.

DATES: NOAA will publish a Record of Decision no sooner than 30 days after publication of the U.S. Environmental Protection Agency's Notice of Availability for this Final PEIS on the S–K website.

ADDRESSES: The Final PEIS is available at the NOAA website at the following link: *https://www.fisheries.noaa.gov/content/saltonstall-kennedy-research-and-development-program.*

FOR FURTHER INFORMATION CONTACT: Cliff Cosgrove, Saltonstall-Kennedy Program Manager, telephone: (301–427–8736); *nmfs.sk.peis@noaa.gov;* or visit the S–K Program website*: https://www.fisheries.noaa.gov/content/saltonstall-kennedy-research-and-development-program.*

SUPPLEMENTARY INFORMATION: The Final PEIS was developed to identify and evaluate the general impacts, issues and concerns related to the implementation of the types of projects that are consistent with the scope of the S–K Program. The S–K Program funds projects that address the needs of fishing communities, optimize economic benefits by building and maintaining sustainable fisheries (where the term ''fisheries'' includes commercial wild capture, recreational fishing, cultural and subsistence fishing, and marine aquaculture), and increase other opportunities to keep working waterfronts viable. The PEIS will be used to support site- and project-specific National Environmental Policy Act (NEPA) reviews, as necessary. The PEIS addresses all of the priorities and their associated project types that the S–K Program has funded since 2010, which cover the range of priorities and project types that fall under the S–K Program. The affected environment associated with the proposed action includes all marine, estuarine, and coastal habitats in the United States and territories. It also includes freshwater interior habitats that influence or affect rivers, streams, and creeks affecting marine or estuarine waters, or that support migratory fish populations. It may also include adjacent or continuous habitats in Canada or Mexico that support living coastal and marine resources under NOAA trusteeship.

The Final PEIS considers comments made on the Draft PEIS that officially began on May 13, 2022 and ended on June 27, 2022. Based on the information provided in the Final PEIS, NOAA has identified the continued operation and active management for Promotion, Marketing, Research, and Development of the S–K Program as the preferred alternative.

This notice initiates a public review period for the Final PEIS. For more information about the S–K Program, please use the link provided in the **FOR FURTHER INFORMATION CONTACT** section above.

Authority: This PEIS was prepared under the authority of, and in accordance with, the requirements of NEPA, implementing regulations published by the Council on Environmental Quality (40 CFR 1500–1508), other applicable regulations, and NOAA's policies and procedures for compliance with those regulations.

Dated: October 13, 2022.

Daniel A. Namur,

Director of the NMFS Financial Assistance Division, National Marine Fisheries Service.

[FR Doc. 2022–22689 Filed 10–18–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Highly Migratory Species Vessel Logbooks and Cost-Earnings Data Reports

AGENCY: National Oceanic & Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of information collection, request for comments.

SUMMARY: The Department of Commerce, in accordance with the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to comment on proposed, and continuing, information

collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. The purpose of this notice is to allow for 60 days of public comment preceding submission of the collection to OMB.

DATES: To ensure consideration, comments regarding this proposed information collection must be received on or before December 19, 2022.

ADDRESSES: Interested persons are invited to submit written comments to Adrienne Thomas, NOAA PRA Officer, at *Adrienne.thomas@noaa.gov.* Please reference OMB Control Number 0648–0371 in the subject line of your comments. Do not submit Confidential Business Information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or specific questions related to collection activities should be directed to Cliff Hutt, NOAA Fisheries Highly Migratory Species Management Division, 13–15 East-West Highway, Silver Spring, MD 20910; (301) 427–8503; or *Cliff.Hutt@noaa.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This request is for extension without revision of a current information collection (ICR). This request is being submitted early in anticipation of a proposed rulemaking that will modify the reporting requirements but will not be finalized before the current ICR expiration date. Under the provisions of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), the NOAA's National Marine Fisheries Service (NMFS) is responsible for management of the nation's marine fisheries. In addition, NMFS must comply with the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*), under which the agency implements binding recommendations by the International Commission for the Conservation of Atlantic Tunas (ICCAT).

NMFS collects information via vessel logbooks to monitor the U.S. catch of Atlantic swordfish, sharks, billfish, and tunas in relation to the quotas, thereby ensuring that the United States complies with its domestic and international obligations. The Highly Migratory Species (HMS) logbook program, OMB Control No. 0648–0371, was specifically designed to collect the vessel-level information needed for the management of Atlantic HMS, and includes set forms, trip forms, negative reports, and cost-earning requirements for both commercial and recreational vessels. The information supplied through the HMS logbook program provides the catch and effort data on a per-set or per-trip level of resolution for both directed and incidental species. In addition to HMS fisheries, the HMS logbook program is also used to report catches of dolphin and wahoo by commercial permit holders that do not hold any other federal permits. Additionally, the HMS logbook collects data on incidental species, such as sea turtles, which is necessary to evaluate the fisheries in terms of bycatch and encounters with protected species. While most HMS fishermen use the HMS logbook program, HMS can also be reported as part of several other logbook collections including the Northeast Region Fishing Vessel Trip Reports (0648–0212) and Southeast Region Coastal Logbook (0648–0016).

These data are necessary to assess the status of HMS, dolphin, and wahoo in each fishery. International stock assessments for tunas, swordfish, billfish, and some species of sharks are conducted through ICCAT's Standing Committee on Research and Statistics periodically and provide, in part, the basis for ICCAT management recommendations, which become binding on member nations. Domestic stock assessments for most species of sharks and for dolphin and wahoo are used as the basis of managing these species.

Supplementary information on fishing costs and earnings has been collected via the HMS logbook program. This economic information enables NMFS to assess the economic impacts of regulatory programs on small businesses and fishing communities, consistent with the National Environmental Policy Act (NEPA), Executive Order 12866, the Regulatory Flexibility Act, and other domestic laws.

II. Method of Collection

Paper logbooks have historically been the primary mode of reporting, but electronic logbooks, including mobile applications, will be offered on a voluntary basis for the HMS logbook in the near future.

III. Data

OMB Control Number: 0648–0371.

Form Number(s): NOAA Form 88–191.

Type of Review: Regular submission (renewal of a current information collection).

Affected Public: Business or other for-profit (vessel owners).

Estimated Number of Respondents: 5,513.

Estimated Time per Response: 30 minutes for cost/earnings summaries attached to logbook reports, 30 minutes for annual expenditure forms, 12 minutes for logbook catch trip and set reports, 2 minutes for negative logbook catch reports.

Estimated Total Annual Burden Hours: 21,304.

Estimated Total Annual Cost to Public: $95 in recordkeeping/reporting costs.

Respondent's Obligation: Mandatory.

Legal Authority: Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*), and the Atlantic Tunas Convention Act of 1975 (16 U.S.C. 971 *et seq.*).

IV. Request for Comments

We are soliciting public comments to permit the Department/Bureau to: (a) Evaluate whether the proposed information collection is necessary for the proper functions of the Department, including whether the information will have practical utility; (b) Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used; (c) Evaluate ways to enhance the quality, utility, and clarity of the information to be collected; and (d) Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you may ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Sheleen Dumas,

Department PRA Clearance Officer, Office of the Chief Information Officer, Commerce Department.

[FR Doc. 2022–22693 Filed 10–18–22; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Public Meetings for Recommending a National Estuarine Research Reserve Site[s] in the Atchafalaya River Area of Louisiana

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce

ACTION: Public meeting notice.

SUMMARY: Notice is hereby given that two public meetings will be held for the purpose of providing information and receiving comments on the preliminary recommendation by the State of Louisiana that portions of the Atchafalaya River area be proposed to NOAA for designation as a National Estuarine Research Reserve.

DATES: The in-person public meeting will be held at 5 p.m. Central Time on November 2, 2022, in the Morgan City Auditorium (728 Myrtle Street, Morgan City, Louisiana 70380). The virtual public meeting will be held at 5 p.m. Central Time on November 3, 2022, at the following link: *meet.google.com/gya-dsaj-eob.* Participants may also join the meeting by phone by using this toll-free number +1 470 485 8283, and meeting ID 749 865 797#.

ADDRESSES: Both public meetings will present the same information.

The State agency holding the meetings is the Louisiana Coastal Protection and Restoration Authority. NOAA's Office for Coastal Management will assist with the meetings.

This meeting will present the State's proposed nomination. Detailed information on the proposed site can be found on the following website: *https://www.laseagrant.org/deltanerr/.*

A presentation about the proposal and the National Estuarine Research Reserve System will be provided at both meetings. The views of interested persons and organizations regarding the proposed nomination are solicited. This information may be expressed verbally and in written statements. Written comments may also be sent to: Louisiana Coastal Protection and Restoration Authority, at *coastal@la.gov.* All written comments must be received no later than seven days following the public meetings [November 10, 2022]. All comments received will be considered by the state when formally nominating a site or sites to NOAA.

FOR FURTHER INFORMATION CONTACT: Ms. Erica Seiden, Office for Coastal Management, National Ocean Service, NOAA, 1305 East West Highway, N/OCM, Silver Spring, MD 20910 or Email: *erica.seiden@noaa.gov.*

SUPPLEMENTARY INFORMATION: The research reserve system is a Federal and State partnership program administered by the Federal government, specifically NOAA. The research reserve system currently has 30 sites and protects more than 1.3 million acres of estuarine and Great Lakes habitat for long-term research, monitoring, education, and stewardship. Established by the Coastal Zone Management Act of 1972, each reserve is managed by a lead State agency or university, with input from local partners. NOAA provides partial funding and national programmatic guidance.

This particular site selection effort is a culmination of several years of local, grassroots-support for a research reserve in Louisiana. The proposed site[s] presented at this meeting follow a comprehensive evaluation process that sought the views of the public, affected landowners, and other interested parties. State and local agency representatives, Tribal nations, as well as estuarine experts, served as committee members and evaluated site proposals.

Keelin S. Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2022–22710 Filed 10–18–22; 8:45 am]

BILLING CODE 3510–JE–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Credit Union Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Credit Union Advisory Council (CUAC or Council) of the Consumer Financial Protection Bureau (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, November 3, 2022, from approximately 1:00 p.m. to 5:00 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Section for Advisory Board and Councils, Office of Stakeholder Management, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CUAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Director established the Credit Union Advisory Council under agency authority.

Section 3 of the CUAC Charter states: ''The purpose of the CUAC is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to credit unions with total assets of $10 billion or less.''

II. Agenda

The CUAC will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CUAC members for consideration. Individuals who wish to join this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_5cquaM1xPpg9pFc,* by noon, November 2, 2022. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday, November 2, 2022, via *consumerfinance.gov.* Individuals

should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2022–22459 Filed 10–18–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Consumer Advisory Board Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Consumer Advisory Board (CAB or Board) of the Consumer Financial Protection Bureau (Bureau). The notice also describes the functions of the Board.

DATES: The meeting date is Wednesday, November 2, 2022, from approximately 1:00 p.m. to 5:00 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Section for Advisory Board and Councils, Office of Stakeholder Management, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 3 of the Charter of the Board states that: The purpose of the CAB is outlined in section 1014(a) of the Dodd-Frank Act, which states that the CAB shall ''advise and consult with the Bureau in the exercise of its functions under the Federal consumer financial laws'' and ''provide information on emerging practices in the consumer financial products or services industry, including regional trends, concerns, and other relevant information.''

To carry out the CAB's purpose, the scope of its activities shall include providing information, analysis, and recommendations to the Bureau. The CAB will generally serve as a vehicle for trends and themes in the consumer finance marketplace for the Bureau. Its objectives will include identifying the impact on consumers and other market participants of new, emerging, and changing products, practices, or services.

II. Agenda

The CAB will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CAB members for consideration. Individuals who wish to join this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_4Mie024lGoE737M,* by noon, November 1, 2022. Members of the public must RSVP by the due date.

III. Availability

The Board's agenda will be made available to the public on Tuesday, November 1, 2022, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2022–22460 Filed 10–18–22; 8:45 am]

BILLING CODE 4810–AM–P

BUREAU OF CONSUMER FINANCIAL PROTECTION

Community Bank Advisory Council Meeting

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), this notice sets forth the announcement of a public meeting of the Community Bank Advisory Council (CBAC or Council) of the Consumer Financial Protection Bureau (Bureau). The notice also describes the functions of the Council.

DATES: The meeting date is Thursday, November 3, 2022, from approximately 1:00 p.m. to 5:00 p.m. eastern daylight time. This meeting will be held virtually and is open to the general public. Members of the public will receive the agenda and dial-in information when they RSVP.

FOR FURTHER INFORMATION CONTACT: Kim George, Outreach and Engagement Associate, Section for Advisory Board and Councils, Office of Stakeholder Management, at 202–450–8617, or email: *CFPB_CABandCouncilsEvents@cfpb.gov.* If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Section 2 of the CBAC Charter provides that pursuant to the executive and administrative powers conferred on the Bureau by section 1012 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Director established the Community Bank Advisory Council under agency authority.

Section 3 of the CBAC Charter states: ''The purpose of the CBAC is to advise the Bureau in the exercise of its functions under the Federal consumer financial laws as they pertain to community banks with total assets of $10 billion or less.''

II. Agenda

The CBAC will discuss broad policy matters related to the Bureau's Unified Regulatory Agenda and general scope of authority.

Persons who need a reasonable accommodation to participate should contact *CFPB_504Request@cfpb.gov,* 202–435–9EEO, 1–855–233–0362, or 202–435–9742 (TTY) at least ten (10) business days prior to the meeting or event to request assistance. The request must identify the date, time, location, and title of the meeting or event, the nature of the assistance requested, and contact information for the requester. The Bureau will strive to provide but cannot guarantee that accommodation will be provided for late requests.

Written comments will be accepted from interested members of the public

and should be sent to *CFPB_CABandCouncilsEvents@cfpb.gov,* a minimum of seven (7) days in advance of the meeting. The comments will be provided to the CBAC members for consideration. Individuals who wish to this meeting must RSVP via this link *https://surveys.consumerfinance.gov/jfe/form/SV_5cquaM1xPpg9pFc,* by noon, November 2, 2022. Members of the public must RSVP by the due date.

III. Availability

The Council's agenda will be made available to the public on Wednesday, November 2, 2022, via *consumerfinance.gov.* Individuals should express in their RSVP if they require a paper copy of the agenda.

A recording and summary of this meeting will be available after the meeting on the Bureau's website *consumerfinance.gov.*

Jocelyn Sutton,

Deputy Chief of Staff, Consumer Financial Protection Bureau.

[FR Doc. 2022–22463 Filed 10–18–22; 8:45 am]

BILLING CODE 4810–AM–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board; Notice of Federal Advisory Committee Meeting

AGENCY: Under Secretary of Defense for Research and Engineering, 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 Defense Science Board (DSB) will take place.

DATES: Closed to the public Tuesday, October 18, 2022 from 8:00 a.m. to 5:00 p.m. Closed to the public Wednesday, October 19, 2022 from 8:00 a.m. to 5:00 p.m.

ADDRESSES: The address of the closed meeting is the Executive Conference Center, 4075 Wilson Blvd., Floor 3, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Mr. Kevin Doxey, (703) 571–0081 (Voice), (703) 697–1860 (Facsimile), *kevin.a.doxey.civ@mail.mil* (Email). Mailing address is Defense Science Board, 3140 Defense Pentagon, Room 3B888A, Washington, DC 20301–3140. Website: *http://www.acq.osd.mil/dsb/.* 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) (Title 5 United States Code (U.S.C), Appendix), the Government in the Sunshine Act (5 U.S.C. 552b), and Title 41 Code of Federal Regulations (CFR), sections 102–3.140 and 102–3.150.

Due to circumstances beyond the control of the Designated Federal Officer, the Defense Science Board was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its October 18–19, 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 mission of the DSB is to provide independent advice and recommendations on matters relating to the DoD's scientific and technical enterprise. The objective of the meeting is to obtain, review, and evaluate classified information related to the DSB's mission. DSB membership will meet to discuss the 2022 DSB Summer Study on Technology Superiority (''the DSB Summer Study'').

Agenda: The DSB Summer Study meeting will begin on Tuesday, October 18, 2022 at 8:00 a.m. with administrative opening remarks from Mr. Kevin Doxey, the Executive Director and Designated Federal Officer, and a classified overview of the objectives of the Summer Study from Dr. Eric Evans, the DSB Chair. Next, the DSB members will meet in a plenary session to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. Following the break, the DSB members will meet in small groups to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. The meeting will adjourn at 5:00 p.m. On Wednesday, October 19, 2022 at 8:00 a.m., the DSB members will meet in small groups to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. Following the break, the DSB members will meet in a plenary session to discuss classified concepts, capabilities, and strategies that may enhance the military technological advantage of the United States. The meeting will adjourn at 5:00 p.m.

Meeting Accessibility: In accordance with Section 10(d) of the FACA and 41 CFR 102–3.155, the DoD has determined that the DSB meeting will be closed to the public. Specifically, the Under Secretary of Defense for Research and Engineering, in consultation with the DoD Office of the General Counsel, has determined in writing that the meeting will be closed to the public because it will consider matters covered by 5 U.S.C. 552b(c)(1). The determination is based on the consideration that it is expected that discussions throughout will involve classified matters of national security concern. Such classified material is so intertwined with the unclassified material that it cannot reasonably be segregated into separate discussions without defeating the effectiveness and meaning of the overall meetings. To permit the meeting to be open to the public would preclude discussion of such matters and would greatly diminish the ultimate utility of the DSB's findings and recommendations to the Secretary of Defense and to the Under Secretary of Defense for Research and Engineering.

Written Statements: In accordance with section 10(a)(3) of the FACA and 41 CFR 102–3.105(j) and 102–3.140, interested persons may submit a written statement for consideration by the DSB at any time regarding its mission or in response to the stated agenda of a planned meeting. Individuals submitting a written statement must submit their statement to the DSB DFO provided above at any point; however, if a written statement is not received at least three calendar days prior to the meeting, which is the subject of this notice, then it may not be provided to or considered by the DSB until a later date.

Dated: October 14, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–22721 Filed 10–18–22; 8:45 am]

BILLING CODE 5001–06–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2022–OS–0121]

Manual for Courts-Martial; Proposed Amendments

AGENCY: Joint Service Committee on Military Justice (JSC), Department of Defense (DoD).

ACTION: Notice of availability of proposed amendments to the Manual for Courts-Martial, United States (2019 ed.), supplementary materials, and notice of public meeting.

SUMMARY: The DoD requests comments on proposed changes to the Manual for Courts-Martial (MCM), United States (2019 ed.). The proposed changes are

based on the Fiscal Year 2022 National Defense Authorization Act and certain recommendations of the Independent Review Commission on Sexual Assault in the Military. Due to the volume of proposed changes, they should be reviewed in their entirety. The approval authority for the changes to the MCM is the President, while the approval authority for the changes to the supplementary materials is the General Counsel of the DoD.

DATES: Comments on the proposed changes must be received no later than December 19, 2022. A public meeting to receive comments concerning the proposed changes will be held on November 16, 2022, at 10:00 a.m. in the United States Court of Appeals for the Armed Forces building, 450 E Street NW, Washington, DC 20442–0001.

ADDRESSES: You may submit comments, identified by docket number and title, by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Mailbox #24, Suite 08D09, Alexandria, VA 22350–1700.
- *JSC Portal: http://jsc.defense.gov/Contact.* Follow the instructions for submitting comments.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Major Kelly Haslup, U.S. Air Force, Executive Secretary, JSC, (240) 612–4820, *kelly.haslup@us.af.mil.* The JSC website is located at *http://jsc.defense.gov.*

SUPPLEMENTARY INFORMATION: Due to the length of the proposed changes, they are being made available on the internet rather than being printed in the **Federal Register**. The following items are available at *http://www.regulations.gov,* Docket ID: DoD–2022–OS–0121.

1. A draft Executive Order.
2. The Annex to the draft Executive Order.
3. Draft revisions to the supplementary materials accompanying the Manual for Courts-Martial.

The full text of the 2019 MCM is available electronically at *https://jsc.defense.gov/Military-Law/Current-Publications-and-Updates/.*

These proposed changes have not been coordinated within the DoD under DoD Directive 5500.01, ''Preparing, Processing and Coordinating Legislation, Executive Orders, Proclamations, Views Letters, and Testimony,'' June 15, 2007, and do not constitute the official position of the DoD, the Military Departments, or any other Government agency.

This notice is provided in accordance with DoD Instruction 5500.17, ''Role and Responsibilities of the Joint Service Committee on Military Justice (JSC),'' February 21, 2018.

The JSC invites members of the public to comment on the proposed changes; such comments should address specific recommended changes and provide supporting rationale.

This notice also sets forth the date, time, and location for a public meeting of the JSC to discuss the proposed changes.

This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

Dated: October 13, 2022.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2022–22718 Filed 10–18–22; 8:45 am]

BILLING CODE 5001–06–P

DELAWARE RIVER BASIN COMMISSION

Notice of Public Hearing and Business Meeting; November 9 and December 7, 2022

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, November 9, 2022. A business meeting will be held the following month on Wednesday, December 7, 2022. Both the hearing and the business meeting are open to the public. Both will be conducted remotely. Details about the remote platforms for the two events will be posted on the Commission's website, *www.drbc.gov,* at least ten days prior to the respective meeting dates.

Public Hearing. The Commission will conduct the public hearing virtually on November 9, 2022, commencing at 1:30 p.m. Hearing items will include draft dockets for withdrawals, discharges, and other projects that could have a substantial effect on the basin's water resources. A list of the projects scheduled for hearing, including project descriptions, will be posted on the Commission's website, *www.drbc.gov,* in a long form of this notice at least ten days before the hearing date.

Written comments on matters scheduled for hearing on November 9, 2022 will be accepted through 5:00 p.m. on Monday, November 14, 2022.

The public is advised to check the Commission's website periodically during the ten days prior to the hearing date, as items scheduled for hearing may be postponed if additional time is needed to complete the Commission's review. Items also may be added up to ten days prior to the hearing date. In reviewing docket descriptions, the public is asked to be aware that the details of projects may change during the Commission's review, which is ongoing.

Public Meeting. The public business meeting on December 7, 2022 will begin at 10:30 a.m. and will include: adoption of the Minutes of the Commission's Septemer 8, 2022 business meeting; announcements of upcoming meetings and events; a report on hydrologic conditions; reports by the Executive Director and the Commission's General Counsel; and consideration of any items for which a hearing has been completed or is not required. The agenda is expected to include consideration of the draft dockets for withdrawals, discharges, and other projects that were subjects of the public hearing on November 9, 2022.

After all scheduled business has been completed and as time allows, the business meeting will be followed by up to one hour of Open Public Comment, an opportunity to address the Commission on any topic concerning management of the Basin's water resources outside the context of a duly noticed, on-the-record public hearing.

There will be no opportunity for additional public comment for the record at the December 7, 2022 business meeting on items for which a hearing was completed on November 9, 2022 or a previous date. Commission consideration on December 7, 2022 of items for which the public hearing is closed may result in approval of the item (by docket or resolution) as proposed, approval with changes, denial, or deferral. When the Commissioners defer an action, they may announce an additional period for written comment on the item, with or without an additional hearing date, or they may take additional time to

consider the input they have already received without requesting further public input. Any deferred items will be considered for action at a public meeting of the Commission on a future date.

Advance Sign-Up for Oral Comment. Individuals who wish to comment on the record during the public hearing on November 9, 2022 or to address the Commissioners informally during the Open Public Comment portion of the meeting on December 7, 2022 as time allows, are asked to sign up in advance through EventBrite. Links to EventBrite for the public hearing and the business meeting will be posted at *www.drbc.gov* at least ten days before each meeting date. For assistance, please contact Ms. Patricia Hausler of the Commission staff, at *patricia.hausler@drbc.gov.*

Addresses for Written Comment. Written comment on items scheduled for hearing may be made through the Commission's web-based comment system, a link to which is provided at *www.drbc.gov.* Use of the web-based system ensures that all submissions are captured in a single location and their receipt is acknowledged. Exceptions to the use of this system are available based on need, by writing to the attention of the Commission Secretary, DRBC, P.O. Box 7360, 25 Cosey Road, West Trenton, NJ 08628–0360. For assistance, please contact Patricia Hausler at *patricia.hausler@drbc.gov.*

Accommodations for Special Needs. Individuals in need of an accommodation as provided for in the Americans with Disabilities Act who wish to attend the meeting or hearing should contact the Commission Secretary directly at 609–883–9500 ext. 203 or through the Telecommunications Relay Services (TRS) at 711, to discuss how we can accommodate your needs.

Additional Information, Contacts. Additional public records relating to hearing items may be examined at the Commission's offices by appointment by contacting Denise McHugh, 609–883–9500, ext. 240. For other questions concerning hearing items, please contact David Kovach, Project Review Section Manager at 609–883–9500, ext. 264.

Authority. Delaware River Basin Compact, Public Law 87–328, Approved September 27, 1961, 75 Statutes at Large, 688, sec. 14.4.

Dated: July 14, 2022.

Pamela M. Bush,

Commission Secretary and Assistant General Counsel.

Editorial Note: This document was received for publication by the Office of the Federal Register on October 14, 2022.

[FR Doc. 2022–22701 Filed 10–18–22; 8:45 am]

BILLING CODE P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2022–SCC–0128]

Agency Information Collection Activities; Comment Request; Independent Living Services for Older Individuals Who Are Blind Annual Report (7–OB)

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education (ED).

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, ED is proposing revision of a currently approved collection.

DATES: Interested persons are invited to submit comments on or before December 19, 2022.

ADDRESSES: To access and review all the documents related to the information collection listed in this notice, please use *http://www.regulations.gov* by searching the Docket ID number ED–2022–SCC–0128. Comments submitted in response to this notice should be submitted electronically through the Federal eRulemaking Portal at *http://www.regulations.gov* by selecting the Docket ID number or via postal mail, commercial delivery, or hand delivery. If the *regulations.gov* site is not available to the public for any reason, ED will temporarily accept comments at *ICDocketMgr@ed.gov.* Please include the docket ID number and the title of the information collection request when requesting documents or submitting comments. *Please note that comments submitted by fax or email and those submitted after the comment period will not be accepted.* Written requests for information or comments submitted by postal mail or delivery should be addressed to the PRA Coordinator of the Strategic Collections and Clearance Governance and Strategy Division, U.S. Department of Education, 400 Maryland Ave. SW, LBJ, Room 6W208C, Washington, DC 20202–8240.

FOR FURTHER INFORMATION CONTACT: For specific questions related to collection activities, please contact Nicole Jeffords, 202–245–6387.

SUPPLEMENTARY INFORMATION: The Department of Education (ED), in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), provides the general public and Federal agencies with an opportunity to comment on proposed, revised, and continuing collections of information. This helps the Department assess the impact of its information collection requirements and minimize the public's reporting burden. It also helps the public understand the Department's information collection requirements and provide the requested data in the desired format. ED is soliciting comments on the proposed information collection request (ICR) that is described below. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: Independent Living Services for Older Individuals Who are Blind Annual Report (7–OB).

OMB Control Number: 1820–0608.

Type of Review: A revision of a currently approved collection.

Respondents/Affected Public: State, Local, and Tribal Governments.

Total Estimated Number of Annual Responses: 56.

Total Estimated Number of Annual Burden Hours: 280.

Abstract: RSA uses this form to meet the specific data collection requirements of Section 752 of the Rehabilitation Act, as amended by the Workforce Innovation Act (WIOA) and implementing regulations at 34 CFR 367.31(c). Each Designated State Agency (DSA) that administers the ILOIB program is required to submit the RSA–7–OB report annually to the RSA Commissioner on or before December 30.

Dated: October 14, 2022.

Juliana Pearson,

PRA Coordinator, Strategic Collections and Clearance, Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2022–22719 Filed 10–18–22; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Extension of a Currently Approved Information Collection for the State Energy Program

AGENCY: Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy.

ACTION: Notice and request for comments.

SUMMARY: The Department of Energy (DOE or the Department), pursuant to the Paperwork Reduction Act of 1995, intends to extend for three years a currently approved collection of information with the Office of Management and Budget (OMB). The information collection request, State Energy Program (SEP), was previously approved on August 31, 2020, under OMB Control No. 1910–5126 and its current expiration date is August 31, 2023. This ICR will include SEP Annual Appropriations and Infrastructure Investment and Jobs Act (IIJA). This ICR makes updates to the SEP reporting metrics to ensure the requested information can be shared on an annual basis with Congress.

DATES: Comments regarding this collection must be received on or before December 19, 2022. If you anticipate difficulty in submitting comments within that period, contact the person listed **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

ADDRESSES: Written comments may be sent to Greg Davoren by email to the following address: *Greg.davoren@ee.doe.gov* with the subject line ''State Energy Program (OMB No. 1910–5126)'' included in the message. Submit electronic comments in WordPerfect, Microsoft Word, PDF, or ASCII file format, and avoid the use of special characters or any form of encryption. No telefacsimiles (faxes) will be accepted.

Although DOE has routinely accepted public comment submissions through a variety of mechanisms, including postal mail and hand delivery/courier, the Department has found it necessary to make temporary modifications to the comment submission process considering the ongoing Covid–19 pandemic. DOE is only accepting electronic submissions at this time. If a commenter finds that this change poses an undue hardship, please contact the DOE staff person listed in this notice.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument and instructions should be directed to Greg Davoren, EE–5W, U.S. Department of Energy, 1000 Independence Ave. SW, Washington, DC 20585–0121 or by email or phone at *greg.davoren@ee.doe.gov,* (202) 287–1706.

SUPPLEMENTARY INFORMATION: Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains: (1) *OMB No.:* 1910–5126; (2) *Information Collection Request Title:* ''State Energy Program (SEP)''; (3) *Type of Review:* Extension of a Currently Approved Collection; (4) *Purpose:* To collect information on the status of grantee activities related to SEP Annual Appropriations and IIJA—total activities funded through with grant funds; expenditures; and results, to ensure that program funds are being used appropriately, effectively and expeditiously. *SEP Annual Appropriations:* On March 15, 2022, the President signed the Consolidated Appropriations Act of 2021, which appropriated $56,500,000 to the SEP for formula grants allocation. As noted in SEPN 22–01, SEP Grantees will be required to report metrics related to the expenditure of these funds. *Infrastructure Investments and Jobs Act (IIJA):* In addition to the reporting documents for the SEP's annual appropriations, this collection also includes reporting for the $790 million delivered by IIJA. IIJA was passed by Congress on November 6, 2021 ''to authorize funds for Federal-aid highways, highway safety programs, and transit programs, and for other purposes.'' The State Energy Program is listed as an IIJA recipient under Title 1: Grid Infrastructure and Resiliency within Division D–Energy. (5) *Annual Estimated Number of Respondents:* 56; (6) *Annual Estimated Number of Total Responses:* 1,288; (8) *Annual Estimated Number of Burden Hours:* 25,088; (8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $1,187,164.16.

Statutory Authority: Title 42, chapter 77, subchapter III, part B of the United States Code (U.S.C.), (42 U.S.C. 6321 *et seq.*). All grant awards made under this program shall comply with applicable laws including, but not limited to, the SEP statutory authority (42 U.S.C. 6321 *et seq.*), 10 CFR part 420, and 2 CFR part 200 as amended by 2 CFR part 910.

Signing Authority

This document of the Department of Energy was signed on October 14, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 14, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2022–22696 Filed 10–18–22; 8:45 am]

BILLING CODE 6450–01–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.

TIME AND DATE: October 20, 2022, 10 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.

1094TH—MEETING

[Open Meeting; October 20, 2022, 10 a.m.]

Item No.	Docket No.	Company
	ADMINISTRATIVE	
A–1	AD23–1–000	Agency Administrative Matters.
A–2	AD23–2–000	Customer Matters, Reliability, Security and Market Operations
A–3	AD06–3–000	2022–2023 Winter Energy Market and Reliability Assessment.
	ELECTRIC	
E–1	ER21–2460–002	New York Independent System Operator, Inc
E–2	ER21–2455–002	California Independent System Operator Corporation
E–3	ER22–1719–001	Southwest Power Pool, Inc
E–4	EL15–3–004	*City and County of San Francisco* v. *Pacific Gas and Electric Company.*
	ER15–704–026	Pacific Gas and Electric Company.
E–5	ER20–67–001	Evergy Kansas Central, Inc.
	ER20–116–001	Evergy Metro, Inc.
	ER20–113–001	Evergy Missouri West, Inc.
E–6	EC22–45–000	TransAlta Energy Marketing (U.S.) Inc., TransAlta Energy Marketing Corp., TransAlta Centralia Generation LLC, TransAlta Wyoming Wind LLC, Lakeswind Power Partners, LLC, Big Level Wind LLC, Eagle Canada Common Holdings LP, and BIF IV Eagle NR Carry LP
E–7	ER19–776–001, ER19–809–001	Midcontinent Independent System Operator, Inc.
E–8	ER21–2464–000	Avangrid Renewables, LLC.
E–9	ER21–2443–000	Black Hills Power, Inc.
E–10	ER21–43–000, ER21–43–001, ER21–43–002, ER21–2453–000.	Exelon Generation Company, LLC.
E–11	ER21–59–002	Brookfield Renewable Trading and Marketing LP.
E–12	ER21–64–001	Macquarie Energy LLC.
E–13	ER21–65–002	Tri-State Generation and Transmission Association, Inc.
E–14	ER22–728–001	Pegasus Wind, LLC.
E–15	EL21–97–000	Blue Ridge Power Agency.
	GAS	
G–1	RP19–78–000, RP19–78–001, RP19–1523–000.	Panhandle Eastern Pipe Line Company, LP.
	RP19–257–005	Southwest Gas Storage Company.
G–2	AD20–10–000	Standard Applied to Complaints Against Oil Pipeline Index Rate Changes.
	HYDRO	
H–1	P–906–032	Cushaw Hydro, LLC
H–2	P–2107–047	Pacific Gas and Electric Company.
	CERTIFICATES	
C–1	CP21–467–000	Texas Gas Transmission, LLC.
C–2	CP21–1–000, CP21–458–000	Golden Pass Pipeline LLC.
C–3	CP22–507–000	Limetree Bay Terminals, LLC.
C–4	CP20–493–001	Tennessee Gas Pipeline Company, L.L.C.
C–5	CP16–454–004	Rio Grande LNG, LLC.
C–6	CP18–512–002	Corpus Christi Liquefaction Stage III, LLC, and Corpus Christi Liquefaction, LLC.
	CP18–513–002	Cheniere Corpus Christi Pipeline, LP.

A free webcast of this event is available through the Commission's website. 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 Federal Energy Regulatory Commission provides technical support for the free webcasts. Please call (202) 502–8680 or email *customer@ferc.gov* if you have any questions.

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.

Issued: October 13, 2022.

Kimberly D. Bose,

Secretary.

[FR Doc. 2022–22773 Filed 10–17–22; 11:15 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP23–20–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Castleton SP367813, 370416, 370607 & Vitol SP370495, 372523 to be effective 11/1/2022.
Filed Date: 10/12/22.
Accession Number: 20221012–5026.
Comment Date: 5 p.m. ET 10/24/22.

Docket Numbers: RP23–21–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing-North Shore Gas Company to be effective 11/1/2022.
Filed Date: 10/12/22.
Accession Number: 20221012–5084.
Comment Date: 5 p.m. ET 10/24/22.

Docket Numbers: RP23–22–000.
Applicants: Columbia Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Neg Rate & Non-Conforming Agreement—Range 232970 to be effective 11/1/2022.
Filed Date: 10/12/22.
Accession Number: 20221012–5158.
Comment Date: 5 p.m. ET 10/24/22.

Docket Numbers: RP23–23–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Volume No. 2—Citadel, ConEd, Direct Energy & Twin Eagle to be effective 11/1/2022.
Filed Date: 10/13/22.
Accession Number: 20221013–5062.
Comment Date: 5 p.m. ET 10/25/22.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22686 Filed 10–18–22; 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 Complaints and Compliance filings in EL Dockets:

Docket Numbers: EL22–17–000.
Applicants: Niagara Mohawk Power Corporation.
Description: Supplement to August 23, 2022 Filing of Niagara Mohawk Power Corporation d/b/a National Grid in Compliance with March 11, 2022 Order, and Request for Shortened Seven-Day Comment Period, etc.
Filed Date: 10/11/22.
Accession Number: 20221011–5399.
Comment Date: 5 p.m. ET 10/18/22.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER13–2387–010; ER15–190–020; ER18–1343–013.
Applicants: Carolina Solar Power, LLC, Duke Energy Renewable Services, LLC, Duke Energy Florida, Inc.
Description: Second Amendment to July 28, 2022, Notice of Non-Material Change in Status of Duke Energy Florida, LLC, et al.
Filed Date: 10/13/22.
Accession Number: 20221013–5045.
Comment Date: 5 p.m. ET 10/24/22.

Docket Numbers: ER22–2773–001.
Applicants: Smoky Mountain Transmission LLC.
Description: Tariff Amendment: Request for Deferral of Action to be effective 12/31/9998.
Filed Date: 10/13/22.
Accession Number: 20221013–5131.
Comment Date: 5 p.m. ET 11/3/22.

Docket Numbers: ER23–75–000.
Applicants: Energy Harbor LLC.
Description: Request for Waiver of Energy Harbor LLC.
Filed Date: 10/11/22.
Accession Number: 20221011–5401.
Comment Date: 5 p.m. ET 11/1/22.

Docket Numbers: ER23–76–000.
Applicants: Sustainable Star, LLC.
Description: Notice of Cancellation of Market Based Rate Tariff of Sustainable Star, LLC.
Filed Date: 10/11/22.
Accession Number: 20221011–5402.
Comment Date: 5 p.m. ET 11/1/22.

Docket Numbers: ER23–77–000.
Applicants: New York State Electric & Gas Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: New York State Electric & Gas Corporation submits tariff filing per 35.13(a)(2)(iii: NYISO–NYSEG Joint 205: SGIA NYISO, NYSEG, SunEast Valley Solar SA2729—CEII to be effective 10/3/2022.
Filed Date: 10/13/22.
Accession Number: 20221013–5007.
Comment Date: 5 p.m. ET 11/3/22.

Docket Numbers: ER23–78–000.
Applicants: Central Hudson Gas & Electric Corporation, New York Independent System Operator, Inc.
Description: § 205(d) Rate Filing: Central Hudson Gas & Electric Corporation submits tariff filing per 35.13(a)(2)(iii: NYISO Joint 205: LGIA NYISO, Central Hudson, KCE NY 2 Project SA2719—CEII to be effective 9/30/2022.
Filed Date: 10/13/22.
Accession Number: 20221013–5013.
Comment Date: 5 p.m. ET 11/3/22.

Docket Numbers: ER23–79–000.
Applicants: Southern California Edison Company.
Description: § 205(d) Rate Filing: Kitching St & San Michele Rd 1st Amend Letter to IFA–DSA + 3 Load Terminations to be effective 10/14/2022.
Filed Date: 10/13/22.
Accession Number: 20221013–5051.
Comment Date: 5 p.m. ET 11/3/22.

Docket Numbers: ER23–80–000.
Applicants: The Connecticut Light and Power Company.
Description: Tariff Amendment: Cancelation of Engineering, Design, Procurement Agreement—EIP Investments, LLC to be effective 10/14/2022.
Filed Date: 10/13/22.
Accession Number: 20221013–5071.
Comment Date: 5 p.m. ET 11/3/22.

Docket Numbers: ER23–81–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, Service Agreement No. 6106; Queue No. AD2–213 to be effective 6/17/2021.
Filed Date: 10/13/22.
Accession Number: 20221013–5108.
Comment Date: 5 p.m. ET 11/3/22.

Docket Numbers: ER23–82–000.
Applicants: Citizens Sunrise Transmission LLC.
Description: § 205(d) Rate Filing: Annual TRBAA Filing October 2022 to be effective 1/1/2023.

Filed Date: 10/13/22.
Accession Number: 20221013–5110.
Comment Date: 5 p.m. ET 11/3/22.
Docket Numbers: ER23–83–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to WMPA, Service Agreement No. 6080; Queue No. AF2–274 to be effective 5/4/2021.
Filed Date: 10/13/22.
Accession Number: 20221013–5116.
Comment Date: 5 p.m. ET 11/3/22.
Docket Numbers: ER23–84–000.
Applicants: Citizens Sycamore-Penasquitos Transmission LLC.
Description: § 205(d) Rate Filing: Annual TRBAA Filing for 2022 to be effective 1/1/2023.
Filed Date: 10/13/22.
Accession Number: 20221013–5132.
Comment Date: 5 p.m. ET 11/3/22.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene or protest in any of the above proceedings must file in accordance with Rules 211 and 214 of the Commission's Regulations (18 CFR 385.211 and 385.214) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

Dated: October 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22684 Filed 10–18–22; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR22–7–000]

Phillips 66 Company v. MPLX Ozark Pipe Line LLC; Notice of Complaint

Take notice that on September 30, 2022, pursuant to section 13(1) of the Interstate Commerce Act, 49 U.S.C. app. 13(1), Rule 206 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.206, and the Commission's Procedural Rules Applicable to Oil Pipeline Proceedings, 18 CFR 343.1(a), Phillips 66 Company (Phillips 66) (Complainant) filed a formal complaint against MPLX Ozark Pipe Line LLC (MPLX Ozark) (Respondents), challenging the lawfulness of the uncommitted rates charged by MPLX Ozark Pipe Line LLC (''MPLX Ozark'') for transportation of crude petroleum from its origin in Cushing, Oklahoma to its destination in Wood River, Illinois on the pipeline owned by MPLX Ozark (''Ozark Pipeline'') from October 1, 2020 to September 30, 2022 and for all future periods.

The Complainant certifies that copies of the complaint were served on the contacts listed for Respondents in the Commission's list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent's answer and all interventions, or protests must be filed on or before the comment date. The Respondent's answer, motions to intervene, and protests must be served on the Complainants.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. At this time, the Commission has suspended access to the Commission's Public Reference Room, due to the proclamation declaring a National Emergency concerning the Novel Coronavirus Disease (COVID–19), issued by the President on March 13, 2020. For assistance, contact the Federal Energy Regulatory Commission at *FERCOnlineSupport@ferc.gov,* or call toll-free, (886) 208–3676 or TYY, (202) 502–8659.

Comment Date: 5 p.m. eastern time on October 31, 2022.

Dated: October 13, 2022.

Debbie-Anne A. Reese,

Deputy Secretary.

[FR Doc. 2022–22685 Filed 10–18–22; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10302–01–OA]

Local Government Advisory Committee's Small Communities Advisory Subcommittee Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notification of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (FACA), EPA hereby provides notice of a meeting for the Local Government Advisory Committee's (LGAC) Small Communities Advisory Subcommittee (SCAS) on the date and times described below. This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**.

DATES: The SCAS will meet virtually November 4th, 2022, starting at 2:00 p.m. through 3:30 p.m. Eastern Daylight Time.

FOR FURTHER INFORMATION CONTACT: Edlynzia Barnes, Designated Federal Officer (DFO), at *LGAC@epa.gov* or 773–638–9158.

Information on Accessibility: For information on access or services for individuals requiring accessibility accommodations, please contact Edlynzia Barnes by email at *LGAC@epa.gov.* To request accommodation, please do so five (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

SUPPLEMENTARY INFORMATION: The EPA has charged the SCAS with the following questions, which will be discussed at this meeting. A draft of the recommendations will be available prior to the meeting for all registered attendees.

Current Charge Questions for Small Communities Advisory Subcommittee (SCAS)

1. As EPA works to implement the BIL, how can the Agency best:

- Support clean and sustainable air, water, and land priorities for small and rural communities.
- Support capacity needs/advancement for small and rural communities.
- Ensure long-lasting communication between EPA and local officials from small and rural communities.
- Ensure small communities are positioned to benefit from this generational investment in environmental infrastructure.

Registration: All interested persons are invited to attend and participate.

The SCAS will hear comments from the public from 3:00–3:15 p.m. (EDT). Individuals or organizations wishing to address the Subcommittee will be allowed a maximum of five (5) minutes to present their point of view. Also, written comments should be submitted electronically to *LGAC@epa.gov* for the SCAS. Please contact the DFO at the email listed under **FOR FURTHER INFORMATION CONTACT** to schedule a time on the agenda by October 28th, 2022. Time will be allotted on a first-come first-served basis, and the total period for comments may be extended if the number of requests for appearances requires it.

The agenda and other supportive meeting materials will be available online at *https://www.epa.gov/ocir/small-community-advisory-subcommittee-scas* and can be obtained by written request to the DFO. In the event of cancellation for unforeseen circumstances, please contact the DFO or check the website above for reschedule information.

Julian Bowles,

Director, State and Local Relations, Office of Congressional and Intergovernmental Relations.

[FR Doc. 2022–22664 Filed 10–18–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10093–01–OMS]

Privacy Act of 1974; System of Records

AGENCY: Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency (EPA).

ACTION: Notice of a modified system of records.

SUMMARY: The U.S. Environmental Protection Agency's (EPA) Office of Chemical Safety and Pollution Prevention is giving notice that it proposes to modify the Federal Lead-Based Paint Program (FLPP) System of Records pursuant to the provisions of the Privacy Act of 1974. To perform Lead-Based Paint or Renovation, Repair, and Painting (RRP) Activities in target housing and child-occupied facilities, EPA requires firms to be certified, individuals to be trained/certified, trainers to be accredited, and individuals to adhere to certain work practice requirements. In addition, firms must notify EPA prior to commencement of lead-based paint abatement activities and accredited training providers must notify EPA with information regarding courses scheduled and provided. The Agency uses the FLPP Database to manage and store information related to the application process for the accreditation of training providers and the certification of firms and individuals who perform abatement and renovation repair and painting activities.

DATES: Persons wishing to comment on this system of records notice must do so by November 18, 2022. New and modified routine uses for this modified system of records will be effective November 18, 2022.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–HQ–OEI–2017–0588, by one of the following methods:

Federal eRulemaking Portal: https://www.regulations.gov. Follow the online instructions for submitting comments.

Email: docket_oms@epa.gov. Include the Docket ID number in the subject line of the message.

Fax: (202) 566–1752.

Mail: OMS Docket, Environmental Protection Agency, Mail Code: 2822T, 1200 Pennsylvania Ave. NW, Washington, DC 20460.

Hand Delivery: OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

Instructions: Direct your comments to Docket ID No. EPA–HQ–OEI–2017–0588. The EPA's policy is that all comments received will be included in the public docket without change and may be made available online at *https://www.regulations.gov,* including any personal information provided, unless the comment includes information claimed to be Controlled Unclassified Information (CUI) or other information for which disclosure is restricted by statute. Do not submit information that you consider to be CUI or otherwise protected through *https://www.regulations.gov.* The *https://www.regulations.gov* website is an ''anonymous access'' system for the EPA, which means the EPA will not know your identity or contact information. If you submit an electronic comment, the EPA recommends that you include your name and other contact information in the body of your comment. If the EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, the EPA may not be able to consider your comment. If you send an email comment directly to the EPA without going through *https://www.regulations.gov,* your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the internet. Electronic files should avoid the use of special characters, any form of encryption, and be free of any defects or viruses. For additional information about the EPA public docket, visit the EPA Docket Center homepage at *https://www.epa.gov/dockets.*

Docket: All documents in the docket are listed in the *https://www.regulations.gov* index. Although listed in the index, some information is not publicly available, *e.g.,* CUI or other information for which disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in *https://www.regulations.gov* or in hard copy at the OMS Docket, EPA/DC, WJC West Building, Room 3334, 1301 Constitution Ave. NW, Washington, DC 20460. The Public Reading Room is normally open from 8:30 a.m. to 4:30 p.m., Monday through Friday excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744, and the telephone number for the OMS Docket is (202) 566–1752. Further information about EPA Docket Center services and current operating status is available at *https://www.epa.gov/dockets.*

FOR FURTHER INFORMATION CONTACT: Robert Wright, Existing Chemicals Risk Management Division (7404T), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; email address: *wright.robert@epa.gov;* telephone number: 202.566.1975.

SUPPLEMENTARY INFORMATION: The FLPP System of Records (FLPPSOR) is being modified to (1) change the name of the system from FLPPSOR to FLPP Database to be more consistent with Agency nomenclature, (2) update the General Routine Uses to add routine uses D, J, L, and M, (3) add a new routine use for the purpose of sharing information for Agency research purposes or to support other research activities (*e.g.,* academic institutions research), and (4) update the ''categories of individuals'', ''categories of records'', and ''policies and practices for retrieval of records'' sections to ensure that all personally identifiable information contained within FLPP Database is addressed.

SYSTEM NAME AND NUMBER:

Federal Lead-Based Paint Program (FLPP) Database, EPA–SORN 54.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The system will be managed by the Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460. Electronically stored information is hosted at the EPA National Computer Center (NCC), 109 TW Alexander Drive, Research Triangle Park, Durham, NC 27711. Paper records are also maintained at EPA regional offices as well as the Federal program contractor's facilities.

SYSTEM MANAGER(S):

Brian Symmes, Acting Director, Existing Chemicals Risk Management Division, USEPA, Office of Pollution Prevention and Toxics, (7404T), 1200 Pennsylvania Ave. NW, Washington, DC 20460, (202) 566–1652; and Michelle Price, Chief, Risk Management Branch 2, Existing Chemicals Risk Management Division, USEPA, Office of Pollution Prevention and Toxics, (7404T), 1200 Pennsylvania Ave. NW, Washington, DC 20460, (202) 566–0744.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 402 of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.,* 40 CFR part 745—Lead-based Paint Poisoning Prevention in Certain Residential Structures.

PURPOSE(S) OF THE SYSTEM:

Information collected in this system is used to establish an applicant's eligibility for (1) certification to conduct lead-based paint and RRP activities in target housing and child-occupied facilities; and (2) accreditation to teach lead-based paint and RRP activities training courses. This certification and accreditation information, as well as information collected from required notifications is used for compliance monitoring, enforcement purposes, and related research.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Firms (including sole proprietorships and individuals doing business), trainers and individuals that perform or wish to perform regulated lead-based paint and renovation activities. Members of the public who have been trained by an EPA accredited training provider to conduct regulated lead-based paint or renovation activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

The FLPP Database system of records contains individuals' names, home addresses, business addresses, telephone numbers, email addresses, documentation of experience/education/training, date of birth, gender, height, weight, hair color, eye color, and photographs.

RECORD SOURCE CATEGORIES:

Information is obtained from individuals through their submission of relevant programmatic forms. These include applications for individual and firm certification, training provider accreditation, notification of training and abatement activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The routine uses below are both related to and compatible with the original purpose for which the information was collected. The following general routine uses apply to this system (*86 FR 62527*): A, B, C, D, E, F, G, H, I, J, K, L and M.

Additional routine uses that apply to this system are:

(1) Information may be disclosed to contractors, grantees, consultants, volunteers, educational institutions, or research organizations who have a need to have access to the information in the performance of research related to the FLPP. Information may be shared for Agency research purposes or to support other FLPP-related research activities at educational institutions or research organizations. When appropriate, recipients will be required to comply with the requirements of the Privacy Act of 1974 as provided in 5 U.S.C. 552a(m).

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

These records are maintained electronically on computer storage devices located at the U.S. EPA National Computer Center, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711. Paper records are maintained at the EPA regional offices and the facility operated by EPA's Federal program contractor's office.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by an individual's name, date of birth, home address, business address, application ID number, applicant ID number, or program activity.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

EPA will retain and dispose of these records in accordance with the EPA Records Schedule 0089. The National Archives and Records Administration (NARA) Disposal Authority: DAA–GRS–2013–0002–0016 disposition instructions requires NARA records to be closed when no longer needed to conduct Agency business and to be destroyed immediately after file closure. When disposal of records is appropriate, sensitive information must be shredded or otherwise definitively destroyed to protect confidentiality.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Security controls used to protect personal sensitive data in the FLPP Database are commensurate with those required for an information system rated MODERATE for confidentiality, integrity, and availability, as prescribed in the National Institute of Standards and Technology (NIST) Special Publication, 800–53, ''Security and Privacy Controls for Federal Information Systems and Organizations,'' Revision 5.

1. *Administrative Safeguards:* All personnel are required to complete annual agency Information Security and Privacy training. All personnel are instructed to lock their computers when they leave their desks.

2. *Technical Safeguards:* Electronic records are maintained in a secure, password protected electronic system. FLLP Database access is limited to authorized, authenticated users integrated with the Agency's single-sign-on or *Login.gov*. This integration uses the user's credentials to identify the user prior to granting access to the platform and the FLPP Database. All of the system's electronic communication utilizes the agency's Trusted internet Connection (TIC).

3. *Physical Safeguards:* All records are maintained in secure, access-controlled areas or buildings. Paper records stored at EPA's Federal program contractor and storage facility are protected by computerized badge-reading security systems, with files maintained in locked file drawers. Records stored at EPA offices are secured through building security protocols and computerized badge-reading systems.

RECORD ACCESS PROCEDURES:

All requests for access to personal records should cite the Privacy Act of 1974 and reference the type of request being made (*i.e.,* access). Requests must include: (1) the name and signature of the individual making the request; (2) the name of the Privacy Act system of records to which the request relates; (3) a statement whether a personal inspection of the records or a copy of

them by mail is desired; and (4) proof of identity. A full description of EPA's Privacy Act procedures for requesting access to records is included in EPA's Privacy Act regulations at 40 CFR part 16.

CONTESTING RECORD PROCEDURES:

Requests for correction or amendment must include: (1) the name and signature of the individual making the request; (2) the name of the Privacy Act system of records to which the request relates; (3) a description of the information sought to be corrected or amended and the specific reasons for the correction or amendment; and (4) proof of identity. A full description of EPA's Privacy Act procedures for the correction or amendment of a record is included in EPA's Privacy Act regulations at 40 CFR part 16.

NOTIFICATION PROCEDURES:

Individuals who wish to be informed whether a Privacy Act system of records maintained by EPA contains any record pertaining to them, should make a written request to the EPA, Attn: Agency Privacy Officer, MC 2831T, 1200 Pennsylvania Ave. NW, Washington, DC 20460, or by email at: *privacy@epa.gov.* A full description of EPA's Privacy Act procedures is included in EPA's Privacy Act regulations at 40 CFR part 16.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

70 FR 35251—Established a new System of Records (SOR) under the Federal Lead-Based Paint Program (June 17, 2005).

74 FR 42298—Amended an existing system of records (SOR) by changing the title of ''Lead-Based Paint System of Records'' (LPSOR) to the ''Federal Lead-Based Paint Program System of Records'' (FLPPSOR) (August 21, 2009) *https://www.govinfo.gov/content/pkg/FR-2009-08-21/pdf/E9-20209.pdf.*

84 FR 5673—Amended an existing system of records (SOR) to update the category of uses to add lead-based paint and renovator professionals' photographs, to add names of training program manages and principal course instructors as well as their education experience or training qualification, and to discuss EPA's Central Data Exchange (CDX) interconnection or online applications and notifications submissions and other administrative updates to the FLPPSOR (February 22, 2019).

Vaughn Noga,

Senior Agency Official for Privacy.

[FR Doc. 2022–22271 Filed 10–18–22; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–10280–01–R8]

Clean Air Act Operating Permit Program; Petition for Objection to State Operating Permit for Hunter Power Plant (Emery County, Utah)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petition to object to state operating permit.

SUMMARY: The EPA Administrator signed an order dated September 27, 2022, denying the petition submitted by the Sierra Club requesting that EPA object to the issuance of the Clean Air Act (CAA) title V operating permit (no. 1500101004) issued to the PacifiCorp Hunter Power Plant in Castle Dale, Emery County, Utah, by the Utah Department of Environmental Quality, Division of Air Quality (UDAQ). The September 27, 2022 Order responds to Sierra Club's January 14, 2022 petition regarding title V operating permit no. 1500101004 (2021 Permit). The Order constitutes final action on the petition.

ADDRESSES: You may review copies of the Order and petition electronically at *https://www.epa.gov/title-v-operating-permits/title-v-petition-database.* To reduce the risk of COVID–19 transmission, for this action we do not plan to offer hard copy review of these documents or other supporting information. Please email or call the person listed in the **FOR FURTHER INFORMATION CONTACT** section if you need to make alternative arrangements for access to the documents.

FOR FURTHER INFORMATION CONTACT: Daniel Fagnant, Air Permitting and Monitoring Branch (8ARD–PM), EPA Region 8, 1595 Wynkoop Street, Denver, Colorado, 80202–1129. Phone number: (303) 312–6927, email address: *fagnant.daniel@epa.gov.*

SUPPLEMENTARY INFORMATION: The CAA affords EPA a 45-day period to review and, as appropriate, the authority to object to operating permits proposed by state permitting authorities under title V of the CAA, 42 U.S.C. 7661–7661f. Section 505(b)(2) of the CAA and 40 CFR 70.8(d) authorize any person to petition the EPA Administrator to object to a title V operating permit within 60 days after the expiration of EPA's 45-day review period if EPA has not objected on its own initiative. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the state, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period. Pursuant to sections 307(b) and 505(b)(2) of the Act, a petition for judicial review of those portions of the Order that deny issues in the petition may be filed in the United States Court of Appeals for the appropriate circuit within 60 days from the date this document appears in the **Federal Register**.

State Operating Permit for Hunter Power Plant (Emery County, Utah)

EPA received petitions from the Sierra Club, requesting that EPA object to the 2016, 2020, and 2021 operating permits for the Hunter Power Plant. Among other things, the Sierra Club claims that the operating permit is deficient because it does not include Prevention of Significant Deterioration (PSD) permitting requirements. More specifically, the Sierra Club asserts that the operating permit should include Best Achievable Control Technology requirements for nitrogen oxide, sulfur dioxide and particulate matter, terms and conditions necessary to adequately protect national ambient air quality standards, and PSD increments. EPA denied the 2016 petition on October 16, 2017; however, the Sierra Club sought judicial review of a portion of the 2017 Order in the United States Court of Appeals for the Tenth Circuit. On July 2, 2020, the Tenth Circuit issued a decision vacating and remanding the 2017 Order. EPA's January 13, 2021 Order responded to the Tenth Circuit's decision, replaced the vacated portion of EPA's 2017 Order, and separately responded to the 2020 Petition. On October 1, 2021, UDAQ transmitted a proposed permit to EPA for the Agency's 45-day review. EPA did not object during this period. On November 19, 2021, UDAQ finalized the Permit. On January 14, 2022, the Sierra Club filed the Petition that this order responds to.

On September 27, 2022, the Administrator issued an Order denying the January 14, 2022 Petition. The Order explains EPA's basis for denying the petition.

Dated: October 13, 2022.

KC Becker,

Regional Administrator, Region 8.

[FR Doc. 2022–22665 Filed 10–18–22; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[GN Docket No. 22–352; DA 22–974; FR ID 107907]

180-Day Freeze on Applications for New or Modified Authorizations for the 12.7–13.25 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Announcement of temporary freeze.

SUMMARY: In this document, the International, Public Safety and Homeland Security, Media, and Wireless Telecommunications Bureaus (Bureaus) announce a 180-day freeze, effective September 19, 2022 on the filing of new or modification applications for licenses or other authorizations in the 12.7–12.75 GHz and 12.75–13.250 GHz bands (collectively, 12.7 GHz band). The purpose of this temporary freeze is to preserve the current landscape of authorized operations in the 12.7 GHz band pending the Commission's consideration of actions that might encourage the larger and more effective use of this radio spectrum in the public interest.

DATES: Filing of certain applications is frozen as of September 19, 2022.

FOR FURTHER INFORMATION CONTACT: Simon Banyai, Broadband Division, Wireless Telecommunications Bureau, (202) 418–1443 or *simon.banyai@fcc.gov.*

SUPPLEMENTARY INFORMATION: This a summary of the Commission's document, DA 22–974, released on September 19, 2022. The full text of this document is available at *https://docs.fcc.gov/public/attachments/DA-22-974A1.pdf.* To request materials in accessible formats (braille, large print, computer diskettes, or audio recordings), please send an email to *FCC504@fcc.gov* or call the Consumer & Government Affairs Bureau at (202) 418–0530 (VOICE), (202) 418–0432 (TTY).

Filing Freeze in 12.7–12.75 GHz and 12.75–13.25 GHz Band (12.7 GHz Band). To preserve the current landscape of authorized operations in the 12.7 GHz band to facilitate the Commission's consideration of spectrum management and planning options, the Bureaus announce a 180-day freeze, effective as of September 19, 2022, on the filing of new or modification applications for fixed satellite service (FSS) space stations serving earth stations located in the United States, FSS earth stations, broadcast auxiliary services, cable television relay service, and fixed microwave services stations, in the 12.7 GHz band, except as otherwise noted herein. The decision to impose this temporary freeze is procedural in nature, and therefore the freeze is exempt from the notice and comment and effective date requirements of the Administrative Procedure Act. Moreover, and in the alternative, the Commission finds good cause to conclude that prior notice and comment or a delay in effectiveness would be impractical, unnecessary, and contrary to the public interest because it would undermine the purposes of the freeze. The Bureaus find that this temporary freeze will help preserve the options available to the Commission for consideration of additional uses of the band while limiting the potential for speculative applications that might be filed in anticipation of potential future actions by the Commission. The Commission or the Bureaus may extend the freeze if doing so is deemed necessary to avoid undermining the purpose of the freeze. Any conditional authority conferred by rule during the pendency of an application is inapplicable to an application that will be dismissed under this freeze.[1] Any temporary authority to operate in the 12.7 GHz band at temporary locations conferred by rule or license will remain operative.[2]

Space stations. During the freeze, the International Bureau will dismiss any new space station license applications and new requests for access to the U.S. market through non-U.S.-licensed space stations, or those parts of any such applications and requests, that seek to operate in the 12.7 GHz band. *Exceptions:* The freeze does not apply to new applications for space stations limited to serving earth stations outside the United States, applications for modification of existing space station authorizations,[3] relocations of existing space stations pursuant to the Commission's fleet management policy,[4] or to applications for replacement space stations.[5]

Earth stations. During the freeze, the International Bureau will dismiss applications, or those portions of applications, received for new earth station licenses, and modifications to earth stations currently authorized, to operate in the 12.7 GHz band. *Exceptions:* The freeze does not extend to applications for renewal or cancellation of current earth station authorizations,[6] or modifications to correct location or other data required in the earth station file,[7] or to certain other earth station modifications described below.

Broadcast Auxiliary.[8] During the freeze, the Wireless Telecommunications Bureau will dismiss applications received for new or major modifications to fixed or mobile BAS stations to operate in the 12.7 GHz band. *Exceptions:* The freeze does not extend to applications for renewal, cancellation, and certain minor modifications described below.

Cable Television Relay.[9] During the freeze, the Media Bureau will dismiss applications received for new or major modifications to fixed or mobile CARS stations to operate in the 12.7 GHz band. *Exceptions:* The freeze does not extend to applications for renewal, cancellation, and certain minor modifications discussed below.

Fixed Microwave.[10] During the freeze, the Wireless Telecommunications and Public Safety and Homeland Security Bureaus will dismiss applications received for new or major modifications to fixed or mobile microwave stations to operate in the 12.7 GHz band. *Exceptions:* The freeze does not extend to applications for renewal, cancellation, or certain minor modifications discussed below.

Exception to freeze for certain modification applications. Under the Commission's emerging technology

[1] *See, e.g.,* 47 CFR 74.25(a), 101.31(b) (conditional authorization during pendency of certain properly filed, completed formal applications that do not require a waiver).

[2] *See, e.g.,* 47 CFR 74.24 (short-term operation), 101.31(a) (operation at temporary locations).

[3] 47 CFR 25.117.

[4] 47 CFR 25.118(e) (permitting the relocation of a GSO space station without prior authorization, but upon 30 days prior notice to the Commission and any potentially affected licensed spectrum user, provided that the operator meets specific requirements, including a requirement that the space station will be relocated to a position within ±0.15° of an orbital location assigned to the same licensee).

[5] 47 CFR 25.158(a)(2), 25.165(e)(1),(2).

[6] 47 CFR 25.121(e).

[7] *See generally International Bureau Addresses Accuracy of Earth Station Location Information in IBFS,* Public Notice, 32 FCC Rcd 9512 (IB 2017); 47 CFR 25.117.

[8] *See* 47 CFR part 74, subparts E, and F (ULS radio service codes: AI, AS, TB, TI, TP, TS, TT).

[9] *See* 47 CFR part 78 (COALS radio service: CS).

[10] *See* 47 CFR part 101, subparts H, I, and J (ULS radio service codes: CF, CT, MG, MW, WA).

policies (ET),[11] microwave incumbents in 1.9 GHz and 2.1 GHz bands that were allocated for emerging technologies were permitted to retain primary status for certain minor modifications if they affirmatively justified primary status and established that the modification would not add to the relocation costs of ET licensees. Based on this precedent, under the instant freeze, incumbents with primary status will be permitted to make the following modifications on a primary basis to any future ET licensees if the incumbent licensee establishes that the modification would not add to any relocation costs, if applicable in the future:

- earth stations: modifications not requiring prior Commission authorization,[12]
- BAS, CARS, and Fixed Microwave stations: minor modifications.[13]

The appropriate Bureau will consider requests for waiver of this freeze on a case-by-case basis and upon a demonstration that waiver will serve the public interest and not undermine the objectives of the freeze.

Federal Communications Commission.

Blaise Scinto,

Chief, Broadband Division, Wireless Telecommunications Bureau.

[FR Doc. 2022–22644 Filed 10–18–22; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0026; –0070; –0079; –0188; –0211]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995, invites the general public and other Federal agencies to take this opportunity to comment on the request to renew the existing information collections described below (OMB Control No. 3064–0026, –0070, –0079, –0188 and –0211). The notice of the proposed renewal for these information collections was previously published in the **Federal Register** on August 22, 2022, and August 29, 2022, allowing for a 60-day comment period.

DATES: Comments must be submitted on or before November 18, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

1. *Title:* Transfer Agent Registration and Amendment Form.

OMB Number: 3064–0026.

Form Number: TA–1.

Affected Public: Private Sector, insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0026]

Information collection description (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Transfer Agent Registration 12 CFR 341.3 (Mandatory)	Reporting (Occasional)	1	1	01:15	1
2. Transfer Agent Amendment 12 CFR 341.4 (Mandatory)	Reporting (Occasional)	1	1	00:10	0
3. Transfer Agent Deregistration 12 CFR 341.5 (Mandatory)	Reporting (Occasional)	1	1	00:25	0
Total Annual Burden (Hours)					1

General Description of Collection: Section 17A(c) of the Security Exchange Act of 1934 (the Act) requires all transfer agents for securities registered under section 12 of the Act or, if the security would be required to be registered except for the exemption from registration provided by section 12(g)(2)(B) or section 12(g)(2)(G), to ''fil[e] with the appropriate regulatory agency . . . an application for registration in such form and containing such information and documents . . . as such appropriate regulatory agency may prescribe as necessary or appropriate in furtherance of the purposes of this section.'' In general, an entity performing transfer agent functions for a security is required to register with its appropriate regulatory agency if the security is registered on a national securities exchange or if the issuer of the security has total assets exceeding $10 million and a class of equity security held of record by 2,000 persons or, for an issuer that is not a bank, BHC, or SLHC, by 500 persons who are not accredited investors. The Federal Reserve Board of Governors' Regulation H (12 CFR 208.31(a)) and Regulation Y (12 CFR 225.4(d)), the OCC's 12 CFR 9.20, and the FDIC's 12 CFR part 341 implement these provisions of the Act.

[11] *See generally* 47 CFR 101.81.

[12] 47 CFR 25.118(a)–(b).

[13] *See* 47 CFR 1.947(b) (licensees may make certain minor modifications to station authorizations, as defined in § 1.929 (Classification of filings as major minor). Section 1.929(d) discusses major actions in the microwave, aural broadcast auxiliary, and television broadcast auxiliary services and Section 1.929(k) states that any change not specifically listed as major is considered minor. *See* 47 CFR 1.929(d) & (k); *see also id.* at §§ 78.109(c)–(d) (defining minor modifications for CARS licenses).

To accomplish the registration of transfer agents, Form TA–1 was developed in 1975 as an interagency effort by the Securities and Exchange Commission and the agencies. The agencies primarily use the data collected on Form TA–1 to determine whether an application for registration should be approved, denied, accelerated or postponed, and they use the data in connection with their supervisory responsibilities. FDIC is revising this information collection to include the burden associated with the reporting requirement related to the transfer agent deregistration form (Form TA–W) currently cleared under OMB Control Number 3064–0027. The intention is to create a combined ICR that covers both the transfer agent registration and amendment form, and the transfer agent deregistration form. This combined ICR will retain the Office of Management and Budget (OMB) number OMB No. 3064–0026. The FDIC plans to discontinue OMB No. 3064–0027 once the combined OMB No. 3064–0026 is approved. This action will streamline the ICR process and contribute to enhanced operational efficiency of the FDIC.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the decline in the estimated overall annual time burden from 2 hours in 2020 and 2021 to 1 hour in 2022.

2. *Title:* Application for a Bank to Establish a Branch or Move its Main Office or Branch.

OMB Number: 3064–0070.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0070]

Information collection description	Type of burden (obligation to respond)	Frequency of response	Number of respondents	Number of responses per respondent	Hours per response	Annual burden (hours)
Application for consent to reduce or retire capital	Reporting (Mandatory)	On Occasion	436	1.461	5	3,185
Estimated Total Annual Burden						3,185

General Description of Collection: Section 18(d) of the Federal Deposit Insurance Act (12 U.S.C. 1828(d) (FDI Act)) provides that no FDIC insured state nonmember bank or state savings association shall establish and operate any new domestic branch or move its main office or any such branch from one location to another without the prior written consent of the FDIC. In granting or withholding consent to the applicant, FDIC considers: (a) The financial history and condition of the depository institution; (b) the adequacy of its capital structure; (c) its future earnings prospects; (d) the general character and fitness of its management; (e) the risk presented by the depository institution to the Deposit Insurance Fund; (f) the convenience and needs of the community to be served; and (g) whether its corporate powers are consistent with the purposes of the FDI Act. FDIC regulations found at 12 CFR 303, subpart C, specify the steps that respondents must take to comply with the statutory mandate.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

3. *Title:* Application for Consent to Reduce or Retire Capital.

OMB Number: 3064–0079.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0079]

Information collection (IC) description	Type of burden (obligation to respond)	Estimated number of respondents	Number of responses per respondent	Estimated time per response (hours)	Total estimated annual burden (hours)
Application for consent to reduce or retire capital	Reporting (Required to Obtain or Retain a Benefit).	74	1.36	11	1,107
Estimated Total Annual Burden					1,107

General Description of Collection: Insured state nonmember banks proposing to change their capital structure must submit an application containing information about the proposed change to obtain FDIC's consent to reduce or retire capital.

There is no change in the method or substance of the collection. The overall reduction in burden hours is the result of economic fluctuation. In particular, the number of respondents has decreased while the hours per response and frequency of responses have remained the same.

4. *Title:* Appraisals for Higher-Priced Mortgage Loans.

OMB Number: 3064–0188.

Form Number: None.

Affected Public: Insured state nonmember banks and state savings associations.

Burden Estimate:

ESTIMATED NUMBER OF RESPONDENTS AND RESPONSES PER RESPONDENT

Item	IC description (section)	Type of burden (frequency of response)	Obligation to respond	Estimated annual number of respondents	Estimated annual number of responses per respondent	Estimated time per response	Estimated annual burden hours
1	Disclose to an applicant for an HPML that the institution may obtain an appraisal for the property, 12 CFR Part 1026.35(c)(5)(i).	Third-party Disclosure (On Occasion).	Mandatory	3,018	14.54	0.017	746
2	Provide a copy of written appraisal to the consumer, 12 CFR Part 1026.35(c)(6)(i).	Third-party Disclosure (On Occasion).	Mandatory	3,018	15.34	0.14	6,481
3	Provide documentation of the property value to the consumer in lieu of an appraisal, 12 CFR Part 1026.35(c)(2)(viii)(B).	Third-party Disclosure (On Occasion).	Optional	3,018	0.74	0.083	185
Total Estimated Annual Burden							7,412

General Description of Collection: Section 1471 of the Dodd-Frank Act established a new Truth in Lending section 129H, which contains appraisal requirements applicable to higher-risk mortgages and prohibits a creditor from extending credit in the form of a higher-risk mortgage loan to any consumer without meeting those requirements. A higher-risk mortgage is defined as a residential mortgage loan secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction as of the date the interest rate is set by certain enumerated percentage point spreads. The rule requires that, within three days of application, a creditor provide a disclosure that informs consumers regarding the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer. If a loan meets the definition of a higher-risk mortgage loan, then the creditor would be required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction, and send a copy of the written appraisal to the consumer. To qualify for the safe harbor provided under the rule, a creditor is required to review the written appraisal as specified in the text of the rule and appendix A. If a loan is classified as a higher-risk mortgage loan that will finance the acquisition of the property to be mortgaged, and the property was acquired within the previous 180 days by the seller at a price that was lower than the current sale price, then the creditor is required to obtain an additional appraisal. A creditor is required to provide the consumer a copy of the appraisal reports performed in connection with the loan, without charge, at least days prior to consummation of the loan.

FDIC is revising this information collection to fully account for the scope of PRA burden delineated in part 1036.35(c). As a result, two new items have been added to the burden table; two items previously listed separately have been combined into a single item; and one item, associated with part 1026.35(c)(4)(iv), was deemed to not impose any additional recordkeeping, disclosure or reporting requirements, has been removed from the table. As a result of these revisions, the estimated annual burden has increased from 4,044 hours to 7,412 hours. The following is a summary of the revisions:

- The 2019 ICR did not include a line item associated with the disclosure requirement in part 1026.35(c)(5)(i), which requires institutions to disclose the following statement, in writing, to a consumer who applies for a higher-priced mortgage loan (HPML): ''We may order an appraisal to determine the property's value and charge you for this appraisal. We will give you a copy of any appraisal, even if your loan does not close. You can pay for an additional appraisal for your own use at your own cost.'' FDIC has added a line item associated with this requirement to the burden table for the 2022 renewal.
- The 2019 ICR did not include a line item associated with part 1026.35(c)(2)(viii)(B), which exempts institutions from the appraisal requirements for HPMLs secured by a manufactured home and not land if the institution obtains, and provides to the consumer no later than three business days prior to the consummation of the transaction, either: (1) For a new manufactured home, the manufacturer's invoice for the manufactured home securing the transaction, provided that the date of manufacture is no earlier than 18 months prior to the creditor's receipt of the consumer's application for credit; (2) A cost estimate of the value of the manufactured home securing the transaction obtained from an independent cost service provider, or; (3) A valuation of the manufactured home performed by a person who has no direct or indirect interest, financial or otherwise, in the property or transaction for which the valuation is performed and has training in valuing manufactured homes. FDIC has added a line item associated with this disclosure requirement to the burden table for the 2022 renewal.
- The 2019 ICR included two separate line items related to the disclosure requirement in part 1026.35(c)(6)(i) for an institution to provide a copy to the applicant of any appraisal obtained pursuant to parts 1026.35(c)(3) and 1026.35(c)(4). The 2019 ICR included one line item for the disclosure requirements for appraisals obtained pursuant to part 1026.35(c)(3) and another for appraisals obtained pursuant to part 1026.35(c)(4). FDIC has combined these two line items into a single line item for the 2022 renewal.
- The 2019 ICR included a line item associated with the requirement in part 1026.35(c)(4)(iv) for one of the two appraisals for a property for which two appraisals are required under part 1026.(c)4(i) to include an analysis of: (1) The difference between the price at which the seller acquired the property and the price that the consumer is obligated to pay to acquire the property, as specified in the consumer's agreement to acquire the property from the seller; (2) Changes in market conditions between the date the seller acquired the property and the date of the consumer's agreement to acquire the property; and (3) Any improvements made to the property between the date the seller acquired the property and the date of the consumer's agreement to

acquire the property. FDIC has determined that part 1026.35(c)(4)(iv) does not impose any additional recordkeeping, disclosure, or reporting requirements on members of the public and has removed the line item associated with this requirement from the burden table for the 2022 renewal.

5. *Title:* Generic Clearance for Prize Competition Participation.

OMB Number: 3064–0211.

Affected Public: Innovators; technologists, coders, engineers and developers; consumers of financial services; consumer advocates; academics; members of trade groups and other associations; individuals connected to financial institutions, community banks, and financial and bank service and technology providers; software, data, and technology firms; and other members of the public.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0211]

Information collection description (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (hours)	Annual burden (hours)
Innovation Prize Competitions (Voluntary)	Reporting (Occasional)	1,500	1	20	30,000

General Description of Collection: The FDIC seeks to extend, without change, its generic clearance for the collection of information requested from potential participants in FDIC-sponsored or co-sponsored prize competitions of various types, including point solution competitions (designed to spur the development of solutions for a particular problem) and exposition (designed competitions to identify and promote a broad range of ideas and practices to facilitate further development by third parties). Prize competitions and the opportunity to submit applications to participate will be announced on the agency's publicly accessible government website, as well as possibly through other forms of public communication, such as publication in the **Federal Register**, issuance of Financial Institution Letters, use of *challenge.gov* website maintained by the U.S. General Services Administration, or social media advertisement. In order for the FDIC to determine which applicants will be eligible and selected to participate in FDIC prize competitions, the FDIC will request that potential participants provide their name, contact information, address, and such other information that may be necessary to evaluate applicants' qualifications and ability to participate in the event as well as to match the applicants' anticipated role to the needs of the competition. Applicants will also be asked to acknowledge the terms and conditions of participating in the prize competition. Information will be collected during prize competitions through the solutions to the challenges or problems presented. This information collection will be voluntary. Collection in the form of application will be conducted primarily online with alternative methods made available. Collection during the events will be in-person or electronic. The FDIC will consult with OMB regarding each specific information collection during the approval period. The FDIC estimates that over the three-year clearance period of this request, up to five (5) competitions will be conducted across various divisions of the agency, involving a variety of topics and challenges associated with underserved communities and financial inclusion; consumer protection; the FDIC's use of information technology and data (including artificial intelligence and machine learning); and financial and technologically-driven innovation in banking. The total hourly burden attributed to this generic clearance will be approximately 30,000 hours (an estimated average of 6,000 hours per prize competition × 5 competitions per year). There is no change in the method or substance of the collection. The estimated annual burden remains the same.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 13, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–22639 Filed 10–18–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

[OMB No. 3064–0122]

Agency Information Collection Activities: Proposed Collection Renewal; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its obligations under the Paperwork Reduction Act of 1995 (PRA), invites the general public and other Federal agencies to take this opportunity to comment on the renewal of the existing information collection described below (OMB Control No. 3064–0122).

DATES: Comments must be submitted on or before December 19, 2022.

ADDRESSES: Interested parties are invited to submit written comments to the FDIC by any of the following methods:

- *Agency Website: https://www.fdic.gov/resources/regulations/federal-register-publications/.*
- *Email: comments@fdic.gov.* Include the name and number of the collection in the subject line of the message.
- *Mail:* Manny Cabeza (202–898–3767), Regulatory Counsel, MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.
- *Hand Delivery:* Comments may be hand-delivered to the guard station at the rear of the 17th Street NW building (located on F Street NW), on business days between 7 a.m. and 5 p.m.

All comments should refer to the relevant OMB control number. A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:
Manny Cabeza, Regulatory Counsel, 202–898–3767, *mcabeza@fdic.gov,* MB–3128, Federal Deposit Insurance Corporation, 550 17th Street NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collection of information:

1. *Title:* Forms Relating to FDIC Outside Counsel, Legal Support and Expert Services Programs.

2. *OMB Number:* 3064–0122.

Affected Public: Entities providing legal and expert services to the FDIC.

Burden Estimate:

SUMMARY OF ESTIMATED ANNUAL BURDEN
[OMB No. 3064–0122]

Information collection (obligation to respond)	Type of burden (frequency of response)	Number of respondents	Number of responses per respondent	Time per response (HH:MM)	Annual burden (hours)
1. Non-Litigation Budget Form, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	2	1	00:30	1
2. Amended Litigation Budget, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	4	1	00:30	2
3. Amended Non-Litigation Budget, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	1	1	00:30	1
4. Litigation Budget, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	6	1	00:30	3
5. Representations and Certifications for Legal Contractors, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	10	1	00:45	8
6. Expert invoice for Fees and Expenses (EIF&E), 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	2	1	00:30	1
7. Legal Support Services (LSS) Provider Invoice for Fees and Expenses (IF&E), 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	2	1	00:30	1
8. Agreement for Services (Expert Legal Support Services (LSS) Provider Amendment, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	3	1	01:00	3
9. Agreement for Services (expert or Legal Support Services Provider) Provider Rate Schedule, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	6	1	01:00	6
10. Legal Services Agreement (LSA) Amendment, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	8	1	01:00	8
11. Expert budget, 12 CFR 361 and 12 CFR 366 (Mandatory)	Reporting (On Occasion)	2	1	00:30	1
12. Representations and Certifications for Experts and Legal Support Services Providers, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	5	1	01:00	5
13. Outside Counsel Legal Services Agreement Rate Schedule, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	10	1	01:00	10
14. Legal Invoice for Fees and Expenses, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	3	1	01:00	3
15. Firm Travel Voucher, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	3	1	01:00	3
16. Oral Representations and Certifications for Expert Legal Support Services, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	1	1	00:30	1
17. Legal Support Services (LSS) Provider Budget Form, 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	6	1	00:30	3
18. Legal Service Agreement (LSA), 12 CFR 361 and 12 CFR 366 (Mandatory).	Reporting (On Occasion)	15	1	00:15	4
Total Annual Burden (Hours)	.....	.....	.....	.....	64

Source: FDIC.

General Description of Collection: The information collected enables the FDIC to ensure that all individuals, businesses and firms seeking to provide legal support services to the FDIC meet the eligibility requirements established by Congress. The information is also used to manage and monitor payments to contractors, document contract amendments, expiration dates, billable individuals, minority law firms, and to ensure that law firms, experts, and other legal support services providers comply with statutory and regulatory requirements. This collection consists of 18 forms. The decrease of 843 hours is entirely the result of the reduction in the estimated number of annual respondents as a result of a revised methodology.

Request for Comment: Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collections, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collections of information on respondents, including through the use of automated collection techniques or other forms of information technology. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, on October 13, 2022.

James P. Sheesley,

Assistant Executive Secretary.

[FR Doc. 2022–22640 Filed 10–18–22; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreements Filed

The Commission hereby gives notice of filing of the following agreements under the Shipping Act of 1984. Interested parties may submit

comments, relevant information, or documents regarding the agreements to the Secretary by email at *Secretary@fmc.gov,* or by mail, Federal Maritime Commission, 800 North Capitol Street, Washington, DC 20573. Comments will be most helpful to the Commission if received within 12 days of the date this notice appears in the **Federal Register,** and the Commission requests that comments be submitted within 7 days on agreements that request expedited review. Copies of agreements are available through the Commission's website (*www.fmc.gov*) or by contacting the Office of Agreements at (202)-523–5793 or *tradeanalysis@fmc.gov.*

Agreement No.: 012355–002.

Agreement Name: CMA CGM/SL Gulf Bridge Express Slot Charter Agreement.

Parties: CMA CGM S.A.; Maersk A/S dba Sealand.

Filing Party: Draughn Arbona, CMA CGM (America) LLC.

Synopsis: The Amendment increases the Parties' allocations to reflect larger capacity vessels being brought into the trade and expands the geographic scope of the Agreement to include Brazil. The Parties have requested expedited review.

Proposed Effective Date: 11/27/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/49.

Agreement No.: 201334–001.

Agreement Name: COSCO/ONE/OOCL/YM EMED–USEC Vessel Sharing Agreement.

Parties: CMA CGM S.A.; COSCO SHIPPING Lines Co., Ltd; Ocean Network Express Pte. Ltd.; and Orient Overseas Container Line Limited; OOCL (Europe) Limited.

Filing Party: Robert Magovern, Cozen O'Connor.

Synopsis: The Amendment renames the agreement to the COSCO/ONE/OOCL/CMA CGM EMED–USEC Vessel Sharing Agreement. The Amendment deletes Yang Ming Marine Transport Corp., Yang Ming (UK) Ltd., Yang Ming (Singapore) Pte. Ltd. as parties to the agreement and adds CMA CGM S.A. as a party to the agreement. The Amendment also removes Israel from the scope; revises the agreement to update the BSAs for each of the parties; and updates the duration and resignation section of the agreement.

Proposed Effective Date: 11/24/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/27479.

Agreement No.: 201393.

Agreement Name: CMA CGM/COSCO Vessel Sharing Agreement Mediterranean—U.S. Gulf & East Coast.

Parties: CMA CGM S.A.; COSCO SHIPPING Lines Co., Ltd.

Filing Party: Draughn Arbona, CMA CGM (America) LLC.

Synopsis: The Agreement authorizes CMA CGM and COSCO to share vessels with one another and cooperate on a liner service in the trade between Italy, France, Spain, and Morocco on the one hand and the U.S. Gulf Coast and East Coast on the other hand.

Proposed Effective Date: 11/24/2022.

Location: https://www2.fmc.gov/FMC.Agreements.Web/Public/AgreementHistory/69503.

Dated: October 14, 2022.

William Cody,

Secretary.

[FR Doc. 2022–22709 Filed 10–18–22; 8:45 am]

BILLING CODE 6730–02–P

FEDERAL MARITIME COMMISSION

[Docket No. 22–27]

Globerunners, Incorporated, Complainant v. Hoyer Global (USA), Inc., Respondent; Notice of Filing of Complaint and Assignment

Served: October 14, 2022.

Notice is given that a complaint has been filed with the Federal Maritime Commission (Commission) by Globerunners, Incorporated, hereinafter ''Complainant,'' against Hoyer Global (USA), Inc., hereinafter ''Respondent.'' Complainant states that it is a non-vessel-operating common carrier that is a corporation organized under the laws of California. Complainant identifies the Respondent as a non-vessel-operating common carrier that is a corporation organized under the laws of Texas.

Complainant alleges that Respondent violated 46 U.S.C. 41102(c) and 41104(a)(14) and 46 CFR 532.5(d)(2)(iv) in its practices and pass-through of charges. The full text of the complaint can be found in the Commission's Electronic Reading Room at *https://www2.fmc.gov/readingroom/proceeding/22-27/.*

This proceeding has been assigned to Office of Administrative Law Judges. The initial decision of the presiding officer in this proceeding shall be issued by October 14, 2023, and the final decision of the Commission shall be issued by April 29, 2024.

William Cody,

Secretary.

[FR Doc. 2022–22707 Filed 10–18–22; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2107]

Pulmonary-Allergy Drugs Advisory Committee; Amendment of Notice

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an amendment to the notice of meeting of the Pulmonary-Allergy Drugs Advisory Committee. This meeting was announced in the **Federal Register** of September 8, 2022. The amendment is being made to reflect changes in the **DATES**, **ADDRESSES**, and **SUPPLEMENTARY INFORMATION** portions of the document. The meeting was rescheduled to allow time for FDA to review new information submitted to the application. There are no other changes.

FOR FURTHER INFORMATION CONTACT: Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, email: *PADAC@fda.hhs.gov,* or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area). Please call the Information Line for up-to-date information on this meeting.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 8, 2022, 87 FR 55008, FDA announced that a meeting of the Pulmonary-Allergy Drugs Advisory Committee would be held on October 6, 2022. The following changes are being made.

(1) On page 55008, in the third column, the **DATES** portion of the document is changed to read as follows:

DATES: The meeting will be held virtually on November 9, 2022, from 9 a.m. to 5 p.m. Eastern Time.

(2) On page 55008, in the third column, the second paragraph and the first sentence of the third paragraph of the **ADDRESSES** portion of the document are changed to read as follows:

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2022–N–2107. Please note that late, untimely filed comments will not be considered. The docket will close on November 8, 2022. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of November 8, 2022.

Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

Comments received on or before October 26, 2022, will be provided to the committee.

(3) On page 55009, in the third column, the first paragraph of the *Procedure* section of the **SUPPLEMENTARY INFORMATION** portion of the document is changed to read as follows:

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. All electronic and written submissions submitted to the Docket (see **ADDRESSES**) on or before October 26, 2022, will be provided to the committee. Oral presentations from the public will be scheduled between approximately 1:30 p.m. and 2:30 p.m. Eastern Time. Those individuals interested in making formal oral presentations should notify the contact person and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation on or before October 26, 2022. Time allotted for each presentation may be limited. If the number of registrants requesting to speak is greater than can be reasonably accommodated during the scheduled open public hearing session, FDA may conduct a lottery to determine the speakers for the scheduled open public hearing session. The contact person will notify interested persons regarding their request to speak by October 27, 2022.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14, relating to the advisory committees.

Dated: October 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22700 Filed 10–18–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2021–D–1246]

Use of Tracers in Animal Food, Type A Medicated Articles, and Medicated Feeds; Guidance for Industry; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA or Agency) is announcing the availability of a final guidance for industry (GIF) 258 entitled ''Use of Tracers in Animal Food, Type A Medicated Articles, and Medicated Feeds.'' Tracers are ingredients added to animal food, medicated feed, and Type A medicated articles to identify a particular product. The purpose of this document is to provide guidance on the use of tracers in animal food, medicated feeds, and Type A medicated articles. This final guidance replaces Compliance Policy Guide (CPG) Sec. 680.100 ''Tracers in Animal Feed.''

DATES: The announcement of the guidance is published in the **Federal Register** on October 19, 2022.

ADDRESSES: You may submit either electronic or written comments on any Agency guidances at any time as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2021–D–1246 for ''Use of Tracers in Animal Food, Type A Medicated Articles, and Medicated Feeds.'' Received comments will be placed in the docket and, except for those submitted as ''Confidential Submissions,'' publicly viewable at *https://www.regulations.gov* or at the Dockets Management Staff between 9 a.m. and 4 p.m., Monday through Friday, 240–402–7500.

- Confidential Submissions—To submit a comment with confidential information that you do not wish to be made publicly available, submit your comments only as a written/paper submission. You should submit two copies total. One copy will include the information you claim to be confidential with a heading or cover note that states ''THIS DOCUMENT CONTAINS CONFIDENTIAL INFORMATION.'' The Agency will review this copy, including the claimed confidential information, in its consideration of comments. The second copy, which will have the claimed confidential information redacted/blacked out, will be available for public viewing and posted on *https://www.regulations.gov.* Submit both copies to the Dockets Management Staff. If you do not wish your name and contact information to be made publicly available, you can provide this information on the cover sheet and not in the body of your comments and you must identify this information as ''confidential.'' Any information marked as ''confidential'' will not be disclosed except in accordance with 21 CFR 10.20 and other applicable disclosure law. For more information about FDA's posting of comments to public dockets, see 80 FR 56469, September 18, 2015, or access the information at: *https://www.govinfo.gov/content/pkg/FR-2015-09-18/pdf/2015-23389.pdf.*

Docket: For access to the docket to read background documents or the electronic and written/paper comments received, go to *https://www.regulations.gov* and insert the docket number, found in brackets in the heading of this document, into the ''Search'' box and follow the prompts and/or go to the Dockets Management Staff, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852, 240–402–7500.

You may submit comments on any guidance at any time (see 21 CFR 10.115(g)(5)).

Submit written requests for single copies of the guidance to the Policy and

Regulations Staff (HFV–6), Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855. Send one self-addressed adhesive label to assist that office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: *Regarding tracers used in animal food:* Diego Paiva, Center for Veterinary Medicine (HFV–229), Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 240–402–6785, *Diego.Paiva@fda.hhs.gov.*

Regarding tracers used in animal drug products: Rebecca Owen, Center for Veterinary Medicine (HFV–141), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 240–402–0670, *Rebecca.Owen@fda.hhs.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 2, 2022 (87 FR 11719), FDA published the notice of availability for a draft GIF #258 entitled ''Use of Tracers in Animal Food, Type A Medicated Articles, and Medicated Feeds'' giving interested persons until May 2, 2022, to comment on the draft guidance. FDA received one comment submission on the draft guidance and the comments in that submission were considered as the guidance was finalized. The guidance announced in this notice finalizes the draft guidance dated March 2, 2022. This guidance replaces CPG Sec. 680.100 ''Tracers in Animal Feed.''

This level 1 guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The guidance represents the current thinking of FDA on the use of tracers in animal food, Type A medicated articles, and medicated feeds. It does not establish any rights for any person and is not binding on FDA or the public. You can use an alternative approach if it satisfies the requirements of the applicable statutes and regulations.

II. Paperwork Reduction Act of 1995

While this guidance contains no collection of information, it does refer to previously approved FDA collections of information. Therefore, clearance by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3521) is not required for this guidance. The previously approved collections of information are subject to review by OMB under the PRA. The collections of information in 21 CFR 501.22 have been approved under OMB control number 0910–0721. The collections of information in 21 CFR part 514 have been approved under OMB control number 0910–0032.

III. Electronic Access

Persons with access to the internet may obtain the guidance at *https://www.fda.gov/animal-veterinary/guidance-regulations/guidance-industry, https://www.fda.gov/regulatory-information/search-fda-guidance-documents,* or *https://www.regulations.gov.*

Dated: October 14, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22705 Filed 10–18–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2019–N–2854]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Premarket Tobacco Product Applications and Recordkeeping Requirements

AGENCY: Food and Drug Administration, Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by November 18, 2022.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. The OMB control number for this information collection is 0910–0879.

FOR FURTHER INFORMATION CONTACT: JonnaLynn Capezzuto, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–3794, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Premarket Tobacco Product Applications and Recordkeeping Requirements—21 CFR 1114

OMB Control Number 0910–0879—Extension

This information collection supports the requirements for the content, format, submission recordkeeping, and postmarket reporting requirements of a premarket tobacco product application (PMTA). Section 910(a) (21 U.S.C. 387j(a)) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) established requirements for premarket review of new tobacco products and the implementing regulations are found in part 1114 (21 CFR part 1114), subchapter K.

An applicant may submit a PMTA to demonstrate that a new tobacco product meets the requirements to receive a marketing granted order. A new tobacco product may not be introduced or delivered for introduction into interstate commerce under this part until FDA has issued a marketing granted order for the product (§ 1114.5). Further, § 1114.7 describes the required content and format of the PMTA. The PMTA must contain sufficient information for FDA to determine whether any of the grounds for denial specified in section 910(c)(2) of the FD&C Act apply. The application must contain the following sections: general information, descriptive information, product samples, labeling, a statement of compliance with 21 CFR part 25, a summary, product formulation, manufacturing, health risk investigations, effect on the population as a whole, and a certification statement.

Submitters can visit the following web page which describes the process for submitting a PMTA (*https://www.fda.gov/tobacco-products/market-and-distribute-tobacco-product/premarket-tobacco-product-applications*).

After submission of a PMTA, FDA may request, and an applicant may submit, an amendment to a pending PMTA. FDA generally expects that when an applicant submits a PMTA, the submission will include all information required by section 910(b)(1) of the FD&C Act and part 1114 to enable FDA to determine whether it should authorize the marketing of a new tobacco product. However, FDA recognizes that additional information

may be needed to complete the review of a PMTA and, therefore FDA allows the submission of amendments to a pending application.

An applicant may transfer ownership of its PMTA at any time, including when FDA has yet to act on it. Section 1114.13 describes the steps that an applicant would be required to take when it changes ownership of a PMTA. This section is intended to facilitate transfers of ownership and help ensure that FDA has current information regarding the ownership of a PMTA.

A supplemental PMTA are an alternative format of submitting a PMTA (§ 1114.15). Applicants that have received a marketing granted order would be able to submit a supplemental PMTA to seek marketing authorization for a new tobacco product that results from a modification or modifications to the original tobacco product that received the marketing granted order. FDA restricts the use of supplemental PMTAs to only changes that require the submission of limited information or revisions to ensure that FDA can efficiently review the application.

If an applicant receives a no marketing granted order, they may submit a resubmission to respond to the deficiencies outlined (§ 1114.17). A resubmission may be submitted for the same tobacco product that received a marketing denial order or for a different new tobacco product that results from changes necessary to address the deficiencies outlined in a marketing denial order. This application format allows an applicant to address the deficiencies described in a marketing denial order without having to undertake the effort of submitting a standard PMTA. The resubmission format is not available for PMTAs that FDA refused to accept, refused to file, cancelled, or administratively closed, or that the applicant withdrew because FDA has not previously completed reviews of such applications upon which it can rely, and such applications may need significant changes to be successfully resubmitted.

FDA requires applicants that receive a marketing granted order to submit postmarket reports. Postmarket reports determine or facilitate a determination of whether there may be grounds to withdraw or temporarily suspend a marketing granted order. Applicants are required to submit two types of postmarket reports after receiving a marketing granted order: periodic reports and adverse experience reports. Periodic reports are required to be submitted within 60 calendar days of the reporting date specified in the marketing granted order. Applicants would also be required to report all serious and unexpected adverse experiences associated with the tobacco product that have been reported to the applicant or of which the applicant is aware. The serious and unexpected adverse experience reports must be submitted to the Center for Tobacco Products' Office of Science through the HHS Safety Reporting Portal (*https://www.safetyreporting.hhs.gov/*) within 15 calendar days after receiving or becoming aware of a serious or unexpected adverse experience. FDA's Safety Reporting Portal is approved under OMB control number 0910–0291.

Applicants receiving a marketing granted order are required to maintain all records necessary to facilitate a determination of whether there are or may be grounds to withdraw or temporarily suspend the marketing granted order, including records related to both the application and postmarket reports, and ensure that such records remain readily available to the Agency upon request (§ 1114.45).

The Consolidated Appropriations Act of 2022 (the Appropriations Act), enacted on March 15, 2022, amended the definition of the term ''tobacco product'' in section 201(rr) (U.S.C. 321(rr)) of the FD&C Act to include products that contain nicotine from any source. As a result, non-tobacco nicotine (NTN) products that were not previously subject to the FD&C Act (*e.g.,* products containing synthetic nicotine) are now subject to all of the tobacco product provisions in the FD&C Act beginning on April 14, 2022, including the requirement of premarket review for new tobacco products. The Appropriations Act also makes all rules and guidances applicable to tobacco products apply to NTN products on that same effective date, which includes the Premarket Tobacco Product Application and Recordkeeping Requirements final rule. Additionally, the Appropriations Act includes a transition period for premarket review requirements, directing companies to submit PMTAs for NTN products by May 14, 2022, to receive an additional 60-day period of marketing without being considered in violation of premarket review requirements. On April 14, 2022, OMB granted an emergency clearance under this collection to include NTN products and its associated burden. OMB granted a 6-month approval, and as such per the requirements of the PRA, the Agency is seeking comment on these new estimates.

In the **Federal Register** of May 16, 2022 (87 FR 29749), FDA published a 60-day notice requesting public comment on the proposed collection of information. No comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR part; activity; form FDA #	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
1114.5; Submission of Standard Bundled PMTAs [2]	1	1	1	1,713	1,713
PMTA Submission; Form FDA 4057	39	1	39	0.75 (45 minutes).	29
PMTA Amendment and General Correspondence Submission; Form FDA 4057a.	39	14	546	0.16 (10 minutes).	87
PMTA Grouping Submission; Form FDA 4057b	39	1	39	0.75 (45 minutes).	29
1114.41; Reporting Requirements (periodic reports)	4	1	4	50	200
1114.9; Amendments	24	2	48	188	9,024
1114.13; Change in Ownership	1	1	1	1	1
1114.15; Supplemental Applications	2	1	2	428	856
1114.17; Resubmissions	3	1	3	565	1,695
1114.41(a)(2); Adverse Experience Reports	4	6	24	1	24
1114.49(b) and (c); Waiver from Electronic Submission	1	1	1	0.25 (15 minutes).	0.25

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]—Continued

21 CFR part; activity; form FDA #	Number of respondents	Number of responses per respondent	Total annual responses	Average burden per response	Total hours
Total					13,658

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] FDA anticipates that applicants will submit bundled PMTAs, which are single submissions containing PMTAs for a number of similar or related products. We estimate that a bundle will contain on average between 6 and 11 distinct products.

Table 1 describes the estimated annual reporting burden. FDA has based these estimates on the full analysis of economic impacts and experience with current PMTA submissions received under OMB control number 0910–0768 (which covers the burden for electronic nicotine delivery system (ENDS) products PMTA submissions). This average represents a wide range of hours that will be required for these applications under different circumstances, with some requiring more hours (*e.g.,* as many as 5,000 hours for early applications that involve complex products and for which the company has no experience conducting studies or preparing analysis of public health impacts, or for which reliance on master files is not possible) as well as many requiring fewer hours (*e.g.,* as few as 50 hours for applications for products that are very similar to other new products). FDA estimates that it will take each respondent approximately 1,500 hours to prepare a PMTA seeking an order from FDA allowing the marketing of a new tobacco product. FDA also estimates that it would on average take an additional 213 hours to prepare an environmental assessment (EA) in accordance with the requirements of 21 CFR 25.40, for a total of 1,713 hours per PMTA application.

FDA assumes that firms will submit all applications as PMTA bundles. We also considered updated data on market consolidation that has occurred since the Deeming Rule published for originally regulated products that would receive marketing granted orders through the PMTA pathway. For originally regulated products we expect to receive one full PMTA submission for a total of 1,713 hours. We believe that bundling PMTAs results in efficiencies for applicants when compared to submitting standalone, full-text submissions for each product. We expect to receive bundled PMTAs where applicants can use the same evidence to support PMTAs for similar or related products. Bundling PMTAs into a single submission would eliminate the administrative burden of having to reproduce the same evidence in a standalone PMTA for each product.

FDA has three forms for use when submitting PMTA information to the Agency. Form FDA 4057 for use when submitting PMTA single and bundled submissions. FDA estimates that 39 respondents will submit PMTA bundles using this form at 0.75 (45 minutes) per response. The number 39 is accounting for the bundles of ENDS products and includes 15 new expected bundles submitted for NTN products and the 1 bundle we expect to receive yearly for originally regulated products, for a total of 29 hours.

Form FDA 4057a for use when firms are submitting amendments and other general correspondence. FDA estimates that 39 respondents will submit amendments and other general correspondence using this form at 0.16 (10 minutes) per response, including 15 new expected submissions related to applications submitted for NTN products. We estimate there will be at least 14 amendments per application for a total of 87 hours. With most applications being submitted toward the end of our 3-year range, we expect fewer amendments during this period. However, FDA expects correspondence from earlier applications to be submitted during this period.

Form FDA 4057b assists industry and FDA in identifying the products that are the subject of a submission where an applicant groups multiple PMTAs into a single submission (referred to as a bundled submission or a grouped submission). FDA has previously stated that one approach to submitting PMTAs could be to group applications for products that are both from the same manufacturer or domestic importer and in the same product category and subcategory into a single submission. The form assists applicants in providing the unique identifying information for each product in a grouped submission of PMTAs. A respondent would utilize Form FDA 4057b once for each submission containing more than one PMTA. We assume the submitter could include from 2 to 2,000 products in each Form FDA 4057b. Entering data for up to 2,000 rows can take approximately 4 hours on average per Form FDA 4057b for manual data entry. We reflect the average time of 45 minutes per response based on the assumption that we expect to receive an average of nine bundled products per submission. Assuming 45 minutes per Form FDA 4057b for 39 applications, we estimate a total burden of 29 hours for this activity. Included in this estimate are the 15 new expected submissions submitted from NTN products.

FDA estimates under § 1114.41 that four respondents will submit a periodic report. This number is based on the average number of periodic report submissions expected between 2020–2022 and the addition of NTN products. The Agency estimates that periodic reports will take on average of 50 hours per response for a total of 200 hours. Firms must also submit adverse experience reports (§ 1114.41(a)(2)) for tobacco products with marketing orders. We assume the same number of firms submitting periodic reports will submit adverse experience reports. Currently, firms may voluntarily submit adverse experience reports using Form FDA 3800 under OMB control number 0910–0645. We have based our estimates on this information collection which estimates that it takes 1 hour (for mandatory reporting) to complete this form for tobacco products for a total of 24 hours.

Under § 1114.9 firms will prepare amendments to PMTA bundles in response to deficiency letters. These amendments contain additional information that we need to complete substantive review. We anticipate 2 responses back per bundle and therefore, we estimate that 24 respondents will submit 48 amendments (24×2). Assuming 1,500 hours as the time to prepare and submit a full PMTA and amendments may on average take 10 percent to 15 percent of that time (150–225). We averaged this time out (12.5 percent of a full submission preparation time) and arrived at 188 hours per response. FDA estimates the total burden hours for preparing amendments is 9,024 hours.

Section 1114.13 would allow an applicant to transfer ownership of a PMTA to a new owner. FDA believes this will be infrequent, so we have

assigned 1 hour acknowledging the requirement.

Section 1114.15 is an alternative format of submitting a PMTA that meets the requirements of § 1114.7 that would reduce the burden associated with the submission and review of an application. Our estimated number of 2 respondents is based on the number estimated for postmarket reports, which is 4 bundles (which is approximately 34 products). Not all applicants will resubmit modifications to previously authorized products, so we estimate 2 bundles (which is approximately 17 products). FDA estimates further that a supplemental PMTA will take 25 percent of the time it takes to do an original submission (including EA hours) for 428 hours per response. We estimate a total of 856 burden hours for this activity.

Under § 1114.17 an applicant may utilize the resubmission format for the same tobacco product for which FDA issued a marketing denial order or for a new tobacco product that results from changes necessary to address the deficiencies described in a marketing denial order. We are estimating that out of all bundles received in 2020, 2021, and 2022, that an average of three bundles are authorized. If we receive 24 amendments to bundles yearly, we estimate based on historical data, 58 percent fail at acceptance (down to 8 bundles remaining), 17 percent fail at filing (down to 7 bundles remaining), and 25 percent receive marketing orders (5 left). We also estimate that 50 percent of the applications that receive marketing denial orders will try to resubmit in a year. Thus, this number of respondents is three (rounded up). FDA estimates that a resubmission will take 33 percent of the time it takes to complete an original submission (including EA hours) at 565 hours per response for a total of 1,695 hours.

An applicant is required to submit a PMTA and all supporting and related documents to FDA in electronic format that FDA can process, review, and archive unless an applicant requests, and FDA grants, a waiver from this requirement. FDA does not believe we will receive many waivers, so we have assigned one respondent to acknowledge the option to submit a waiver. Consistent with our other application estimates for waivers, we believe it would take .25 hours (15 minutes) per waiver for a total of .25 hours.

TABLE 2—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR part; activity	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
1114.45; PMTA Records	39	1	39	2	78
1100.204; Pre-existing Products Records	1	1	1	2	2
1107.3; Exemptions From Substantial Equivalence (SE) Records	1	1	1	2	2
Total					82

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

Table 2 describes the annual recordkeeping burden. FDA estimates that 39 recordkeepers will maintain records at 2 hours per record. Included in this estimate are the 15 expected new recordkeepers of NTN products. Firms are also required to establish and maintain records related to SE exemption requests and pre-existing products (§ 1100.200 states that subpart C of part 1100). We expect the burden hours to be negligible for SE exemption requests. Firms would have already established the required records when submitting the SE exemption request. Similarly, we expect the hours of to be negligible for any pre-existing tobacco products that have already submitted standalone pre-existing tobacco product submissions, because firms would have established the required records when submitting the standalone pre-existing tobacco product submissions. We believe this time is usual and customary for these firms. We estimate that it would take 2 hours per record to establish the required records for a total of 4 hours.

Relative to the emergency approval by OMB our estimated burden for the information collection reflects an overall increase of 72 hours and a corresponding increase of 117 responses/records. We attribute this adjustment to the addition of NTN product submissions.

Dated: October 11, 2022.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2022–22708 Filed 10–18–22; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Eunice Kennedy Shriver National Institute of Child Health and Human Development; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Neonatal Research Network.

Date: November 7–8, 2022.

Closed: 10:00 a.m. to 1:00 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, Room 2140, Bethesda, MD 20892–7510 (Virtual Meeting).

Contact Person: Joanna Kubler-Kielb, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH 6710B, Rockledge Drive, Room 2140, Bethesda, MD 20892, (301) 435–6916, *kielbj@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Neonatal Research Network and Maternal-Fetal Medicine Units Network: Data Coordinating Centers.

Date: November 10, 2022.

Closed: 1:00 p.m. to 3:00 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, Rm. 2127D, Bethesda, MD 20892–7510 (Virtual Meeting).

Contact Person: Luis E. Dettin, Ph.D., MS, MA, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH 6710B, Rockledge Drive, Rm. 2127D, Bethesda, MD 20892, (301) 219–3400, *luis_dettin@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Pediatric Scientist Development Program.

Date: November 15, 2022.

Closed: 11:00 a.m. to 1:00 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, Rm. 2131B, Bethesda, MD 20892–7510 (Virtual Meeting).

Contact Person: Jolanta Maria Topczewska, Ph.D., Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH 6710B, Rockledge Drive, Rm. 2131B, Bethesda, MD 20892, (202) 309–7153, *jolanta.topczewska@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Maternal-Fetal Medicine Units Network: Clinical Centers.

Date: November 17–18, 2022.

Closed: 12:00 p.m. to 4:00 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, Rm. 2127D, Bethesda, MD 20892–7510 (Virtual Meeting).

Contact Person: Luis E. Dettin, Ph.D., MS, MA, Scientific Review Officer, Scientific Review Branch, Eunice Kennedy Shriver National Institute of Child Health and Human Development, NIH 6710B, Rockledge Drive, Rm. 2127D, Bethesda, MD 20892, (301) 219–3400, *luis_dettin@nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel; Bioprinted Tissues Constructs.

Date: November 29, 2022.

Closed: 11:00 a.m. to 3:00 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, Rm. 2127B, Bethesda, MD 20892–7510 (Virtual Meeting).

Contact Person: Chi-Tso Chiu, Ph.D., Scientific Review Officer, Scientific Review Branch (SRB), Eunice Kennedy Shriver National Institute of Child Health & Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2127B, Bethesda, MD 20817, (301) 435–7486, *chiuc@mail.nih.gov.*

Name of Committee: National Institute of Child Health and Human Development Member Conflict Special Emphasis Panel.

Date: November 30, 2022.

Time: 10:00 a.m. to 1:00 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, Rm. 2125C, Bethesda, MD 20892–7510 (Virtual Meeting).

Contact Person: Moushumi Paul, Ph.D., BA, Scientific Review Officer, Scientific Review Branch (SRB), Eunice Kennedy Shriver National Institute of Child Health & Human Development, NIH, DHHS, 6710B Rockledge Drive, Rm. 2125C, Bethesda, MD 20817, (301) 496–3596, *Moushumi.paul@nih.gov.*

Any interested person may file written comments with the committee by forwarding the statement to the Contact Person listed on this notice. The statement should include the name, address, telephone number and when applicable, the business or professional affiliation of the interested person.

(Catalogue of Federal Domestic Assistance Program Nos. 93.865, Research for Mothers and Children, National Institutes of Health, HHS)

Dated: October 13, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22647 Filed 10–18–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel; NHLBI Member Conflict Institutional Training T32-Awards.

Date: November 4, 2022.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 6705 Rockledge Drive, Bethesda, MD 20817 (Virtual Meeting).

Contact Person: Fungai Chanetsa, Ph.D., MPH, Scientific Review Officer, Office of Scientific Review/DERA, National Heart, Lung, and Blood Institute, National Institutes of Health, 6705 Rockledge Drive, Room 206–B, Bethesda, MD 20817, (301) 402–9394, *fungai.chanetsa@nih.gov.*

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: October 13, 2022.

David W. Freeman,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2022–22645 Filed 10–18–22; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

[Docket No. USCG2022–0349]

Certificate of Alternative Compliance for the Hayden Grace, O.N. 1326783

AGENCY: Coast Guard, DHS.

ACTION: Notification of issuance of a certificate of alternative compliance.

SUMMARY: The Coast Guard announces that the Chief of Prevention, Eighth Coast Guard District has issued a certificate of alternative compliance from the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), for the HAYDEN GRACE, O.N. 1326783. We are issuing this notice because its publication is required by statute. Due to the construction and placement of mast lights, stern light, and sidelights, HAYDEN GRACE cannot fully comply with the light, shape, or sound signal provisions of the 72 COLREGS without interfering with the vessel's design and construction. This notification of issuance of a certificate of alternative compliance promotes the Coast Guard's marine safety mission.

DATES: The Certificate of Alternative Compliance was issued on October 4, 2022.

FOR FURTHER INFORMATION CONTACT: For information or questions about this notice call or email Lieutenant Commander Jessica Flennoy, District Eight, Prevention Division, U.S. Coast Guard, telephone 504–671–2156, email *Jessica.Flennoy@uscg.mil.*

SUPPLEMENTARY INFORMATION: The United States is signatory to the International Maritime Organization's International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), as amended. The special construction or purpose of some vessels makes them unable to comply with the light, shape, or sound signal provisions of the 72 COLREGS. Under statutory law, however, specified 72 COLREGS provisions are not applicable to a vessel of special construction or purpose if the Coast Guard determines that the vessel cannot comply fully with those requirements without interfering with the special function of the vessel.[1]

The owner, builder, operator, or agent of a special construction or purpose vessel may apply to the Coast Guard District Office in which the vessel is being built or operated for a determination that compliance with alternative requirements is justified,[2] and the Chief of the Prevention Division would then issue the applicant a certificate of alternative compliance (COAC) if he or she determines that the vessel cannot comply fully with 72 COLREGS light, shape, and sound signal provisions without interference with the vessel's special function.[3] If the Coast Guard issues a COAC, it must publish notice of this action in the **Federal Register**.[4]

The Chief of Prevention Division, Eighth District, U.S. Coast Guard, certifies that the HAYDEN GRACE, O.N. 1326783 is a vessel of special construction or purpose, and that, with respect to the position of the mast lights, stern light, and sidelights, it is not possible to comply fully with the requirements of the provisions enumerated in the 72 COLREGS, without interfering with the normal operation, construction, or design of the vessel. The Chief of Prevention Division, Eighth District, U.S. Coast Guard, further finds and certifies that the mast lights, stern light, and sidelights are in the closest possible compliance with the applicable provisions of the 72 COLREGS.[5]

This notice is issued under authority of 33 U.S.C. 1605(c) and 33 CFR 81.18.

Dated: October 13, 2022.

A.H. Moore, Jr.,

Captain, U.S. Coast Guard, Chief, Prevention Division, Eighth Coast Guard District.

[FR Doc. 2022–22712 Filed 10–18–22; 8:45 am]

BILLING CODE 9110–04–P

[1] 33 U.S.C. 1605.

[2] 33 CFR 81.5.

[3] 33 CFR 81.9.

[4] 33 U.S.C. 1605(c) and 33 CFR 81.18.

[5] 33 U.S.C. 1605(a); 33 CFR 81.9.

DEPARTMENT OF HOMELAND SECURITY

Implementation of a Parole Process for Venezuelans

AGENCY: Department of Homeland Security.

ACTION: Notice.

SUMMARY: This notice describes a new effort designed to immediately address the increasing number of encounters of Venezuelan nationals along the southwest border (SWB), as the Administration continues to implement its broader, multi-pronged and regional strategy to address the challenges posed by irregular migration. Venezuelans who do not avail themselves of this process, and instead enter the United States without authorization between POEs, will be subject to expulsion or removal. As part of this effort, the Department of Homeland Security (DHS) will implement a process—modeled on the successful *Uniting for Ukraine* (U4U) parole process—for certain Venezuelan nationals to lawfully enter the United States in a safe and orderly manner. To be eligible, individuals must have a supporter in the United States who agrees to provide housing and other supports as needed; must pass national security and public safety vetting; and must agree to fly at their own expense to an interior U.S. port of entry (POE), rather than entering at a land POE. Individuals are ineligible if they have been ordered removed from the United States within the prior five years or have entered unauthorized into the United States between POEs, Mexico, or Panama after the date of this notice's publication.

DATES: DHS will begin accepting online applications for this process on October 18, 2022.

FOR FURTHER INFORMATION CONTACT: Ihsan Gunduz, Office of Strategy, Policy, and Plans, Department of Homeland Security, 2707 Martin Luther King Jr. Ave. SE, Washington, DC 20528–0445, (202) 282–9708.

SUPPLEMENTARY INFORMATION:

I. Background—Venezuela Parole Process

This notice describes the implementation of a new parole process for certain Venezuelan nationals announced by the Secretary of Homeland Security on October 12, 2022,[1] including the eligibility criteria and filing process. The parole process is intended to enhance border security by reducing the record levels of Venezuelan nationals entering the United States between POEs, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

The Secretary's announcement followed detailed consideration of a wide range of relevant facts and alternatives, as reflected in the Secretary's decision memorandum dated October 12, 2022.[2] The complete reasons for the Secretary's decision are included in that memorandum. This **Federal Register** notice is intended to provide appropriate context and guidance for the public regarding the policy and relevant procedures associated with this policy.

A. Overview

The U.S. Government is engaged in a multi-pronged, regional strategy to address the challenges posed by irregular migration. The strategy—a shared endeavor with partner countries—focuses on addressing the root causes of migration, which currently are fueling unprecedented levels of irregular migration, and creating safe and orderly processes for migration throughout the region. This strategy will reduce regional irregular migration in the mid- to long-term, but we anticipate continued substantial pressures along the southwest border over the coming months.

In light of this reality, DHS is implementing an immediate effort to address the increasing number of encounters of Venezuelan nationals at the SWB as we continue to implement the broader and long-term strategy. We anticipate that this new effort would reduce the record levels of Venezuelan nationals seeking to irregularly enter the United States between POEs along the SWB, while also providing a process for certain such nationals to lawfully enter the United States in a safe and orderly manner.

With the cooperation of the Government of Mexico (GOM), and potentially other governments, this effort is intended to serve as a deterrent to irregular migration by providing a meaningful alternative to irregular migration and by imposing immediate consequences on Venezuelan nationals who choose to not avail themselves of the new process and instead seek to irregularly enter the United States

[1] DHS Announces New Migration Enforcement Process for Venezuelans, October 12, 2022, available at: *https://www.dhs.gov/news/2022/10/12/dhs-announces-new-migration-enforcement-process-venezuelans.*

[2] *See* Memorandum for the Secretary from U.S. Customs and Border Protection Commissioner and U.S. Citizenship and Immigration Services Director, Parole Process for Certain Venezuelan Nationals (Oct. 12, 2022).

between POEs. It will also provide an incentive for Venezuelans to avoid the often dangerous journey to the border altogether, by putting in place a safe and orderly process for Venezuelan nationals to travel to the United States to seek a discretionary, case-by-case grant of parole into the United States, based on significant public benefit and urgent humanitarian reasons.[3] Venezuelan nationals who irregularly enter the United States between POEs after October 19, 2022 are subject to expulsion or removal from the United States; those who enter irregularly into the United States, Mexico, or Panama will also be found ineligible for a discretionary grant of parole under this process. Only those who meet specified criteria and pass national security and public safety vetting would be eligible for consideration for parole under this process.

Implementation of the parole process is conditioned on Mexico continuing to accept the expulsion or removal of Venezuelan nationals seeking to irregularly enter the United States between POEs. As such, this new process will couple a meaningful incentive to seek a lawful, safe and orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly.

The new policy is modeled on *Uniting for Ukraine* (U4U), the successful parole process that was put in place in the wake of Russia's unprovoked invasion of Ukraine, when thousands of Ukrainian migrants spontaneously arrived at SWB POEs. Once U4U was implemented, such spontaneous arrivals fell sharply, and travel shifted to a safe and orderly process. This new process is procedurally similar to U4U, in which certain Ukrainians with U.S.-based supporters who meet specified eligibility criteria have been able to travel to the United States to seek a discretionary, case-by-case grant of parole for up to two years. As in U4U, applications using this parole process will be initiated by a supporter in the United States who would apply on behalf of a Venezuelan individual and commit to providing the beneficiary housing and other financial support, as needed, for the duration of their parole.

In addition to the supporter requirement, Venezuelan nationals are required to meet several eligibility criteria, as outlined in more detail later in this notice, to receive advance authorization to travel to the United States and be considered for parole, on a case-by-case basis. Importantly, individuals are ineligible if they have been ordered removed from the United States within the prior five years; they are also ineligible if they have crossed into the United States between POEs, or entered Mexico or Panama without authorization, after October 19, 2022. Only those who pass national security and public safety vetting and agree to fly to an interior POE, as opposed to entering between POEs, and who meet all specified criteria below will be eligible to receive advance authorization to travel to the United States and be considered for parole, on a case-by-case basis, under this process.

Any discretionary grants of parole will be for a temporary period of up to two years. During this two-year period, the United States will continue to build on the multi-pronged and long-term strategy and engage with our foreign partners throughout the region. These efforts are intended to support conditions that would decrease irregular migration, work to improve refugee processing and other lawful immigration pathways in the region, and allow for increased removals of those who continue to migrate irregularly and lack a valid claim of asylum or other lawful basis to remain in the United States. The two-year period will also enable individuals to seek humanitarian relief or other immigration benefits for which they may be eligible, and to work and contribute to the U.S. economy as they do so. Those who are not granted asylum or other immigration benefits will need to leave the United States at the expiration of their authorized period of parole or will generally be placed in removal proceedings after the period of parole expires.

The temporary, case-by-case parole of qualifying Venezuelan nationals pursuant to this process will provide a significant public benefit for the United States, while also addressing the urgent humanitarian reasons that Venezuelan nationals are fleeing, to include repression and unsafe conditions in their home country. Most significantly, we anticipate that parole will: (i) enhance the security of our SWB by reducing irregular migration of Venezuelan nationals; (ii) enhance border security and national security by vetting individuals prior to their arrival at a United States POE; (iii) reduce the strain on DHS personnel and resources; (iv) minimize the domestic impact of Venezuelan irregular migration; (v) disincentivize a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfill important foreign policy goals to manage migration collaboratively in the hemisphere. The process is capped at 24,000 beneficiaries. After this cap is reached, DHS will not approve additional beneficiaries, absent a Secretary-level decision, at the Secretary's sole discretion, to continue the process.

B. Conditions at the Border

1. Trends and Flows: Increase of Venezuelan Nationals Arriving at the Southwest Border

The last decades have yielded a dramatic increase in encounters at the SWB and a dramatic shift in the demographics of those encountered. Throughout the 1980s and into the first decade of the 2000s, encounters along the SWB routinely numbered in the millions per year. By the early 2010s, three decades of investments in border security and strategy contributed to reduced border flows, with border encounters averaging fewer than 400,000 per year from 2011–2017.[4] These gains were subsequently reversed, however, as border encounters more than doubled between 2017 and 2019, and—following a steep drop in the first months of the COVID–19 pandemic—continued to increase at a similar pace in 2021 and 2022.

Shifts in demographics have also had a significant effect on irregular migration. Border encounters in the 1980s and 1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons. Beginning in the 2010s, a growing share of migrants have been from Northern Central America[5] (NCA) and, since the late 2010s, from countries throughout the Americas. Migrant populations from these newer source countries have included large numbers of families and children, many of whom are traveling to escape violence and political oppression and for other non-economic reasons.[6]

The most recent rise in the numbers of encounters at the border has been driven in significant part by a surge in

[3] *See* INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[4] Office of Immigration Statistics (OIS) analysis of historic CBP data.

[5] Northern Central America refers to El Salvador, Guatemala, and Honduras.

[6] Prior to 2013, the overall share of encounters who were processed for expedited removal and claimed fear averaged less than 2 percent annually. Between 2013 and 2018, the share rose from 8 to 20 percent, before dropping with the surge of family unit encounters in 2019 (most of whom were not placed in expedited removal) and the onset of Title 42 expulsions in 2020. As the same time, between 2013 and 2021, among those placed in expedited removal, the share making fear claims increased from 16 to 82 percent. OIS analysis of historic CBP and USCIS data and OIS Enforcement Lifecycle through June 30, 2022.

migration of Venezuelan nationals. Unique encounters of Venezuelan nationals increased throughout fiscal year (FY) 2021, totaling 47,328. More than 25% of Venezuela's population has left the country. The United States is seeing a rising rate of Venezuelans encountered at our border over the past two years, which has surged in the last few months. Average monthly unique encounters of Venezuelan nationals at the land border totaled 15,494 in FY 2022,[7] rising further to over 25,000 in August and 33,000 in September, compared to a monthly average of 127 unique encounters from FY 2014–2019.[8] Of note, unique encounters of Venezuelan nationals rose 293 percent between FY 2021 and FY 2022, while unique encounters of all other nationalities combined increased by 45 percent. Panama is currently seeing more than 3,000 people, mostly Venezuelan nationals, crossing into its territory from Colombia via the Darién jungle each day.

In recent months, this surge in irregular migration of Venezuelan nationals has been accelerating. Nationals from Venezuela accounted for 25,130 unique encounters in August 2022, and the Office of Immigration Statistics (OIS) estimates that there were 33,500 unique encounters in September, more than Mexico and more than all three NCA countries combined.[9]

2. Push and Pull Factors

DHS assesses that the high—and rising—number of Venezuelan encounters has three key causes: First, the deteriorating conditions in Venezuela, including repression, instability, and violence, are pushing large numbers to leave their home country. Second, the lack of safe and orderly migration alternatives throughout the entire region, including to the United States, means that those seeking refuge outside of Venezuela have few lawful options. Third, the United States faces significant limits on the ability to return Venezuelan nationals to Venezuela or elsewhere, as described below; absent such a return ability, more individuals are willing to take a chance that they can come—and stay.

a. Factors Pushing Migration From Venezuela

A complex political, humanitarian, and economic crisis; the widespread presence of non-state armed groups; crumbling infrastructure; and the repressive tactics of Nicolás Maduro have caused nearly 7 million Venezuelans to flee their country.[10] Maduro has arbitrarily banned key opposition figures from participating in the political process, detained hundreds of political prisoners, employed judicial processes to circumscribe political parties, and denied opposition political representatives equal access to media coverage and freedom of movement in the country.[11] In a February 2022 report, Amnesty International reported that ''[c]rimes under international law and human rights violations, including politically motivated arbitrary detentions, torture, extrajudicial executions and excessive use of force have been systematic and widespread, and could constitute crimes against humanity.'' [12] Amnesty International further reported that ''trends of repression in Venezuela have been directed against a specific group of people: those perceived as dissidents or opponents'' of Nicolás Maduro.[13]

According to the United Nations High Commissioner for Refugees, Venezuela has become the second-largest external displacement crisis in the world, following Syria.[14] At least in the short term, the crisis is expected to continue, thus continuing to push Venezuelans to seek alternatives elsewhere. As described above, Panama is currently seeing more than 3,000 people, mostly Venezuelan nationals, crossing into its territory from Colombia via the Darién jungle each day.

b. Return Limitations

At this time, there are significant limits in DHS's ability to expel or return Venezuelans who enter the United States without authorization in between POEs. DHS is currently under a court-ordered obligation to implement the Centers for Disease Control and Prevention's (CDC) Title 42 public health Order, under which covered noncitizens may be prevented entry or expelled to prevent the spread of communicable disease.[15] But Venezuela does not presently allow repatriations via charter flights, which significantly limits DHS's ability to return those subject to the Title 42 Order or who are ordered removed. To date, other countries, including Mexico, have generally been reluctant to accept Venezuelans as well. As a result, DHS was only able to repatriate a small number of Venezuelan nationals to Venezuela in FY 2022.

c. Overall Effect

DHS assesses that the combination of the country conditions in Venezuela, the lack of safe and orderly lawful pathways, and the present inability to expel or remove Venezuelan nationals engaged in irregular migration, has significantly led to the significant increase in irregular migration among Venezuelan nationals. Conversely, DHS assesses that the return of a significant portion of Venezuelans who enter irregularly at the border, coupled with an alternative process pursuant to which Venezuelans could enter the United States lawfully, would meaningfully change the incentives for those intending to migrate—leading to a decline in the numbers of Venezuelans seeking to irregularly cross the SWB.

This prediction is based on prior experience: CBP saw rapidly increasing numbers of encounters of Guatemalan and Honduran nationals from January 2021 until August 2021, when these countries began accepting the direct return of their nationals. In January 2021, CBP encountered an average of 424 Guatemalan nationals and 362 Honduran nationals a day. By August 4, 2021, the 30-day average daily encounter rates had climbed to 1,249 Guatemalan nationals and 1,502 Honduran nationals—an increase of 195 percent and 315 percent, respectively. In the 60 days immediately following the resumption of routine flights, average daily encounters fell by 37

[7] FY 2022 CBP data cited in this notice is based on internal reporting to date. CBP releases official data in regular intervals; final FY 2022 figures may differ to some degree from the figures cited here.

[8] OIS analysis of OIS Persist Dataset based on data through August 31, 2022 and OIS analysis of U.S. Customs and Border Protection (CBP) data from Unified Immigration Portal (UIP) as of October 6, 2022. Unique encounters include encounters of persons at the Southwest Border who were not previously encountered in the prior 12 months. Throughout this notice unique encounter data are defined to also include OFO parolees and other OFO administrative encounters.

[9] OIS Persist Dataset based on data through August 31, 2022 and OIS analysis of CBP UIP data as of October 6, 2022.

[10] UNHCR, Venezuela Situation, available at: *https://www.unhcr.org/en-us/venezuela-emergency.html* (last visited Sept. 24, 2022).

[11] 2021 Country Reports of Human Rights Practices: Venezuela, U.S. Department of State, Apr. 12, 2022, available at: *https://www.state.gov/reports/2021-country-reports-on-human-rights-practices/venezuela/* (last visited Sept. 24, 2022).

[12] Venezuela: Calculated repression: Correlation between stigmatization and politically motivated arbitrary detentions, Amnesty International, p. 11, Feb. 10, 2022, available at: *https://www.amnesty.org/en/documents/amr53/5133/2022/en/* (last visited Sept. 25, 2022).

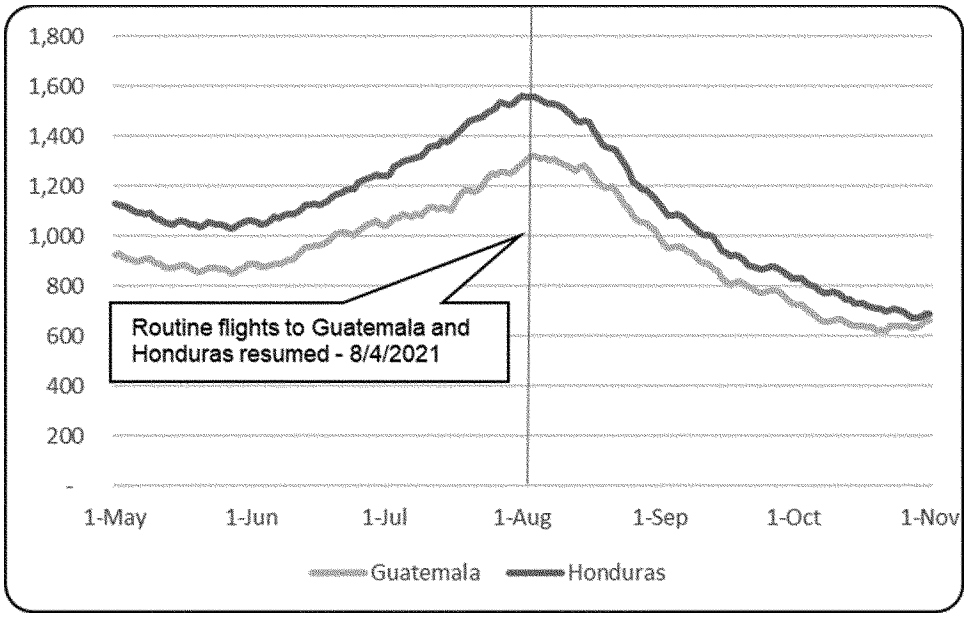
[13] Venezuela: Calculated repression: Correlation between stigmatization and politically motivated arbitrary detentions, Amnesty International, p.52, Feb. 10, 2022, available at: *https://www.amnesty.org/en/documents/amr53/5133/2022/en/* (last visited Sept. 25, 2022).

[14] UNHCR, Venezuela Situation, available at: *https://www.unhcr.org/en-us/venezuela-emergency.html* (last visited Sept. 24, 2022).

[15] *Louisiana* v. *CDC,*—F. Supp. 3d—, 2022 WL 1604901 (W.D. La. May 20, 2022).

percent for Guatemala and 42 percent for Honduras, as shown in Figure 1 below.[16]

Figure 1: Daily Encounters of Guatemalan and Honduran Nationals, May 1–November 1, 2021.



NOTE: Figure depicts 30-day average of daily encounters.

Source: OIS analysis of OIS Persist Dataset.

Returns alone, however, are not sufficient. While the numbers of encounters of Guatemalan and Honduran nationals have fallen, CBP is currently encountering a total of around 1,000 nationals from these two countries each day. The process thus seeks to *combine* a consequence for Venezuelan nationals who seek to enter the United States irregularly at the land border with an incentive to use the lawful process to request authorization to travel by air to and enter the United States, without making the dangerous journey to the border.

This effort is informed by the way that similar incentives and disincentives worked in the U4U process. In the two weeks prior to U4U's implementation, DHS encountered a daily average of 940 nationals of Ukraine at the U.S.-Mexico land border seeking to enter the United States. After the new parole process launched and approved Ukrainians could fly directly into the United States—whereas those who sought to enter irregularly were subject to expulsion pursuant to the Title 42 public health Order—daily encounters dropped to fewer than twelve per day.[17] Mexican officials also reported seeing a similar decline in the number of inbound Ukrainian air passengers.

3. Impact on DHS Resources and Operations

To respond to the increase in encounters along the SWB since FY 2021—an increase that has accelerated in FY 2022, driven in significant part by the number of Venezuelan nationals encountered—DHS has taken a series of extraordinary steps. Largely since FY 2021, DHS has built and now operates 10 soft-sided processing facilities, which cost $688 million in FY 2022. It has detailed 3,770 officers and agents from CBP and ICE to the SWB. In FY 2022, DHS had to utilize its above threshold reprogramming authority to identify approximately $281 million from elsewhere in the Department to address SWB needs, to include facilities, transportation, medical care, and personnel costs.

The Federal Emergency Management Agency (FEMA) has spent $260 million in FYs 2021 and 2022 on grants to non-governmental organizations (NGO) and state and local entities through the Emergency Food and Shelter Program—Humanitarian (EFSP—H) to assist with the reception and onward travel of irregular migrants arriving at the SWB. This spending is in addition to $1.4 billion in FY 2022 one-year surge funding for SWB enforcement and processing capacities.[18]

The impact has been particularly acute in certain border sectors. The increased flows of Venezuelan nationals are disproportionately occurring within the remote Del Rio, El Paso, and Yuma sectors, all of which are at risk of operating, or are currently operating, over capacity. In FY 2022, 93 percent of unique encounters of Venezuelan nationals occurred in these three sectors, with the trend rising to 98 percent in September 2022.[19] In FY 2022, the Del Rio, El Paso, and Yuma sectors encountered almost double the number of migrants as compared to FY 2021 (an 87 percent increase), and a ten-fold increase over the average for FY 2014–FY 2019, primarily as a result of increases in Venezuelans and other non-traditional sending countries.[20]

The focused increase in encounters in those three sectors is particularly challenging. Yuma and Del Rio sectors are geographically remote, and because—until the past two years—they have never been a focal point for large numbers of individuals entering irregularly, they have limited infrastructure and personnel in place to safely process the elevated encounters

[16] OIS analysis of OIS Persist Dataset based on data through August 31, 2022.

[17] OIS Persist Dataset based on data through August 31, 2022.

[18] DHS Plan for Southwest Border Security and Preparedness, DHS Memorandum for Interested Parties, Alejandro N. Mayorkas, Secretary of Homeland Security, Apr. 26, 2022.

[19] OIS analysis of OIS Persist Dataset through August 31, 2022 and CBP UIP data for September 1–30, 2022.

[20] OIS analysis of OIS Persist Dataset through August 31, 2022.

that they are seeing. El Paso sector has relatively modern infrastructure for processing noncitizens encountered at the border, but is far away from other CBP sectors, which makes it challenging to move individuals elsewhere for processing during surges.

In an effort to decompress sectors that are experiencing surges, DHS deploys lateral transportation, using buses and flights to move noncitizens to other sectors with capacity to process. In just one week (between September 22–September 28), El Paso and Yuma sectors operated a combined 79 decompression buses staffed by Border Patrol agents to neighboring sectors.[21] In that same week, El Paso and Yuma sectors also operated 29 combined lateral decompression flights, redistributing noncitizens to other sectors with additional capacity.[22]

Because these assets are finite, using DHS air resources to operate lateral flights impacts DHS's ability to operate international repatriation flights to receiving countries, leaving noncitizens in custody for longer and further taxing DHS resources. This is concerning given the correlation between DHS's ability to operate return flights to non-contiguous home countries and encounters at the border, as described above. DHS assesses that a reduction in the flow of Venezuelans arriving at the SWB would reduce pressure on overstretched resources and enable the Department to more quickly process and, as appropriate, return or remove those who do not have a lawful basis to stay.

II. DHS Parole Authority

The Immigration and Nationality Act (INA or Act) provides the Secretary of Homeland Security with discretionary authority to parole noncitizens into the United States temporarily, under such reasonable conditions that the Secretary may prescribe, on a case-by-case basis for ''urgent humanitarian reasons or significant public benefit.'' [23] Parole is not an admission of the individual to the United States, and a parolee remains an ''applicant for admission'' during the period of parole in the United States.[24] DHS may set the duration of the parole based on the purpose for granting the parole request and may impose reasonable conditions on parole.[25] Individuals may be granted advance authorization to travel to the United States to seek parole.[26] DHS may terminate parole in its discretion at any time.[27] Individuals who are paroled into the United States generally may apply for employment authorization.[28]

This effort will combine a consequence for those who seek to enter the United States irregularly between POEs with a significant incentive for Venezuelan nationals to remain where they are and use a lawful process to request authorization to travel by air to and ultimately enter the United States for the purpose of seeking a discretionary grant of parole for up to two years.

III. Justification for the Process

A. Significant Public Benefit

The case-by-case parole of Venezuelan nationals pursuant to this process—which combines consequences for those who seek to enter the United States irregularly between POEs with an opportunity for eligible Venezuelan nationals to seek advance authorization to travel to the United States to seek discretionary parole, on a case-by-case basis, in the United States—will serve a significant public benefit for multiple, intersecting reasons. Specifically, as noted above, we assess that the parole of eligible individuals pursuant to this process will result in the following: (i) enhancing the security of our border by reducing irregular migration of Venezuelan nationals; (ii) enhancing border security and national security by vetting individuals before they arrive at our border; (iii) reducing the strain on DHS personnel and resources; (iv) minimizing the domestic impact of Venezuelan irregular migration; (v) disincentivizing a dangerous irregular journey that puts migrant lives and safety at risk and enriches smuggling networks; and (vi) fulfilling important foreign policy goals to manage migration collaboratively in the hemisphere and, as part of those efforts, to establish additional processing pathways from within the region to discourage irregular migration.

1. Enhancing the Security of Our Border by Reducing Irregular Migration of Venezuelan Nationals

Implementation of the parole process is contingent on the GOM agreeing to accept the return of Venezuelan nationals encountered irregularly entering the United States without authorization between POEs. While DHS remains under the court order to implement the CDC's Title 42 public health Order, these returns will take the form of expulsions. Once Title 42 is no longer in place, DHS will engage the GOM to effectuate Title 8 removals of individuals subject to expedited removal who cannot be returned to Venezuela or elsewhere. The ability to effectuate returns to Mexico will impose a consequence on irregular entry that currently does not exist.

As described above, Venezuelan nationals make up a significant and growing number of those encountered seeking to cross between POEs irregularly. We assess that without additional and more immediate consequences imposed on those who seek to do so, together with a safe and orderly parole process, the numbers will continue to grow. By pairing a consequence on those seeking to irregularly cross between the POEs with the incentive provided by the opportunity to apply for advance authorization to travel to the United States to seek a discretionary grant of parole, this process will create a combination of incentives and disincentives that will lead to a substantial decline in irregular migration by Venezuelans to the SWB.

As also described above, this expectation is informed, in part, by past experience with respect to the ways that flows of irregular migration decreased from NCA countries once nationals from those countries were returned to their home countries and shifts that took place once the U4U process was initiated. These experiences provide compelling evidence of the importance of coupling effective disincentives for irregular entry with incentives for lawful entry as a way of addressing migratory surges.

2. Enhance Border Security and National Security by Vetting Individuals Before They Arrive at Our Border

The Venezuelan parole process described above will allow DHS to vet potential beneficiaries for national security and public safety purposes *before* they travel to the United States. It is important to note that all noncitizens DHS encounters at the border undergo thorough vetting against national security and public safety databases during their processing, and that individuals who are determined to pose a national security or public safety threat are detained pending removal. Venezuelan nationals seeking parole via this process will still be subject to this vetting upon their arrival at the POE. That said, there are distinct advantages to being able to conduct some vetting actions *before* an individual arrives at the border to prevent individuals who

[21] Data from SBCC, as of September 29, 2022.

[22] Data from SBCC, as of September 29, 2022.

[23] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A); *see also* 6 U.S.C. 202(4) (charging the Secretary with the responsibility for ''[e]stablishing and administering rules . . . governing . . . parole'').

[24] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[25] INA sec. 212(d)(5)(A), 8 U.S.C. 1182(d)(5)(A).

[26] *See* 8 CFR 212.5(f).

[27] *See* 8 CFR 212.5(e).

[28] *See* 8 CFR 274a.12(c)(11).

could pose threats to national security or public safety from even traveling to the United States.

As described above, the vetting will require prospective beneficiaries to upload a live photograph via a mobile application. This will substantially enhance the scope of the pre-travel vetting—thereby enabling DHS to better identify those with criminal records or other disqualifying information of concern and deny them an advance authorization to travel before they arrive at our border.

3. Reduce the Burden on DHS Personnel and Resources

As discussed above, the impact of the increased migratory flows has strained the DHS workforce in ways that have been particularly concentrated in certain sectors along the SWB. By reducing encounters of Venezuelan nationals at the SWB, and channeling decreased flows of Venezuelan nationals to interior POEs through this streamlined process, we anticipate the process will relieve some of this burden. This will free up resources, including those focused on decompression of border sectors, which in turn could enable an increase in removal flights—enabling the removal of more noncitizens with final orders of removal faster and reducing the number of days in DHS custody. While the process will also draw on DHS resources within USCIS and CBP to process requests for discretionary parole on a case-by-case basis and conduct vetting, these requirements involve different parts of DHS and require minimal resources as compared to the status quo.

4. Minimize the Domestic Impact

The increase in irregular migration, including the change in demographics, has put a strain on domestic resources, which is felt most acutely by border communities. As the number of arrivals increases, thus necessitating more conditional releases, the strains are shared by others as well. Given the current inability to return or repatriate Venezuelans in substantial numbers, Venezuelan nationals account for a significant percentage of the individuals being conditionally released pending their removal proceedings or the initiation of such proceedings after being encountered and processed along the SWB.

State and local governments, along with NGOs, are providing services and assistance to the Venezuelans and other noncitizens who have arrived at our border, including by building new administrative structures, finding additional housing facilities, and constructing tent shelters to address the increased need.[29] DHS also has worked with Congress to make approximately $290 million available since FY 2019 through FEMA's EFSP to support NGOs and local governments that provide initial reception for migrants entering through the SWB. This funding has allowed DHS to support building significant NGO capacity along the SWB, including a substantial increase in available shelter beds in key locations.

Despite these efforts, local communities have reported strain on their ability to provide needed social services.[30] Local officials and NGOs report that the temporary shelters that house migrants are quickly reaching capacity due to the high number of arrivals,[31] and stakeholders in the border region have expressed concern that shelters will eventually reach full bed space capacity and not be able to host any new arrivals.[32] The parole process will address these concerns by diverting flows of Venezuelan nationals to interior POEs through a safe and orderly process and ensuring that those who do arrive in the United States have support during their period of parole. The effort is intended to yield a decrease in the numbers arriving at the SWB.

Moreover, and critically, beneficiaries will be required to fly to the interior, rather than arriving at the SWB, absent extraordinary circumstances. They will only be authorized to come to the United States if they have a supporter who has agreed to receive them and provide basic needs, including housing support. Beneficiaries also will be eligible to apply for work authorization, thus enabling them to support themselves. We anticipate that this process will help reduce the burden on communities, state and local governments, and NGOs that currently support the reception and onward travel of migrants arriving at the SWB.

5. Disincentivize a Dangerous Journey That Puts Migrant Lives and Safety at Risk and Enriches Smuggling Networks

In FY 2022, more than 750 migrants died attempting to enter the United States across the SWB,[33] an estimated 32 percent increase from FY 2021 (568 deaths) and a 195 percent increase from FY 2020 (254 deaths).[34] The approximate number of migrants rescued by CBP in FY 2022 (almost 19,000 rescues) [35] increased 48 percent from FY 2021 (12,857 rescues), and 256 percent from FY 2020 (5,336 rescues).[36] Although exact figures are unknown, experts estimate that about 30 bodies have been taken out of the Rio Grande River each month since March 2022.[37] CBP attributes these rising trends to increasing numbers of migrants, as evidenced by increases in overall U.S. Border Patrol encounters.[38] The increased rates of both migrant deaths and those needing rescue at the SWB demonstrate the perils of the journey.

Meanwhile, these numbers do not account for the countless incidents of death, illness, and exploitation migrants experience during the perilous journey north. Migrants are increasingly traveling to the SWB from South America through the Darién Gap, an incredibly dangerous and grueling 100-kilometer stretch of dense jungle between Colombia and Panama. Women and children are particularly vulnerable. Children are particularly at risk for diarrhea, respiratory diseases, dehydration, and other ailments that

[29] Aya Elamroussi and Adrienne Winston, Washington, DC, approves creation of new agency to provide services for migrants arriving from other states, CNN, Sept. 21, 2022, available at: *https://www.cnn.com/2022/09/21/us/washington-dc-migrant-services-office (last visited Sept. 29, 2022).*

[30] Lauren Villagran. El Paso struggles to keep up with Venezuelan migrants: 5 key things to know. Sep. 14, 2022, available at: *https://www.elpasotimes.com/story/news/2022/09/14/venezuelan-migrants-el-paso-what-to-know-about-their-arrival/69493289007/* (last visited Sept. 29, 2022); Uriel J. Garcia. El Paso scrambles to move migrants off the streets and gives them free bus rides as shelters reach capacity. Sept. 20, 2022, available at: *https://www.texastribune.org/2022/09/20/migrants-el-paso-texas-shelter/* (last visited Sept. 29, 2022).

[31] Email from City of San Diego Office of Immigration Affairs to DHS, Sept. 23, 2022.

[32] Denelle Confair, Local migrant shelter reaching max capacity as it receives hundreds per day, KGUN9 Tucson, Sept. 23, 2022, available at: *https://www.kgun9.com/news/local-news/local-migrant-shelter-reaching-max-capacity-as-it-receives-hundreds-per-day* (last visited Sept. 29, 2022).

[33] Priscilla Alvarez, First on CNN: A record number of migrants have died crossing the US-Mexico border, Sept. 7, 2022, available at: *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html* (last visited Sept. 30, 2022).

[34] Rescue Beacons and Unidentified Remains, Fiscal Year 2022 Report to Congress, U.S. Customs and Border Protection.

[35] Priscilla Alvarez, First on CNN: A record number of migrants have died crossing the US-Mexico border, Sept. 7, 2022, available at: *https://www.cnn.com/2022/09/07/politics/us-mexico-border-crossing-deaths/index.html* (last visited Sept. 30, 2022).

[36] Rescue Beacons and Unidentified Remains, Fiscal Year 2022 Report to Congress, U.S. Customs and Border Protection.

[37] Valerie Gonzalez, The Guardian, Migrants risk death crossing treacherous Rio Grande river for 'American dream,' Sept. 5, 2022, available at: *https://www.theguardian.com/us-news/2022/sep/05/migrants-risk-death-crossing-treacherous-rio-grande-river-for-american-dream* (last visited Oct. 11, 2022).

[38] Rescue Beacons and Unidentified Remains, Fiscal Year 2022 Report to Congress, U.S. Customs and Border Protection.

require immediate medical attention.[39] According to Panama migration authorities, of the over 31,000 migrants passing through the Darién Gap in August 2022, 23,600 were Venezuelan.[40]

These migration movements are in many cases facilitated by numerous human smuggling organizations that treat the migrants as pawns.[41] These organizations exploit migrants for profit, often bringing them through across inhospitable jungles, rugged mountains, and raging rivers, often with small children in tow. Upon reaching the border area, noncitizens seeking to cross the United States generally pay transnational criminal organizations (TCOs) to coordinate and guide them along the final miles of their journey. Tragically, a significant number of individuals perish along the way. The trailer truck accident that killed 55 migrants in Chiapas, Mexico last December, and the tragic incident in San Antonio, Texas on June 27, 2022, in which 53 migrants died of the heat in appalling conditions, are just two examples of many in which TCOs engaged in human smuggling prioritize profit over safety.[42]

[39] UNICEF, 2021 Records Highest Ever Number of Migrant Children Crossing the Darien Towards the U.S., Oct. 11, 2021, available at: *https://www.unicef.org/lac/en/press-releases/2021-records-highest-ever-number-migrant-children-crossing-darien-towards-us* (last visited Sept. 29, 2022).

[40] Panamá Migración, Irregulares en Tránsito Frontera Panamá—Colombia 2022, available at: *https://www.migracion.gob.pa/inicio/estadisticas*

[41] DHS Plan for Southwest Border Security and Preparedness, DHS Memorandum for Interested Parties, Alejandro N. Mayorkas, Secretary of Homeland Security, Apr. 26, 2022.

[42] Jacob Garcia, Reuters, Migrant truck crashes in Mexico killing 54, available at: *https://www.reuters.com/article/uk-usa-immigration-mexico-accident-idUKKBN2IP01R* (last visited Sept. 29, 2022); Mica Rosenberg, Kristina Cooke, Daniel Trotta, The border's toll: Migrants increasingly die crossing into U.S. from Mexico, July 25, 2022, available at: *https://www.reuters.com/article/usa-immigration-border-deaths/the-borders-toll-migrants-increasingly-die-crossing-into-u-s-from-mexico-idUSL4N2Z247X* (last visited Oct. 2, 2022).

This new process, which will incentivize intending migrants to use a safe and orderly means to access the United States via commercial air flights, cuts out the smuggling networks. DHS anticipates it will save lives and undermine the profits and operations of the dangerous TCOs that put migrants' lives at risk for profit.

6. Fulfill Important Foreign Policy Goals To Manage Migration Collaboratively in the Hemisphere

Promoting a safe, orderly, legal, and humane migration strategy throughout the Western Hemisphere has been a top foreign policy priority for the Administration. This is reflected in three policy-setting documents: the U.S. Strategy for Addressing the Root Causes of Migration in Central America (Root Causes Strategy); the Collaborative Migration Management Strategy (CMMS); and the Los Angeles Declaration on Migration and Protection (L.A. Declaration), which was endorsed in June 2022 by 21 countries. The CMMS and the L.A. Declaration call for a collaborative and regional approach to migration. Countries that have endorsed the L.A. Declaration are committed to implementing programs and processes to stabilize communities that host migrants, or that have high outward migration. They commit to humanely enforcing existing laws regarding movements across international boundaries, especially when minors are involved, taking actions to stop migrant smuggling by targeting the criminals involved in these activities, and providing increased regular pathways and protections for migrants residing in or transiting through the 21 countries. The L.A. Declaration specifically lays out the goal of collectively ''expand[ing] access to regular pathways for migrants and refugees.'' [43]

[43] L.A. Declaration.

This new process helps achieve these goals by providing an immediate and temporary safe and orderly process for Venezuelan nationals to lawfully enter the United States while we work to improve conditions in sending countries and expand more permanent lawful immigration pathways in the region, including refugee processing, and other lawful pathways into the United States and other Western Hemisphere countries. It thus enables the United States to lead by example.

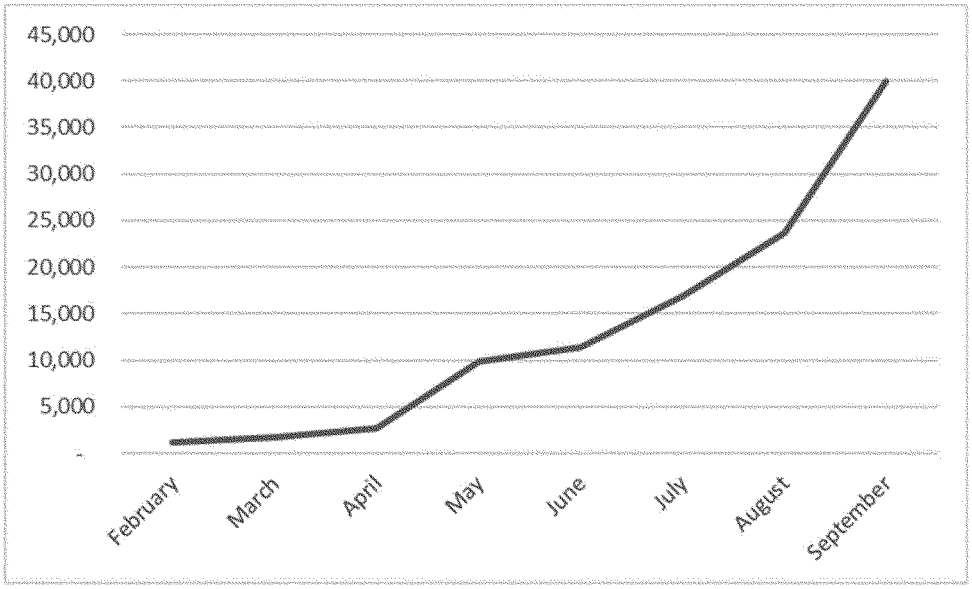
The process also responds to an acute foreign policy need. The current surge of Venezuelan nationals transiting the Darién Gap is impacting every country between Colombia and the SWB. Colombia, Peru, and Ecuador are now hosting almost 4 million displaced Venezuelans among them. The Government of Panama has repeatedly signaled that it is overwhelmed with the number of migrants, a significant portion of whom are Venezuelan, emerging from harrowing journeys through the Darién Gap.

Reporting indicates that in the first six months of 2022, 85 percent more migrants, primarily Venezuelans, crossed from Colombia into Panama through the Darién Gap than during the same period in 2021—including approximately 40,000 Venezuelans in September alone.[44] Again, Darién Gap migrant encounters now average more than 3,000 each day, predominantly comprised of Venezuelan nationals.

Figure 2 shows that the number of Venezuelan nationals processed by Panama after entering irregularly from Colombia increased by almost 30-fold from the week of April 1, 2022 to the week of October 1, 2022.

Figure 2: Panamanian Encounters of Venezuelan Nationals in the Darién Gap, February–September 2022

[44] The Department of State Cable, 22 Panama 624.



Note: September figure is a preliminary estimate.

Source: Panama Migration Report, September 24, 2022.

Key allies throughout the region—including the Governments of Mexico, Costa Rica, and Panama, all of which are also affected by the increased movement of Venezuelan nationals—have been seeking greater action to address these challenging flows for some time. Meanwhile, the GOM has consistently expressed concerns with policies, programs, and trends that contribute to large populations of migrants, many of whom are Venezuelan, entering Mexico. These entries strain local governmental and civil society resources in Mexican border communities in both the south and north, and have at times led to violence, crime, and unsafe and unhealthy encampments.

The United States is already taking key steps to address some of these concerns. On June 10, 2022, the Department of State's Bureau of Population, Refugees, and Migration (PRM) and the U.S. Agency for International Development (USAID) announced $314 million in new funding for humanitarian and development assistance for refugees and vulnerable migrants across the hemisphere, including support for socio-economic integration and humanitarian aid for Venezuelans in 17 countries of the region.[45] And on September 22, 2022, PRM and USAID announced nearly $376 million in additional humanitarian assistance, which will provide essential support for vulnerable Venezuelans inside Venezuela, as well as urgently needed assistance for migrants, refugees, and host communities across the region. This funding will further address humanitarian needs in the region.[46]

This new process adds to these efforts and enables the United States to lead by example. It is a key mechanism to advance the larger domestic and foreign policy goals of this Administration to promote a safe, orderly, legal, and humane migration strategy throughout our hemisphere. It also lays the foundation for the United States to press regional partners to undertake additional actions with regards to these populations, many of which are already taking important steps. Colombia, for example, is hosting more than 2.4 million displaced Venezuelans and has provided temporary protected status for more than 1.5 million of them. Costa Rica is developing plans to renew temporary protection for Venezuelans. And on June 1, 2022, the Government of Ecuador—which is hosting more than 500,000 Venezuelans—authorized a second regularization process that would provide certain Venezuelans a two-year temporary residency visa.[47] Any effort to meaningfully address the crisis in Venezuela will require continued efforts by these and other regional partners.

Importantly, the United States will not implement the new parole process without the ability to return Venezuelan nationals to Mexico who enter irregularly. The United States' ability to execute this process thus requires the GOM to accept the return of Venezuelan nationals who bypass this new process and enter the United States irregularly between POEs.

For its part, the GOM has made clear that in order to effectively manage the migratory flows that are impacting both countries, the United States needs to provide additional safe and orderly processes for migrants who seek to enter the United States. As the GOM makes a unilateral decision whether to accept returns of third country nationals at the border and how best to manage migration within Mexico, it is closely watching the United States' approach to migration management and whether the United States is delivering on its plans in this space. Initiating and managing this process—which is dependent on the GOM's actions—will require careful, deliberate, and regular assessment of the GOM's responses to unilateral U.S. actions and ongoing, sensitive diplomatic engagements.

This process is responsive to the GOM's desire to see more lawful pathways to the United States and is aligned with broader Administration

[45] The United States Announces More Than $314 Million in New Stabilization Efforts and Humanitarian Assistance for Venezuelans and Other Migrants at the Summit of the Americas, June 10, 2022, available at: *https://www.usaid.gov/news-information/press-releases/jun-10-2022-united-states-announces-more-314-million-new-stabilization-efforts-venezuela* (last visited Oct. 11, 2022).

[46] The United States Announces Nearly $376 Million in Additional Humanitarian Assistance for People Affected by the Ongoing Crisis in Venezuela and the Region, Sept. 22, 2022, available at: *https://www.usaid.gov/news-information/press-releases/sep-22-2022-the-us-announces-nearly-376-million-additional-humanitarian-assistance-for-people-affected-by-ongoing-crisis-in-venezuela* (last visited Sept. 30, 2022).

[47] Venezuela Regional Crisis—Complex Emergency, June 14, 2022, available at: *https://www.usaid.gov/sites/default/files/documents/2022-06-14_USG_Venezuela_Regional_Crisis_Response_Fact_Sheet_3.pdf* (last visited Sept. 29, 2022).

domestic and foreign policy priorities in the region. It will couple a meaningful incentive to seek a lawful, orderly means of traveling to the United States with the imposition of consequences for those who seek to enter irregularly. The goal of this process is to reduce the irregular migration of Venezuelan nationals throughout the hemisphere while we, together with partners in the region, work to improve conditions in sending countries and create more lawful immigration and refugee pathways in the region, including to the United States.

B. Urgent Humanitarian Reasons

The case-by-case temporary parole of individuals pursuant to this process will address the urgent humanitarian reasons faced by so many Venezuelans subject to the repressive regime of Nicolás Maduro. This process provides a safe and orderly mechanism for Venezuelan nationals who seek to leave their home country to enter the United States without having to make the dangerous journey to the United States.

IV. Eligibility To Participate in the Process and Processing Steps

A. Supporters

U.S.-based supporters will initiate an application on behalf of a Venezuelan national [48] by submitting a Form I–134, Declaration of Financial Support, to USCIS for each beneficiary. Supporters can be sole individuals, individuals filing on behalf of a group, or individuals representing an entity. To serve as a supporter under the process, an individual must:

- be a U.S. citizen, national, or lawful permanent resident; hold a lawful status in the United States; or be a parolee or recipient of deferred action or Deferred Enforced Departure;
- pass security and background vetting, including for public safety, national security, human trafficking, and exploitation concerns; and
- demonstrate sufficient financial resources to receive, maintain, and support the intended beneficiary whom they commit to support for the duration of their parole period.

B. Beneficiaries

In order to be eligible to request and ultimately be considered for a discretionary issuance of advance authorization to travel to the United States to seek a discretionary grant of parole at the POE, such individuals must:

- be outside the United States;
- be a national of Venezuela or be a non-Venezuelan immediate family member [49] of and traveling with a Venezuelan principal beneficiary;
- have a U.S.-based supporter who filed a Form I–134 on their behalf that USCIS has vetted and confirmed;
- possess a passport valid for international travel;
- provide for their own commercial travel to an air POE and final U.S. destination;
- undergo and pass required national security and public safety vetting;
- comply with all additional requirements, including vaccination requirements and other public health guidelines; and
- demonstrate that a grant of parole is warranted based on significant public benefit or urgent humanitarian reasons, as described above, and that a favorable exercise of discretion is otherwise merited.

A Venezuelan national is ineligible to be considered for parole under this process if that person is a permanent resident or dual national of any country other than Venezuela, or currently holds refugee status in any country.[50]

In addition, a potential beneficiary is ineligible for advance authorization to travel to the United States as well as parole under this process if that person:

- failed to pass national security and public safety vetting or is otherwise deemed not to merit a favorable exercise of discretion;
- has been ordered removed from the United States within the prior five years or is subject to a bar based on a prior removal order; [51]
- has crossed irregularly into the United States, between the POEs, after October 19, 2022;
- has irregularly crossed the Mexican or Panamanian borders after October 19, 2022; or
- is under 18 and not traveling through this process accompanied by a parent or legal guardian, and as such is a child whom the inspecting officer would determine to be an unaccompanied child.[52]

Travel requirements: Beneficiaries who receive advance authorization to travel to the United States to seek parole into the United States will be responsible for arranging and funding their own commercial air travel to the United States.

Health Requirements: Beneficiaries must follow all applicable requirements, as determined by DHS's Chief Medical Officer, in consultation with CDC, with respect to health and travel, including vaccination and/or testing requirements for diseases including COVID–19, polio, and measles. The most up-to-date public health requirements applicable to this process will be available at *https://www.uscis.gov/venezuela.*

C. Processing Steps

Step 1: Financial Support

A U.S.-based supporter will submit a Form I–134, Declaration of Financial Support with USCIS through the online myUSCIS web portal to initiate the process. The Form I–134 identifies and collects information on both the supporter and the beneficiary. The supporter must submit a separate Form I–134 for each beneficiary they are seeking to support, including Venezuelans' immediate family members and minor children. The supporter will then be vetted by USCIS to protect against exploitation and abuse, and to ensure that the supporter is able to financially support the individual and any immediate family members whom they agree to support. Supporters must be vetted and confirmed by USCIS, at USCIS' discretion, before moving forward in the process.

Step 2: Submit Biographic Information

If a supporter is confirmed by USCIS, the listed beneficiary will receive an email from USCIS on how to create an account with myUSCIS and instructions on next steps for completing the application. The beneficiary will be required to confirm their biographic information in myUSCIS and attest to meeting the eligibility requirements.

As part of confirming eligibility in their myUSCIS account, individuals who seek authorization to travel to the United States will need to confirm that they meet public health requirements, including certain vaccination requirements.

Step 3: Submit Request in CBP One Mobile Application

After confirming biographic information in myUSCIS and completing required eligibility attestations, the beneficiary will receive

[48] Certain non-Venezuelans may use this process if they are an immediate family member of a Venezuelan beneficiary and traveling with that Venezuelan beneficiary. For purposes of this process, immediate family members are limited to a spouse, common-law partner, and/or unmarried child(ren) under the age of 21.

[49] See the preceding footnote.

[50] This limitation does not apply to immediate family members traveling with a Venezuelan national.

[51] *See, e.g.,* INA sec. 212(a)(9)(A), 8 U.S.C. 1182(a)(9)(A).

[52] As defined in 6 U.S.C. 279(g)(2). Children under the age of 18 must be traveling to the United States in the care and custody of their parent or legal guardian to be considered for parole at the POE under the process.

instructions through myUSCIS on how to access the CBP One mobile application. The beneficiary must then enter limited biographic information into CBP One and submit a live photo.

Step 4: Approval To Travel to the United States

After completing Step 3, the beneficiary will receive a notice to their myUSCIS account confirming whether CBP has, in CBP's discretion, provided the beneficiary advance authorization to travel to the United States to seek a discretionary grant of parole on a case-by-case basis. If approved, this authorization is generally valid for 90 days, and beneficiaries are responsible for securing their own travel via commercial air to the United States.[53] Approval of advance authorization to travel does not guarantee parole into the United States at a U.S. POE. That parole is a discretionary determination made by CBP at the POE.

All of the steps in this process, including the decision to grant or deny advance travel authorization and the parole decision at the POE, are entirely discretionary and not subject to appeal on any grounds.

Step 5: Seeking Parole at the POE

Upon their arrival at a POE, each individual arriving under this process will be inspected by CBP and considered for a grant of discretionary parole for a period of up to two years on a case-by-case basis.

As part of the inspection, beneficiaries will undergo additional screening and vetting, to include additional fingerprint biometric vetting consistent with the CBP inspectional process. Individuals who are determined to pose a national security or public safety threat or otherwise do not warrant parole pursuant to section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), and as a matter of discretion upon inspection, will be processed under an appropriate processing pathway and may be referred to U.S. Immigration and Customs Enforcement (ICE) for detention.

Step 6: Parole

If granted parole pursuant to this process, each individual generally will be paroled into the United States for a period of up to two years, subject to applicable health and vetting requirements, and will be eligible to apply for employment authorization under existing regulations. Individuals may request authorization to work from USCIS. USCIS is leveraging technological and process efficiencies to minimize processing times for requests for work authorization. All individuals two years of age or older will be required to complete a medical screening for tuberculosis, including an IGRA test, within 90 days of arrival to the United States.

D. Sunset, Renewal, and Termination

The process is capped at 24,000 beneficiaries. After this cap is reached, the program will sunset absent a decision by the Secretary to continue the process, based on the Secretary's sole discretion. The Secretary also retains the sole, unreviewable discretion to terminate the process at any point.

E. Administrative Procedure Act (APA)

This process is exempt from notice-and-comment rulemaking requirements on multiple grounds, and is therefore amenable to immediate issuance and implementation.

First, the Department is merely adopting a general statement of policy,[54] *i.e.,* a ''statement[ ] issued by an agency to advise the public prospectively of the manner in which the agency proposes to exercise a discretionary power.'' [55] As section 212(d)(5)(A) of the INA, 8 U.S.C. 1182(d)(5)(A), provides, parole decisions are made by the Secretary of Homeland Security ''in his discretion.''

Second, even if this process were considered to be a legislative rule that would normally be subject to requirements for notice-and-comment rulemaking and a delayed effective date, the process is exempt from such requirements because it involves a foreign affairs function of the United States.[56] In addition, although under the APA, invocation of this exemption from notice-and-comment rulemaking does not require the agency to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing,[57] and DHS can make one here.

As described above, this process is directly responsive to requests from key foreign partners—including the GOM—to provide a lawful process for Venezuelan nationals to enter the United States. The United States will not implement the new parole process without the ability to return Venezuelan nationals who enter irregularly to Mexico, and the United States' ability to execute this process thus requires the GOM's willingness to accept into Mexico those who bypass this new process and enter the United States irregularly between POEs. Thus, initiating and managing this process will require careful, deliberate, and regular assessment of the GOM's responses to this unilateral U.S. action and ongoing, sensitive diplomatic engagements.

Delaying issuance and implementation of this process to undertake rulemaking would undermine the foreign policy imperative to act now and result in definitely undesirable international consequences. It also would complicate broader discussions and negotiations about migration management. For now, Mexico has indicated it is prepared to make a unilateral decision to accept a substantial number of Venezuela returns. That willingness to accept the returns could be impacted by the delay associated with a public rulemaking process involving advance notice and comment and a delayed effective date. Additionally, making it publicly known that we plan to return nationals of Venezuela to Mexico at a future date would likely result in a surge in migration, as migrants rush to the border to enter before the rule becomes final—which would adversely impact each country's border security and further strain their personnel and resources deployed to the border.

Moreover, this process is not only responsive to the request of Mexico and key foreign partners—and necessary for addressing migration issues requiring coordination between two or more governments—it is also fully aligned with larger and important foreign policy objectives of this Administration and fits within a web of carefully negotiated actions by multiple governments (for instance in the L.A. Declaration). It is the view of the United States that the implementation of this process will advance the Administration's foreign policy goals by demonstrating U.S. partnership and U.S. commitment to the shared goals of addressing migration through the hemisphere, both of which are essential to maintaining a strong bilateral relationship.

The invocation of the foreign affairs exemption here is also consistent with Department precedent. For example, in 2017 DHS published a notice eliminating an exception to expedited removal for certain Cuban nationals, which explained that the change in

[53] Air carriers can validate an approved and valid travel authorization submission using the same mechanisms that are currently in place to validate that a traveler has a valid visa or other documentation to facilitate issuance of a boarding pass for air travel.

[54] 5 U.S.C. 553(b)(A).

[55] *Lincoln* v. *Vigil,* 508 U.S. 182, 197 (1993) (quoting *Chrysler Corp.* v. *Brown,* 441 U.S. 281, 302 n.31 (1979)).

[56] 5 U.S.C. 553(a)(1).

[57] *See, e.g., Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008).

policy was consistent with the foreign affairs exemption because the change was central to ongoing negotiations between the two countries.[58]

Third, DHS assesses that there is good cause to find that the delay associated with implementing this process through notice-and-comment rulemaking would be impracticable and contrary to the public interest because of the need for coordination with the GOM described above, and the urgent border and national security and humanitarian interests in reducing and diverting the flow of irregular migration.[59] It would be impracticable to delay issuance in order to undertake such procedures because—as noted above—maintaining the status quo, which involves record numbers of Venezuelan nationals currently being encountered attempting to enter irregularly at the SWB, coupled with DHS's extremely limited options for processing, detaining, or quickly removing such migrants, unduly impedes DHS's ability to fulfill its critical and varied missions. At current rates, a delay of just a few months to conduct notice-and-comment rulemaking would effectively forfeit an opportunity to reduce and divert migrant flows in the near term, harm border security, and potentially result in scores of additional migrant deaths. Undertaking such procedures would also be contrary to the public interest because an advance announcement of this process would seriously undermine a key goal of the policy by incentivizing even more irregular migration of Venezuelan nationals seeking to enter the United States before the process would take effect.

F. Paperwork Reduction Act (PRA)

Under the Paperwork Reduction Act (PRA), 44 U.S.C. chapter 35, all Departments are required to submit to the Office of Management and Budget (OMB), for review and approval, any new reporting requirements they impose. The process announced by this notice requires changes to two collections of information, as follows.

First, OMB has approved a revision to USCIS Form I–134, *Declaration of Financial Support* (OMB control number 1615–0014) under the PRA's emergency processing procedures at 5 CFR 1320.13. USCIS is making some changes to the online form in connection with the implementation of the process described above. These changes include: requiring two new data elements for U.S.-based supporters (''Sex'' and ''Social Security Number''); adding a third marker (''X'') in addition to ''M'' and ''F'' in accordance with this Administration's stated gender equity goals; and adding Venezuela as an acceptable option for the beneficiary's country of origin. USCIS has submitted and OMB has approved a request for emergency authorization of the required changes (under 5 CFR 1320.13) for a period of 6 months. Within the next 90 days, USCIS will immediately begin normal clearance procedures under the PRA.

Second, OMB has approved an emergency request under 5 CFR 1320.13 for a new information collection from CBP entitled *Advance Travel Authorization.* OMB has approved the emergency request for a period of 6 months and will assign a control number to the collection. This new information collection will allow certain noncitizens from Venezuela, and their qualifying immediate family members, who lack United States entry documents to submit information through the newly developed CBP ATA capability within the CBP One™ application as part of the process to request an advance authorization to travel to the United States to seek parole. Within the next 90 days, CBP will immediately begin normal clearance procedures under the PRA. More information about both collections can be viewed at *www.reginfo.gov.*

Alejandro N. Mayorkas,

Secretary of Homeland Security.

[FR Doc. 2022–22739 Filed 10–18–22; 8:45 am]

BILLING CODE 9110–9M–P

[58] *See* 82 FR 4902 (Jan. 17, 2017).

[59] 5 U.S.C. 553(b)(B).

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–52]

30-Day Notice of Proposed Information Collection: Debt Resolution Program, OMB Control No.: 2502–0483

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for an additional 30 days of public comment.

DATES: *Comments Due Date:* November 18, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *OIRA_submission@omb.eop.gov* or *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: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 23, 2022 at 87 FR 1479.

A. Overview of Information Collection

Title of Information Collection: Debt Resolution Program.

OMB Approval Number: 2502–0483.

OMB Expiration Date: November 30, 2022.

Type of Request: Revision of a currently approved collection.

Form Number: HUD–56141, HUD–56142, HUD–56146.

Description of the need for the information and proposed use: HUD is required to collect debt owed to the agency. As part of the collection process, demand for repayment is made on the debtor(s).

Respondents: Individuals or Households, Business or other For-Profit.

Estimated Number of Respondents: 648.

Estimated Number of Responses: 2,159.

Frequency of Response: 1.

Average Hours per Response: 1.

Total Estimated Burden: 590 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–22680 Filed 10–18–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–7050–N–53]

30-Day Notice of Proposed Information Collection: Manufactured Home Construction and Safety Standards Program, OMB Control No.: 2502–0233

AGENCY: Office of Policy Development and Research, Chief Data Officer, HUD.

ACTION: Notice.

SUMMARY: HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

DATES: *Comments Due Date:* December 19, 2022.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Room 4176, Washington, DC 20410–5000; telephone 202–402–3400 (this is not a toll-free number) or email at *Colette.Pollard@hud.gov* for a copy of the proposed forms or other available information. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

FOR FURTHER INFORMATION CONTACT: Colette Pollard, Reports Management Officer, REE, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410; email Colette Pollard at *Colette.Pollard@hud.gov* or telephone 202–402–3400. This is not a toll-free number. HUD welcomes and is prepared to receive calls from individuals who are deaf or hard of hearing, as well as individuals with speech and communication disabilities. To learn more about how to make an accessible telephone call, please visit: *https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs.*

Copies of available documents submitted to OMB may be obtained from Ms. Pollard.

SUPPLEMENTARY INFORMATION: This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

The **Federal Register** notice that solicited public comment on the information collection for a period of 60 days was published on March 25, 2022 at 87 FR 17099.

A. Overview of Information Collection

Title of Information Collection: Manufactured Home Construction and Safety Standards Program.

OMB Approval Number: 2502–0233.

OMB Expiration Date: November 30, 2022.

Type of Request: Revision of a currently approved collection.

Form Numbers: HUD–101, HUD–203, HUD–203B, HUD–301, HUD–302, HUD–303, HUD–304.

Description of the need for the information and proposed use:

This information collection is used in conjunction with certification labels, which are 2-inch x 4-inch metal tags permanently attached to each section of manufactured homes to provide a unique identifying number to each section of home produced under 24 CFR Chapter XX Part 3280, the Manufactured Home Construction and Safety Standards (Standards). Manufacturers are required to affix labels to all manufactured homes to be sold or leased in the United States, to certify compliance with the Standards in accordance with 24 CFR 3280.11, 24 CFR 3282.204, and 24 CFR 3282.205.

Respondents are both approved Production Inspection Primary Inspections Agencies (IPIAs) as described in 24 CFR 3282.362, and manufacturers, as defined in 24 CFR 3282.7. HUD issues certification labels to IPIAs and those certification labels are re-distributed to manufacturers in accordance with the rules. Manufacturers pay the fee designated in 24 CFR 3284.5. The information collection is necessary to ensure label control, production levels, and provide certification label association to allow the Department to identify a manufactured home after it leaves the plant and to ensure that the certification label fee has been paid. The information will also facilitate any recall or safety-related defect campaigns and provide the data that is needed to pay required fees or credits for program participants in the various states where such homes are manufactured and located.

HUD has updated the number of respondents based on current industry characteristics. The number of manufacturing plants has increased and the number of burden hours per response on the HUD–302 Monthly Production Report has been increased to one hour. Form HUD–203B has been revised to include a field for ''Explanation of Damage/Repair.'' The forms have also been updated to include more precise burden statements.

Respondents: Business or other for-profit; State, Local or Tribal Government.

Estimated Number of Respondents: 151.

Estimated Number of Responses: 5,153.

Frequency of Response: Monthly.

Average Hours per Response: 1.0 burden hour for HUD–302; 0.5 burden hours for all other forms included with this information collection.

Total Estimated Burden: 3,410 hours.

B. Solicitation of Public Comment

This notice is soliciting comments from members of the public and affected

parties concerning the collection of information described in Section A on the following:

(1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) The accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

(5) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

HUD encourages interested parties to submit comment in response to these questions.

C. Authority

Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. chapter 35.

Colette Pollard,

Department Reports Management Officer, Office of Policy Development and Research, Chief Data Officer.

[FR Doc. 2022–22681 Filed 10–18–22; 8:45 am]

BILLING CODE 4210–67–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2022–N051; FXRS12610900000–223–FF09R24000; OMB Control Number 1018–0162]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to revise an existing collection of information.

DATES: Interested persons are invited to submit comments on or before November 18, 2022.

ADDRESSES: Send your comments on the information collection request (ICR) before the close of the comment period listed under **DATES** to *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, 5275 Leesburg Pike, MS: PRB (JAO/3W), Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference OMB Control Number 1018–0162 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States. You may also view the ICR at *https://www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act (PRA, 44 U.S.C. 3501 *et seq.*) and its implementing regulations at 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor and you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

On January 27, 2022, we published in the **Federal Register** (87 FR 4275) a notice of our intent to request that OMB approve our proposed revision to this information collection. In that notice, we solicited comments for 60 days, ending on March 28, 2022. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *https://www.regulations.gov* (Docket FWS–HQ–NWRS–2021–0155) to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received the following four comments in response to this notice:

Comment 1: Email from Jean Public, received 01/30/2022:

The commenter states it is unnecessary to lease oil and gas resources on public lands.

Agency Response to Comment 1: The commenter did not address the information collection requirements. No response required.

Comment 2: Anonymous electronic comment via *https://www.regulations.gov* (FWS–HQ–NWRS–2021–0155–0002), received on 02/02/2022:

The commenter recommends that no permits be issued.

Agency Response to Comment 2: The commenter did not address the information collection requirements. No response required.

Comment 3: Anonymous electronic comment via *https://www.regulations.gov* (FWS–HQ–NWRS–2021–0155–0003), received on 03/01/2022:

The commenter recommends stopping all oil and gas production on public lands.

Agency Response to Comment 3: The commenter did not address the information collection requirements. No response required.

Comment 4: Anonymous electronic comment via *https://www.regulations.gov* (FWS–HQ–NWRS–2021–0155–0004), received on 03/23/2022:

The commenter recommends banning fossil fuel production on public lands.

Agency Response to Comment 4: The commenter did not address the information collection requirements. No response required.

On June 1, 2022, we published a second **Federal Register** notice (87 FR 33200), notifying the public of our intent to request that OMB approve this information collection. This notice solicited comments for an additional 60 days, ending on August 1, 2022. We also described additional revisions identified since the publication of the January 27, 2022. The Service also published this **Federal Register** notice on *https://www.regulations.gov* (Docket FWS–HQ–NWRS–2022–0063), to provide the public with an additional method to submit comments (in addition to the typical *Info_Coll@fws.gov* email and U.S. mail submission methods). We received the following four comments in response to this notice:

Comment 5: Anonymous electronic comment via *https://www.regulations.gov* (FWS–HQ–NWRS–2022–0063–0002), received on 05/31/2022:

The commenter states that it is unnecessary to develop oil and gas resources on public lands.

Agency Response to Comment 5: The commenter did not address the information collection requirements. No response required.

Comment 6: Electronic comment via *https://www.regulations.gov* (FWS–HQ–NWRS–2022–0063–0003) from Jean Public, received on 06/01/2022:

The commenter opposes developing oil and gas resources on public lands.

Agency Response to Comment 6: The commenter did not address the information collection requirements. No response required.

Comment 7: Anonymous electronic comment via *https://www.regulations.gov* (FWS–HQ–NWRS–2022–0063–0004), received on 06/23/2022.

The commenter supports moving the information collection to an electronic format.

Agency Response to Comment 7: With this submission, we are moving toward a format that allows users to submit information collection requirements via an electronic format (automation of FWS Form 3–2469 on the Service's ePermits platform).

Comment 8: Anonymous electronic comment via *https://www.regulations.gov* (FWS–HQ–NWRS–2022–0063–0005), received on 06/27/2022:

The commenter recommends nationalizing the oil and gas industry.

Agency Response to Comment 8: The commenter did not address the information collection requirements. No response required.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again inviting the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. 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 publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The authority of the Service to regulate non-Federal oil and gas operations on National Wildlife Refuge System (NWRS) lands is broadly derived from the Property Clause of the U.S. Constitution (art. IV, sec. 3), in carrying out the statutory mandates of the Secretary of the Interior, as delegated to the Service, to manage Federal lands and resources under the National Wildlife Refuge System Administration Act (NWRSAA), as amended by the National Wildlife Refuge System Improvement Act (NWRSIA; 16 U.S.C. 668dd *et seq.*), and to specifically manage species within the NWRS under the provisions of numerous statutes, the most notable of which are the Migratory Bird Treaty Act (MBTA; 16 U.S.C. 715 *et seq.*), the Endangered Species Act (ESA; 16 U.S.C. 1531 *et seq.*), and the Fish and Wildlife Act of 1956 (FWA; 15 U.S.C. 742f).

The Service's regulations at 50 CFR part 29, subpart D provide for the continued exercise of non-Federal oil and gas rights while avoiding or minimizing unnecessary impacts to national wildlife refuge resources and uses. Other land management agencies have regulations that address oil and gas development, including the Department of the Interior's National Park Service and Bureau of Land Management, and the U.S. Department of Agriculture's Forest Service. These agencies all require the submission of information similar to the information requested by the Service.

The collection of information is necessary for the Service to properly balance the exercise of non-Federal oil and gas rights within national wildlife refuge boundaries with the Service's responsibility to protect wildlife and habitat, water quality and quantity, wildlife-dependent recreational opportunities, and the health and safety of employees and visitors on NWRS lands.

The information collected under 50 CFR part 29, subpart D identifies the owner and operator (the owner and operator can be the same) and details how the operator may access and develop oil and gas resources. It also identifies the steps the operator intends to take to minimize any adverse impacts of operations on refuge resources and uses. No information is submitted unless the operator wishes to conduct oil and gas operations.

We use the information collected to (1) evaluate proposed operations; (2) ensure that all necessary mitigation measures are employed to protect national wildlife refuge resources and values; and (3) ensure compliance with all applicable laws and regulations, including the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*) and its regulations (40 CFR parts 1500–1508), and the NWRSAA, as amended by the NWRSIA, and to specifically manage species within the NWRS under the provisions of numerous statutes, the most notable of which are the MBTA, the ESA, the Fish and Wildlife Coordination Act (16 U.S.C. 661 *et seq.*), and the FWA.

Proposed Revisions

Automation of Application Form via ePermits

With this submission, we are proposing to automate FWS Form 3–2469 in the Service's ePermits system, an automated permit application system that allows the agency to move towards a streamlined permitting process to reduce public burden. Public burden reduction is a priority for the Service; the Assistant Secretary for Fish, Wildlife, and Parks; and senior leadership at the Department of the Interior. The intent of ePermits is to fully automate the permitting process to improve the customer experience and to reduce time burden on respondents. This system enhances the user experience by allowing users to enter data from any device that has internet access, including personal computers (PCs), tablets, and smartphones. It also provides the permit applicant with a link to pay associated permit application fees via the *Pay.gov* system.

Financial Assurances Costs

With this submission, we will seek OMB approval of the costs associated with the financial assurances requirements as they are required per regulations contained in 50 CFR 29.103(b) and 50 CFR 29.150. These costs were inadvertently overlooked with previous submissions for this collection of information, so at this time we are bringing this requirement into compliance with the PRA as an annual non-hour burden cost. The estimated annual non-hour cost burden associated with the required financial assurances is captured below under ''Total Estimated Annual Non-Hour Burden Cost.''

Proposed Changes to Application Form (FWS Form 3–2469)

We propose several changes to the existing FWS Form 3–2469 to improve the user collection experience and our internal processing requirements:

(1) Under the ''Type of Permit'' on page 1, we are adding these categories:

a. ''New''—Used by operators applying for a new permit to operate where no existing Form 3–2469 permit exists;

b. ''Renewal''—Used by operators with a currently approved permit to renew the operation without any substantial changes;

c. ''Amendment''—Used by an operator with an existing Form 3–2469 approved permit to amend their operations; and

d. ''Extension''—Used by an operator with an existing Form 3–2469 approved permit to request an extension to one of its conditions (*e.g.,* extend the shut-in status of a well).

(2) Under the ''Production Operations'' on page 1, we are adding these subcategories:

a. ''Maintenance''—Used for maintenance actions (*e.g.,* need to bring in a workover rig);

b. ''Plugging''—Used with plugging and abandoning of a well; and

c. ''Reclamation''—Used with all activities remove contaminated soils, equipment, pipe, etc., and restore the site to its original contours and vegetation.

(3) Under the ''Contact Information'' in part 1 (on page 2), we propose to add two new questions:

a. ''Tax Identification Number''; and

b. ''Do you have operations on other refuges? If so, provide the names of those refuges.''

(4) Administrative corrections:

a. We corrected the control number in the ''Paperwork Reduction Act Statement''; and

b. We updated the mail stop in the ''Estimated Burden Statement.''

Title of Collection: Non-Federal Oil and Gas Operations on National Wildlife Refuge System Lands, 50 CFR 29, Subpart D.

OMB Control Number: 1018–0162.

Form Number: FWS Form 3–2469.

Type of Review: Revision of a currently approved collection.

Respondents/Affected Public: Businesses that conduct oil and gas exploration on national wildlife refuges.

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Non-hour Burden Cost: $2,250,000 (associated with the new information collection for financial assurances).

Activity/requirement	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours
Preexisting Operations (§ 29.61)	40	50	2,000
Temporary Access Permit Application (§ 29.71) *Hard Copy*	18	17	306
Temporary Access Permit Application (§ 29.71) *ePermits*	18	12.75	230
Accessing Oil and Gas Rights from Non-Federal Surface Location (§ 29.80)	5	1	5
Pre-application Meeting for Operations Permit (§ 29.91)	45	2	90
Operations Permit Application (§§ 29.94–29.97) *Hard Copy*	23	140	3,220
Operations Permit Application (§§ 29.94–29.97) *ePermits*	23	105	2,415
Financial Assurance (§§ 29.103(b), 29.150)	45	1	45
Identification of Wells and Related Facilities (§ 29.119(b))	45	2	90
Reporting (§ 29.121):			
Third-Party Monitor Report (§ 29.121(b))	300	17	5,100
Notification—Injuries/Mortality to Fish and Wildlife and Threatened/Endangered Plants (§ 29.121(c))	20	1	20
Notification—Accidents involving Serious Injuries/Death and Fires/Spills (§ 29.121(d))	20	1	20
Written Report—Accidents Involving Serious Injuries/Deaths and Fires/Spills (§ 29.121(d))	20	16	320
Report—Verify Compliance with Permits (§ 29.121(e))	240	4	960
Permit Modifications (§ 29.160(a))	10	16	160
Notification—Chemical Disclosure of Hydraulic Fracturing Fluids uploaded to FracFocus (§ 29.121(f))	5	1	5
Change of Operator § 29.170:			
Transferring Operator Notification			
(§ 29.170)	20	8	160
Extension to Well Plugging (§ 29.181(a)).			
Application for Permit *Hard Copy*	5	140	700
Application for Permit *ePermits*	5	105	525
Modification *Hard Copy*	3	16	48
Modification *ePermits*	3	12	36
Acquiring Operator's Requirements for Wells Not Under a Service Permit (§ 29.171(a)) *Hard Copy*	10	40	400
Acquiring Operator's Requirements for Wells Not Under a Service Permit (§ 29.171(a)) *ePermits*	10	30	300
Acquiring Operator's Acceptance of an Existing Permit (§ 29.171(b))	1	8	8
Public Information (§ 29.210):			
Affidavit in Support of Claim of Confidentiality (§ 29.210(c) and (d))	1	1	1
Confidential Information (§ 29.210(e) and (f))	1	1	1
Maintenance of Confidential Information (§ 29.210(h))	1	1	1

Activity/requirement	Estimated number of annual responses	Completion time per response (hours)	Estimated total annual burden hours
Generic Chemical Name Disclosure (§ 29.210(i))	1	1	1
Totals	938		17,167

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2022–22678 Filed 10–18–22; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[2231A2100DD/AAKC001030/ A0A501010.999900]

Notice of Deadline for Submitting Completed Applications To Begin Participation in the Tribal Self-Governance Program in Fiscal Year 2024 or Calendar Year 2024

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of application deadline.

SUMMARY: In this notice, the Office of Self-Governance (OSG) establishes a March 1, 2023, deadline for Indian tribes/consortia to submit completed applications to begin participation in the tribal self-governance program in fiscal year (FY) 2024 or calendar year (CY) 2024.

DATES: Completed application packages must be received by the Director, Office of Self-Governance, by March 1, 2023.

ADDRESSES: Application packages for inclusion in the applicant pool should be sent to Sharee M. Freeman, Director, Office of Self-Governance, Department of the Interior, Mail Stop 3624–MIB, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Vickie Hanvey, Office of Self Governance, Telephone (918) 931–0745.

SUPPLEMENTARY INFORMATION: Under the Tribal Self-Governance Act of 1994 (Pub. L. 103–413), as amended by the ''Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination Act of 2019–2020'' or the ''PROGRESS for Indian Tribes Act'', section 402(b)(1)(A), the Secretary, acting through the Director of the Office of Self-Governance, may select not more than 50 new Indian Tribes per year from those eligible tribes. The March 1, 2023, application deadline is predicated upon providing the parties enough time to complete funding agreement negotiations in advance of the FY or CY start date of the 2024 funding agreement. The Act mandates that copies of the funding agreements be sent at least 90 days before the proposed effective date to each Tribe that is served by the Bureau of Indian Affairs' agency that is serving the Tribe that is a party to the funding agreement. Initial negotiations with a Tribe/consortium located in a region and/or agency which has not previously been involved with self-governance negotiations will take approximately two months from start to finish. Agreements for an October 1 to September 30 funding year need to be signed and submitted by July 1, 2023. Agreements for a January 1 to December 31 calendar year need to be signed and submitted by October 1, 2023.

Purpose of Notice

The regulations at 25 CFR 1000.10 to 1000.31 have been modified by section 201 of the newly enacted ''Practical Reforms and Other Goals to Reinforce the Effectiveness of Self-Governance and Self-Determination'' (PROGRESS) Act as follows:

Section 201. Definitions; reporting and audit requirements; application of programs.

To be eligible to participate in self-governance, an Indian Tribe shall:

(1) successfully complete the planning phase described in subsection (d);

(2) request participation in self-governance by resolution or other official action by the Tribal governing body; and

(3) demonstrate for the 3 fiscal years preceding the date on which the Tribe requests participation, fiscal stability and financial management capability as evidenced by the Indian Tribe having no uncorrected significant and internal audit exceptions in the required annual audit of its self-determination or self-governance agreements with any Federal agency.

An Indian Tribe seeking to begin participation in self-governance shall complete the planning phase. The planning phase shall:

(A) be conducted to the satisfaction of the Indian Tribe; and

(B) include:

(i) legal and budgetary research; and

(ii) internal Tribal governing planning, training, and organizational preparation.

Applicants should be guided by the referenced requirements in preparing their applications to begin participation in the tribal self-governance program in fiscal year 2024 or calendar year 2024. Copies of these requirements may be obtained from the information contact person identified in this notice.

Tribes/consortia wishing to be considered for participation in the tribal self-governance program in fiscal year 2024 or calendar year 2024 must respond to this notice, except for those tribes/consortia which are one of the 137 tribal entities with signed self-governance agreements.

Information Collection

This information collection is authorized by OMB Control Number 1076–0143, Tribal Self-Governance Program, which expires October 31, 2022.

Bryan Newland,

Assistant Secretary—Indian Affairs.

[FR Doc. 2022–22668 Filed 10–18–22; 8:45 am]

BILLING CODE 4337–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[LLWY950000, L71220000.EU0000, LVTFK2199200, WYW168207]

Notice of Realty Action; Non-Competitive (Direct) Sale of Public Land in Fremont County, Wyoming

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The Bureau of Land Management (BLM) proposes a non-competitive (direct) sale of 24.79 acres

of public lands (the parcel) in Fremont County, Wyoming, to the Town of Bairoil pursuant to the Federal Land Policy and Management Act of 1976 (FLPMA), as amended, to allow for community expansion and resolve an unauthorized use of public lands. The sale will be subject to the applicable provisions of section 203 of FLPMA and BLM regulations. The appraised fair market value for the sale parcel is $7,500.00.

DATES: Submit written comments regarding this direct sale, including notification of any encumbrances or other claims relating to the identified lands until December 5, 2022.

ADDRESSES: Mail written comments concerning this notice should be sent to the Field Manager, BLM Lander Field Office, 1335 Main Street, Lander, WY 82520.

FOR FURTHER INFORMATION CONTACT: Leta Rinker, Realty Specialist, at the above address or telephone (307) 332–8405, or you may contact the BLM Lander Field Office at the earlier-listed address.

Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The following-described public lands are located 1.25 miles northwest of the town of Bairoil, in Fremont County, Wyoming. The parcel has been examined and found suitable for sale under the authority of Section 203 of FLPMA, as amended. The parcel is more specifically identified as:

Sixth Principal Meridian, Wyoming

T. 27 N., R. 90 W.,
Sec. 34, Parcel A.

The area described contains 24.79 acres, according to the official plat of the survey of the parcel on file with the BLM.

The sale is in conformance with the BLM Lander Resource Management Plan, approved on June 26, 2014, which identifies this parcel of public land as suitable for disposal on page 311, parcel number 175. The parcel is not needed for any other federal purpose. Sale of the parcel is not prohibited by Secretarial Order 3373 because it does not provide access for outdoor recreation. The regulations at 43 CFR 2711.3–3(a) permit the BLM to make direct sales of public lands when a competitive sale is not appropriate, and the public interest would be best served by a direct sale. In conformance with the National Environmental Policy Act, the BLM prepared a site-specific environmental assessment (EA) (DOI–BLM WY–R050–2019–0031 EA) that analyzed the sale of this parcel. The BLM issued a finding of no significant impact and decision record on September 23, 2021.

Upon publication of this notice in the **Federal Register**, the above-described lands will be segregated from all forms of appropriation under the public land laws, including the mining laws, except the sale provisions of FLPMA. Until completion of the sale action, the BLM is not accepting land use applications affecting the identified public land, except applications for the amendment of previously filed rights-of-way applications or existing authorizations to increase the term of the grants in accordance with 43 CFR 2807.15 and 2886.15. This temporary segregation will terminate upon the issuance of a patent, publication in the **Federal Register** of a termination of the segregation, or on October 21, 2024, unless extended by the BLM Wyoming State Director in accordance with 43 CFR 2711.1–2(d) prior to the termination date.

In addition to this Notice of Realty Action, notice of this sale will also be published once a week for three weeks in the Rawlins Daily Times newspaper. The public land would not be offered for sale to the Town of Bairoil prior to 60 days from the date of publication of this notice in the **Federal Register**.

The conveyance document, if issued, will be subject to all valid existing rights documented at the time of patent issuance, including the following terms, conditions, and reservations:

1. A rights-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945);

2. All minerals, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

The EA, appraisal, maps, and Environmental Site Assessment are available for review (see the **FOR FURTHER INFORMATION CONTACT** section above).

Only written comments submitted by postal service or overnight mail to the address in the **ADDRESSES** section above will be considered as properly filed. Electronic mail, facsimile or telephone comments will not be considered. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Comments, including names and street addresses of respondents, will be available for public review at the BLM Lander Field Office during regular business hours, except holidays.

Any adverse comments regarding the sale will be reviewed by the BLM Wyoming State Director, who may sustain, vacate, or modify this realty action in response to such comments. In the absence of any comments, this realty action will become the final determination of the Department of the Interior.

(Authority: 43 CFR 2711)

Andrew Archuleta,

Wyoming State Director.

[FR Doc. 2022–22679 Filed 10–18–22; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

[S1D1S SS08011000 SX064A000 222S180110; S2D2S SS08011000 SX064A000 22XS501520]

Grant Notification for Fiscal Year 2023

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSMRE), are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) Title IV Abandoned Mine Land (AML) Reclamation Program, Title V Regulatory Program, and the Bipartisan Infrastructure Law (BIL) AML Program. We will award these grants during Fiscal Year 2023.

DATES: Written comments from State, Tribal, or local entities about the funding for the SMCRA Title IV AML Reclamation Program, Title V Regulatory Program, or the BIL AML Program are due to OSMRE by November 18, 2022.

ADDRESSES: You may submit comments by any of the following methods:

- *Electronic mail:* Send your comments to *yrichardson@osmre.gov.*

• *Mail, hand-delivery, or courier:* Send your comments to Office of Surface Mining Reclamation and Enforcement, Attn: Grants Notice, Room 4551, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Yetunde Richardson, Office of Surface Mining Reclamation and Enforcement, 1849 C Street NW, MS 4551, Washington, DC 20240; Telephone (202) 208–2766.

SUPPLEMENTARY INFORMATION:

Grant Notification

We are notifying the public that we intend to grant funds to eligible applicants for purposes authorized under SMCRA's Title IV AML Reclamation Program (30 U.S.C. 1231–1244), Title V Regulatory Program (30 U.S.C. 1251–1279), and the BIL AML Program (Pub. L. 117–58, 40701). We will award these grants during Fiscal Year 2023. Eligible applicants include those States and Tribes with existing AML reclamation programs and/or regulatory programs approved pursuant to SMCRA, as amended, 30 U.S.C. 1201 *et seq.,* as well as those States and Tribes that are seeking to develop a regulatory program. Consistent with Executive Order 12372, we are providing State and Tribal officials the opportunity to review and comment on these proposed Federal financial assistance activities. Eighteen of the eligible applicants do not have single points of contact; therefore, we are publishing this notice as an alternate means of notification.

Description of the AML Reclamation Program

Title IV of SMCRA established the Abandoned Mine Reclamation Fund to receive the AML fees collected by OSMRE from coal operators that, along with funds from other sources, are used to finance grants to eligible States and Tribes for the reclamation of AML coal mine sites and for certain other purposes. Grant recipients use these funds to reclaim the highest priority AML coal mine sites that were abandoned before the enactment of SMCRA in 1977; to reclaim eligible non-coal sites; for projects that address the impacts of mineral development; and for eligible non-reclamation projects. In addition to the BIL AML program described below, the BIL also amended Title IV of SMCRA to extend OSMRE's AML fee collection authority through September 30, 2034, reduced AML fee rates, and extended distribution of AML fee-based grants to eligible States and Tribes through Fiscal Year 2035.

Description of the Regulatory Program

Title V of SMCRA authorizes OSMRE to provide grants to States and Tribes to develop, administer, and enforce State and Tribal regulatory programs that address, among other things, the disturbances from coal mining operations. Additionally, upon our approval of a State or Tribal regulatory program, title V authorizes that State or Tribe to assume regulatory primacy, act as the regulatory authority within the State or Tribe, and administer and enforce its approved regulatory program. These provisions of SMCRA are implemented by our regulations at title 30 of the Code of Federal Regulations, chapter VII.

Description of the BIL AML Program

The BIL, also known as the Infrastructure Investment and Jobs Act, was enacted on November 15, 2021. In addition to amending Title IV of SMCRA, the BIL authorized and appropriated $11.293 billion for deposit into the Abandoned Mine Reclamation Fund. Of the $11.293 billion appropriated, approximately $10.873 billion will be distributed to eligible States and Tribes on an equal annual basis over a 15-year period, which amounts to an annual distribution of approximately $725 million per year. In addition, the BIL provides discretion to prioritize BIL-funded projects that employ current and former employees of the coal industry.

BIL AML grants will be distributed to eligible State and Tribal reclamation programs for AML and water reclamation projects under SMCRA. These projects will abate and eliminate physical hazards to public health, safety, and the environment caused by AML sites, including emergencies. These projects also support communities in achieving their priorities and needs through collaboration and consensus-building for local AML projects. BIL AML grants may also be used by State and Tribal reclamation programs to provide safe drinking water in areas where water supplies are contaminated due to coal mines abandoned before the passage of SMCRA. As described in Executive Order 14008 and Executive Order 14052, BIL AML grants are also subject to the Justice40 Initiative, which supports environmental justice by working toward the goal that 40 percent of the overall benefits of certain Federal investments flow to disadvantaged communities that are marginalized, underserved, and overburdened by pollution. By funding additional reclamation projects, allowing States and Tribes the discretion to prioritize projects employing current and former coal industry employees, and allocating benefits to disadvantaged communities, BIL AML grants will benefit all who live and work in and near America's coalfield communities by creating jobs, reviving aquatic life in mining-polluted streams, and restoring degraded lands to a usable condition.

Glenda H. Owens,

Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 2022–22691 Filed 10–18–22; 8:45 am]

BILLING CODE 4310–05–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1336]

Institution of Investigation; Certain Semiconductor Devices, Mobile Devices Containing the Same, and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 13, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Daedalus Prime LLC of Bronxville, New York. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor devices, mobile devices containing the same, and components thereof by reason of the infringement of certain claims of U.S. Patent No. 9,831,306 (''the '306 patent''); U.S. Patent No. 10,319,812 (''the '812 patent''); U.S. Patent No. 10,700,178 (''the '178 patent''); and U.S. Patent No. 11,251,281 (''the '281 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. A supplement to the complaint was filed on October 12, 2022. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired

individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 13, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 26–35 of the '306 patent; claims 21–30 of the '812 patent; claims 1–5 and 11–20 of the '178 patent; and claims 1, 5–7, and 12–20 of the '281 patent and, whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''(a) semiconductor devices, consisting of integrated circuits or wafers, incorporating foreign fabricated wafers, fabricated using: (i) Samsung's 14 nm and smaller process nodes; or (ii) TSMC's 16nm and smaller process nodes; (b) mobile devices consisting of smartphones, tablets, and smartwatches containing the same; and (c) components of such semiconductor devices and mobile devices'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. 137(d)(1), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Daedalus Prime LLC, 51 Pondfield Road, Suite 3, Bronxville, NY 10708.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Samsung Electronics Co., Ltd., 129 Samsung-Ro, Maetan-3dong, Yeongtong-Gu, Suwon-si, Gyeonggi-do, 16677, Republic of Korea.

Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660.

Taiwan Semiconductor Manufacturing, Company Limited, No. 8, Li Hsin Road VI, Hsinchu Science Park, Hsinchu City 300–78, Taiwan.

TSMC North America, 2851 Junction Avenue, San Jose, CA 95134.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 14, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22711 Filed 10–18–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[USITC SE–22–044]

Sunshine Act Meetings

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: October 26, 2022 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agendas for future meetings: none.
2. Minutes.
3. Ratification List.
4. Commission vote on Inv. Nos. 701–TA–671–672 and 731–TA–1571–1573 (Final) (Oil Country Tubular Goods from Argentina, Mexico, Russia, and South Korea). The Commission is currently scheduled to complete and file its determinations and views of the Commission on November 7, 2022.
5. Outstanding action jackets: none.

CONTACT PERSON FOR MORE INFORMATION: William Bishop, Supervisory Hearings and Information Officer, 202–205–2595.

The Commission is holding the meeting under the Government in the Sunshine Act, 5 U.S.C. 552(b). In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: October 17, 2022.

William Bishop,

Supervisory Hearings and Information Officer.

[FR Doc. 2022–22778 Filed 10–17–22; 11:15 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–683 and 731–TA–1594–1596 (Preliminary)]

Paper File Folders From China, India, and Vietnam; Institution of Anti-Dumping and Countervailing Duty Investigations and Scheduling of Preliminary Phase Investigations

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice of the institution of investigations and commencement of preliminary phase antidumping and countervailing duty investigation Nos. 701–TA–683 and 731–TA–1594–1596 (Preliminary) pursuant to the Tariff Act of 1930 (''the Act'') to determine whether there is a reasonable indication that 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 paper file folders from China, India, and Vietnam, provided for in subheading 4820.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value and alleged to be subsidized by the Government of India. Unless the Department of Commerce (''Commerce'') extends the time for initiation, the Commission must reach a preliminary determination in antidumping and countervailing duty investigations in 45 days, or in this case by November 28, 2022. The Commission's views must be transmitted to Commerce within five business days thereafter, or by December 5, 2022.

DATES: October 12, 2022.

FOR FURTHER INFORMATION CONTACT: Calvin Chang (202–205–3062), 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:

Background.—These investigations are being instituted, pursuant to sections 703(a) and 733(a) of the Tariff Act of 1930 (19 U.S.C. 1671b(a) and 1673b(a)), in response to petitions filed on October 12, 2022, by the Coalition of Domestic Folder Manufacturers, Hastings, Minnesota and Naperville, Illinois.

For further information concerning the conduct of these investigations 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 B (19 CFR part 207).

Participation in the investigations and public service list.—Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping duty and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

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 these investigations available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigations under the APO issued in the investigations, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference.—The Office of Investigations will hold an in-person staff conference in connection with the preliminary phase of these investigations beginning at 9:30 a.m. on Wednesday, November 2, 2022. Requests to appear at the conference should be emailed to *preliminaryconferences@usitc.gov* (DO NOT FILE ON EDIS) on or before October 31, 2022. Please provide an email address for each conference participant in the email. 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 Director of the Office of Investigations, 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 3 p.m. the business day prior to the conference. Information on conference procedures 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 participate by submitting a short statement.

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.

Written submissions.—As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before November 7, 2022, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties shall file written testimony and supplementary material in connection with their presentation at the conference no later than noon on November 1, 2022. 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.

In accordance with §§ 201.16(c) and 207.3 of the 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.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these investigations must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that any information that it submits to the Commission during these investigations 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 these or related investigations or reviews, 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, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Authority: These investigations are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

By order of the Commission.

Issued: October 13, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22676 Filed 10–18–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1334]

Certain Raised Garden Beds and Components Thereof; Institution of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 13, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Vego Garden, Inc. of Houston, Texas. On September 21, 2022, the complainant filed a letter supplementing the complaint. On September 22, 2022, the complainant filed an amended complaint. The amended complaint alleges violations of section 337 based upon the importation into the United States, and in the sale of, certain raised garden beds and components thereof by reason of misappropriation of trade secrets and unfair competition, the threat or effect of which is to destroy or substantially injure a domestic industry. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The amended complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the amended complaint, the U.S. International Trade Commission, on October 13, 2022, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(A) of section 337 in the importation into the United States, or in the sale of, certain products identified in paragraph (2) by reason of misappropriation of trade secrets and unfair competition, the threat or effect of which is to destroy or substantially injure a domestic industry in the United States;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''raised metal garden beds'';

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Vego Garden, Inc., 1521 Greens Road, Suite # 100, Houston, TX 77032.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the amended complaint is to be served:

Huizhou Green Giant Technology Co., Ltd., Xiao Ao Tou, Hong Tian Management Area, Xin Yu Zhen, Hui Yang District, Hui Zhou, Guangdong, China 516223.

Utopban International Trading Co., Ltd., d/b/a Vegega, 2646 River Avenue, Suite #A, Rosemead, CA 91770.

Utopban Limited, UNIT 2 22/F Richmond Comm. Bldg, 109 Argyle Street, Mongkok KL, Hong Kong 999077.

The Hydro Source Inc., d/b/a Forever Garden Beds, 4411 Rowland Avenue, El Monte, CA 91731.

VegHerb, LLC, d/b/a Frame It All, 102 Lake Hickory Court, Cary, NC 27519.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(4) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the amended complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the amended complaint and the notice of investigation. Extensions of time for submitting responses to the amended complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the amended complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the amended complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the amended complaint and this notice and to enter an initial determination and a final determination containing such findings, and may

result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 13, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22667 Filed 10–18–22; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–1335]

Institution of Investigation: Certain Integrated Circuits, Mobile Devices Containing the Same, and Components Thereof

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on September 13, 2022, under section 337 of the Tariff Act of 1930, as amended, on behalf of Daedalus Prime LLC of Bronxville, New York. The complaint alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain integrated circuits, mobile devices containing the same, and components thereof by reason of the infringement of certain claims of U.S. Patent No. 8,775,833 (''the '833 patent''), U.S. Patent No. 8,898,494 (''the '494 patent''), U.S. Patent No. 10,049,080 (''the '080 patent''), and U.S. Patent No. 10,705,588 (''the '588 patent''). The complaint further alleges that an industry in the United States exists or is in the process of being established as required by the applicable Federal Statute. A supplement to the complaint was filed on October 12, 2022. The complainant requests that the Commission institute an investigation and, after the investigation, issue a limited exclusion order and cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at (202) 205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.*

FOR FURTHER INFORMATION CONTACT: Pathenia M. Proctor, The Office of Unfair Import Investigations, U.S. International Trade Commission, telephone (202) 205–2560.

SUPPLEMENTARY INFORMATION:

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2021).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on October 13, 2022, ordered that —

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–5, 7, and 13–18 of the '833 patent; claims 1, 3, 12, 14, and 15 of the '494 patent; claims 1–8 of the '080 patent; and claims 1–19 of the '588 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

(2) Pursuant to section 210.10(b)(1) of the Commission's Rules of Practice and Procedure, 19 CFR 210.10(b)(1), the plain language description of the accused products or category of accused products, which defines the scope of the investigation, is ''(a) integrated circuits that incorporate computer processors, fabricated using foreign fabricated wafers; (b) mobile devices consisting of smartphones, tablets, and smartwatches containing such integrated circuits; and (c) components of such integrated circuits, smartphones, tablets, and smartwatches'';

(3) Pursuant to Commission Rule 210.50(b)(l), 19 CFR 210.50(b)(1), the presiding administrative law judge shall take evidence or other information and hear arguments from the parties or other interested persons with respect to the public interest in this investigation, as appropriate, and provide the Commission with findings of fact and a recommended determination on this issue, which shall be limited to the statutory public interest factors set forth in 19 U.S.C. l337(d)(l), (f)(1), (g)(1);

(4) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is: Daedalus Prime LLC, 51 Pondfield Road, Suite 3, Bronxville, NY 10708.

(b) The respondents are the following entities alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Samsung Electronics Co., Ltd., 129 Samsung-Ro, Maetan-3dong, Yeongtong-gu, Suwon-si, Gyeonggi-do, 16677, Republic of Korea.

Samsung Electronics America, Inc., 85 Challenger Road, Ridgefield Park, NJ 07660.

Qualcomm Inc., 5775 Morehouse Drive, San Diego, CA 92121.

(c) The Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Suite 401, Washington, DC 20436; and

(5) For the investigation so instituted, the Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(e) and 210.13(a), as amended in 85 FR 15798 (March 19, 2020), such responses will be considered by the Commission if received not later than 20 days after the date of service by the complainant of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint and the notice of investigation will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

By order of the Commission.

Issued: October 14, 2022.

Katherine Hiner,

Acting Secretary to the Commission.

[FR Doc. 2022–22713 Filed 10–18–22; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Technical Advisory Committee; Notice of Meeting and Agenda

The Bureau of Labor Statistics Technical Advisory Committee will meet on Thursday, November 17, 2022. This meeting will be held virtually from 9:00 a.m. to 3:00 p.m. EST.

The Committee presents advice and makes recommendations to the Bureau of Labor Statistics (BLS) on technical aspects of data collection and the formulation of economic measures and makes recommendations on areas of research. The BLS presents issues and then draws on the expertise of Committee members representing specialized fields within the academic disciplines of economics, statistics, data science, and survey design.

The schedule and agenda for the meeting are as follows:

9:00 a.m.—Commissioner's Welcome and Review of Agency Developments

9:30 a.m.—CPS Work Schedules and Work at Home Supplement

11:00 a.m.—Improved Methods to Increase CFOI Publishability

1:30 p.m.—Improved Hedonic Methods for Televisions and Wireless Phone Service Using Blended Survey and Non-Survey Data

3:00 p.m.—Approximate Conclusion

The meeting is open to the public. Any questions concerning the meeting should be directed to Sarah Dale, Bureau of Labor Statistics Technical Advisory Committee, at *BLSTAC@bls.gov.* Individuals planning to attend the meeting should register at *https://blstac.eventbrite.com.* Individuals who require special accommodations should contact Ms. Dale at least two days prior to the meeting date.

Signed at Washington, DC, this 13th day of October 2022.

Eric Molina,

Acting Chief, Division of Management Systems.

[FR Doc. 2022–22687 Filed 10–18–22; 8:45 am]

BILLING CODE 4510–24–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2021–0010]

Federal Advisory Council on Occupational Safety and Health (FACOSH); Notice of Meeting

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of FACOSH meeting.

SUMMARY: The Federal Advisory Committee on Occupational Safety and Health (FACOSH) will meet November 17, 2022.

DATES: FACOSH meeting: FACOSH will meet from 1 p.m.–4 p.m. ET, Thursday, November 17, 2022.

ADDRESSES:

Submission of comments and requests to speak: Submit comments and requests to speak at the FACOSH meeting by November 10, 2022, identified by the docket number for this **Federal Register** notice (Docket No. OSHA–2021–0010), using the following method:

Electronically: Comments and requests to speak, including attachments, must be submitted electronically at *www.regulations.gov,* the Federal eRulemaking Portal. Follow the online instructions for submitting comments.

Requests for special accommodations: Submit requests for special accommodations for this FACOSH meeting by November 10, 2022, to Ms. Mikki Holmes, Directorate of Enforcement Programs, OSHA, U.S. Department of Labor; telephone: (202) 693–2491; email: *holmes.mikki@dol.gov.*

Instructions: All submissions must include the agency name and the OSHA docket number for this **Federal Register** notice (Docket No. OSHA–2021–0010). OSHA will place comments and requests to speak, 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.

Docket: To read or download documents in the public docket for this FACOSH meeting, go to *www.regulations.gov.* All documents in the public docket are listed in the index; however, some documents (*e.g.,* copyrighted material) are not publicly available to read or download through *www.regulations.gov.* 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.

Participation in the FACOSH meeting: Members of the public may attend the FACOSH meeting. However, any participation by the public will be in listen-only mode.

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:

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 14048). 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. Meeting Information

FACOSH Meeting

FACOSH will meet from 1 p.m. to 4 p.m., ET, Thursday, November 17, 2022. The meeting is open to the public.

Meeting agenda: The tentative agenda for this meeting includes:

- Updates from OSHA Leadership
- OSHA's Heat NEP to prevent heat at work and conduct programmed inspections
- Federal agencies responsibilities under 29 CFR part 1960

Public attendance at the FACOSH Committee meeting will be virtual only. Meeting information will be posted in the Docket (Docket No. OSHA–2021–0010) and on the FACOSH web page, *https://www.osha.gov/advisorycommittee/facosh,* prior to the meeting.

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. 2), Executive Order 12196 and 14048, Secretary of Labor's Order 08–2020, 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.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2022–22688 Filed 10–18–22; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 03033009; EA–2021–157; NRC–2022–0179]

Confirmatory Order Modifying License of Cammenga and Associates, LLC

AGENCY: Nuclear Regulatory Commission.

ACTION: Confirmatory order; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a Confirmatory Order to Cammenga and Associates, LLC, as a result of a successful alternative dispute resolution mediation session. The commitments outlined in the Confirmatory Order were made as a part of a settlement agreement concerning apparent violations by Cammenga and Associates regarding the distribution of products containing byproduct material (hydrogen-3) without the required licensing authorization.

DATES: The Confirmatory Order became effective on October 6, 2022.

ADDRESSES: Please refer to Docket ID NRC–2022–0179 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0179. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the For **FURTHER INFORMATION CONTACT** section of this document.
- *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 Confirmatory Order modifying license of Cammenga and Associates, LLC. is available in ADAMS under Accession No. ML22278A182.
- *NRC's PDR:* You may examine and purchase copies of public documents, by appointment, at the NRC's PDR, Room P1 B35, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8:00 a.m. and 4:00 p.m. Eastern Time (ET), Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Carmen Rivera-Diaz, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–0296, email: *Carmen.RiveraDiaz@nrc.gov.*

SUPPLEMENTARY INFORMATION: The text of the order is attached.

Dated: October 14, 2022.

For the Nuclear Regulatory Commission.

Dori Willis,

Acting Director, Office of Enforcement.

Attachment—Confirmatory Order Modifying License of Cammenga and Associates, LLC

UNITED STATES OF AMERICA

NUCLEAR REGULATORY COMMISSION

In the Matter of
Cammenga and Associates, Inc.
Dearborn, Michigan
Docket Nos. 03038679
License Nos. 21–26460–03E
SSD Registration No.: NR–0210–D–101–E
EA–21–157

CONFIRMATORY ORDER MODIFYING LICENSE

EFFECTIVE UPON ISSUANCE

I

Cammenga and Associates, LLC, (Cammenga or Licensee) is the holder of Materials License No. 21–26460–03E and Sealed Source and Device Registration (SSD) Certificate No. NR–0210–D–101–E issued by the U.S. Nuclear Regulatory Commission (NRC) pursuant to Part 30 and 32 of Title 10 of the *Code of Federal Regulations* (10 CFR). The license authorizes Cammenga to distribute products containing byproduct material (tritium, hydrogen-3) to persons exempt from the regulations. For the products authorized under License No. 21–26460–03E, an SSD is required and is captured as a License Condition in the license. The SSD identifies the models that are authorized for distribution under the license.

This Confirmatory Order is the result of an agreement reached during an alternative dispute resolution (ADR) mediation session conducted on June 28, 2022.

II

The NRC conducted investigations in 2021 (OI Case No. 3–2021–008) related to apparent violations by Cammenga regarding the distribution of products containing byproduct material (hydrogen-3) without the required licensing authorization.

On March 17, 2022, the NRC issued a letter to Cammenga that detailed the results of the investigation and outlined two apparent violations. The first apparent violation involved Cammenga's failure to limit its distribution of self-luminous products to the products authorized in its NRC License No. 21–26460–03E. The product was listed on a redistributor's website as the Tritium Pry Bar. Specifically, between late 2020 and January 27, 2021, the licensee distributed to an unlicensed entity at least 25 Tritium Pry Bars that were not included in the products authorized in NRC License No. 21–26460–03E, in accordance with NRC SSD registration certificate No. NR–0210–D–101–E. The second apparent violation involved Cammenga's failure to limit its distribution of self-luminous products to the products authorized in its NRC License No. 21–26460–03E. The product was listed on a redistributor's website as the Tritium Glow Fob. Specifically, between late 2020 and January 27, 2021, the licensee distributed to an unlicensed entity at least 10 Tritium Glow Fobs that were not included in the products authorized in NRC License No. 21–26460–03E, in accordance with NRC SSD registration certificate No. NR–0210–D–101–E.

The failure to conduct activities in accordance with a license is significant because it resulted in the NRC not being able to conduct its regulatory responsibilities to ensure that the products were safe for distribution to members of the public, and it inhibited the process of regulatory oversight.

The NRC determined that regarding the first violation identified in the March 17, 2022, letter, Cammenga's actions were willful. Specifically, Cammenga distributed 25 products containing tritium, identified in the March 17, 2022, letter as the Tritium Pry Bar. The NRC's determination of willfulness was not based on a finding that Cammenga deliberately intended to violate NRC requirements, but rather on Cammenga's careless disregard in failing to pursue necessary actions to ensure Cammenga's compliance. Willful violations are of significant concern to the NRC because the NRC's regulatory programs rely upon the integrity of entities, applicants, and licensees

to comply with NRC regulations and requirements.

For both violations identified in the March 17, 2022, letter, the NRC considered whether Cammenga had taken corrective actions to restore and maintain compliance. The insufficient information regarding Cammenga's corrective actions warranted a response by the licensee to the final action including providing a detailed description of its corrective actions.''

In the March 17, 2022, letter, the NRC offered Cammenga the choice to: (1) respond in writing to the apparent violations addressed in the NRC's inspection report within 30 days of the date of the letter; (2) request a Pre-decisional Enforcement Conference (PEC); or (3) request ADR mediation. Cammenga requested ADR.

On June 28, 2022, Cammenga and the NRC met in an ADR session mediated by a professional mediator, arranged through Cornell University's Institute on Conflict Resolution. The ADR process is one in which a neutral mediator, with no decision-making authority, assists the parties in reaching an agreement on resolving any differences regarding the dispute. This Confirmatory Order is issued pursuant to the agreement reached during the ADR process.

III

As a result of an ADR mediation session held on June 28, 2022, NRC and Cammenga reached a preliminary agreement. The elements of the agreement, as signed by both parties on June 28, 2022, consisted of the following:

1. Cammenga shall issue a company policy statement to its employees regarding the importance of regulatory compliance.

a. The Policy Statement regarding Regulatory Compliance shall provide Cammenga management's position on (1) the importance of ensuring full understanding of the regulatory and license requirements, (2) the ethics of complying with regulatory requirements, (3) the awareness that willful violations are unacceptable, pursuant to the requirements of 10 CFR 30.9 and 30.10, (4) that there are potential criminal sanctions that the Department of Justice may take against individuals for deliberate misconduct, and (5) the need to ensure the primacy of regulatory compliance over competing goals.

b. Within 60 days of the date of the Confirmatory Order, Cammenga shall create and provide copies of the company policy statement to all employees.

c. Within 60 days of the date of the Confirmatory Order, Cammenga shall provide a copy of company policy statement to the NRC.

d. Cammenga shall maintain copies of the company policy statement for NRC inspection.

2. Cammenga shall issue a letter to its current resellers articulating the existence of regulatory requirements, the importance of distributing only products that are authorized, and the importance of asking their suppliers to confirm that the product is properly authorized.

a. Within 60 days of the date of the Confirmatory Order, Cammenga shall issue the letter to current resellers.

b. Within 60 days of the date of the Confirmatory Order, Cammenga shall provide a copy of the letter to the NRC.

c. Cammenga shall maintain copies of the letter for NRC inspection.

3. Cammenga shall conduct initial and annual refresher training for all engineering and management personnel that are responsible for ensuring compliance with all active NRC Exempt Distribution Licenses and Sealed Source and Device Certificates. The training shall consist of reviewing all active NRC Exempt Distribution Licenses and Sealed Source and Device Certificates.

a. Cammenga shall maintain documentation for training completed. The training documentation shall include a summary of the contents of the training and the individuals completing the training. The training documentation shall be maintained for 5 years. The training can be a read-and-sign.

b. Within 60 days of the date of the Confirmatory Order, Cammenga shall conduct the initial training for all current individuals engaged in licensed activities.

c. For individuals not currently engaged in the above activities, Cammenga shall conduct initial training prior to engagement in relevant activities.

d. By December 31 of each calendar year, Cammenga shall conduct annual refresher training for all individuals engaged in relevant activities.

e. Cammenga shall maintain copies of the training documentation for NRC inspection.

4. Within 90 days of the date of the CO, Cammenga shall create and maintain and implement written procedures to ensure that only products approved on the distribution license shall be distributed. The procedures will be available for NRC inspection.

5. Within 90 days of the date of the CO, Cammenga shall create and maintain written procedures for a process for new or changed designs to ensure the design either (1) fits within what is currently authorized, or (2) an amendment is submitted and approved by the NRC prior to distribution. The process will include a step to assess if it is appropriate to request a pre-application meeting with NRC. The procedures will be available for NRC inspection.

6. Cammenga commits to cease distribution of the Tritium Pry Bar and Tritium Glow Fob (Cammenga will provide the product number for these two models for the CO), until such time as Cammenga receives written confirmation from NRC that the model is approved.

7. Within 180 days of the date of the CO, Cammenga will perform an audit of all current models in inventory or production to confirm products are authorized for distribution.

a. Cammenga will not distribute any models not confirmed authorized for distribution.

b. Cammenga will document the review. The documentation will include the following: list of models reviewed, determination whether the model is authorized for distribution, and if authorized, the number of the associated SSD and drawing number.

c. The documentation will be available for NRC inspection and will be maintained for three years.

8. Cammenga will perform an annual assessment of program and compliance for NRC License No. 21–26460–03E. The review will specifically include: review for implementation of appropriate procedures, verification that training was completed and documented as per the ADR CO, and that all new/changed products were reviewed under the new/change product process. Cammenga will maintain documentation of the review. The documentation will be available for NRC inspection, and will be maintained for at least three years.

a. By December 31 of each calendar year, Cammenga shall conduct an annual assessment of program and compliance.

9. Cammenga shall pay a civil penalty of $5000.

a. Within 30 days of the date of the Confirmatory Order, Cammenga shall pay a civil penalty of $5000. Cammenga shall pay the civil penalty in accordance with NUREG/BR–0254, ''Payment Methods''.

b. Within 45 days of the date of the Confirmatory Order, Cammenga shall submit to the NRC, a statement indicating when and by what method payment was made.

On September 21, 2022, Cammenga consented to issuing this Confirmatory Order with the commitments, as described in Section V below. Cammenga further agreed that this Confirmatory Order is to be effective upon issuance of the Confirmatory Order and that it has waived its right to a hearing.

IV

Since the licensee has agreed to take additional actions to address NRC concerns, as set forth in Section III above, the NRC has concluded that its concerns can be resolved through issuance of this Confirmatory Order.

I find that Cammenga's commitments as set forth in Section V are acceptable and necessary and conclude that with these commitments the public health and safety are reasonably assured. In view of the foregoing, I have determined that public health and safety require that Cammenga's commitments be confirmed by this Confirmatory Order. Based on the above and Cammenga's consent, this Confirmatory Order is effective upon issuance of the Confirmatory Order.

V

Accordingly, pursuant to Sections 81,161b, 161i, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR part 30, *it is hereby ordered* that license No. 21–26460–03E is modified as follows:

1. Cammenga shall issue a company policy statement to its employees regarding the importance of regulatory compliance.

a. The Policy Statement regarding Regulatory Compliance shall provide Cammenga management's position on (1) the importance of ensuring full understanding of the regulatory and license requirements, (2) the ethics of complying with regulatory requirements, (3) that willful violations are unacceptable, pursuant to the requirements of 10 CFR 30.9 and 30.10, (4) that there are

potential criminal sanctions that the Department of Justice may take against individuals for deliberate misconduct, and (5) the need to ensure the primacy of regulatory compliance over competing goals.

b. Within 60 days of the date of the Confirmatory Order, Cammenga shall create and provide copies of the company policy statement to all employees.

c. Within 60 days of the date of the Confirmatory Order, Cammenga shall create and provide copies of the company policy statement to the NRC.

d. Cammenga shall maintain copies of the company policy statement for NRC inspection.

2. Cammenga shall issue a letter to its current resellers articulating the existence of regulatory requirements, the importance of distributing only products that are authorized, and the importance of asking their suppliers to confirm that the product is properly authorized.

a. Within 60 days of the date of the Confirmatory Order, Cammenga shall issue the letter to current resellers.

b. Within 60 days of the date of the Confirmatory Order, Cammenga shall provide a copy of the letter to the NRC.

c. Cammenga shall maintain copies of the letter for NRC inspection.

3. Cammenga shall conduct initial and annual refresher training for all engineering and management personnel that are responsible for ensuring compliance with any active NRC Exempt Distribution Licenses and Sealed Source and Device Certificates. The training shall consist of reviewing all active NRC Exempt Distribution Licenses and Sealed Source and Device Certificates.

a. Cammenga shall maintain documentation for training completed. The training documentation shall include a summary of the contents of the training and the individuals completing the training. The training documentation shall be maintained for five years. The training can be a read-and-sign.

b. Within 60 days of the date of the Confirmatory Order, Cammenga shall conduct the initial training for all current individuals engaged in licensed activities.

c. For individuals not currently engaged in licensed activities, Cammenga shall conduct initial training prior to engagement in such activities.

d. By December 31 of each calendar year, Cammenga shall conduct annual refresher training for all individuals engaged in such activities.

e. Cammenga shall maintain copies of the training documentation for NRC inspection.

4. Within 90 days of the date of the Confirmatory Order, Cammenga shall create, maintain, and implement written procedures to ensure that only products approved on the distribution license shall be distributed. The procedures shall be available for NRC inspection.

5. Within 90 days of the date of the Confirmatory Order, Cammenga shall create, maintain, and implement written procedures for a process for new or changed designs to ensure that either (1) the design fits within what is currently authorized, or (2) a license amendment is submitted and approved by the NRC prior to distribution. The process shall include a step to assess whether it is appropriate to request a pre-application meeting with NRC. The procedures shall be available for NRC inspection.

6. Cammenga shall cease distribution of the Tritium Pry Bar and Tritium Glow Fob, until such time as Cammenga receives written confirmation from NRC that the models are approved.

7. Within 180 days of the date of the Confirmatory Order, Cammenga shall perform an audit of all current models in inventory or production to confirm the products are authorized for distribution.

a. Cammenga shall not distribute any models not confirmed as authorized for distribution.

b. Cammenga shall document the audit review. The documentation shall include (1) the list of models reviewed, (2) determination of whether the model is authorized for distribution, and if authorized, (3) the associated SSD number and drawing number.

c. The documentation shall be available for NRC inspection, and Cammenga shall maintain the documentation for three years.

8. Cammenga shall perform an annual assessment of program and compliance for NRC License No. 21–26460–03E. The assessment shall specifically include: (1) review for implementation of appropriate procedures, (2) verification that training was completed and documented as per the ADR Confirmatory Order, and (3) verification that all new/changed products have been reviewed under the new/change product process established in accordance with paragraph 5 above. Cammenga shall maintain documentation of the assessment. The documentation shall be available for NRC inspection, and Cammenga shall maintain the documentation for at least three years.

a. By December 31 of each calendar year, Cammenga shall conduct an annual assessment of program and compliance.

9. Cammenga shall pay a civil penalty of $5000.

a. Within 30 days of the date of the Confirmatory Order, Cammenga shall pay a civil penalty of $5000. Cammenga shall pay the civil penalty through one of the following methods:

i. Submit the payment with the enclosed invoice to this Order (EA–21–157) to the following address: Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, P.O. Box 979051, St. Louis, MO 63197, OR

ii. Submit the payment in accordance with NUREG/BR–0254, ''Payment Methods''.

b. Within 45 days of the date of the Confirmatory Order, Cammenga shall submit to the NRC, a written statement indicating when and by what method payment was made to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

The NRC considers the corrective actions discussed above to be appropriately prompt and comprehensive.

The NRC agrees not to pursue any further enforcement action in connection with the NRC's March 17, 2022, letter to Cammenga.

The Confirmatory Order shall constitute escalated enforcement action.

This agreement is binding upon successors and assigns of NRC License No. 21–26460–03E.

In the event of the transfer of the possession and/or distribution licenses of Cammenga to another entity, the terms and conditions set forth hereunder shall continue to apply to the new entity and accordingly survive any transfer of ownership or license.

Unless otherwise specified, all dates are from the date of issuance of the Confirmatory Order.

Unless otherwise specified, all documents required to be submitted to the NRC shall be sent to: Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738, with a copy to the Director, Materials Safety, Security, State, and Tribal Programs, Two White Flint North, 11545 Rockville Pike, Rockville, MD 20852–2738. Cammenga will also endeavor to provide courtesy electronic copies to the above individuals.

The Director, Office of Enforcement, may, in writing, relax or rescind any of the above conditions upon demonstration by the Licensee of good cause.

VI

In accordance with 10 CFR 2.202 and 10 CFR 2.309, any person adversely affected by this Confirmatory Order, other than Cammenga, may request a hearing within thirty (30) calendar days of the date of issuance of this Confirmatory Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension.

All documents filed in NRC adjudicatory proceedings including documents filed by an interested State, local governmental body, federally recognized Indian Tribes, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other

adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9:00 a.m. and 6:00 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing dockets where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Confirmatory Order and shall address the criteria set forth in 10 CFR 2.309(d) and (f).

If a hearing is requested by a person whose interest is adversely affected, the Commission will issue a separate Order designating the time and place of any hearings, as appropriate. If a hearing is held, the issue to be considered at such hearing shall be whether this Confirmatory Order should be sustained.

In the absence of any request for hearing, or written approval of an extension of time in which to request a hearing, the provisions specified in Section V above shall be effective and final 30 days after issuance of the Confirmatory Order without further order or proceedings. If an extension of time for requesting a hearing has been approved, the provisions specified in Section V shall be final when the extension expires if a hearing request has not been received.

For the Nuclear Regulatory Commission.

Mark D. Lombard,

Director, Office of Enforcement.

Dated this 6th day of October 2022.

[FR Doc. 2022–22716 Filed 10–18–22; 8:45 am]

BILLING CODE 7590–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–14 and CP2023–13]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 20, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633,

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2023–14 and CP2023–13; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 66 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 12, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 20, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–22673 Filed 10–18–22; 8:45 am]

BILLING CODE 7710–FW–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2023–15 and CP2023–14; MC2023–16 and CP2023–15]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* October 21, 2022.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the market dominant or the competitive product list, or the modification of an existing product currently appearing on the market dominant or the competitive product list.

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The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern market dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

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1. *Docket No(s).:* MC2023–15 and CP2023–14; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 67 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 13, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* October 21, 2022.

2. *Docket No(s).:* MC2023–16 and CP2023–15; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail, First-Class Package Service & Parcel Select Contract 68 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* October 13, 2022; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Jennaca D. Upperman; *Comments Due:* October 21, 2022.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2022–22697 Filed 10–18–22; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service®.

ACTION: Notice of a modified system of records.

SUMMARY: The United States Postal Service® (USPS®) is proposing to modify one General Privacy Act System of Records (SOR) to support a resilient, modern, and flexible Fleet Management Information System (FMIS) for the USPS fleet. An Integrated Fleet Management (IFM) solution, that includes both Telematics system technology and a Commercial Off-The-Shelf (COTS) FMIS, will improve the effectiveness and efficiency of USPS Fleet Management capabilities to better meet future challenges and needs, by providing real time vehicle maintenance and operational data to fleet managers. Telematics uses onboard vehicle technologies, including instruments and sensors, to track and combine maintenance and operational data, that is subsequently transmitted to a central database for fleet management purposes.

DATES: These revisions will become effective without further notice on November 18, 2022, unless responses to comments received on or before that date, result in a contrary determination.

ADDRESSES: Comments may be submitted via email to the Privacy and Records Management Office, United States Postal Service Headquarters (*privacy@usps.gov*). To facilitate public inspection, arrangements to view copies of any written comments received will be made upon request.

FOR FURTHER INFORMATION CONTACT: Janine Castorina, Chief Privacy and Records Management Officer, Privacy and Records Management Office, 202–268–3069 or *privacy@usps.gov.*

SUPPLEMENTARY INFORMATION: This notice is in accordance with the Privacy Act requirement that agencies publish their systems of records in the **Federal Register** when there is a revision, change, or addition, or when the agency establishes a new system of records. The Postal Service is proposing revisions to an existing system of records (SOR) to support the implementation of the Integrated Fleet Management (IFM) solution within the Fleet Management Information System (FMIS).

Telematics devices will be installed on Postal owned vehicles to monitor vehicle health, calculate vehicle utilization and report vehicle location. Additionally, data gathered from Telematics will inform drivers of safety warnings and provide fuel savings through improved safety measures by highlighting vehicle operational efficiencies through improved vehicle operational performance and usage.

Vehicle health data will be provided to the Fleet Management group, so that they can proactively maintain vehicles. A Telematics device plugs into a vehicle's data port (OBDII and OBDI) and provides near real-time information on the operating condition of the vehicle. Examples include mileage, location, acceleration/deceleration, battery condition, fluid levels and tire pressure monitoring if applicable. These devices can replace the need for manually reported information and allow Vehicle Maintenance Facility (VMF) employees to monitor the condition of vehicles in near real-time. This will enable the Postal Service to move from planned/reactive maintenance to predictive/proactive maintenance.

Telematics has been identified as a solution for a variety of current and future opportunities within the vehicle fleet, with functionality that includes utilization reporting, along with tracking of vehicle maintenance, repair, safety and security. The FMIS will provide multiple indicators about key fleet needs and systems under one central program including maintenance and work-order management, vehicle accident history, invoice payment and tracking, vehicle assignment and location information, and many other features working in tandem with the Telematics vehicle data.

I. Background

The Postal Service is proposing modifications to SOR 500.100 Carrier and Vehicle Operator Records, to support the implementation of the new Integrated Fleet Management (IFM) solution within the Fleet Management Information System (FMIS). The Postal Service is seeking to optimize the maintenance, utilization, and tracking of vehicle assets throughout their lifecycle, and reduce operational costs for its fleet. The installation and operation of approximately 287,000 Telematics devices, as well as the acquisition and implementation of a dedicated FMIS aligns with the USPS Delivering for America 10-year plan.

Telematics devices will be placed on all Postal-owned vehicles and trailers over a ten-year period. The FMIS will include all Postal-owned vehicles and trailers and can also be used to improve tracking capabilities for leased vehicles and trailers. Telematic devices will not be installed onto leased, rented or personally owned vehicles (POV). However, when the use of leased, rented, or personally owned vehicles (POV) are replaced by the use of Postal owned fleet vehicles, these USPS vehicles will receive Telematics devices and be managed via the new FMIS.

The acquisition of the FMIS solution addresses an immediate need to implement new vehicle technologies for our current fleet of all Delivery, and Non-Mail Hauling vehicles. In addition, the acquisition of Next Generation Delivery Vehicles (NGDV) will include the installation of telematics units prior to delivery to the USPS.

II. Rationale for Changes to USPS Privacy Act Systems of Records

The Postal Service is proposing modifications to USPS SOR 500.100 Carrier and Vehicle Operator Records as described in the summary of changes below.

Summary of Changes:

- Added two new Purposes—Numbers 8 and 9.
- Added two new Categories of Individuals—Numbers 4 and 5.
- Added two new Categories of Records—Numbers 5 and 6.
- Added one new Retention period—Number 8.

III. Description of the Modified System of Records

Pursuant to 5 U.S.C. 552a(e)(11), interested persons are invited to submit written data, views, or arguments on this proposal. A report of the proposed revisions to this SOR has been sent to Congress and to the Office of Management and Budget for their evaluations. The Postal Service does not expect this modified system of records to have any adverse effect on individual privacy rights.

Accordingly, for the reasons stated above, USPS SOR 500.100 Carrier and Vehicle Operator Records, including proposed modifications, is provided below in its entirety.

SYSTEM NAME AND NUMBER:

USPS 500.100 Carrier and Vehicle Operator Records.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Headquarters; area and district facilities; processing and distribution centers; bulk mail centers; vehicle maintenance facilities; Post Offices; Integrated Business Solutions Services Centers; Accounting Service Centers; contractor or licensee locations; and facilities employing persons under a highway vehicle contract.

SYSTEM MANAGER(S):

Vice President, Retail & Post Office Operations, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Delivery Operations, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

Vice President, Transportation Strategy, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

39 U.S.C. 401, 403, 404, and 1206.

PURPOSE(S) OF THE SYSTEM:

1. To reimburse carriers who use privately owned vehicles to transport the mail pursuant to a contractual agreement.

2. To evaluate delivery and collection operations and to administer these functions.

3. To provide local Post Office managers, supervisors, and transportation managers with information to assign routes and vehicles, and to adjust workload, schedules, and type of equipment operated.

4. To determine contract vehicle operator suitability for assignments requiring access to mail.

5. To serve as a basis for vehicle operator corrective action and presentation of safe driving awards.

6. To administer the USPS fleet card program used to purchase commercial fuel and oil, maintenance repair, polishing and washing, servicing, shuttling, and towing.

7. To administer a Bid Solicitation and Contract Management System to meet USPS transportation needs.

8. To evaluate vehicle operator's driving execution and improve vehicle efficiencies and safety performance from

data collected from Telematics devices installed into USPS fleet vehicles.

9. To manage vehicle operator's status of state Drivers Licensing and Commercial Drivers Licensing expiration dates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. City Letter carriers.

2. Current and former USPS employees who operate or maintain USPS-owned or leased vehicles.

3. Contract highway vehicle operators.

4. Suppliers, including companies and individuals, under contract or agreement with the Postal Service to provide transportation services.

5. Vehicle Maintenance Facility employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

1. Carrier information: Records related to letter carriers, including carrier's name, home address, Social Security Number, Employee Identification Number, postal assignment information, work contact information, finance number(s), duty location, pay location, route number and work schedule, and effective date of agreement for use of a privately owned vehicle to transport the mail, if applicable.

2. Vehicle operator information: Records of employees' operation or maintenance of USPS-owned or leased vehicles, including employee name, home address, Social Security Number, Employee Identification Number, age, postal assignment information, work contact information, finance number(s), duty location, pay location, work schedule, Fuel Purchase Fleet Card Personal Identification Number (PIN), and other records of vehicle operation and maintenance.

3. Highway vehicle contract employee information: Records related to contract employee name, Social Security Number, address and employment history, driver's license number, and contract assignment information.

4. *Bid Solicitation and Contract Management System Records:* Individual operator name, owner name, address, email address, phone number, SMS text, other contact information, Social Security Number, Taxpayer Identification Number (TIN), driver's license number and state, route number, trip schedules, Accounts Payable Excellence (APEX) system number, Standard Carrier Alpha Code (SCAC), contract number, bid solicitation information, financial statements, insurance information, company name, company address, company phone number, company email address, list of services provided, cost of services provided, geographic coverage, other information such as safe driving or accident records and other scanned in documents that accompany contract information, contract Terms and Conditions, lease agreements, payment information, and scanned images of hardcopy contract documentation.

5. *Vehicle Maintenance Facility (VMF) Technicians, Clerks and VMF Supervisors:* Records related to vehicle maintenance facility employees, including name, home address, Social Security Number, Employee Identification Number, postal assignment information, work contact information, finance number(s), duty location, pay location and work schedule.

6. *Vehicle Maintenance Facility (VMF) Motor Vehicle Operators:* Records related to vehicle maintenance facility employees, including name, home address, Social Security Number, Employee Identification Number, postal assignment information, work contact information, finance number(s), duty location, pay location, state Driver's License, Commercial Driver's License, and work schedule.

RECORD SOURCE CATEGORIES:

Employees; contractors or suppliers; carrier supervisors; route inspectors, state motor vehicle departments and VMF employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Standard routine uses 1. through 9. apply.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Automated database, computer storage media, and paper.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

By name, Social Security Number, Taxpayer Identification Number (TIN), Employee Identification Number, pay location, Postal Service facility name, route number, vehicle number, or Fuel Purchase Fleet Card Personal Identification Number (PIN), contract number, Accounts Payable Excellence (APEX) System Number, and Standard Carrier Alpha Code (SCAC).

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

1. Route inspection records and minor adjustment worksheets are retained 2 years where inspections or minor adjustments are made annually or more frequently. Where inspections are made less than annually, records are retained until a new inspection or minor adjustment, and an additional 2 years thereafter.

2. Statistical engineering records are retained 5 years and may be retained further on a year-to-year basis.

3. Agreements for use of a privately owned vehicle are retained 2 years. Post office copies of payment authorizations are retained 90 days. Vehicle records are maintained for the life of the vehicle.

4. Records of employees who operate or maintain USPS vehicles are retained 4 years.

5. Records of highway vehicle contract employees are retained 1 year after contract expiration or contract employee termination.

6. Records pertaining to the USPS fuel fleet card purchase program are retained for 10 years.

7. Records stored within the Bid Solicitation and Contract Management System are retained for six (6) years after the end of the fiscal year in which the contract record become inactive.

8. Telematics vehicle data records that contain Carrier and vehicle operator information will be maintained for 20 years after the end of the calendar year in which the individual vehicle is disposed of.

Records existing on paper are destroyed by burning, pulping, or shredding. Records existing on computer storage media are destroyed according to the applicable USPS media sanitization practice.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Paper records, computers, and computer storage media are located in controlled-access areas under supervision of program personnel. Access to these areas is limited to authorized personnel, who must be identified with a badge.

Access to records is limited to individuals whose official duties require such access. Contractors and licensees are subject to contract controls and unannounced on-site audits and inspections.

Computers are protected by mechanical locks, card key systems, or other physical access control methods. The use of computer systems is regulated with installed security software, computer logon identifications, and operating system controls including access controls, terminal and transaction logging, and file management software.

RECORD ACCESS PROCEDURES:

Requests for access must be made in accordance with the Notification Procedure above and USPS Privacy Act

regulations regarding access to records and verification of identity under 39 CFR 266.5.

CONTESTING RECORD PROCEDURES:

See Notification Procedures below and Record Access Procedures above.

NOTIFICATION PROCEDURES:

Current and former employees, and highway vehicle contract employees, wanting to know if information about them is maintained in this system of records must address inquiries to the facility head where currently or last employed. Requests must include full name, Social Security Number or Employee Identification Number, and, where applicable, the route number and dates of any related agreements or contracts.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

None.

HISTORY:

July 25, 2022, 87 FR 44157; May 15, 2020, 85 FR 29492; June 27, 2012, 77 FR 38342.

* * * * *

Sarah Sullivan,

Attorney, Ethics & Legal Compliance.

[FR Doc. 2022–22371 Filed 10–18–22; 8:45 am]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96074; File No. SR–NYSEAMER–2022–48]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the NYSE American Options Fee Schedule

October 13, 2022.

Pursuant to Section 19(b)(1) [1] of the Securities Exchange Act of 1934 (''Act'') [2] and Rule 19b–4 thereunder,[3] notice is hereby given that, on October 12, 2022, NYSE American LLC (''NYSE American'' 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 self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend the NYSE American Options Fee Schedule (''Fee Schedule'') regarding certain incentive programs. The Exchange proposes to implement the fee change effective October 12, 2022.[4] 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. 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 purpose of this filing is to modify the Fee Schedule regarding three incentive programs currently offered by the Exchange. Specifically, the Exchange proposes to modify (1) the qualifications for the Alternative Initiating Participant Rebate for Complex CUBE auctions, as set forth in Section I.G. (the ''Complex CUBE Rebate''), (2) the qualifications for the credit on Customer Electronic Simple and Complex executions set forth in Section I.H. (the ''Customer Credit''), and (3) the amount of the Initiating Participant Credit for Single-Leg CUBE Auctions set forth in Section I.G. (the ''Initiating Participant Credit'').

As further discussed below, the proposed changes are designed to encourage ATP Holders to increase volume in a variety of transactions on the Exchange, including CUBE auction volume, Customer Electronic volume, and Professional Electronic volume.[5]

The Exchange proposes to implement this fee change on October 12, 2022.

Proposed Rule Change

Complex CUBE Auction Alternative Initiating Participant Rebate

Section I.G. of the Fee Schedule sets forth the per contract fees and credits for executions associated with Single-Leg and Complex CUBE Auctions. To encourage participation in Complex CUBE Auctions, the Exchange offers rebates on certain initiating Complex CUBE volume. Currently, the Exchange offers the ACE Initiating Participant Rebate to ATP Holders that also qualify for the American Customer Engagement (''ACE'') Program [6] and the Complex CUBE Rebate for ATP Holders that do not qualify for the ACE program.[7] Both the ACE Initiating Participant Rebate and the Complex CUBE Rebate provide for a rebate of $0.10 per contract, and an ATP Holder that qualifies for both rebates is entitled to only the greater of the two.[8]

Currently, ATP Holders that meet each of the following monthly qualification levels are eligible to receive the Complex CUBE Rebate: (a) 10,000 contracts ADV from Initiating CUBE orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.05% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional (as defined in Section I.H. of the Fee Schedule) Electronic executions of 0.03% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange.

The Exchange proposes to modify the qualifications for the Complex CUBE Rebate to require that ATP Holders execute: (a) 5,000 contracts ADV from Initiating CUBE orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.03% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional (as defined in Section I.H. of the Fee Schedule) Electronic executions of 0.02% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange.

[4] The Exchange originally filed to amend the Fee Schedule on September 30, 2022 (SR–NYSEAMER–2022–46) and withdrew such filing on October 12, 2022.

[5] For purposes of this filing, ''Professional'' Electronic volume includes: Professional Customer, Broker Dealer, Non-NYSE American Options Market Maker, and Firm.

[6] *See* Fee Schedule, Section I.E., American Customer Engagement (''ACE'') Program, *available at: https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[7] *See id.* at Section I.G., CUBE Auction Fees and Credits, Complex CUBE Auction.

[8] *See id.*

The Exchange does not propose to modify the amount of the Complex CUBE Rebate (which will remain at $0.10 per contract), and an ATP Holder that qualifies for both the ACE Initiating Participant Rebate and the Complex CUBE Rebate will continue to be entitled only to the greater of the two rebates.

Credit on Customer Electronic Simple and Complex Executions

As set forth in Section I.H. of the Fee Schedule, ATP Holders are currently eligible to receive the Customer Credit of $0.10 per contract on Customer Electronic Simple and Complex executions, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange, by meeting each of the following monthly qualification levels: (a) 10,000 contracts ADV from Initiating CUBE Orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.05% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional Electronic executions of 0.03% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange.[9]

The Exchange proposes to modify the qualifications for the Customer Credit to require that ATP Holders execute: (a) 5,000 contracts ADV from Initiating CUBE orders in Complex CUBE Auctions; (b) Customer Electronic executions of 0.03% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange; and (c) Professional (as defined in Section I.H. of the Fee Schedule) Electronic executions of 0.02% of TCADV, excluding CUBE Auctions, QCC Transactions, and volume from orders routed to another exchange. The Exchange does not propose to modify the amount of the Customer Credit, which will remain at $0.10 per contract.

Single-Leg CUBE Auction Initiating Participant Credit

Section I.G. of the Fee Schedule sets forth the rates for per contract fees and credits for executions associated with Single-Leg and Complex CUBE Auctions.[10] To encourage participants to utilize Single-Leg CUBE Auctions, the Exchange offers rebates and credits on certain initiating Single-Leg CUBE volume. Currently, as described in Note 1 in the Single-Leg CUBE Auction section of Section I.G., the Exchange offers Initiating Participant Credits for each contract in a Contra Order paired with a CUBE Order that does not trade with the CUBE Order because it is replaced in the auction.[11] The Exchange offers a $0.30 per contract credit for Penny issues and a $0.70 per contract credit for Non-Penny issues.

The Exchange proposes to modify the amounts of the Initiating Participant Credits to offer a $0.26 per contract credit for Penny issues and a $0.65 per contract credit for Non-Penny issues. The Exchange further proposes to modify Note 1 to provide that ATP Holders that execute at least 0.40% of TCADV in Electronic Customer Complex Orders would be eligible for an increased Initiating Participant Credit of $0.30 per contract for Penny issues and $0.70 per contract for Non-Penny issues, instead of the proposed $0.26 and $0.65 per contract credits for Penny and Non-Penny issues, respectively.

* * * * *

The proposed changes are designed to incent ATP Holders to direct order flow to the Exchange and to encourage ATP Holders to engage in a variety of transactions on the Exchange. In particular, the Exchange believes the proposed change would encourage ATP Holders to direct more auction-eligible order flow, Customer Electronic volume, and Professional Electronic volume to the Exchange to qualify for the Complex CUBE Rebate, Customer Credit, and/or Initiating Participant Credit. The Exchange notes that the proposed changes to the Complex CUBE Rebate and Customer Credit would also maintain alignment between the requirements for the Complex CUBE Rebate and Customer Credit. The Exchange also believes that the proposed changes to the Initiating Participant Credit, although they would decrease the amount of the credit available to ATP Holders that do not execute the proposed required level of Electronic Customer Complex volume, would continue to provide an incentive for participation in Single-Leg CUBE Auctions, while also encouraging increased Electronic Customer Complex volume. Although the Exchange cannot predict with certainty whether ATP Holders will be incentivized to qualify for the Complex CUBE Rebate, Customer Credit, or Initiating Participant Credit, as modified, the Exchange believes that, to the extent that the proposed changes achieve their intended purpose, the increased liquidity on the Exchange would result in enhanced market quality for all participants.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Sections 6(b)(4) and (5) of the Act,[13] in particular, because it provides for the equitable allocation of reasonable dues, fees, and other charges among its members, issuers and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers or dealers.

The Proposed Rule Change is Reasonable

The Exchange operates in a highly competitive market. The Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. In Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14]

There are currently 16 registered options exchanges competing for order flow. Based on publicly-available information, and excluding index-based options, no single exchange has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[15] Therefore, currently no exchange possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[16]

[9] *See id.* at Section I.H. In calculating an OFP's Electronic volume, the Exchange will include the activity of either (i) Affiliates of the OFP, such as when an OFP has an Affiliated NYSE American Options Market Making firm, or (ii) an Appointed MM of such OFP.

[10] *See id.* at Section I.G., CUBE Auction Fees & Credits.

[11] *See id.,* Single-Leg CUBE Auction, note 1 (setting forth both the ACE Initiating Participant Rebate and the Alternative Initiating Participant Rebate).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005) (S7–10–04) (''Reg NMS Adopting Release'').

[15] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.*

[16] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in multiply listed equity

The Exchange's fees are constrained by intermarket competition, as ATP Holders may direct their order flow to any of the 16 options exchanges, including those offering incentives similar to the Complex CUBE Rebate, Customer Credit, and Initiating Participant Credit.[17] Thus, ATP Holders have a choice of where they direct their order flow. The proposed modifications to the Complex CUBE Rebate, Customer Credit, and Initiating Participant Credit are designed to continue to encourage ATP Holders to engage in a variety of transactions on the Exchange and increase volume in CUBE auctions as well as Customer and Professional Electronic executions. The Exchange believes all market participants stand to benefit from increased order flow, which promotes market depth, facilitates tighter spreads, and enhances price discovery.

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, competitive forces constrain options exchange transaction fees. Stated otherwise, changes to exchange transaction fees and rebates can have a direct effect on the ability of an exchange to compete for order flow.

The proposed rule change is designed to continue to incent ATP Holders to direct liquidity to the Exchange in a variety of forms and from a variety of sources, thereby promoting market depth, price discovery, and price improvement and enhancing order execution opportunities for market participants. In particular, the Exchange believes it is reasonable to provide ATP Holders with a rebate or credit for achieving certain volume goals in different types of executions.

The Exchange also believes that the proposed changes are designed to continue to encourage ATP Holders to execute a variety of orders on the Exchange. The Exchange further believes that maintaining the same criteria to qualify for the Complex CUBE Rebate or Customer Credit should encourage greater use of the Exchange by all ATP Holders, which may lead to greater opportunities to trade and for price improvement for all participants. The Exchange notes that all market participants stand to benefit from increased transaction volume, as such increase promotes market depth, facilitates tighter spreads and enhances price discovery, and may lead to a corresponding increase in order flow from other market participants.

The Exchange cannot predict with certainty whether any ATP Holders would seek to qualify for the Complex CUBE Rebate or the Customer Credit, as modified, but believes that the proposed qualifying bases for the Complex CUBE Rebate and Customer Credit, which lower the volume necessary to qualify and maintain alignment between the volume requirements across the two incentives, are achievable for ATP Holders and would continue to incent ATP Holders to direct volume to the Exchange. The Exchange also believes that the proposed modification of the Initiating Participant Credit, although it would decrease the credit earned by ATP Holders that do not execute the proposed required level of Customer Electronic Complex volume, would continue to promote both participation in Single-Leg CUBE Auctions and increased Customer Electronic Complex volume directed to the Exchange.

Finally, to the extent the proposed changes attract greater volume and liquidity, the Exchange believes the proposed changes would improve the Exchange's overall competitiveness and strengthen its market quality for all market participants. In the backdrop of the competitive environment in which the Exchange operates, the proposed rule changes are a reasonable attempt by the Exchange to increase the depth of its market and improve its market share relative to its competitors.

The Proposed Rule Change is an Equitable Allocation of Fees and Rebates

The Exchange believes the proposed rule change is an equitable allocation of its fees and rebates. The proposal is based on the amount and type of business transacted on the Exchange, and ATP Holders can seek to qualify for these incentives or not. The Exchange further believes that, because ATP Holders would need to meet requirements based on Initiating CUBE Orders, Customer Electronic executions, and Professional Electronic executions in order to qualify for either the Complex CUBE Rebate or Customer Credit, and would need to meet a requirement based on Electronic Customer Complex to earn a higher Initiating Participant Credit on Single-Leg CUBE orders, the proposed changes are designed to continue to encourage ATP Holders to aggregate their executions at the Exchange as a primary execution venue. To the extent that the proposed changes attract more volume to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery.

The Proposed Rule Change is not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory because the proposed modifications would apply to all similarly-situated market participants on an equal and non-discriminatory basis. The proposed changes are based on the amount and type of business transacted on the Exchange, and ATP Holders are not obligated to try to achieve any of the incentives offered. Rather, the proposals are designed to continue to encourage participants to utilize the Exchange as a primary trading venue (if they have not done so previously) and increase auction, Customer Electronic, and Professional Electronic volume sent to the Exchange. In addition, the proposed modifications would continue to align the requirements for the Customer Credit and Complex CUBE Rebate, which may lead to greater opportunities to trade—and for price improvement—for all participants.

To the extent that the proposed changes attract more executions to the Exchange, this increased order flow would continue to make the Exchange a more competitive venue for order execution. Thus, the Exchange believes the proposed rule changes would improve market quality for all market participants on the Exchange and, as a consequence, attract more order flow to the Exchange thereby improving market-wide quality and price discovery. The

and ETF options was 7.56% for the month of August 2021 and 7.57% for the month of August 2022.

[17] *See, e.g.,* Cboe Exchange, Inc. (''Cboe'') Fee Schedule, Volume Incentive Program, available at: *https://cdn.cboe.com/resources/membership/Cboe_FeeSchedule.pdf* (providing per contract credits that, similar to the Complex CUBE Rebate and Customer Credit, have qualifications based on volume from a variety of executions, including auction volume, volume from various account types, and volume from both simple and complex executions); Cboe Fee Schedule, Break-Up Credits (offering break-up credits on certain orders executed through Cboe Automated Improvement Mechanism of $0.25 and $0.60 for penny and non-penny classes, respectively, similar to the Initiating Participant Credit for Single-Leg CUBE orders); Cboe EDGX (''EDGX'') Options Fee Schedule, Break-Up Credits, available at: *https://www.cboe.com/us/options/membership/fee_schedule/edgx/* (offering break-up credits on certain orders executed through EDGX Automated Improvement Mechanism of $0.25 and $0.60 for penny and non-penny program securities, respectively, similar to the Initiating Participant Credit for Single-Leg CUBE orders).

resulting increased volume and liquidity would provide more trading opportunities and tighter spreads to all market participants and thus would promote just and equitable principles of trade, 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.

Finally, 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, the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. Instead, as discussed above, the Exchange believes that the proposed changes would encourage the submission of additional liquidity to a public exchange, thereby promoting market depth, price discovery and transparency and enhancing order execution opportunities for all market participants. As a result, the Exchange believes that the proposed changes further 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.'' [18]

Intramarket Competition. The proposed change is designed to continue to attract increased and diverse order flow to the Exchange by offering competitive credits and rebates, which may increase the volume of contracts traded on the Exchange. Specifically, the Exchange believes the proposed rule change, by specifying requirements in auction, Customer Electronic, and Professional Electronic volume, would incent ATP Holders to participate in a variety of types of executions on the Exchange to qualify for the Complex CUBE Rebate, Customer Credit, and Initiating Participant Credit. To the extent that this purpose is achieved, all of the Exchange's market participants should benefit from the improved market liquidity. Enhanced market quality and increased transaction volume resulting from the anticipated increase in order flow directed to the Exchange would benefit all market participants and improve competition on the Exchange.

Intermarket Competition. The Exchange operates in a highly competitive market in which market participants can readily favor one of the 16 competing option exchanges if they deem fee levels at a particular venue to be excessive. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges and to attract order flow to the Exchange. Based on publicly-available information, and excluding index-based options, no single exchange currently has more than 16% of the market share of executed volume of multiply-listed equity and ETF options trades.[19] Therefore, no exchange currently possesses significant pricing power in the execution of multiply-listed equity and ETF options order flow. More specifically, in August 2022, the Exchange had less than 8% market share of executed volume of multiply-listed equity and ETF options trades.[20]

The Exchange believes that the proposed rule change reflects this competitive environment because it modifies the Exchange's fees and rebates in a manner designed to encourage ATP Holders to direct trading interest to the Exchange, to provide liquidity and to attract order flow. Specifically, the Exchange believes that the proposed change would encourage ATP Holders to direct increased and diverse volume to the Exchange, thereby increasing the number of executions (and executions of varying types) on the Exchange. The Exchange further believes that maintaining consistency between the requirements for the Complex CUBE Rebate and Customer Credit could make the incentives more achievable for ATP Holders and would thus continue to make the Exchange a more attractive and competitive venue for order execution. To the extent that this purpose is achieved, all the Exchange's market participants should benefit from the improved market quality and increased opportunities for price improvement.

Thus, the Exchange believes that the proposed changes could promote competition between the Exchange and other execution venues, including those that currently offer similar pricing incentives, by encouraging additional orders to be sent to the Exchange for execution.

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) [21] of the Act and subparagraph (f)(2) of Rule 19b–4 [22] 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) [23] 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–NYSEAMER–2022–48 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–NYSEAMER–2022–48. This file number should be included on the subject line if email is used. To help the Commission process and review your

[18] *See* Reg NMS Adopting Release, *supra* note 14, at 37499.

[19] *See supra* note 15.

[20] Based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, *see id.,* the Exchange's market share in multiply listed equity and ETF options was 7.56% for the month of August 2021 and 7.57% for the month of August 2022.

[21] 15 U.S.C. 78s(b)(3)(A).

[22] 17 CFR 240.19b–4(f)(2).

[23] 15 U.S.C. 78s(b)(2)(B).

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–NYSEAMER–2022–48, and should be submitted on or before November 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[24]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22663 Filed 10–18–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96060; File No. SR–DTC–2022–010]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Procedures Set Forth in the Custody Guide and the Underwriting Guide Including the Policy Statement on the Eligibility of Foreign Securities

October 13, 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 October 7, 2022, The Depository Trust Company (''DTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. DTC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act[3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change consists of amendments to Procedures[5] set forth in the Custody Guide[6] and the Underwriting Guide,[7] as well as the Policy Statement on the Eligibility of Foreign Securities (''Policy Statement'') set forth in the Rules,[8][9] to make technical and clarifying changes, as described in greater detail below.

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change would amend the Procedures[10] set forth in the Custody Guide[11] and the Underwriting Guide,[12] as well as the Policy Statement on the Eligibility of Foreign Securities (''Policy Statement'') set forth in the Rules,[13] to make technical and clarifying changes, as described below.

[24] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Pursuant to the Rules, the term ''Procedures'' means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. Rule 1, Section 1, *infra* note 9. DTC's Procedures are filed with the Securities and Exchange Commission (''Commission''). They are binding on DTC and each Participant in the same manner that they are bound by the Rules. Rule 27, *infra* note 9.

[6] The Custody Guide, *infra* note 9, contains Procedures for DTC's Custody Service. The Custody Service allows a Participant to deposit (i) Securities not eligible for DTC book-entry services, (ii) Securities that would otherwise be eligible for DTC book-entry services but are not registered in the name of DTC's nominee, Cede & Co., and (iii) certain ''non-standard assets.'' Custody Guide, *infra* note 9, at 7. The Custody Service also includes DTC services for Deposit and Safekeeping, Withdrawal, Regular Transfer, Restricted Deposits and Transfer, Reorganization, Branch Deposits, and Physical Clearance and Settlement services. Custody Guide, *infra* note 9, at 8.

[7] The Underwriting Guide, *infra* note 9, contains Procedures for DTC's Underwriting Service. The Underwriting Service allows Participants to request eligibility for Securities and deposit securities eligible for depository services. Underwriting Guide, *infra* note 9, at 7.

[8] The purpose of the Policy Statement is to set forth in an accessible manner the criteria and procedures for making the securities of foreign issuers (''Foreign Securities'') eligible for deposit and book-entry transfer through the facilities of DTC in accordance with the Securities Act of 1933 and the rules and regulations of the Commission thereunder. *See* Securities Exchange Act Release No. 56277 (August 17, 2007), 72 FR 48709 (August 24, 2007) (File No. SR–DTC–2007–04).

[9] Each capitalized term not otherwise defined herein has its respective meaning as set forth in the Rules, By-Laws and Organization Certificate of The Depository Trust Company (''Rules''), *available at http://www.dtcc.com/legal/rules-and-procedures.aspx*, the DTC Custody Service Guide (''Custody Guide''), *available at https://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Custody.pdf* and the DTC Underwriting Service Guide (''Underwriting Guide''), *available at https://www.dtcc.com/~/media/Files/Downloads/legal/service-guides/Underwriting-Service-Guide.pdf.*

[10] Pursuant to the Rules, the term ''Procedures'' means the Procedures, service guides, and regulations of DTC adopted pursuant to Rule 27, as amended from time to time. Rule 1, Section 1, *supra* note 9. DTC's Procedures are filed with the Securities and Exchange Commission (''Commission''). They are binding on DTC and each Participant in the same manner that they are bound by the Rules. Rule 27, *supra* note 9.

[11] The Custody Guide, *supra* note 9, contains Procedures for DTC's Custody Service. The Custody Service allows a Participant to deposit (i) Securities not eligible for DTC book-entry services, (ii) Securities that would otherwise be eligible for DTC book-entry services but are not registered in the name of DTC's nominee, Cede & Co., and (iii) certain ''non-standard assets.'' Custody Guide, *supra* note 9, at 7. The Custody Service also includes DTC services for Deposit and Safekeeping, Withdrawal, Regular Transfer, Restricted Deposits and Transfer, Reorganization, Branch Deposits, and Physical Clearance and Settlement services. Custody Guide, *supra* note 9, at 8.

[12] The Underwriting Guide, *supra* note 9, contains Procedures for DTC's Underwriting Service. The Underwriting Service allows Participants to request eligibility for Securities and deposit securities eligible for depository services. Underwriting Guide, *supra* note 9, at 7.

[13] The purpose of the Policy Statement is to set forth in an accessible manner the criteria and procedures for making the securities of foreign issuers (''Foreign Securities'') eligible for deposit and book-entry transfer through the facilities of DTC in accordance with the Securities Act of 1933 and the rules and regulations of the Commission thereunder. *See* Securities Exchange Act Release No. 56277 (August 17, 2007), 72 FR 48709 (August 24, 2007) (File No. SR–DTC–2007–04).

Proposed Rule Change

Custody Guide

The proposed rule change would make the following changes to the text of the Custody Guide.

First, the section of the Custody Guide titled ''Requesting Custody Eligibility for a Security'' [14] would be revised to delete text that directs Participants with questions regarding the section to a phone number for the DTC Underwriting Hotline.[15] The more appropriate party for a Participant to contact is its relationship manager, which is already noted in the section.[16] Deleting the reference to the Underwriting Hotline would provide greater clarity as to where Participants should direct their inquiries relating to this aspect of the Custody Service.

Second, the subsection titled ''Short-Term Maturity'' [17] under the ''Custody Reorganization'' section of the Custody Guide would be deleted as the functionality described in the subsection will be retired. The functionality described in the subsection relates to a process for the automatic redemption of Securities with short terms to maturity, including, but not limited to, bankers' acceptances and certificates of deposit.[18] This functionality provides that DTC will track payment details for short-term Securities held in the Custody Service and provides a projection report of maturities to occur within the next 5 Business Days to the applicable Participant for balancing purposes. DTC then arranges for the certificate to be automatically routed to an internal Short-Term Maturity Prep box (''Short-Term Maturity Box'') to then be presented to the paying agent on the payable date, along with a system-generated instruction for the paying agent to wire the proceeds to the bank account designated by the Participant.

DTC is retiring this Short-Term Maturity functionality as it has not been used by a Participant in over five years, and such transactions have been rare since the implementation of the Short-Term Maturity functionality. Based on DTC's observation of existing Participant deposits and activity, DTC does not anticipate future demand for this process.

Once the Short-Term Maturity process described in the subsection is discontinued, Participants holding any applicable Securities through the Custody Service would need to track any such maturity details on their own and provide appropriate instructions relating to matured Securities through the DTC system via the general Custody Service system functionality, as they would for other transaction types not otherwise specified in the Custody Guide, using the Participant Terminal System (PTS)/Participant Browser System (PBS) function CUST or via messaging.[19]

In discontinuing this function, the Custody Guide would be updated to delete, (i) a reference to the Short-Term Maturity Box under the heading ''Custody Reorganization Boxes,'' and (ii) a reference to short-term maturities under the heading ''Reorganization and Redemption Activities.''

Finally, in the ''Copyright'' section of the Custody Guide, the date would be changed from 2021 to 2022.

Underwriting Guide

The proposed rule change would make the following changes to the text of the Underwriting Guide.

First, the heading titled ''Service Topics'' [20] would be deleted. The heading follows a section titled ''Overview'' that explains that the Underwriting Guide describes services offered under the Underwriting Service and related requirements. Also, the ''Service Topics'' heading immediately precedes descriptions of the various service offerings that DTC provides as part of the Underwriting Service. Because the Overview section provides sufficient context for the reader to understand that the Underwriting Guide provides such descriptions, the inclusion of the ''Service Topics'' heading is not needed as a reference point for readers to understand the context or purpose of the service descriptions that follow. In this regard, DTC believes the elimination of this heading would enhance readability by reducing unnecessary wording.

Second, the section of the Underwriting Guide titled ''Custody Service'' [21] would be deleted. Although, the section provides a brief overview of the Custody Service and related Procedures, the Custody Service is already described in the Custody Service Guide. So, inclusion of the description of the Custody Service within the Underwriting Guide is duplicative and unnecessary. The deletion of this section from the Underwriting Guide will not affect the Custody Service or the Procedures described in the Custody Guide.

Third, references to ''data distribution boxes'' and references to distributions of hard copy reports [22] would be deleted from the Underwriting Guide. The glossary included in the Underwriting Guide defines data distribution boxes as receptacles located in the central delivery area of DTC used for distributing hard copy reports and notices to Participants.[23] A subsection titled ''About the Product'' under the ''IPO Tracking System'' section of the Underwriting Guide provides that reports are issued daily in hard copy form and are distributed through DTC's data distribution boxes or DTC's Interface Department. The ''How the Product Works'' subsection of the ''IPO Tracking System'' section also contains a cross reference regarding instructions on data distribution boxes to the text in the ''About the Product'' subsection described above.

Today, IPO Tracking reports are transmitted in electronic format, and Participants no longer retrieve such reports in hard copy form. As such, DTC would update the Underwriting Guide to delete the above-described references to data distribution boxes and distribution of hard copy reports from the glossary and the ''IPO Tracking System'' section.

Finally, in the ''Copyright'' section of the Underwriting Guide, the date would be changed from 2021 to 2022.

Policy Statement

The proposed rule change would make a technical amendment to the Policy Statement to align a provision of the Policy Statement with the Procedures.

The Policy Statement covers eligibility provisions for both Foreign Securities deposited with DTC at the time that such Foreign Securities are first distributed (referred to as ''new issues'') and Foreign Securities deposited with DTC subsequent to the time that such Foreign Securities are first distributed (referred to as ''older issues'').

Section 3 (''Section 3'') of the Policy Statement provides for a variety of measures designed to facilitate compliance by issuers and Participants with their obligations to DTC and pursuant to the federal securities laws.

Among requirements for new issues, Section 3 references an ''Eligibility Questionnaire'' that sets forth, *inter alia,* the basis on which the securities are

[14] Custody Guide, *supra* note 9, at 20–21.

[15] Custody Guide, *supra* note 9, at 21.

[16] Custody Guide, *supra* note 9, at 20.

[17] Custody Guide, *supra* note 9, at 24.

[18] *See* Securities Exchange Act Release No. 42597 (March 30, 2000), 65 FR 18399 (April 7, 2000) (File No. SR–DTC–99–26).

[19] Custody Guide, *supra* note 9, at 16.

[20] Underwriting Guide, *supra* note 9, at 10.

[21] Underwriting Guide, *supra* note 9, at 18.

[22] Underwriting Guide, *supra* note 9, at 8, 12 and 13.

[23] Underwriting Guide, *supra* note 9, at 8.

eligible for deposit and book-entry transfer through the facilities of DTC that must be provided by a Participant seeking eligibility of a Foreign Security. However, today, in accordance with the Procedures, namely the Underwriting Guide [24] and the Operational Arrangements (Necessary for an Issue to Become and Remain Eligible for DTC Services) (''OA''),[25] Participants submit eligibility requests through DTC's systems designated for this purpose.

In this regard, the proposed rule change would make a technical change to the above-referenced text in the Policy Statement to remove the reference to an ''Eligibility Questionnaire'' and replace it with a reference to an ''eligibility request, to be submitted to the Corporation in accordance with the Procedures.''

2. Statutory Basis

DTC believes that the proposed rule change is consistent with the requirements of the Securities Exchange Act of 1934 (''Act''), and the rules and regulations thereunder applicable to DTC, in particular Section 17A(b)(3)(F) [26] of the Act.

Section 17A(b)(3)(F) of the Act requires, *inter alia,* that the rules of the clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.[27] As described above, the proposed rule change revises the Custody Guide, the Underwriting Guide, and the Policy Statement to remove references to obsolete functions and make other technical changes. In this regard, the proposed rule change helps clarify the Procedures set forth in the Custody Guide, the Underwriting Guide, and the Policy Statement with respect to services and functions offered by DTC to Participants for processing of applicable transactions. Therefore, by improving the clarity of those documents with respect to those services and functions, the proposed rule change would help promote the prompt and accurate clearance and settlement of securities transactions, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F) of the Act, cited above.

(B) Clearing Agency's Statement on Burden on Competition

DTC does not believe that the proposed rule change will have an impact on competition because the proposed rule change consists of updates relating to obsolete functions and technical changes that would not significantly affect Participants' use of the applicable services.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

DTC has not received or solicited any written comments relating to this proposal. If any written comments are received, they would be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submit-comments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

DTC reserves the right to not respond to any comments 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) [28] of the Act and paragraph (f) [29] of Rule 19b–4 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.

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–DTC–2022–010 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–DTC–2022–010. 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 DTC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–DTC–2022–010 and should be submitted on or before November 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

J. Matthew DeLesDernier,

Deputy Secretary.

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[24] Underwriting Guide, *supra* note 9, at 16.

[25] OA, *available* at *https://www.dtcc.com/~/media/Files/Downloads/legal/issue-eligibility/eligibility/operational-arrangements.pdf* at 6–19.

[26] 15 U.S.C. 78q–1(b)(3)(F).

[27] *Id.*

[28] 15 U.S.C. 78s(b)(3)(A).

[29] 17 CFR 240.19b–4(f).

[30] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96062; File No. SR–GEMX–2022–09]

Self-Regulatory Organizations; Nasdaq GEMX, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend GEMX Options 7

October 13, 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 October 3, 2022, Nasdaq GEMX, LLC (''GEMX'' 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 Pricing Schedule at Options 7.

The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/gemx/rules,* at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend Options 7, Sections 1, 3 and 4 in connection with adopting an Affiliated Entity program. The Exchange also proposes to amend Options 7, Section 3 to amend its Regular Order Fees and Rebates for Penny Symbols and Non-Penny Symbols and Qualifying Tier Thresholds and remove note 13 from the Pricing Schedule. Each change is described below.

Affiliated Entity Program

The Exchange proposes to permit Affiliated Entities to aggregate certain volume for purposes of paying lower fees or receiving higher rebates. Today, Nasdaq MRX, LLC (''MRX'') and Nasdaq ISE, LLC (''ISE'') [3] also permit Affiliated Entities to aggregate volume for purposes of qualifying for certain pricing.

Specifically, the Exchange proposes to adopt the term ''Affiliated Entity'' within Options 7, Section 1(c).[4] An ''Affiliated Entity'' would be a relationship between an Appointed Market Maker and an Appointed OFP for purposes of qualifying for certain pricing specified in the Pricing Schedule. An ''Appointed Market Maker'' is proposed to be defined within Options 7, Section 1(c) as a Market Maker who has been appointed by an OFP for purposes of qualifying as an Affiliated Entity. An ''Order Flow Provider'' or ''OFP'' is proposed to be defined within Options 7, Section 1(c) as any Member, other than a Market Maker, that submits orders, as agent or principal, to the Exchange.[5] Finally, an ''Appointed OFP'' would be defined within Options 7, Section 1(c) as an OFP who has been appointed by a Market Maker for purposes of qualifying as an Affiliated Entity.

In order to become an Affiliated Entity, Market Makers and OFPs would be required to send an email to the Exchange to appoint their counterpart, at least 3 business days prior to the last day of the month to qualify for the next month.[6] For example, with this proposal, market participants should have submitted emails to the Exchange to become Affiliated Entities to qualify for discounted pricing by September 28, 2022, which is 3 business days prior to the first business day of October 3, 2022. The Exchange will acknowledge receipt of the emails and specify the date the Affiliated Entity is eligible for applicable pricing, as specified in the Pricing Schedule within Options 7, Section 1(c).

Each Affiliated Entity relationship will commence on the 1st of a month and may not be terminated prior to the end of any month. An Affiliated Entity relationship will automatically renew each month until or unless either party terminates earlier in writing by sending an email to the Exchange at least 3 business days prior to the last day of the month to terminate for the next month. Affiliated Members [7] may not qualify as a counterparty comprising an Affiliated Entity. Each Member may qualify for only one (1) Affiliated Entity relationship at any given time. As proposed, an Affiliated Entity shall be eligible to aggregate their volume for purposes of qualifying for certain pricing specified in the Pricing Schedule, as described below.

The Exchange proposes to amend Options 7, Section 3, Regular Order Fees and Rebates, to indicate that with respect to the Qualifying Tier Thresholds, for purposes of measuring Total Affiliated Member *or Affiliated Entity* % of Customer Total Consolidated Volume, Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month. Further, the Exchange proposes to provide that all eligible volume from Affiliated Members *or an Affiliated Entity* will be aggregated in determining applicable tiers for each of the Qualifying Tier Thresholds in Table 1. Finally, the Exchange proposes to note that the Total Affiliated Member *or Affiliated Entity* % of Customer Total Consolidated Volume category includes all volume in all symbols and order types, including both maker and taker volume and volume executed in the PIM, Facilitation, Solicitation, and QCC mechanisms.

With these proposed amendments, an Affiliated Entity would be permitted to aggregate its volume to qualify for the Qualifying Tier Thresholds. By aggregating volume, the Appointed Market Maker and Appointed OFP will both have an opportunity to receive lower Taker Fees and higher Maker Rebates as a result of the aggregation. The Exchange believes that the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* MRX and ISE Options 7, Section 1.

[4] The Exchange proposes to add a ''c'' before the term references within Options 7, Section 1 to further describe this section of the Pricing Schedule.

[5] Market Makers shall not be considered Appointed OFPs for the purpose of becoming an Affiliated Entity.

[6] The Exchange issued an Options Trader Alert which provided the email address and details required to apply to become an Affiliated Entity.

[7] An ''Affiliated Member'' is Member that shares at least 75% common ownership with a particular Member as reflected on the Member's Form BD, Schedule A. This term is currently described within Options 7, Sections 3 and 4. The Exchange proposes to remove the description of an Affiliated Member from Options 7, Sections 3 and 4 and instead describe an Affiliated Member within Options 7, Section 1(c). The Exchange also proposes to capitalize the word ''affiliated'' within Options 7, Section 4 to refer to the defined term.

Affiliated Entity program will encourage Appointed Market Makers and Appointed OFPs to submit additional liquidity on GEMX.

As noted above, with this proposed change, a GEMX Member may aggregate either as an Affiliated Member or an Affiliated Entity during the same time period, but may not aggregate under both programs during the same time period. The Exchange proposes to incentivize certain Members, who are not Affiliated Members, to enter into an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify to for certain Maker or Taker tiers.

Options 7, Section 3

The Exchange proposes to amend Options 7, Section 3, Regular Order Fees and Rebates, to: (1) renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, (2) add a new Maker Rebate Tier 4 and Taker Fee Tier 4; (3) amend new Priority Customer [8] Maker Rebate Tier 5; and (4) eliminate current note 13. Each change will be described below.

Maker Rebates

Today, GEMX pays the following Tier 4 Penny Symbol Maker Rebates: $0.41 per contract to Market Makers [9] and $0.52 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM),[10] Firm Proprietary [11]/Broker Dealers [12] and Professional Customers [13] are not eligible for Tier 4 Penny Symbol Maker Rebates. Today, GEMX pays the following Tier 4 Non-Penny Symbol Maker Rebates: $0.75 per contract to Market Makers and $1.05 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers are not eligible for Tier 4 Non-Penny Symbol Maker Rebates.

At this time, the Exchange proposes to renumber Penny and Non-Penny Symbol Maker Rebate Tiers 4 as Tier 5.

The Exchange also proposes to increase the Priority Customer Penny Symbol newly renumbered Maker Rebate Tier 5 from $0.52 to $0.53 per contract.

The Exchange also proposes to adopt a new Penny Symbol Maker Rebate Tier 4 as follows: $0.32 per contract to Market Makers and $0.51 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers will not be eligible for proposed Tier 4 Penny Symbol Maker Rebates.

The Exchange also proposes to adopt a new Non-Penny Symbol Maker Rebate Tier 4 as follows: $0.50 per contract to Market Makers and $0.90 per contract to Priority Customers. Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers will not be eligible for proposed Tier 4 Non-Penny Symbol Maker Rebates.

Taker Fees

Today, GEMX pays the following Tier 4 Penny Symbol Taker Fees: $0.48 per contract to Market Makers and Non-Nasdaq GEMX Market Makers (FarMM), $0.49 per contract to Firm Proprietary/Broker Dealers and Professional Customers, and $0.43 per contract to Priority Customers. Today, GEMX pays the following Tier 4 Non-Penny Symbol Taker Fees: $0.94 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers and $0.82 per contract to Priority Customers

At this time, the Exchange proposes to renumber Penny and Non-Penny Symbol Taker Fee Tiers 4 as Tier 5.

The Exchange also proposes to adopt a new Penny Symbol Taker Fee Tier 4 as follows: $0.50 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers, and $0.48 per contract to Priority Customers. Similar to current Penny Symbol Taker Fees, non-Priority Customer [14] orders will be charged the Penny Symbol Taker Fee for trades executed during the Opening Process for Penny Symbol Tier 4 Taker Fees. Priority Customer orders executed during the Opening Process will receive the applicable Penny Symbol Maker Rebate based on the tier achieved.[15]

The Exchange also proposes to adopt a new Non-Penny Symbol Taker Fee Tier 4 as follows: $0.99 per contract to Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers, and $0.85 per contract to Priority Customers. Similar to current Non-Penny Symbol Taker Fees, non-Priority Customer orders will be charged the Non-Penny Taker Fee for trades executed during the Opening Process for Non-Penny Symbol Tier 4 Taker Fees. Priority Customer orders executed during the Opening Process will receive the applicable Non-Penny Symbol Maker Rebate based on the tier achieved.[16] Additionally, Non-Priority Customer orders will be charged a Non-Penny Symbol Taker Fee of $1.10 per contract for trades executed against a Priority Customer. Priority Customer orders will be charged a Non-Penny Symbol Taker Fee of $0.85 per contract for trades executed against a Priority Customer.[17]

Today, for Penny Symbol Taker Fees 1,[18] 2,[19] 3 [20] and 4, non-Priority Customers who execute less than 4.0% of Customer Total Consolidated Volume [21] will be charged a Penny Symbol Taker Fee of $0.48 per contract for trades executed against a Priority Customer. Non-Priority Customers who execute 4.0% or greater of Customer Total Consolidated Volume will be charged a Penny Symbol Taker Fee of $0.47 per contract for trades executed against a Priority Customer. All Priority Customer orders will be charged a Penny Symbol Taker Fee of $0.48 per

[8] A ''Priority Customer'' is a person or entity that is not a broker/dealer in securities, and does not place more than 390 orders in listed options per day on average during a calendar month for its own beneficial account(s), as defined in Nasdaq GEMX Options 1, Section 1(a)(36). Unless otherwise noted, when used in this Pricing Schedule the term ''Priority Customer'' includes ''Retail'' as defined below. *See* Options 7, Section 1(c), as proposed.

[9] The term ''Market Makers'' refers to ''Competitive Market Makers'' and ''Primary Market Makers'' collectively. *See* Options 1, Section 1(a)(21).

[10] A ''Non-Nasdaq GEMX Market Maker'' is a market maker as defined in Section 3(a)(38) of the Securities Exchange Act of 1934, as amended, registered in the same options class on another options exchange. *See* GEMX Options 7, Section 1.

[11] A ''Firm Proprietary'' order is an order submitted by a member for its own proprietary account. *See* GEMX Options 7, Section 1.

[12] A ''Broker-Dealer'' order is an order submitted by a member for a broker-dealer account that is not its own proprietary account. *See* GEMX Options 7, Section 1.

[13] A ''Professional Customer'' is a person or entity that is not a broker/dealer and is not a Priority Customer. *See* GEMX Options 7, Section 1.

[14] Non-Priority Customer Orders includes order for the accounts of Market Makers, Non-Nasdaq GEMX Market Makers (FarMM), Firm Proprietary/Broker Dealers and Professional Customers.

[15] *See* note 4 in Options 7, Section 3 of the Pricing Schedule.

[16] *See* note 4 in Options 7, Section 3 of the Pricing Schedule.

[17] *See* note 16 in Options 7, Section 3 of the Pricing Schedule.

[18] Today, the Exchange assesses $0.50 per contract for Penny Symbol Taker Fee 1 for all non-Priority Customers and $0.48 per contract for Priority Customers.

[19] Today, the Exchange assesses $0.50 per contract for Penny Symbol Taker Fee 2 for all non-Priority Customers and $0.48 per contract for Priority Customers.

[20] Today, the Exchange assesses $0.50 per contract for Penny Symbol Taker Fee 3 for all non-Priority Customers and $0.48 per contract for Priority Customers.

[21] Customer Total Consolidated Volume means the total volume cleared at The Options Clearing Corporation in the Customer range in equity and ETF options in that month.

contract for trades executed against a Priority Customer.[22]

At this time, the Exchange proposes to remove note 13 from the Pricing Schedule within Options 7, Section 3. While the Exchange is eliminating certain incentives to lower the Penny Symbol Taker Fee when trading against a Priority Customer, the Exchange believes that the amendments proposed herein to the Taker Fees offer market participants the ability to obtain lower Taker Fees, if they are currently in Penny Symbol Taker Fee Tiers 1–3, by submitting additional order flow to GEMX.

Finally, the Exchange proposes to amend the criteria to qualify for the tier thresholds within Options 7, Section 3. The Exchange proposes to add tier qualifications for new Tier 4 which would require a Member to execute 2.25% to less than 2.50% of Customer Total Consolidated Volume for the qualifying percentage of Customer Total Consolidated Volume. Also, for Tier 4, a Member would be required to execute Priority Customer Maker volume of 1.05% to less than 1.20% of Customer Total Consolidated Volume for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume.

With the addition of new Tier 4 in the Qualifying Tier Thresholds, the Exchange proposes to also amend Tier 3 to accommodate the new tier. The Exchange proposes to amend the range in Tier 3 for the qualifying percentage of Customer Total Consolidated Volume to require a Member to execute 1.5% to less than 2.25% of Customer Total Consolidated Volume (from 1.5% to less than 2.50% of Customer Total Consolidated Volume). Also, the Exchange proposes to amend the range in Tier 3 for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume to require a Member to execute Priority Customer Maker volume of 0.65% to less than 1.05% of Customer Total Consolidated Volume (from 0.65% to less than 1.20% of Customer Total Consolidated Volume). Finally, the Exchange proposes to renumber Tier 4 as Tier 5 within the Qualifying Tier Thresholds.

The Exchange believes that the addition of Tier 4 will incentive GEMX Members in Penny and Non-Penny Symbol Tiers 1 through 3 to submit additional order flow to GEMX to obtain lower Taker Fees and higher Maker Rebates.

[22] *See* note 13 in Options 7, Section 3 of the Pricing Schedule.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[23] in general, and furthers the objectives of Sections 6(b)(4) and 6(b)(5) of the Act,[24] 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 Proposal Is Reasonable

The proposed changes to its Pricing Schedule are reasonable in several respects. As a threshold matter, the Exchange is subject to significant competitive forces in the market for options transaction services that constrain its pricing determinations in that market. The fact that this market is competitive has long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission* [25] (''NetCoalition''), the D.C. Circuit stated, ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers' . . . .'' [26]

Numerous indicia demonstrate the competitive nature of this market. For example, clear substitutes to the Exchange exist in the market for options transaction services. The Exchange is only one of sixteen options exchanges to which market participants may direct their order flow. Within this environment, market participants can freely and often do shift their order flow among the Exchange and competing venues in response to changes in their respective pricing schedules. Within the foregoing context, the proposal represents a reasonable attempt by the Exchange to attract additional order flow to the Exchange and increase its market share relative to its competitors.

[23] 15 U.S.C. 78f(b).

[24] 15 U.S.C. 78f(b)(4) and (5).

[25] *NetCoalition* v. *SEC,* 615 F.3d 525 (D.C. Cir. 2010).

[26] *Id.* at 539 (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) SR–NYSEArca–2006–21)).

Affiliated Entity Program

The Exchange's proposal to permit an Affiliated Entity to aggregate certain volume for purposes of paying lower fees or receiving higher rebates is reasonable because the Exchange believes this program will incentivize certain GEMX Members, who are not Affiliated Members, to enter into an Affiliated Entity relationship for the purpose of aggregating volume executed on the Exchange to qualify for certain lower Market Maker fees. By aggregating volume, the Appointed Market Maker and Appointed OFP will both have an opportunity to receive lower Taker Fees and higher Maker Rebates as a result of the aggregation. Additionally, this proposal will harmonize GEMX's program with MRX's and ISE's programs.[27] While a GEMX Member may not utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates, the Exchange believes that permitting aggregation individually under each program, Affiliated Member and the Affiliated Entity program, will encourage Appointed Market Makers and Appointed OFPs to submit additional liquidity on GEMX if they chose to enter into this relationship.

The Exchange's proposal to permit Affiliated Entities to aggregate certain volume for purposes of paying lower fees or receiving higher rebates is equitable and not unfairly discriminatory as all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. The Exchange's proposal to exclude Affiliated Members from qualifying as an Affiliated Entity is equitable and not unfairly discriminatory because, today, Affiliated Members may aggregate volume for purposes of lowering fees or increasing rebates on GEMX. Also, as proposed no GEMX Member may utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates. Also, the Exchange will apply all qualifications in a uniform manner for an Affiliated Entity.

Options 7, Section 3

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees

[27] *See* MRX and ISE Options 7, Section 1.

and Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a new Maker Rebate Tier 4 and Taker Fee Tier 4 is reasonable because the addition of new Tier 4 will incentive GEMX Members to submit additional order flow to GEMX to obtain lower fees and higher rebates. Specifically, Members currently in Penny and Non-Penny Symbol Tiers 1 through 3 may be assessed lower Taker Fees or receive higher Maker Rebates if they are able to submit additional order to qualify for new Tier 4.

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees and Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a new Maker Rebate Tier 4 and Taker Fee Tier 4 is equitable and not unfairly discriminatory because the Exchange's maker/taker model continues to incentivize Priority Customers by assessing them the lowest fees and paying them the highest rebates as compared to all other non-Priority Customer market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Continuing to pay Maker Rebates to Priority Customers is equitable and not unfairly discriminatory for these reasons as well. Paying Maker Rebates to Market Makers is equitable and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).[28] Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from $0.52 to $0.53 per contract is reasonable because the Exchange believes this increased rebate will attract additional Priority Customer order flow to GEMX.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from $0.52 to $0.53 per contract is equitable and not unfairly discriminatory because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 is reasonable because while the Exchange is eliminating certain incentives to lower the Penny Symbol Taker Fee when trading against a Priority Customer, the Exchange believes that the amendments proposed herein to the Penny Symbol Taker Fees offer market participants the ability to obtain lower fees, if they are currently in Penny Symbol Taker Fee Tiers 1–3, by submitting additional order flow to GEMX.

The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 is equitable and not unfairly discriminatory because no market participant will be entitled to a lower Penny Symbol Taker Fee as a result of the removal of note 13.

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 is reasonable because the addition of new Tier 4 would allow Members to qualify for lower fees or higher rebates if they are able to execute 2.25% to less than 2.50% of Customer Total Consolidated Volume for the qualifying percentage of Customer Total Consolidated Volume and execute Priority Customer Maker volume of 1.05% to less than 1.20% of Customer Total Consolidated Volume for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume. The criteria for new Tier 4 requires less order flow than the criteria for re-numbered Tier 5 and pays lower Taker Fees and higher Maker Rebates than Tier 3.[29]

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 is equitable and not unfairly discriminatory because the Qualifying Tier Thresholds are the same for all Members and would be uniformly applied to all Members in determining a Member's applicable tier.

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.

Intermarket Competition

The Exchange operates in a highly competitive market in which market participants can readily favor competing venues if they deem fee levels at a particular venue to be excessive, or rebate opportunities available at other venues to be more favorable. In such an environment, the Exchange must continually adjust its fees to remain competitive with other exchanges. Because competitors are free to modify their own fees in response, and because market participants may readily adjust their order routing practices, the Exchange believes that the degree to which fee changes in this market may impose any burden on competition is extremely limited because other options exchanges offer similar affiliation programs and have maker/taker models akin to GEMX's model.

Moreover, as noted above, price competition between exchanges is fierce, with liquidity and market share moving freely between exchanges in reaction to fee and rebate changes. In sum, if the changes proposed herein are unattractive to market participants, it is likely that the Exchange will lose market share as a result. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing order execution venues to maintain their competitive standing in the financial markets.

Intramarket Competition

Affiliated Entity Program

The Exchange's proposal to permit Affiliated Entities to aggregate certain volume for purposes of paying lower Taker Fees or receiving higher Maker Rebates does not impose an undue burden on competition because all market participants may enter into an Affiliated Entity relationship, provided they have not elected to aggregate as an Affiliated Member. As proposed, Affiliated Members, who are eligible to aggregate volume today, are not eligible to also enter into an Affiliated Entity relationship. Today, Affiliated Members

[28] *See* GEMX Options 2, Section 5.

[29] The Exchange proposes to amend Tier 3 to accommodate the new tier 4. The Exchange proposes to amend the range in Tier 3 for the qualifying percentage of Customer Total Consolidated Volume to require a Member to execute 1.5% to less than 2.25% of Customer Total Consolidated Volume (from 1.5% to less than 2.50% of Customer Total Consolidated Volume). Also, the Exchange proposes to amend the range in Tier 3 for the qualifying Priority Customer Maker % of Customer Total Consolidated Volume to require a Member to execute Priority Customer Maker volume of 0.65% to less than 1.05% of Customer Total Consolidated Volume (from 0.65% to less than 1.20% of Customer Total Consolidated Volume).

may aggregate volume for purposes of lowering fees or increasing rebates on GEMX. Also, as proposed no GEMX Member may utilize both the Affiliated Member and the Affiliated Entity program to aggregate volume for purposes of achieving lower fees or higher rebates. Also, the Exchange will apply all qualifications in a uniform manner for an Affiliated Entity.

Options 7, Section 3

The Exchange's proposal to amend Options 7, Section 3, Regular Order Fees and Rebates, to renumber current Penny and Non-Penny Symbol Maker Rebate Tier 4 and Taker Fee Tier 4 as Maker Rebate Tier 5 and Taker Fee Tier 5, respectively, and add a new Maker Rebate Tier 4 and Taker Fee Tier 4 does not impose an undue burden on competition because the Exchange's maker/taker model continues to incentivize Priority Customers by assessing them the lowest fees and paying them the highest rebates as compared to all other non-Priority Customer market participants. Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants. Continuing to pay Maker Rebates to Priority Customers is equitable and not unfairly discriminatory for these reasons as well. Paying Maker Rebates to Market Makers is equitable and not unfairly discriminatory because Market Makers have different requirements and obligations to the Exchange that other market participants do not (such as quoting requirements).[30] Incentivizing Market Makers to provide greater liquidity benefits all market participants through the quality of order interaction.

The Exchange's proposal to amend new Priority Customer Maker Rebate Tier 5 to increase the Priority Customer Penny Symbol Maker Rebate from $0.52 to $0.53 per contract does not impose an undue burden on competition because Priority Customer liquidity benefits all market participants by providing more trading opportunities, which attracts Market Makers. An increase in the activity of these market participants in turn facilitates tighter spreads, which may cause an additional corresponding increase in order flow from other market participants.

The Exchange's proposal to eliminate note 13 from the Pricing Schedule at Options 7, Section 3 does not impose an undue burden on competition because no market participant will be entitled to a lower Penny Symbol Taker Fee as a result of the removal of note 13.

The Exchange's proposal to amend the criteria to qualify for the tier thresholds within Options 7, Section 3 does not impose an undue burden on competition because the Qualifying Tier Thresholds are the same for all Members and would be uniformly applied to all Members in determining a Member's applicable tier.

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 [31] and paragraph (f) of Rule 19b–4 [32] 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–GEMX–2022–09 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–GEMX–2022–09. 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–GEMX–2022–09 and should be submitted on or before November 9,2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[33]

J. Matthew DeLesDernier,

Deputy Secretary.

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BILLING CODE 8011–01–P

[30] *See* GEMX Options 2, Section 5.

[31] 15 U.S.C. 78s(b)(3)(A).

[32] 17 CFR 240.19b–4(f).

[33] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96061; File No. SR–FICC–2022–007]

Self-Regulatory Organizations; Fixed Income Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Clarify and Update GSD Rules, MBSD Rules and EPN Rules

October 13, 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 October

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

7, 2022, Fixed Income Clearing Corporation (''FICC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II and III below, which Items have been prepared by the clearing agency. FICC filed the proposed rule change pursuant to Section 19(b)(3)(A) of the Act [3] and Rule 19b–4(f)(4) thereunder.[4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

(a) The proposed rule change of Fixed Income Clearing Corporation (''FICC'') consists of modifications to the FICC Government Securities Division (''GSD'') Rulebook (''GSD Rules''), the FICC Mortgage-Backed Securities Division (''MBSD'') Clearing Rules (''MBSD Rules'') and the Electronic Pool Notification (''EPN'') Rules of MBSD (''EPN Rules,'' and together with the GSD Rules and the MBSD Rules, the ''Rules'').

Specifically, the proposed rule change would (i) clarify GSD Rules, MBSD Rules and EPN Rules concerning admission to FICC premises, (ii) update EPN Rules related to FICC's maintenance of fidelity insurance bond, (iii) remove outdated EPN Rules related distribution facilities, and (iv) clarify GSD Rules and MBSD Rules concerning Settling Banks' ability to refuse to settle. The proposed changes are designed to clarify and update certain sections of the Rules and enhance the transparency of those Rules by conforming, as appropriate, provisions in certain sections of the Rules with similar rules of FICC's affiliates, as described in greater detail below.[5]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the clearing agency 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 clearing agency has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(4).

[5] Capitalized terms not otherwise defined herein are defined in the MBSD Rules, GSD Rules, and the EPN Rules, as applicable, *available at http://www.dtcc.com/legal/rules-and-procedures.*

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

FICC is proposing to clarify and update the Rules and enhance the transparency of those Rules through modifications related to (i) credentials required to access the premises of FICC, (ii) FICC's maintenance of a fidelity insurance bond, (iii) existence of distribution facilities of FICC, and (iv) clarification of Settling Banks' and Cash Settling Banks' ability to refuse to settle for itself.

First, the proposed changes would enhance the transparency of these Rules by providing participants of FICC with updated, clear information. Second, the proposed changes would simplify and update these Rules by removing information that either (a) describes internal processing and does not provide participants with important information regarding any applicable service, or (b) no longer describes FICC's current operations. Finally, the proposed changes would conform those Rules with similar rules of FICC affiliates, The Depository Trust Company (''DTC'') and National Securities Clearing Corporation (''NSCC,'' and, together with FICC and DTC, the ''Clearing Agencies''), where appropriate.

The proposed changes are discussed in detail below.

(i) Admission to FICC Premises

First, FICC is proposing to revise GSD Rule 27 (Admissions to Premises of the Corporation, Powers of Attorney, ETC.), MBSD Rule 20 (Admissions to Premises of the Corporation, Powers of Attorney, ETC.) and EPN Rule 4 of Article III,[6] (Admission to Premises of Corporation; Powers of Attorney), which provide for the approval and subsequent revocation of access to FICC's premises by a participant's employee, or a person to whom a power of attorney or other authorization has been given to act for a participant, in connection with the work of FICC. The proposed changes to these Rules would add information regarding the need for any representative of a participant to prominently display credentials to gain entry and remain on the premises of FICC. The proposed rule change of EPN Rule 4 of Article III also clarifies the need to provide FICC with immediate notice of a change of circumstances resulting in the revocation of such credentials. The proposed changes further outline FICC's processes for allowing participants onto FICC's premises and, therefore, enhance the transparency of these Rules. The proposed change would allow FICC to continue to monitor and ensure the safety of its employees and guests, while clarifying expectations for participants and representatives of participants while on FICC premises.

In addition, the proposed rule change would conform GSD Rule 27, MBSD Rule 20 and EPN Rule 4 of Article III with DTC Rule 17 and NSCC Rule 27.[7] By conforming the descriptions in similar rules across the Clearing Agencies where there is no difference in FICC's processes and therefore no need for differing language, the proposed changes would improve predictability and transparency for visitors of FICC.

(ii) Maintenance of Fidelity Bond

Next, FICC is proposing to revise EPN Rule 6, Section 3 of Article V (*Fidelity Bond*) which currently provides for FICC's maintenance of fidelity bond coverage in an amount of not less than $10,000,000. FICC is proposing to amend this rule to replace the existing language with a more general description of FICC's obligation to maintain appropriate insurance, including fidelity bonds, related to its business, to provide access to such insurance policies or contracts to EPN Users and to notify each EPN User and the Commission of any material reduction in such insurance coverage. FICC is proposing to replace the current language of this rule with a more general description because FICC does not believe the current rule provides EPN Users with important information regarding their rights and obligations, or FICC's rights and obligations, in connection with this obligation to maintain insurance coverage. In general, FICC maintains a significantly higher amount of fidelity bond coverage than that required in this rule.

In addition, the proposed changes would conform the language of EPN Rule 6, Section 3 of Article V with those of MBSD Rule 25, DTC Rule 14, and NSCC Rule 34 and GSD Rules 34.[8] By conforming the descriptions in similar rules across the Clearing Agencies where there is no difference in FICC's processes and therefore no need for differing language, the proposed changes would improve predictability and transparency for firms that are

[6] All references to ''Articles'' herein shall refer to Articles of the EPN Rules, *supra* note 5.

[7] The DTC Rules and NSCC Rules are available on DTCC's public website, *available at https://www.dtcc.com/legal/rules-and-procedures.*

[8] *Id.*

participants with multiple Clearing Agencies.

(iii) Distribution Facilities

FICC is also proposing to change the EPN Rules by deleting EPN Rule 20 of Article V (Distribution Facilities) because it does not currently maintain such facilities and has no plans to do so. Therefore, this proposed change would reflect FICC's current processes and improve the clarity the EPN Rules.

EPN Rule 20 of Article V currently states that FICC may, if it deems necessary, establish distribution facilities ''for the distribution of papers, documents and other material incidental to the ordinary course of business'' to be used by EPN Users. To FICC's knowledge, FICC has not utilized such option and based on current FICC processes and procedures, FICC does not believe it would be necessary to establish such facilities in the future. As such, the proposed change would not impede any EPN Users from engaging in the services or have an adverse impact on such firms.

(iv) Settlement by Settling Banks and Cash Settling Banks

Lastly, FICC is proposing to revise GSD Rule 13, Section 5(b) (*Funds-Only Settlement Amount Payment Process*) and MBSD Rule 11, Section 9(b) (*Cash Settlement*) to clarify that a Settling Bank and a Cash Settling Bank, respectively, may not refuse to settle for itself.

GSD Rule 13, Section 5(b) currently provides that Funds-Only Settling Banks must acknowledge to FICC by a certain time their intention to either settle their Net Funds-Only Settlement Figures or their refusal to settle for one or more Netting Members. MBSD Rule 11, Section 9(b) currently provides that Cash Settling Banks must acknowledge to FICC by a certain time their intention to either settle their Total Debit Cash Balance Figures and Total Credit Cash Balance Figures or their refusal to settle for one or more particular Member.

The proposed change to these rules, would clarify that a Settling Bank and a Cash Settling Bank cannot refuse to settle for itself. The proposed change would codify a longstanding practice and understanding among participants of the Clearing Agencies. As Netting Members and Members have an ongoing responsibility to settle their own obligations, a Netting Member or Member who serves as a Settling Bank or Cash Settling Bank, respectively, would carry the same responsibility on its own behalf. More specifically, GSD Rule 13, Section 5(e) states that if the Funds-Only Settling Bank does not acknowledge, or sends a refusal regarding, the Netting Member's Funds-Only Settlement Amount that is a debit or if the Funds-Only Settling Bank acknowledges the amount but then does not settle the payment, the Netting Member shall remain obligated, pursuant to the Rules, to pay such Amount by the payment deadline.[9] MBSD Rule 11, Section 9(e) states that if the Cash Settling Bank does not acknowledge, or sends a refusal regarding, the Member's Cash Settlement amount that is a debit or if the Cash Settling Bank acknowledges the amount but then does not settle the payment, the Member shall remain obligated, pursuant to the Rules, to pay such Cash Settlement amount by the payment deadline.[10] Therefore, if Settling Bank or a Cash Settling Bank is a Netting Member or a Member, respectively, it would be subject, as a Netting Member or Member, to the obligation to settle on its own behalf pursuant to the obligations of Netting Members and Member under the Rules cited above. While a Settling Bank and Cash Settling Bank may refuse to settle for another participant that has engaged it as a settling bank, in which case, the participant's obligation to settle on its own behalf would be triggered, it cannot refuse to settle for itself.

The proposed change would clarify and increase transparency of these Rules. In addition, the proposed change would conform GSD Rule 13, Section 5(b) and MBSD Rule 11, Section 9(b) with DTC Rule 9D and NSCC Rule 55, which state in clearer terms that settling banks cannot refuse to settle on its own behalf.

2. Statutory Basis

Section 17A(b)(3)(F) of the Act requires, in part, that the Rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest.[11]

FICC believes the proposed rule change would promote the prompt and accurate clearance and settlement of securities transactions by FICC, consistent with the requirements of the Act, in particular Section 17A(b)(3)(F), cited above.[12] Specifically, the proposed rule changes concerning *Admission to FICC's Premises* and *Settlement by Settling Banks and Cash Settling Banks* would update and clarify these Rules by codifying settled processes and provide transparency thereby allowing participants to conduct their business more efficiently and effectively in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change regarding *Distribution Facilities* would remove an outdated rule related to inactive services in reference to distribution facilities. This proposed change is designed to improve the accuracy, clarity, and transparency of the Rules and thereby allow participants to conduct their business more efficiently and effectively in accordance with the Rules, which FICC believes would promote the prompt and accurate clearance and settlement of securities transactions. The proposed rule change related to FICC's *Maintenance of Fidelity Bond* is designed to simplify and update this rule by removing information that describes internal processes and does not provide participants with important information regarding FICC's maintenance of appropriate insurance coverage.

By updating, clarifying and improving the transparency of the Rules, the proposed changes would allow participants to better understand their rights and obligations under the Rules. As such, FICC believes the proposed rule changes would promote the prompt and accurate clearance and settlement of securities transactions and assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible, consistent with the requirements of Section 17A(b)(3)(F).[13]

(B) Clearing Agency's Statement on Burden on Competition

FICC does not believe that the proposed rule changes would have any impact on competition, because the proposed changes to (1) enhance transparency of the Rules, (2) change language that does not provide participants with important information regarding any service, (3) update the Rules to reflect current practice, and (4) conform the Rules across FICC's divisions and the Clearing Agencies, where appropriate, would not materially alter the respective rights or obligations of FICC or its participants. These proposed changes would allow participants to better understand FICC's internal processes by adding information to the Rules, update the Rules by removing services that are not provided and establish conformity across FICC's divisions and Clearing Agencies, where applicable. As such,

[9] *See supra* note 5.

[10] *Id.*

[11] 15 U.S.C. 78q–1(b)(3)(F).

[12] *Id.*

[13] *Id.*

the proposed changes would not impede participants from engaging in the services or have an adverse impact on any participants. Therefore, FICC believes the proposed rule changes would not have any impact on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

FICC has not received or solicited any written comments relating to this proposal. If any written comments are received, they will be publicly filed as an Exhibit 2 to this filing, as required by Form 19b–4 and the General Instructions thereto.

Persons submitting comments are cautioned that, according to Section IV (Solicitation of Comments) of the Exhibit 1A in the General Instructions to Form 19b–4, the Commission does not edit personal identifying information from comment submissions. Commenters should submit only information that they wish to make available publicly, including their name, email address, and any other identifying information.

All prospective commenters should follow the Commission's instructions on how to submit comments, *available at https://www.sec.gov/regulatory-actions/how-to-submitcomments.* General questions regarding the rule filing process or logistical questions regarding this filing should be directed to the Main Office of the Commission's Division of Trading and Markets at *tradingandmarkets@sec.gov* or 202–551–5777.

FICC reserves the right not to respond to any comments 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) [14] of the Act and paragraph (f) [15] of Rule 19b–4 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.

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–FICC–2022–007 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549.

All submissions should refer to File Number SR–FICC–2022–007. 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 FICC and on DTCC's website (*http://dtcc.com/legal/sec-rule-filings.aspx*). All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–FICC–2022–007 and should be submitted on or before November 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[16]

J. Matthew DeLesDernier,

Deputy Secretary.

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[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f).

[16] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96068; File No. SR–NYSEARCA–2022–65]

Self-Regulatory Organizations; NYSE Arca, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the NYSE Arca Options Fee Schedule Concerning the Options Regulatory Fee

October 13, 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 28, 2022, NYSE Arca, Inc. (''NYSE Arca'' 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 self-regulatory organization. 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 NYSE Arca Options Fee Schedule (''Fee Schedule'') regarding the Options Regulatory Fee (''ORF''), effective September 28, 2022. 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 Fee Schedule to (1) waive the ORF for the period November 1, 2022 through January 31, 2023; (2) eliminate the requirement that the Exchange may only modify the ORF semi-annually; and (3) delete outdated language relating to the ORF for August 30, 2019 (the ''August 2019 ORF'').

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[4] More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's costs for the supervision and regulation of OTP Holders and OTP Firms (collectively, ''OTP Holders''), including the Exchange's regulatory program and legal expenses associated with options, such as the costs related to in-house staff, third-party service providers, and technology that facilitate surveillance, investigation, examinations and enforcement (collectively, the ''ORF Costs''). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on OTP Holders for options transactions that are cleared by the OTP Holder through the Options Clearing Corporation (''OCC'') in the Customer range regardless of the exchange on which the transaction occurs.[5] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca,[6] the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders. In addition, the Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs.[7] As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder proprietary transactions) of its regulatory program.

ORF Collections and Monitoring of ORF

Exchange rules establish that the Exchange may only increase or decrease the ORF semi-annually, that any such fee change will be effective on the first business day of February or August, and that market participants must be notified of any such change via Trader Update at least 30 calendar days prior to the effective date of the change.[8]

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from OTP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from OTP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the ORF Costs. If the Exchange determines the amount of ORF collected exceeds costs over an extended period, the Exchange may adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission'').

Temporary ORF Waiver

Based on the Exchange's recent review of regulatory costs and ORF collections, the Exchange proposes to waive the ORF from November 1, 2022 through January 31, 2023 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange proposes to resume assessing the ORF on February 1, 2023 at the current rate of $0.0055 per contract. The Exchange will notify OTP Holders of the proposed change to the ORF via Trader Update at least 30 calendar days prior to the proposed operative date of the waiver, November 1, 2022, so that market participants have an opportunity to configure their systems to account for the waiver of the ORF. The Exchange's proposal to waive the ORF for the month of January 2023 would similarly provide OTP Holders with additional time in the new year to make any necessary adjustments or preparations for the resumption of the ORF effective February 1, 2023.

The proposed waiver is based on recent options volumes. The options industry has experienced extremely high options trading volumes and volatility, and options volume in 2022 remains high when compared to options volume in 2019, 2020, and 2021. The increased options volumes have, in turn, impacted the Exchange's ORF collection.

For example, total average daily volume in 2022, to date, is 115% higher than total average daily volume in 2019, and customer average daily volume in 2022, to date, is 123% higher than customer average daily volume in 2019. Below is industry data from OCC[9]

[4] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Bylaws of NYSE Arca, Inc., Art. II, Sec. 2.06.

[5] *See* Fee Schedule, NYSE Arca GENERAL OPTIONS and TRADING PERMIT (OTP) FEES, Regulatory Fees, Options Regulatory Fee (''ORF''), *available here, https://www.nyse.com/publicdocs/nyse/markets/arca-options/NYSE_Arca_Options_Fee_Schedule.pdf.*

[6] *See id.* The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An OTP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE Arca. *See id.*

[7] The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.,* Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

[8] *See* Fee Schedule, *supra* note 5.

[9] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.* The volume discussed in this filing is based on a compilation of OCC data

illustrating the significant increase in options volume between 2019 and 2022:

	2019	2020	2021	2022
Customer ADV	15,234,198	25,598,023	34,730,276	33,939,560
Total ADV	35,083,673	55,369,993	74,339,870	75,497,647

In addition, the below industry data from OCC demonstrates the high options trading volumes (especially when compared to 2019, 2020, and 2021) and volatility that the industry has continued to experience in 2022:

	April 2022	May 2022	June 2022	July 2022	August 2022	September 2022
Customer ADV	33,266,801	34,202,077	31,469,858	30,506,706	33,013,156	34,149,000
Total ADV	73,140,597	76,254,734	70,628,926	68,535,963	73,487,342	77,134,470

Because of the difficulty of predicting when volumes may return to more normal levels, the Exchange proposes to waive the ORF from November 1, 2022 through January 31, 2023. The Exchange cannot predict whether options volume will remain at these levels going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that the proposed waiver of the ORF would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs without the need to account for any ORF collection during that timeframe. The Exchange proposes to resume assessing the current ORF rate of $0.0055 per contract side as of February 1, 2023.

Semi-Annual Changes to ORF

As noted above, the Fee Schedule currently specifies that the Exchange may only increase or decrease the ORF semi-annually and that any such fee change will be effective on the first business day of February or August.[10] NYSE Arca proposes to eliminate this requirement to afford the Exchange increased flexibility in amending the ORF.[11] Although the Exchange proposes to eliminate the requirement to adjust the ORF only semi-annually, it would continue to submit a proposed rule change for each modification of the ORF and notify OTP Holders of any planned change to the ORF by Trader Update at least 30 calendar days prior to the effective date of such change. The Exchange believes that the prior notification to OTP Holders will provide guidance on the timing of any changes to the ORF and ensure that OTP Holders are prepared to configure their systems to properly account for the ORF. The Exchange will also issue a Trader Update informing OTP Holders of the ORF adjustment proposed in this filing, as described below, at least 30 calendar days prior to the proposed effective date.

August 2019 ORF

The Exchange proposes to delete language in the Fee Schedule pertaining to the August 2019 ORF, which was relevant only for the August 30, 2019 trading day and thus no longer reflects a fee currently assessed by the Exchange. The Exchange believes this change would improve the clarity of the Fee Schedule by removing obsolete language.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b)[12] of the Act, in general, and Section 6(b)(4) and (5)[13] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the Exchange may only use regulatory funds such as ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[14] In this regard, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2022 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year. Particularly, as noted above, the options market has seen a substantial increase in volume in 2022 as compared to 2019, 2020, and 2021, due in large part to the continued extreme volatility in the marketplace as a result of the COVID–19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange, thereby resulting in substantially higher ORF collections than projected. The Exchange therefore believes that it would be reasonable to waive ORF from November 1, 2022 through January 31, 2023 to help ensure that ORF collection does not exceed the ORF Costs for 2022.[15] Particularly, the Exchange believes that waiving the ORF from November 1, 2022 to January 31, 2023 and taking into account all of the Exchange's other regulatory fees and

for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

[10] *See* Fee Schedule, *supra* note 5.

[11] The Exchange notes that at least one other options exchange has previously removed this requirement with respect to adjusting the ORF. *See, e.g.,* Securities Exchange Act Release No. 76950 (January 21, 2016), 81 FR 4687 (January 27, 2016) (SR–NASDAQ–2016–003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Options Regulatory Fee).

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* note 4, *supra.*

[15] The Exchange's proposal to also waive the ORF for the month of January 2023 would provide OTP Holders with additional time in the new year to make any necessary adjustments or preparations for the resumption of the ORF effective February 1, 2023.

fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange would resume assessing its current ORF ($0.0055 per contract) as of February 1, 2023. Until effectiveness of the waiver on November 1, 2022, the Exchange will continue to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed ORF Costs. The Exchange would also continue monitoring the amount collected from the ORF when such collection resumes on February 1, 2023 and, if necessary to ensure that such collections do not exceed such costs, subsequently adjust the ORF by submitting a filing a proposed rule change and notifying OTP Holders of such change by Trader Update.

The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF semi-annually and that any such fee change must be effective on the first business day of February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed ORF Costs. The Exchange also believes the proposed change is reasonable because the Exchange will continue to provide market participants with 30 days advance notice of changes to the ORF, thereby providing OTP Holders with adequate time to make any necessary adjustments to accommodate the change.

The Exchange also believes that the proposed deletion of language relating to the August 2019 ORF is reasonable because it would remove obsolete language and thus improve the clarity of the Fee Schedule.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion ORF Costs among such OTP Holders. In addition, the Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes that a temporary waiver of the ORF is an equitable allocation of fees because it would apply equally to all OTP Holders on all their transactions that clear in the Customer range at the OCC.

The Exchange also believes that the proposed change to eliminate the requirement that the Exchange modify the ORF only semi-annually in February or August is equitable because the change would impact all OTP Holders subject to the ORF uniformly, and all OTP Holders would continue to receive at least 30 days' advance notice of changes to the ORF. The proposed change to remove language relating to the August 2019 ORF is also equitable because it would eliminate language from the Fee Schedule that is no longer applicable to any OTP Holders.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders. In addition, the Exchange notes that the costs relating to monitoring OTP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring OTP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating OTP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the OTP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* OTP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the temporary waiver of the ORF and the proposed modification of language relating to the Exchange's ability to modify the ORF is not unfairly discriminatory because the changes would apply to all OTP Holders subject to the ORF and the Exchange would provide all such OTP Holders with 30 days' advance notice of planned changes to the ORF.

The Exchange believes that the proposed change to eliminate the semi-annual change requirement is not unfairly discriminatory because the change would apply to all OTP Holders subject to the ORF. Furthermore, all OTP Holders would continue to be notified of changes to the ORF at least 30 days prior to the effectiveness of any such change. The proposed change to remove language relating to the August 2019 ORF is also not unfairly discriminatory because it would eliminate language from the Fee Schedule describing a fee that was effective only for August 30, 2019 and thus no longer impacts any OTP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on

competition because the ORF is charged to all OTP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. In addition, because the ORF is collected from OTP Holder clearing firms by the OCC on behalf of NYSE Arca, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such OTP Holders. The Exchange further believes that the proposed change to remove the semi-annual requirement would not impose any burden on competition because the change would impact all OTP Holders subject to the ORF, and the Exchange will continue to provide advance notice of changes to the ORF to all OTP Holders via Trader Update. The Exchange also believes that the proposed change to eliminate language relating to the August 2019 ORF would not impact intramarket competition because it would simply add clarity to the Fee Schedule by removing text describing a fee that is no longer effective.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total regulatory costs and to promote clarity in the Fee Schedule by deleting obsolete text.

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) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] 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) [18] 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 No. SR–NYSEARCA–2022–65 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–NYSEARCA–2022–65. 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 No. SR–NYSEARCA–2022–65, and should be submitted on or before November 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22660 Filed 10–18–22; 8:45 am]

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[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

[19] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96073; File No. SR–CboeEDGX–2022–043]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule

October 13, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2022, Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX Options'') proposes to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Secretary, 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 its Fee Schedule to modify rebates related to Automated Improvement Mechanism (''AIM'') transactions, effective October 3, 2022.

The Exchange first notes that it operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. More specifically, the Exchange is only one of 16 options venues to which market participants may direct their order flow. Based on publicly available information, no single options exchange has more than 18% of the market share and currently the Exchange represents only approximately 6% of the market share.[3] Thus, in such a low-concentrated and highly competitive market, no single options exchange, including the Exchange, possesses significant pricing power in the execution of option order flow. 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 to reduce use of certain categories of products, in response to fee changes. Accordingly, competitive forces constrain the Exchange's transaction fees, and market participants can readily trade on competing venues if they deem pricing levels at those other venues to be more favorable.

The Exchange's Fees Schedule sets forth standard rebates and rates applied per contract. For example, the Exchange provides standard rebates ranging from $0.01 up to $0.21 per contract for Customer orders in both Penny and Non-Penny Securities. The Fee Codes and Associated Fees section of the Fees Schedule also provides for certain fee codes associated with certain order types and market participants that provide for various other fees or rebates. Fee code BC, for example, is appended to Customer Agency orders executed in the Automated Improvement Mechanism (''AIM'' or ''AIM Auction'') and currently offers a rebate of $0.06 per contract. Additionally, the Fee Schedule offers tiered pricing which provides Members[4] opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Additionally, in response to the competitive environment, the Exchange also offers tiered pricing, which provides Members with opportunities to qualify for higher rebates or reduced fees where certain volume criteria and thresholds are met. Tiered pricing provides an incremental incentive for Members to strive for higher tier levels, which provides increasingly higher benefits or discounts for satisfying increasingly more stringent criteria.

For example, the Exchange currently offers two AIM Volume Tiers which provide enhanced rebates between $0.11 and $0.12 per contract for qualifying Customer orders that yield fee code BC where a Member meets the respective tiers' volume threshold.[5] More specifically, AIM Tier 1 currently offers an enhanced rebate of $0.11 per contract for a Member's qualifying orders (*i.e.,* yielding fee code BC) if a Member has an ADV[6] in Customer Orders greater than or equal to 0.30% of average OCV.[7] AIM Tier 2 currently offers an enhanced rebate of $0.12 per contract for a Member's qualifying orders (*i.e.,* yielding fee code BC) if a Member has an ADV in Customer Orders greater than or equal to 0.50% of average OCV. The Exchange first proposes to reduce the current rebates for both AIM Tiers. Specifically, the Exchange proposes to reduce the current enhanced rebate for AIM Tier 1 from $0.11 per contract to $0.09 per contract. The Exchange proposes to reduce the current enhanced rebate for AIM Tier 2 from $0.12 per contract to $0.10 per contract. The Exchange notes that it believes the AIM Tiers continue to provide Members with an opportunity to receive an enhanced rebate (albeit at a lower amount), thus providing a continued incentive to submit Customer order flow to the Exchange.

The Exchange also proposes to adopt new supplemental AIM Tiers (under Footnote 9) which would provide additional rebates (*i.e.,* in addition to the standard rebate or enhanced rebates Members may receive for Customer Agency orders executed in AIM). The proposed tiers would be applicable to fee code BC and applied on an order-by-order basis. In addition to a volume threshold described below, the proposed tiers would include criteria based on the ''Interaction Rate'' of the order. Particularly, the Exchange proposes to add new Supplemental Tier 1, which would provide an additional rebate of $0.02 per contract where a Member (i) has an ADV in Customer Orders greater than or equal to 0.50% of average OCV and (ii) the order has an Interaction Rate greater than or equal to 51% and less than 80%. The Exchange proposes to add new Supplemental Tier 2, which would provide an additional rebate of $0.05 per contract where a Member (i) has Member has an ADV in Customer Orders greater than or equal to 0.50% of average OCV and (ii) the order has an Interaction Rate greater than or equal to 0% and less than 51%. The ''Interaction Rate'' of an order refers to the percentage of the Agency Order that traded against the Initiating Order.[8] By way of example, if an AIM Agency Order trades 35 out of 40 contracts with the paired Initiating Order (*i.e.,* 15 [sic] contracts were executed against a response or unrelated order), the Interaction Rate would be 87.5% (35 ÷ 40). Because the Interaction Rate was above 80% in this example, that order would not qualify for either additional rebate. However, if an AIM Agency Order trades 25 out of 40 contracts with the paired Initiating Order, the Interaction Rate would be 62.5% (25 ÷ 40), and that order would be entitled to an additional rebate of $0.02 per

[3] *See* Cboe Global Markets U.S. Options Market Monthly Volume Summary (September 30, 2022), available at *https://markets.cboe.com/us/options/market_statistics/*.

[4] *See* Exchange Rule 1.5(n).

[5] *See* Cboe EDGX U.S. Options Exchange Fees Schedule, Footnote 9, Automated Improvement Mechanism (''AIM'') Tiers.

[6] ''ADV'' means average daily volume calculated as the number of contracts added or removed, combined, per day.

[7] ''OCC Customer Volume or ''OCV'' means the total equity and ETF options volume that clears in the Customer range at the Options Clearing Corporation (''OCC'') for the month for which the fees apply, excluding volume on any day that the Exchange experiences an Exchange System Disruption and on any day with a scheduled early market close.

[8] An Options Member may electronically submit for execution in AIM an order it represents as agent (''Agency Order'') against principal interest or a solicited order(s) (except for an order for the account of any Options Market Maker registered in the applicable series on the Exchange) (an ''Initiating Order''). *See* EDGX Options Rule 21.19.

contract (provided the Member also meets the requirements of the first prong and has an ADV in Customer Orders greater than or equal to 0.50% of average OCV). The proposed new tiers are designed to incentivize order flow providers to continue to route AIM orders to the Exchange, notwithstanding the potential for such orders to be broken up. The Exchange also proposes to clarify that the additional proposed rebates will apply to the Member that submitted a qualifying AIM Agency Order, including a Member who routed an order to the Exchange with a Designated Give Up, when the Agency Order trades with a Response Order.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of Section 6(b) of the Act.[9] Specifically, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[10] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with the Section 6(b)(5)[11] requirement that the rules of an exchange not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

As described above, the Exchange operates in a highly competitive market in which market participants can readily direct order flow to competing venues if they deem fee levels at a particular venue to be excessive or incentives to be insufficient. The proposed rule change reflects a competitive pricing structure designed to incentivize market participants to direct their order flow to the Exchange, which the Exchange believes would enhance market quality to the benefit of all Members.

The Exchange believes the proposed reduction in rebate amounts under AIM Tiers 1 and 2 for orders yielding fee code BC is reasonable both tiers continue to provide an enhanced rebate (albeit at lower amounts), which the Exchange believes is still commensurate with the current criteria. The proposed rule change is equitable and unfairly [sic] discriminatory as the amended rebate amounts apply uniformly to all Members' respective qualifying Customer orders. The Exchange believes that the current AIM Tiers continue to benefit all Members by contributing towards a robust and well-balanced market ecosystem. Indeed, the Exchange believes AIM Tiers 1 and 2 will continue to incentivize increased Customer order flow and overall order flow to the Exchange's Book, which creates more trading opportunities, which, in turn attracts Market-Makers. A resulting increase in Market-Maker activity may facilitate tighter spreads, which may lead to an additional increase of order flow from other market participants. Increased overall order flow benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency, and improving investor protection.

The Exchange believes the proposed rule change to adopt new AIM Supplemental Tiers is reasonable because it provides an opportunity for Members to receive additional rebates for meeting certain thresholds and based on the Interaction Rate of the AIM order. The Exchange also believes the proposed additional rebates are commensurate with the proposed criteria. The Exchange further believes the proposal encourages the use of AIM. Specifically, the Exchange believes that the proposed additional rebates for AIM Agency Orders would incentivize Agency Order flow to AIM Auctions, notwithstanding the potential for such orders to be broken up. Additional auction order flow provides market participants with additional trading opportunities at improved prices. Moreover, exchanges have a history of providing credits when an auctioned order is broken up.[12] Lastly, the proposed additional rebates are not unreasonably discriminatory because such rebates are equally available to all Members submitting AIM Agency Orders to 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 that is not necessary or appropriate in furtherance of the purposes of the Act. In particular, the Exchange believes the proposed rule change does not impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act, but rather, serves to increase intra-market competition by incentivizing members to direct their orders, and, in particular, Customer orders, to the Exchange's AIM Auction, in turn providing for more opportunities to compete at improved prices. Moreover, the Exchange notes the proposed change to AIM Tiers will apply to all Members equally in that all Members will be eligible to receive the rebates under the tiers, have a reasonable opportunity to meet the tier's criteria and receive the enhanced rebates (albeit at a lower amount) on their qualifying orders if such criteria is met.

Also, as stated above, the proposal to adopt the proposed Supplemental AIM Tiers will also apply to all Members, in that, such Tier will be available for any Member that meets the criteria. The Exchange does not believe the proposed changes burden competition as all Members will continue to have an opportunity receive enhanced rebates or additional rebates offered under various tiers, which tiers are generally designed to increase the competitiveness of EDGX and attract order flow and incentivize participants to increase their participation on the Exchange, providing for additional execution opportunities for market participants and improved price transparency. Greater overall order flow, trading opportunities, and pricing transparency benefit all market participants on the Exchange by enhancing market quality and continuing to encourage Members to send orders, thereby contributing towards a robust and well-balanced market ecosystem.

The Exchange also believes the proposed rule change does not impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. As previously discussed, the Exchange operates in a highly competitive market. Members have numerous alternative venues they may participate on and direct their order flow, including 15 other options exchanges. Additionally, the Exchange represents a small percentage of the overall market. Based on publicly available information, no

[9] 15 U.S.C. 78f(b).

[10] 15 U.S.C. 78f(b)(5).

[11] *Id.*

[12] *See e.g.,* Nasdaq ISE Options 7 Pricing Schedule, Facilitation and Solicitation Break-Up Rebate.

single options exchange has more than 18% of the market share. Therefore, no exchange possesses significant pricing power in the execution of order flow. Indeed, participants can readily choose to send their orders to other exchanges if they deem fee levels at those other venues to be more favorable. As noted above, the Exchange believes that the proposed fee changes are comparable to that of other exchanges offering similar functionality. Moreover, 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.'' The fact that this market is competitive has also long been recognized by the courts. *In NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . . ''. Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act [13] and paragraph (f) of Rule 19b–4 [14] 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov*. Please include File Number SR–CboeEDGX–2022–043 on the subject line.

Paper Comments

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to File Number SR–CboeEDGX–2022–043. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*http://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR–CboeEDGX–2022–043 and should be submitted on or before November 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[15]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22662 Filed 10–18–22; 8:45 am]

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[13] 15 U.S.C. 78s(b)(3)(A).

[14] 17 CFR 240.19b–4(f).

[15] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96069; File No. SR–NASDAQ–2022–056]

Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend Equity 4, Rule 4757

October 13, 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 October 6, 2022, The Nasdaq Stock Market LLC (''Nasdaq'' 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 Equity 4, Rule 4757, as described further below. The text of the proposed rule change is available on the Exchange's website at *https://listingcenter.nasdaq.com/rulebook/nasdaq/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

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

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 enhance the anti-internalization functionality available on the Exchange by giving market participants the flexibility to choose to have this protection apply to market participants under Common Ownership.[3] Anti-internalization, also known as self-match prevention, is an optional feature available on the Exchange that (1) prevents two orders with the same Market Participant Identifier (MPID) from executing against each other, or (2) prevents two orders entered through a specific order entry port from executing against each other (in the case of market participants using the OUCH order entry protocol). The proposed rule change would permit market participants to direct that quotes/orders entered into the System not execute against quotes/orders entered across MPIDs that are under Common Ownership. The Exchange believes that this enhancement will provide helpful flexibility for market participants that wish to prevent trading against all quotes and orders entered by market participants under Common Ownership, instead of just quotes and orders that are entered under the same MPID or under a particular order entry port.

Currently, under Equity 4, Rule 4757, the Exchange provides optional anti-internalization functionality whereby quotes and orders entered by market participants using the same MPID are not executed against quotes and orders by market participants using the same MPID. In addition, under Equity 4, Rule 4757, market participants using the OUCH order entry protocol may assign to orders entered through a specific order entry port a unique group identification modifier that will prevent quotes/orders with such modifier from executing against each other.[4] Self-match prevention functionality assists participants in reducing trading costs from unwanted executions potentially resulting from the interaction of executable buy and sell trading interest from the same firm.

The Exchange currently provides three versions of self-match prevention functionality to allow participants to choose how orders are handled in the event of a self-match situation: (1) decrement, (2) cancel oldest, and (3) cancel newest. Under the first version (''decrement''), if the self-match orders have the same share size, both orders will cancel back to the customer. If the orders are not equivalent in size, the smaller order will cancel back to the originating customer and the larger order will decrement by the size of the smaller order. The remaining shares of the larger order will remain on the book. Under the second version (''cancel oldest''), the full size of the order residing on the book will cancel back to the customer if the incoming order would execute against it. The incoming order will remain intact with no changes. Under the third version (''cancel newest''), the full size of the order coming into the book will cancel back to the customer. The resting order will remain intact with no changes. Currently, firms may opt-in to any version of the self-match prevention functionality on a per MPID basis or per port basis.

Today, the anti-internalization protection prevents market participants from trading against their own quotes and orders at the MPID or port level. The proposed enhancement to this functionality would allow participants to choose to have this protection applied at the MPID or port level as implemented today, or across MPIDs under Common Ownership. If participants choose to have this protection applied across MPIDs under Common Ownership, the anti-internalization functionality would prohibit quotes and orders from different MPIDs associated with the same Organization ID (''OrgId'') [5] from trading against one another. Under the proposed rule change, the anti-internalization functionality would continue to be an optional feature. If a firm chooses to take advantage of self-match prevention, the firm would need to opt-in to the self-match prevention functionality, as is the case today. If participants opt-in to the self-match prevention functionality, under the proposed rule change, participants would have the option to choose whether to apply the protection at the OrgId, MPID, or port level. In addition, participants may opt-in to any version of the self-match prevention strategy that exists today (*i.e.,* decrement, cancel oldest, or cancel newest).[6]

The Exchange believes that the proposed anti-internalization enhancement would provide participants with more tailored self-trade functionality that allows them to manage their trading as appropriate based on the participant's business needs. While the Exchange believes that some firms will want to restrict self-match prevention to trading against interest from the same MPID or same port—*i.e.,* as implemented today—the Exchange believes that other firms will find it helpful to be able to configure self-match prevention to apply at the OrgId level so that they are protected regardless of which MPID the order or quote originated from.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5) of the Act,[8] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest.

The Exchange believes that the proposed rule change is consistent with the protection of investors and the public interest as it is designed to provide market participants with additional flexibility with respect to how to implement self-trade protections provided by anti-internalization functionality. Currently, market participants are provided optional functionality that (1) prevents quotes and orders from one MPID from trading with quotes and orders from the same MPID, or (2) prevents quotes and orders entered through a specific order entry port from trading with quotes and orders entered though the same order entry port (in the case of market participants using the OUCH order entry protocol). This functionality allows participants to better manage their order flow and prevent undesirable

[3] The proposed rule change would define ''Common Ownership'' under Equity 4, Rule 4757 to mean participants under 75% common ownership or control.

[4] The group identification modifier allows firms to apply self-match prevention on a more granular level (*i.e.,* per a specific order entry port).

[5] The OrgId is a field that indicates Common Ownership across multiple MPIDs.

[6] If the self-match prevention strategy differs between two orders, the strategy of the order removing liquidity applies.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

executions where the participant, using the same MPID or same port, would be on both sides of the trade. While this functionality is helpful, the Exchange proposes to expand the protections to provide participants with the option not to trade with quotes and orders entered by different MPIDs under Common Ownership. The Exchange would continue to provide the option to opt out of the self-match prevention. In addition, the Exchange would continue to provide the option to use the current functionality to prevent self-trades on a per MPID or per port basis. The proposed rule change would offer a new option for participants opting-in to the self-match prevention to prevent undesirable executions across different MPIDs under the same Common Ownership. The Exchange believes that flexibility to apply anti-internalization functionality at the OrgId level would be useful to participants. The Exchange believes that the proposed rule change is designed to promote just and equitable principles of trade and will remove impediments to and perfect the mechanisms of a free and open market as it will further enhance self-trade protections provided to market participants. This functionality does not relieve or otherwise modify the duty of best execution owed to orders received from public customers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The proposed rule change is designed to enhance self-match prevention functionality provided to the Exchange's participants and will benefit participants that wish to protect their quotes and orders against trading with other quotes and orders within the same OrgId, rather than the more limited MPID or port standard applied today. The new functionality is also completely voluntary, and members that wish to use the current functionality (or opt out altogether) can also continue to do so. The Exchange does not believe that providing more flexibility to participants will have any significant impact on competition. In fact, the Exchange believes that the proposed rule change is evidence of the competitive environment where exchanges must continually improve their offerings to maintain competitive standing.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[9] and subparagraph (f)(6) of Rule 19b–4 thereunder.[10]

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:

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–NASDAQ–2022–056 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–NASDAQ–2022–056. 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–NASDAQ–2022–056 and should be submitted on or before November 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[11]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22661 Filed 10–18–22; 8:45 am]

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[9] 15 U.S.C. 78s(b)(3)(A)(iii).

[10] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96065; File No. SR–CBOE–2022–052]

Self-Regulatory Organizations; Cboe Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Update Its Fees Schedule

October 13, 2022.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 3, 2022, Cboe Exchange, Inc. (the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

''Exchange'' or ''Cboe Options'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe Exchange, Inc. (the ''Exchange'' or ''Cboe Options'') proposes to update its Fees Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://www.cboe.com/AboutCBOE/CBOELegalRegulatoryHome.aspx*), at the Exchange's Office of the Secretary, 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 its Fees Schedule, effective October 3, 2022.

Index Combination VIX Orders

The Exchange first proposes to reduce fees for certain complex Professional Customer VIX transactions. By way of background, an ''Index Combo'' is a complex order to purchase or sell one or more index option series and the offsetting number of Index Combinations defined by the delta.[3] An ''Index Combination'' is a purchase (sale) of an index option call and sale (purchase) of an index option put with the same underlying index, expiration date and strike price.[4] Index Combinations can trade on their own or as part of a tied combo strategy (such as part of an Index Combo), where similar to a tied-to-stock option, an option contact is bought or sold in the same package as the two legs making up the Index Combination as the synthetic underlying position as a hedge. Currently, Professional Customer (capacity ''U'') orders, including Index Combo orders, in VIX options are assessed a $0.40 per contract fee (yielding fee code BR). The Exchange proposes to waive transaction fees for the Index Combination component (legs) of Professional Customer Index Combo orders in VIX. The Index Combination legs will yield fee code ''CI'', and any remaining legs will continue to yield the applicable standard Professional Customer complex order fee code for VIX transactions (*i.e.,* fee code BR). The Exchange notes it recently adopted the same fee waiver for Customer orders in VIX, which orders also yield fee code CI.[5] The Exchange proposes to add the reference to Professional Customers in Footnote 43 which currently describes the fee waiver for Customer VIX orders (and which will similarly apply to Professional Customers as proposed). The Exchange proposes to waive fees for Professional Customer Index Combinations to encourage the submission of Index Combo orders which provide Professional Customers with a means to reduce or hedge the risk associated with price movements in the underlying index.

XSP Fees

The Exchange next proposes to modify fees for Market-Maker orders in XSP. Currently, Market-Maker XSP orders are assessed $0.045 per contract. The Exchange proposes to waive these fees through December 31, 2022. The Exchange also proposes to remove XSP from the Marketing Fee program, which currently assesses a fee of $0.25 per contract to Market-Maker XSP contracts resulting from Customer orders.

NANOS Fees and LMM Incentive Programs

The Exchange first proposes to remove NANOS from the Marketing Fee program, which currently assesses a fee of $0.09 per contract to Market-Maker NANOS contracts resulting from Customer orders.

The Exchange next proposes to amend the current NANOS Lead Market-Maker (''LMM'') Incentive Program (the ''Program''). Particularly, the Exchange proposes to amend the NANOS LMM Incentive Program by increasing the rebate under the Program and amending the quote width requirements under the Program. By way of background, the Exchange offers, among other LMM incentive programs, a NANOS LMM Incentive Program which provides a rebate to TPH(s) that are appointed to the Program provided they meet certain quoting standards in NANOS in a month. The Exchange notes that meeting or exceeding the quoting standards in NANOS to receive the rebate (as currently offered and as proposed; described in further detail below) is optional for an LMM appointed to the NANOS LMM Incentive Programs. Indeed, an LMM appointed to the NANOS LMM incentive program is eligible to receive the corresponding rebate if it satisfies the applicable quoting standards (as currently offered and as proposed, described in further detail below), which the Exchange believes encourages an LMM to provide liquidity in NANOS. The Exchange may consider other exceptions to the Program's quoting standards based on demonstrated legal or regulatory requirements or other mitigating circumstances. In calculating whether an LMM appointed to the Program meets the quoting standards each month, the Exchange excludes from the calculation in that month the business day in which the LMM missed meeting or exceeding the quoting standards in the highest number of series.

An LMM appointed to the NANOS LMM Incentive Program must provide continuous electronic quotes that meet or exceed the quoting standards under the applicable program in at least 99% of each of NANOS series, 90% of the time in a given month in order to receive a rebate for that month in the amount of $15,000 (or pro-rated amount if an appointment begins after the first trading day of the month or ends prior to the last trading day of the month) for that month. The Exchange now proposes to increase the rebate amount received for meeting the quoting standards in a given month. Specifically, the Exchange proposes to slightly increase the rebate amount from $15,000 to $17,500. The Exchange wishes to further incentivize the LMMs appointed to the NANOS LMM Incentive Program to provide significant liquidity in NANOS options by meeting the quoting standards under the

[3] *See* Cboe Options Rule 5.33, ''Index Combo''.

[4] *See* Cboe Options Rule 5.33(b)(5) (subparagraph (1) of definition of ''Index Combo'').

[5] The Exchange inadvertently included a parenthetical symbol at the end of the rates added for CI in the row for Customer complex VIX orders, which the Exchange proposes to delete now.

Program in order to receive the proposed increased rebate.

The Exchange also proposes to marginally tighten the quotes widths as follows:

Premium level	Current width	Proposed width
VIX Value at Prior Close <20:		
$0.00—$2.00	$0.28	$0.08
$2.01–$5.00	0.32	0.10
$5.01–$15.00	0.35	0.18
Greater than $15.00	0.50	0.31
VIX Value at Prior Close from 20–30:		
$0.00–$2.00	0.30	0.09
$2.01–$5.00	0.35	0.10
$5.01–$15.00	0.40	0.24
Greater than $15.00	0.55	0.31
VIX Value at Prior Close from >30:		
$0.00–$2.00	0.35	0.16
$2.01–$5.00	0.40	0.17
$5.01–$15.00	0.45	0.31
Greater than $15.00	0.60	0.38

Lastly, the Exchange proposes to offer a NANOS Volume Incentive Pool under the NANOS LMM Incentive Program, like that offered under the SPESG LMM Incentive Program. Specifically, the proposed rule change to the program provides that, in addition to the above rebate (*i.e.,* the proposed $17,500 per month rebate), if the appointed LMM meets or exceeds the above heightened quoting standards in a given month, the LMM will receive the Monthly ADV Payment amount that corresponds to the level of ADV provided by the LMM in NANOS for that month per the NANOS Volume Incentive Pool program below.

NANOS ADV	Monthly ADV payment
0–1,999 contracts	$0.00
2,000–4,999 contracts	5,000
5,000–24,999 contracts	8,000
25,000–49,999 contracts	10,000
50,000–99,999 contracts	12,000
Greater than 10,000 contracts	15,000

The proposed NANOS Volume Incentive Pool offered by the NANOS LMM Incentive Program is designed to incentivize LMMs to further increase the provision of liquidity in NANOS options. Increased liquidity in NANOS options would, in turn, provide greater trading opportunities, added market transparency and enhanced price discovery for all market participants in NANOS.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,[6] in general, and furthers the objectives of Section 6(b)(4),[7] in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and issuers and other persons using its facilities. The Exchange also believes that the proposed rule change is consistent with the objectives of Section 6(b)(5)[8] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest, and, particularly, is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that the proposed rule change to waive transaction fees for the Index Combination legs of a Professional Customer Index Combo order executed in VIX options is reasonable, equitable and not unfairly discriminatory as Professional Customers would not be subject to fees for contracts that are executed as part of an Index Combination and the proposed change would apply to all Professional Customers uniformly. The Exchange believes the proposal is reasonably designed to encourage Professional Customer order flow in VIX options. The Exchange wishes to promote the growth of VIX and believes that incentivizing increased Professional Customer Index Combo order flow in VIX options would attract additional liquidity to the Exchange. The Exchange believes increased Professional Customer order flow facilitates increased trading opportunities and attracts Market-Maker activity, which facilitates tighter spreads and may ultimately signal an additional corresponding increase in order flow from other market participants, contributing overall towards a robust and well-balanced market ecosystem. The Exchange notes that it similarly waives fees for Index Combination legs of an Index Combo for Customer orders executed in VIX options.[9]

Further, the Exchange believes that it is equitable and not unfairly discriminatory to waive fees for certain Professional Customer complex orders because Professional Customer liquidity benefits all market participants by providing more execution opportunities, in turn, attracting Market Maker order flow, which ultimately enhances market quality on the Exchange to the benefit of all market participants. Additionally, the Exchange believes the proposed change is in line with other fee programs that are designed to incentivize the sending of complex orders, including Index Combo orders, to the Exchange. For example, the Exchange provides higher rebates under the Volume Incentive Program for complex orders as compared to simple orders.[10] The Exchange also assesses lower fees for complex Customer orders

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A.

[10] *See* Cboe Options Fees Schedule, Volume Incentive Program.

in VIX as compared to simple orders in VIX.[11]

The Exchange next believes the proposed change to temporarily waive XSP transaction fees for Market-Makers and remove XSP from the Marketing Fee program is reasonable as Market-Makers will not have to pay fees for such transactions. The Exchange notes the proposed changes are designed to encourage the sending of additional XSP orders to the Exchange. Indeed, the Exchange believes the proposed reduced feed will encourage Market-Makers to submit additional orders in XSP which may signal additional corresponding increase in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants.

The Exchange believes the proposed fee change is equitable and not unfairly discriminatory because it applies to all Market-Makers uniformly. The Exchange believes that it is equitable and not unfairly discriminatory to propose lower transaction rates for Market-Makers because the Exchange recognizes that these market participants can provide key and distinct sources of liquidity. Additionally, as noted above, an increase in general market-making activity may provide more trading opportunities, in turn, signaling additional corresponding increase in order flow from other market participants, and, as a result, contributing towards a robust, well-balanced market ecosystem. The Exchange notes too that Market-Makers take on a number of obligations that other market participants do not have. For example, unlike other market participants, Market-Makers take on quoting obligations and other market making requirements.

The Exchange believes that the proposed increase to the rebate under the NANOS LMM Incentive Program is reasonably designed to continue to incentivize an appointed LMM to meet the applicable quoting standards for NANOS options, thereby providing liquid and active markets, which facilitates tighter spreads, increased trading opportunities, and overall enhanced market quality to the benefit of all market participants. The Exchange further believes that the proposed rule change is reasonable because it is comparable to and within the range of the rebates offered by other LMM Incentive Programs. For example, the GTH2 VIX LMM Programs currently offers a rebate of $20,000 if the quoting standards are met in a given month. The Exchange believes the proposed rebate applicable to the NANOS LMM Incentive Program is equitable and not unfairly discriminatory because it will continue to apply equally to any TPH that is appointed as an LMM to the Program.

The Exchange believes that it is reasonable to amend the quoting requirements under the Program by marginally tightening the quote widths in order to encourage LMMs to increase their quoting activity and post tighter spreads and more aggressive quotes in NANOS options in order to meet the heightened quoting standards and receive the proposed increased rebate. An increase in quoting activity and tighter quotes tends to signal additional corresponding increase in order flow from other market participants, which benefits all investors by deepening the Exchange's liquidity pool, potentially providing even greater execution incentives and opportunities, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency, and improving investor protection. The Exchange also believes that the proposed widths are reasonable because they remain generally aligned with the current heightened quoting standards in the program, as the proposed widths are only marginally reduced in order to incentivize an increase in quoting activity and the provision of tighter markets. The Exchange believes that the proposed reduced quote widths under the Program are equitable and not unfairly discriminatory because such quote widths will continue to apply equally to any and all TPHs with LMM appointments to the NANOS LMM Incentive Program. Additionally, the Exchange notes if an LMM appointed to the Program does not satisfy the quoting standards for any given month, then it simply will not receive the rebate offered by the Program for that month. The Exchange believes the proposed changes to the quoting requires are equitable and not unfairly discriminatory because it will continue to apply equally to any TPH that is appointed as an LMM to the Program.

The Exchange believes that the proposed rule change to adopt a NANOS Volume Incentive Pool as part of the NANOS LMM Incentive Program is reasonably designed to continue to encourage LMMs appointed to the incentive program to provide significant liquidity in NANOS options. The Exchange notes that the SPESG LMM Incentive Program also offers a volume incentive pool structured in a substantially similar manner. The Exchange believes the proposed NANOS Volume Incentive Program is equitable and not unfairly discriminatory because it will apply equally to any TPH that is appointed as an LMM to the Program.

Regarding each of the LMM incentive programs generally, the Exchange believes it is reasonable, equitable and not unfairly discriminatory to offer these financial incentives, including as amended, to LMMs appointed to the Program, because it benefits all market participants trading in NANOS. These incentive programs encourage the LMMs to satisfy the heightened quoting standards, which may increase liquidity and provide more trading opportunities and tighter spreads. Indeed, the Exchange notes that these LMMs serve a crucial role in providing quotes and the opportunity for market participants to trade NANOS which can lead to increased volume, providing for robust markets. The Exchange ultimately offers the LMM incentive, as amended, to sufficiently incentivize LMMs to provide key liquidity and active markets in NANOS, and believes that these programs, even as amended, will continue to encourage increased quoting to add liquidity in NANOS thereby protecting investors and the public interest. The Exchange also notes that an LMM appointed to an incentive program may undertake added costs each month in order to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes the proposed amendments to its Fee Schedule will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed fee changes will be assessed automatically and uniformly to each similarly situated market participant (*e.g.,* all qualifying Professional Customer VIX transactions will receive the proposed fee waiver and all Market-Makers will be subject to the XSP fee waiver and no longer be subject to the Marketing Fee for XSP and NANOs orders). Similarly, the proposed changes to the NANOS LMM Incentive Program and adoption of the NANOS Volume Incentive Pool will apply uniformly to any LMM appointment to

[11] *See* Cboe Options Fees Schedule, Rate Table—Underlying Symbol List A.

the programs. The Exchange notes that there is a history in the options markets of providing preferential treatment to these market participants. As discussed in the statutory basis, the Exchange believes Professional Customer order flow may facilitate increased trading opportunities and attract Market-Maker activity, which can contribute towards a robust and well-balanced market ecosystem. Market-Makers provide key and distinct sources of liquidity, and an increase in general market-making activity may facilitate tighter spreads, which tends to signal additional corresponding increases in order flow from other market participants, ultimately incentivizing more overall order flow and improving liquidity levels and price transparency on the Exchange to the benefit of all market participants. Further as discussed, Market-Makers take on a number of obligations that other market participants do not, such as quoting obligations and other market-making requirements. Similarly, to the extent LMMs appointed to the NANOS LMM Incentive Program receive a benefit that other market participants do not, as stated, these LMMs in their role as Market-Makers on the Exchange have different obligations and are held to different standards. An LMM appointed to an incentive program may also undertake added costs each month to satisfy that heightened quoting standards (*e.g.,* having to purchase additional logical connectivity).

The Exchange also notes that the proposed fee changes are designed to attract additional order flow to the Exchange, wherein greater liquidity benefits all market participants by providing more trading opportunities, tighter spreads, and added market transparency and price discovery, and signals to other market participants to direct their order flow to those markets, thereby contributing to robust levels of liquidity.

The Exchange does not believe that the proposed rule change will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act because the proposed rule changes apply only to products exclusively listed on the Exchange. Additionally, the Exchange notes it operates in a highly competitive market. In addition to Cboe Options, TPHs have numerous alternative venues that they may participate on and direct their order flow, including 15 other options exchanges, as well as off-exchange venues, where competitive products are available for trading. Based on publicly available information, no single options exchange has more than 18% of the market share of executed volume of options trades.[12] Therefore, no exchange possesses significant pricing power in the execution of option order flow. Moreover, 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.'' [13] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission*, the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[14] Accordingly, the Exchange does not believe its proposed changes to the incentive programs impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

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 [15] and paragraph (f) of Rule 19b-4 [16] 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 will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's internet comment form (*http://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include File Number SR–CBOE–2022–052 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–CBOE–2022–052. 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

[12] See Cboe Global Markets, U.S. Options Market Volume Summary by Month (September 30, 2022), available at *http://markets.cboe.com/us/options/market_share/.*

[13] See Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[14] *NetCoalition* v. *SEC*, 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b-4(f).

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–CBOE–2022–052 and should be submitted on or before November 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[17]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22658 Filed 10–18–22; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–96066; File No. SR–NYSEAMER–2022–45]

Self-Regulatory Organizations; NYSE American LLC; Notice of Filing and Immediate Effectiveness of Proposed Change To Amend the NYSE American Options Fee Schedule Concerning the Options Regulatory Fee

October 13, 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 28, 2022, NYSE American LLC (''NYSE American'' 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 self-regulatory organization. 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 NYSE American Options Fee Schedule (''Fee Schedule'') regarding the Options Regulatory Fee (''ORF''), effective September 28, 2022. The proposed 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. 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 Fee Schedule to (1) waive the ORF for the period November 1, 2022 through January 31, 2023; (2) eliminate the requirement that the Exchange may only modify the ORF semi-annually; and (3) delete outdated language relating to the ORF for August 30, 2019 (the ''August 2019 ORF'').

Background

As a general matter, the Exchange may only use regulatory funds such as the ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[4] More specifically, the ORF is designed to recover a material portion, but not all, of the Exchange's costs for the supervision and regulation of ATP Holders, including the Exchange's regulatory program and legal expenses associated with options, such as the costs related to in-house staff, third-party service providers, and technology that facilitate surveillance, investigation, examinations and enforcement (collectively, the ''ORF Costs''). ORF funds may also be used for indirect expenses such as human resources and other administrative costs. The Exchange monitors the amount of revenue collected from the ORF to ensure that this revenue, in combination with other regulatory fees and fines, does not exceed regulatory costs.

The ORF is assessed on ATP Holders for options transactions that are cleared by the ATP Holder through the Options Clearing Corporation (''OCC'') in the Customer range regardless of the exchange on which the transaction occurs.[5] All options transactions must clear via a clearing firm and such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American,[6] the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs.[7] As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder

[17] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78a.

[3] 17 CFR 240.19b–4.

[4] The Exchange considers surveillance operations part of regulatory operations. The limitation on the use of regulatory funds also provides that they shall not be distributed. *See* Thirteenth Amended and Restated Operating Agreement of NYSE American LLC, Article IV, Section 4.05 and Securities Exchange Act Release No. 87993 (January 16, 2020), 85 FR 4050 (January 23, 2020) (SR–NYSEAMER–2020–04).

[5] *See* Fee Schedule, Section VII, Regulatory Fees, Options Regulatory Fee (''ORF''), *available here, https://www.nyse.com/publicdocs/nyse/markets/american-options/NYSE_American_Options_Fee_Schedule.pdf.*

[6] *See id.* The Exchange uses reports from OCC when assessing and collecting the ORF. The ORF is not assessed on outbound linkage trades. An ATP Holder is not assessed the fee until it has satisfied applicable technological requirements necessary to commence operations on NYSE American. *See id.*

[7] The Exchange notes that many of the Exchange's market surveillance programs require the Exchange to look at and evaluate activity across all options markets, such as surveillance for position limit violations, manipulation, front-running and contrary exercise advice violations/expiring exercise declarations. The Exchange and other options SROs are parties to a 17d–2 agreement allocating among the SROs regulatory responsibilities relating to compliance by the common members with rules for expiring exercise declarations, position limits, OCC trade adjustments, and Large Option Position Report reviews. *See, e.g.,* Securities Exchange Act Release No. 85097 (February 11, 2019), 84 FR 4871 (February 19, 2019).

proprietary transactions) of its regulatory program.

ORF Collections and Monitoring of ORF

Exchange rules establish that the Exchange may only increase or decrease the ORF semi-annually, that any such fee change will be effective on the first business day of February or August, and that market participants must be notified of any such change via Trader Update at least 30 calendar days prior to the effective date of the change.[8]

Because the ORF is based on options transactions volume, the amount of ORF collected is variable. For example, if options transactions reported to OCC in a given month increase, the ORF collected from ATP Holders will likely increase as well. Similarly, if options transactions reported to OCC in a given month decrease, the ORF collected from ATP Holders will likely decrease as well. Accordingly, the Exchange monitors the amount of ORF collected to ensure that it does not exceed the ORF Costs. If the Exchange determines the amount of ORF collected exceeds costs over an extended period, the Exchange may adjust the ORF by submitting a fee change filing to the Securities and Exchange Commission (the ''Commission'').

Temporary ORF Waiver

Based on the Exchange's recent review of regulatory costs and ORF collections, the Exchange proposes to waive the ORF from November 1, 2022 through January 31, 2023 in order to help ensure that the amount collected from the ORF, in combination with other regulatory fees and fines, does not exceed the Exchange's total regulatory costs. The Exchange proposes to resume assessing the ORF on February 1, 2023 at the current rate of $0.0055 per contract. The Exchange will notify ATP Holders of the proposed change to the ORF via Trader Update at least 30 calendar days prior to the proposed operative date of the waiver, November 1, 2022, so that market participants have an opportunity to configure their systems to account for the waiver of the ORF. The Exchange's proposal to waive the ORF for the month of January 2023 would similarly provide ATP Holders with additional time in the new year to make any necessary adjustments or preparations for the resumption of the ORF effective February 1, 2023.

The proposed waiver is based on recent options volumes. The options industry has experienced extremely high options trading volumes and volatility, and options volume in 2022 remains high when compared to options volume in 2019, 2020, and 2021. The increased options volumes have, in turn, impacted the Exchange's ORF collection.

For example, total average daily volume in 2022, to date, is 115% higher than total average daily volume in 2019, and customer average daily volume in 2022, to date, is 123% higher than customer average daily volume in 2019. Below is industry data from OCC[9] illustrating the significant increase in options volume between 2019 and 2022:

	2019	2020	2021	2022
Customer ADV	15,234,198	25,598,023	34,730,276	33,939,560
Total ADV	35,083,673	55,369,993	74,339,870	75,497,647

In addition, the below industry data from OCC demonstrates the high options trading volumes (especially when compared to 2019, 2020, and 2021) and volatility that the industry has continued to experience in 2022:

	April 2022	May 2022	June 2022	July 2022	August 2022	September 2022
Customer ADV	33,266,801	34,202,077	31,469,858	30,506,706	33,013,156	34,149,000
Total ADV	73,140,597	76,254,734	70,628,926	68,535,963	73,487,342	77,134,470

Because of the difficulty of predicting when volumes may return to more normal levels, the Exchange proposes to waive the ORF from November 1, 2022 through January 31, 2023. The Exchange cannot predict whether options volume will remain at these levels going forward and projections for future regulatory costs are estimated, preliminary, and may change. However, the Exchange believes that the proposed waiver of the ORF would allow the Exchange to continue to monitor the amount collected from the ORF to help ensure that ORF collection, in combination with other regulatory fees and fines, does not exceed regulatory costs without the need to account for any ORF collection during that timeframe. The Exchange proposes to resume assessing the current ORF rate of $0.0055 per contract side as of February 1, 2023.

Semi-Annual Changes To ORF

As noted above, the Fee Schedule currently specifies that the Exchange may only increase or decrease the ORF semi-annually and that any such fee change will be effective on the first business day of February or August.[10] NYSE American proposes to eliminate this requirement to afford the Exchange increased flexibility in amending the ORF.[11] Although the Exchange proposes to eliminate the requirement to adjust the ORF only semi-annually, it would continue to submit a proposed rule change for each modification of the ORF and notify ATP Holders of any planned change to the ORF by Trader Update at least 30 calendar days prior to the effective date of such change. The Exchange believes that the prior notification to ATP Holders will provide guidance on the timing of any changes to the ORF and ensure that ATP Holders are prepared to configure their systems to properly account for the ORF. The Exchange will also issue a Trader Update informing ATP Holders of the ORF adjustment proposed in this filing, as described below, at least 30 calendar

[8] *See* Fee Schedule, *supra* note 5.

[9] The OCC publishes options and futures volume in a variety of formats, including daily and monthly volume by exchange, available here: *https://www.theocc.com/Market-Data/Market-Data-Reports/Volume-and-Open-Interest/Monthly-Weekly-Volume-Statistics.* The volume discussed in this filing is based on a compilation of OCC data for monthly volume of equity-based options and monthly volume of ETF-based options, in contract sides.

[10] *See* Fee Schedule, *supra* note 5.

[11] The Exchange notes that at least one other options exchange has previously removed this requirement with respect to adjusting the ORF. *See, e.g.,* Securities Exchange Act Release No. 76950 (January 21, 2016), 81 FR 4687 (January 27, 2016) (SR–NASDAQ–2016–003) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Amend the Options Regulatory Fee).

days prior to the proposed effective date.

August 2019 ORF

The Exchange proposes to delete language in the Fee Schedule pertaining to the August 2019 ORF, which was relevant only for the August 30, 2019 trading day and thus no longer reflects a fee currently assessed by the Exchange. The Exchange believes this change would improve the clarity of the Fee Schedule by removing obsolete language.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) [12] of the Act, in general, and Section 6(b)(4) and (5) [13] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities and does not unfairly discriminate between customers, issuers, brokers, or dealers.

The Proposal Is Reasonable

The Exchange believes the proposed temporary waiver of the ORF is reasonable because it would help ensure that collections from the ORF do not exceed a material portion of the Exchange's ORF Costs. As noted above, the Exchange may only use regulatory funds such as ORF ''to fund the legal, regulatory, and surveillance operations'' of the Exchange.[14] In this regard, the ORF is designed to recover a material portion, but not all, of the Exchange's ORF Costs.

Although there can be no assurance that the Exchange's final costs for 2022 will not differ materially from its expectations and prior practice, nor can the Exchange predict with certainty whether options volume will remain at the current level going forward, the Exchange believes that the amount collected based on the current ORF rate, when combined with regulatory fees and fines, may result in collections in excess of the estimated ORF Costs for the year. Particularly, as noted above, the options market has seen a substantial increase in volume in 2022 as compared to 2019, 2020, and 2021, due in large part to the continued extreme volatility in the marketplace as a result of the COVID–19 pandemic. This unprecedented spike in volatility resulted in significantly higher volume than was originally projected by the Exchange, thereby resulting in substantially higher ORF collections than projected. The Exchange therefore believes that it would be reasonable to waive ORF from November 1, 2022 through January 31, 2023 to help ensure that ORF collection does not exceed the ORF Costs for 2022.[15] Particularly, the Exchange believes that waiving the ORF from November 1, 2022 to January 31, 2023 and taking into account all of the Exchange's other regulatory fees and fines would allow the Exchange to continue covering a material portion of ORF Costs, while lessening the potential for generating excess funds that may otherwise occur using the current rate. The Exchange would resume assessing its current ORF ($0.0055 per contract) as of February 1, 2023. Until effectiveness of the waiver on November 1, 2022, the Exchange will continue to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed ORF Costs. The Exchange would also continue monitoring the amount collected from the ORF when such collection resumes on February 1, 2023 and, if necessary to ensure that such collections do not exceed such costs, subsequently adjust the ORF by submitting a filing a proposed rule change and notifying ATP Holders of such change by Trader Update.

The Exchange believes that the proposed elimination of language specifying that the Exchange may only increase or decrease the ORF semi-annually and that any such fee change must be effective on the first business day of February or August is reasonable because it is designed to afford the Exchange increased flexibility in making necessary adjustments to the ORF, as the Exchange is required to monitor the amount collected from the ORF to ensure that it, in combination with its other regulatory fees and fines, does not exceed ORF Costs . The Exchange also believes the proposed change is reasonable because the Exchange will continue to provide market participants with 30 days advance notice of changes to the ORF, thereby providing ATP Holders with adequate time to make any necessary adjustments to accommodate the change.

The Exchange also believes that the proposed deletion of language relating to the August 2019 ORF is reasonable because it would remove obsolete language and thus improve the clarity of the Fee Schedule.

The Proposal Is an Equitable Allocation of Fees

The Exchange believes its proposal is an equitable allocation of fees among its market participants. The Exchange believes that the proposed waiver would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion ORF Costs among such ATP Holders. In addition, the Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes that a temporary waiver of the ORF is an equitable allocation of fees because it would apply equally to all ATP Holders on all their transactions that clear in the Customer range at the OCC.

The Exchange also believes that the proposed change to eliminate the requirement that the Exchange modify the ORF only semi-annually in February or August is equitable because the change would impact all ATP Holders subject to the ORF uniformly, and all ATP Holders would continue to receive at least 30 days' advance notice of changes to the ORF. The proposed change to remove language relating to the August 2019 ORF is also equitable because it would eliminate language

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(4) and (5).

[14] *See* note 4, *supra.*

[15] The Exchange's proposal to also waive the ORF for the month of January 2023 would provide ATP Holders with additional time in the new year to make any necessary adjustments or preparations for the resumption of the ORF effective February 1, 2023.

from the Fee Schedule that is no longer applicable to any ATP Holders.

The Proposed Fee Is Not Unfairly Discriminatory

The Exchange believes that the proposal is not unfairly discriminatory. The Exchange believes that the proposed waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. Because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. In addition, the Exchange notes that the costs relating to monitoring ATP Holders with respect to Customer trading activity are generally higher than the costs associated with monitoring ATP Holders that do not engage in Customer trading activity, which tends to be more automated and less labor-intensive. By contrast, regulating ATP Holders that engage in Customer trading activity is generally more labor intensive and requires a greater expenditure of human and technical resources as the Exchange needs to review not only the trading activity on behalf of Customers, but also the ATP Holder's relationship with its Customers via more labor-intensive exam-based programs. As a result, the costs associated with administering the customer component of the Exchange's overall regulatory program are materially higher than the costs associated with administering the non-customer component (*e.g.,* ATP Holder proprietary transactions) of its regulatory program. Thus, the Exchange believes the temporary waiver of the ORF and the proposed modification of language relating to the Exchange's ability to modify the ORF is not unfairly discriminatory because the changes would apply to all ATP Holders subject to the ORF and the Exchange would provide all such ATP Holders with 30 days' advance notice of planned changes to the ORF.

The Exchange believes that the proposed change to eliminate the semi-annual change requirement is not unfairly discriminatory because the change would apply to all ATP Holders subject to the ORF. Furthermore, all ATP Holders would continue to be notified of changes to the ORF at least 30 days prior to the effectiveness of any such change. The proposed change to remove language relating to the August 2019 ORF is also not unfairly discriminatory because it would eliminate language from the Fee Schedule describing a fee that was effective only for August 30, 2019 and thus no longer impacts any ATP Holders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intramarket Competition. The Exchange believes the proposed change would not impose an undue burden on competition because the ORF is charged to all ATP Holders on all their transactions that clear in the Customer range at the OCC; thus, the amount of ORF imposed is based on the amount of Customer volume transacted. The Exchange believes that the proposed temporary waiver of the ORF would not place certain market participants at an unfair disadvantage because all options transactions must clear via a clearing firm. Such clearing firms can then choose to pass through all, a portion, or none of the cost of the ORF to its customers, *i.e.,* the entering firms. In addition, because the ORF is collected from ATP Holder clearing firms by the OCC on behalf of NYSE American, the Exchange believes that using options transactions in the Customer range serves as a proxy for how to apportion regulatory costs among such ATP Holders. The Exchange further believes that the proposed change to remove the semi-annual requirement would not impose any burden on competition because the change would impact all ATP Holders subject to the ORF, and the Exchange will continue to provide advance notice of changes to the ORF to all ATP Holders via Trader Update. The Exchange also believes that the proposed change to eliminate language relating to the August 2019 ORF would not impact intramarket competition because it would simply add clarity to the Fee Schedule by removing text describing a fee that is no longer effective.

Intermarket Competition. The proposed fee change is not designed to address any competitive issues. Rather, the proposed change is designed to help the Exchange adequately fund its regulatory activities while seeking to ensure that total collections from regulatory fees do not exceed total regulatory costs and to promote clarity in the Fee Schedule by deleting obsolete text.

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) [16] of the Act and subparagraph (f)(2) of Rule 19b–4 [17] 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) [18] 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 No. SR–NYSEAMER–2022–45 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–NYSEAMER–2022–45. 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

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f)(2).

[18] 15 U.S.C. 78s(b)(2)(B).

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 No. SR–NYSEAMER–2022–45, and should be submitted on or before November 9, 2022.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[19]

J. Matthew DeLesDernier,

Deputy Secretary.

[FR Doc. 2022–22659 Filed 10–18–22; 8:45 am]

BILLING CODE 8011–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36581]

Akron Barberton Cluster Railway Company—Acquisition Exemption—Rittman Community Improvement Corporation

Akron Barberton Cluster Railway Company (ABC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire from Rittman Community Improvement Corporation (RCIC) approximately 3.26 miles of rail line between milepost 216.76 near Wadsworth, and milepost 220.02 near Rittman, in Medina and Wayne Counties, Ohio (the Line).

The verified notice states that ABC has been serving as the operator on the Line since August 1994 when it acquired the rail assets of its predecessor, Akron & Barberton Belt Railroad Company, and several Consolidated Rail Corporation lines. *See Akron Barberton Cluster Ry.—Acquis. & Operation Exemption—Certain Lines of Consol. Rail Corp.,* FD 32537 (ICC served Aug. 10, 1994). ABC states that the Line was inadvertently omitted from the verified notice of exemption filed in that docket and that the authority it seeks here would rectify that oversight. The verified notice also states that RCIC and ABC have executed a purchase and sale agreement providing for ABC's acquisition of all of RCIC's right, title, and interest in and to the Line subject to ABC's receipt of appropriate authority or exemption from the Board, and that ABC will continue to operate and provide all rail common carrier service to shippers on the Line after the exemption becomes effective.

ABC certifies that its projected annual revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier and will not exceed $5 million annually. ABC further certifies that the acquisition does not involve an interchange commitment.

The transaction may be consummated on or after November 2, 2022, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions to stay must be filed no later than October 26, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36581, must be filed with the Surface Transportation Board either via e-filing or in writing addressed to 395 E Street SW Washington, DC 20423–0001. In addition, a copy of each pleading must be served on ABC's representative: Michael J. Barron Jr., Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to ABC, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: October 14, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2022–22683 Filed 10–18–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. AB 290 Sub-No (411X)]

Northern Southern Railway Company—Abandonment Exemption—in the City of Evansville, Ind.

Norfolk Southern Railway Company (NSR) has filed a verified notice of exemption pursuant to 49 CFR part 1152, subpart F—*Exempt Abandonments* to abandon an approximately 0.24-mile rail line extending from milepost +/1 0.00 EB to milepost +/− 0.24 EB in the City of Evansville, Ind. (the Line). The Line traverses U.S. Postal Service Zip Code 47711.

NSR has certified that: (1) no local traffic has moved over the Line for at least two years; (2) no overhead traffic has moved over the Line for at least two years, and overhead traffic, if there were any, could be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the Line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the Line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the two-year period; and (4) the requirements at 49 CFR 1105.7 and 1105.8 (notice of environmental and historic report), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

Any employee of NSR adversely affected by the abandonment shall be protected under *Oregon Short Line Railroad—Abandonment Portion Goshen Branch Between Firth & Ammon, in Bingham & Bonneville Counties, Idaho,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received,[1] the exemption will be effective on November 18, 2022, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to

[19] 17 CFR 200.30–3(a)(12).

[1] Persons interested in submitting an OFA must first file a formal expression of intent to file an offer, indicating the type of financial assistance they wish to provide (*i.e.,* subsidy or purchase) and demonstrating that they are preliminarily financially responsible. *See* 49 CFR 1152.27(c)(2)(i).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Office of Environmental

Continued

file an OFA under 49 CFR 1152.27(c)(2), and interim trail use/rail banking requests under 49 CFR 1152.29 must be filed by October 31, 2022.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by November 8, 2022, with the Surface Transportation Board, 395 E Street SW, Washington, DC 20423–0001.

A copy of any petition filed with the Board should be sent to NSR's representative, William A. Mullins, Baker & Miller PLLC, 2401 Pennsylvania Ave. NW, Suite 300, Washington, DC 20037.

If the verified notice contains false or misleading information, the exemption is void ab initio.

NSR has filed a combined environmental and historic report that addresses the potential effects, if any, of the abandonment on the environment and historic resources. OEA will issue a Draft Environmental Assessment (Draft EA) by November 13, 2022. The Draft EA will be available to interested persons on the Board's website, by writing to OEA, or by calling OEA at (202) 245–0305. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877–8339. Comments on environmental and historic preservation matters must be filed within 15 days after the Draft EA becomes available to the public.

Environmental, historic preservation, public use, or interim trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), NSR shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the Line. If consummation has not been effected by NSR's filing of a notice of consummation by October 19, 2023, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available at *www.stb.gov.*

Decided: October 13, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Aretha Laws-Byrum,

Clearance Clerk.

[FR Doc. 2022–22653 Filed 10–18–22; 8:45 am]

BILLING CODE 4915–01–P

SURFACE TRANSPORTATION BOARD

[Docket No. FD 36638]

Pioneer Industrial Railway Co.—Change in Operator Exemption—in Peoria County, Ill.

Pioneer Industrial Railway Company (Pioneer), a Class III rail carrier, has filed a verified notice of exemption pursuant to 49 CFR 1150.41 to assume operations over two interconnected railroad lines (collectively, the Lines) owned by, and located entirely within, the City of Peoria, Ill. (City). The first line, the Western Connection, is about 2.24 miles long and extends from a point of connection with the Peoria Subdivision of the Union Pacific Railroad Company at approximately milepost 71.5 to a point a short distance west of University Avenue in the City, then extends another 1,800 feet to a point of connection between the Western Connection and the Kellar Branch. The second line, the North Line, is an approximately 1.5-mile portion of the Kellar Branch between milepost 8.50 and milepost 10.0. The Lines total approximately 3.75 route miles.

Pioneer certifies that it has entered into a lease agreement with the City to assume leasehold operations over the Lines in place of the prior lessee, the Central Illinois Railroad Company (CIRY), which obtained Board authority to operate the Lines in 2005.[1] The verified notice, as supported by a verified statement by CIRY's former Controller, indicates Pioneer's understanding that in 2011 CIRY was involuntarily dissolved as a business and ceased providing rail service in 2010. CIRY's contract with the City to operate the Lines was terminated. Additionally, prior to its dissolution, CIRY reportedly intended to obtain authority to discontinue service over all of its lines but, through oversight or administrative error, failed to do so with respect to these Lines. Pioneer further states that it cannot locate CIRY's prior owners.

Pioneer confirms, as required under 49 CFR 1150.43(h), that the proposed transaction does not involve a provision or agreement that may limit future interchange with a third-party connecting carrier. Pioneer also certifies that its projected annual revenues will not result in the creation of a Class I or II rail carrier or exceed $5 million as a result of this transaction.

Under 49 CFR 1150.42(b), a change in operator requires that notice be given to shippers. Pioneer certifies that it has provided notice of the proposed change in operator to Carver Lumber, the only potential shipper on the Lines, and the verified notice includes a letter from Carver Lumber in support of this transaction.

The transaction may be consummated on or after November 2, 2022, the effective date of the exemption (30 days after the verified notice was filed).

If the verified notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the effectiveness of the exemption. Petitions for stay must be filed no later than October 26, 2022 (at least seven days before the exemption becomes effective).

All pleadings, referring to Docket No. FD 36638, must be filed with the Surface Transportation Board either via e-filing on the Board's website or in writing addressed to 395 E Street SW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Pioneer's representative, Robert A. Wimbish, Fletcher & Sippel LLC, 29 North Wacker Drive, Suite 800, Chicago, IL 60606–3208.

According to Pioneer, this action is categorically excluded from environmental review under 49 CFR 1105.6(c) and from historic preservation reporting requirements under 49 CFR 1105.8(b).

Board decisions and notices are available at *www.stb.gov.*

Decided: October 14, 2022.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Jeffrey Herzig,

Clearance Clerk.

[FR Doc. 2022–22694 Filed 10–18–22; 8:45 am]

BILLING CODE 4915–01–P

Analysis (OEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Serv. Rail Lines,* 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Filing fees for OFAs and trail use requests can be found at 49 CFR 1002.2(f)(25) and (27), respectively.

[1] *Cent. Ill. R.R.—Operation Exemption—Rail Lines of the City of Peoria, Ill.,* FD 34518, et al. (STB served Feb. 23, 2005).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[DOT–OST–2022]

Research, Engineering, and Development Advisory Committee (REDAC); Revitalization Membership Plan

AGENCY: Federal Aviation Administration, Department of Transportation.

ACTION: Solicitation of nominations for appointment to the Research, Engineering, and Development Advisory Committee (REDAC).

SUMMARY: This notice announces the solicitation of memberships for the Research, Engineering, and Development Advisory Committee (REDAC).

DATES: Nominations must be received no later than 11:59 p.m. eastern time on December 31, 2022. Nominations received after the above due date may be retained for evaluation for future REDAC vacancies after all other nominations received by the due date have been reviewed and considered.

ADDRESSES: Nominations can be submitted electronically (via email) to Chinita Roundtree-Coleman, in the FAA's Research and Development Management Division, ANG–E42, at *chinita.roundtree-coleman@faa.gov.* The body of the email must contain content or attachments that address all requirements as specified in the below ''Materials to Submit'' section. Incomplete/partial submittals, as well as those that exceed the specified document length may not be considered for evaluation. An email confirmation from the FAA will be sent upon receipt of all complete nominations that meet the criteria in the ''Materials to Submit'' section. Anyone wishing to submit an application by paper may do so by contacting Chinita Roundtree-Coleman via email or telephone at (609) 485–7149 or (609) 569–3729. The FAA will notify those appointed to serve on the REDAC in writing.

FOR FURTHER INFORMATION CONTACT: Chinita Roundtree-Coleman, REDAC PM/Lead, FAA/U.S. Department of Transportation, at *chinita.roundtree-coleman@faa.gov* or (609) 485–7149 or (609) 569–3729.

SUPPLEMENTARY INFORMATION:

I. Background

The Research, Engineering, and Development Advisory Committee was created under the Federal Advisory Committee Act (FACA), in accordance with Public Law 100–591 (1988) and Public Law 101–508 (1990) to provide advice and recommendations to the FAA Administrator in support of the Agency's Research and Development (R&D) portfolio.

II. Description of Duties

In accordance with 49 U.S. Code 44508, the REDAC conducts assessments of the FAA's technical R&D programs and projects to:

- Provide advice and recommendations to the Administrator regarding needs, objectives, plans, approaches, content, and accomplishments with respect to the aviation research program,
- Assist in ensuring that the research is coordinated with similar research being conducted outside the Administration,
- Review the operation of the air transportation centers of excellence and,
- Review the annual allocations made by the Administrator across major R&D categories.

If selected to serve on the REDAC, travel to FAA headquarters in Washington, DC (or other locations) no less than twice per year is required in order to attend committee meetings. By accepting the nomination, preparation and read ahead material review is often necessary regarding agendas and/or special tasks as required.

III. Membership

The membership must be fairly balanced in terms of points of view represented and the functions performed. In accordance with 49 U.S. Code 44508 and departmental policy, the REDAC will consist of no more than 25 members on the parent committee. Membership terms are two years and will be considered for renewal or resignation upon committee evaluations to ensure the efficacy of team compositions required to fulfill objectives. Selectees will be considered in one of the following categories: Representatives, Special Government Employee (SGE) or Regular Government Employee (RGE). Annual training and the submission of required disclosure documentation must be completed upon request.

The desired stakeholder groups represented on the REDAC include individuals with expertise and knowledge of industry trends in one or more of the following areas:

—Aircraft Safety
—Airport Infrastructure and Technologies
—Human and/or Aeromedical Factors
—National Airspace System (NAS) Operations
—Environment & Energy
—Digital Systems and Technologies (Cybersecurity, Artificial Intelligence, Machine Learning, Data Science and Analytics)
—Emerging Operations [Uncrewed Aircraft Systems (UAS), Advanced Air Mobility (AAM), Commercial Space, Autonomous Operations]

a. *Qualifications:* Candidates must demonstrate good public standing as well as technical capacities. Proficiencies, expertise, and subject mastery that inform the Agency's strategy for R&D areas will be critical to selections along with experience on advisory committees/boards/councils and research and development. This solicitation is open to leaders from industry, academia, other government agencies, and/or subject matter expert/advisory committee representatives. Applicants must be citizens or permanent residents of the United States.

b. *Materials to Submit:* Proposed nominees for the Research, Engineering, and Development Advisory Committee (REDAC) are required to submit a professional resume or curriculum vitae for review in order to be considered for membership on the (REDAC). Submissions that do not comply with the following rules, terms, and conditions may be disqualified:

i. Submissions must be in English and in a format readable by Microsoft Word or Adobe PDF. Scanned hand-written submissions will be disqualified.

ii. Applicants may not be a current employee of the DOT, including but not limited to the FAA;

iii. Submission Marking and Freedom of Information Act (FOIA), 5 U.S.C. 552: All materials submitted to the FAA as a part of a membership nomination submission become FAA records and are subject to release under the FOIA.

Issued in Washington, DC.

Chinita Roundtree-Coleman,

REDAC PM/Lead, Federal Aviation Administration.

[FR Doc. 2022–22646 Filed 10–18–22; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2022–0082]

Notice of Funding Opportunity To Establish Cooperative Agreements With Technical Assistance Providers for the Fiscal Year 2022 Thriving Communities Program

AGENCY: Office of the Secretary of Transportation, U.S. Department of Transportation (DOT).

ACTION: Notice of Funding Opportunity (NOFO), Assistance Listing #20.942 (tentative).

SUMMARY: The purpose of this notice is to publish DOT's application submission requirements and application review procedures to select capacity builders to provide technical assistance, planning and capacity building through cooperative agreements with DOT, as authorized by the Consolidated Appropriations Act, 2022.

DATES: The deadline for application submission is 11:59 p.m. Eastern Time on November 22, 2022. Proposals or applications received after the above deadlines will not be reviewed or considered. See section E of this NOFO regarding DOT's review process and section G of the NOFO for DOT's contact information.

ADDRESSES: Applications must be submitted through *https://www.grants.gov.* Opportunity number DOT–TCP–FY22–01 (expected live date is the week of October 17, 2022).

FOR FURTHER INFORMATION CONTACT: Alexander Bond at 202–366–2414. Office hours are from 8 a.m. to 5 p.m. EDT, Monday through Friday, except for Federal holidays. Ongoing updates, webinar notices, FAQs: *https://www.transportation.gov/thriving-communities.*

Email: *ThrivingCommunities@dot.gov.*

A Telecommunications Device for the Deaf (TDD) is available (202) 366–3993.

SUPPLEMENTARY INFORMATION:

Table of Contents

A. Program Description

1. Overview

The U.S. Department of Transportation's (DOT) Thriving Communities Program (TCP) was established by the Consolidated Appropriations Act, 2022 (Pub. L. 117–103, Division L, Title I). The goal of the TCP is to ensure disadvantaged communities adversely and/or disproportionately affected by environmental, climate, and human health policy outcomes have the technical tools and organizational capacity to comprehensively plan for and deliver quality infrastructure projects and community development projects that enable their communities and neighborhoods to thrive. The TCP will provide technical assistance, planning and capacity building support to advance transportation and community revitalization activities that benefit disadvantaged populations and communities. The TCP will also support and build local capacity to improve project acceleration, access to and management of federal funding, and deployment of local hiring, workforce development and inclusive community engagement practices (including persons with disabilities and limited English proficient individuals.

DOT's FY2022–2026 Strategic Plan (*https://www.transportation.gov/dot-strategic-plan*) and its Equity Action Plan (*https://www.transportation.gov/priorities/equity/equity-action-plan*) articulate the Department's commitment to equity as a transportation cornerstone. The TCP embodies this commitment with a focus on ensuring that all communities, regardless of their size or current capacity, have the necessary tools to access DOT funding and that equity is infused into decision making and planning, procurement and hiring processes. TCP allows DOT to prioritize support to rural, Tribal, and other disadvantaged communities, many of whom have been bypassed or harmed by past transportation investments. TCP is a Justice40 covered program provided to ensure that disadvantaged communities can successfully identify, develop, fund, and deliver infrastructure projects informed by meaningful public involvement and generating multiple economic, climate, health, equity, and other community benefits. Information on the Justice40 policy and other programs that that can support equity goals can be viewed at: *https://www.transportation.gov/equity-Justice40.*

This Notice of Funding Opportunity (NOFO) seeks to establish a national technical assistance program that will drive innovation, advance equity outcomes, and build a national pipeline of community-driven infrastructure projects. In its first year, TCP will provide deep-dive technical assistance to at least 30 communities. This will be done through cooperative agreements with eligible parties to help those communities with the highest degree of burden and capacity constraints prepare, develop, and deliver transformative infrastructure projects.

Eligible TCP applicants should propose strategies to provide deep-dive technical assistance, planning and capacity building and build a robust Community of Practice across regions involving diverse transportation and community stakeholders. Specifically, this includes facilitating the scoping, planning, development and delivery of transportation and community revitalization activities supported by DOT under titles 23, 46, and 49, United States Code, that increase mobility, reduce pollution from transportation sources, expand affordable transportation options, facilitate efficient land use, preserve or expand jobs, improve housing conditions, enhance connections to health care, education, and food security, or improve health outcomes.

The U.S. Department of Housing and Urban Development (HUD) allocated $5 million from the FY2022 appropriations act to coordinate with DOT's TCP. HUD will provide funding to technical assistance providers and capacity builders to help jurisdictions consider housing and community development needs as part of transportation infrastructure plans (for example, identifying land that is near planned transportation projects and suitable for housing development). HUD's technical assistance will enable more communities to thoughtfully plan and boost location-efficient housing supply. Applicants interested in HUD's Thriving Communities Technical Assistance Notice of Funding Opportunity should visit *https://www.huduser.gov/portal/nofos/thriving-communities.html.*

For FY2022 funding, the TCP presents two separate response opportunities:

(1) This NOFO is for eligible applicants to provide technical assistance, planning, or capacity building services to help disadvantaged communities, and

(2) A separate call for Letters of Interest (LOI) from recipients eligible to receive TCP support can be viewed at *https://www.transportation.gov/grants/thriving-communities.*

Recipients of the technical assistance provided through TCP are state, local, or Tribal governments, United States territories, metropolitan planning organizations, regional transportation planning organizations, transit agencies, or other political subdivisions of state or local governments. DOT is establishing as a prerequisite to eligibility, that these governmental entities form coalitions, referred to as Community Partnerships (as described in the LOI), with organizations from within and outside the government that may also serve as local capacity building and technical assistance implementation partners and generate deeper community engagement particularly from historically under-represented populations and environmental justice stakeholders. The

composition of these Community Partnerships will be at the discretion of each technical assistance recipient and identified in their LOI, but could include other government entities, nonprofits, non-governmental and community-based organizations, labor unions, advocacy groups, chambers of commerce and major employers or anchor institutions, and philanthropic organizations.

The TCP is one of several technical assistance programs administered through DOT's Build America Bureau's (Bureau). Participation in technical assistance programs is voluntary and does not obligate the awardee or recipients to apply for DOT grants or credit programs in the future, nor does participation offer preferential treatment to future applications or a guarantee of Federal funding.

The TCP will coordinate and leverage other Federal place-based technical assistance and capacity building initiatives that align with TCP goals to provide comprehensive support to selected recipient communities. This may include, but is not limited to USDA's Rural Partners Network, the Interagency Working Group on Coal and Power Plant Communities and Economic Revitalization, the Economic Development Administration's Economic Recovery Corps, and the Environmental Protection Agency's Environmental Justice Thriving Communities Technical Assistance Centers.

Please note that key definitions for terms relevant to TCP are provided in section H.1 of this NOFO.

2. Thriving Communities Program Structure

a. Capacity Builder Design Strategies

DOT seeks applications from technical assistance, planning, and capacity building providers—henceforth referred to as Capacity Builders (see section C.1 of this NOFO for more information)—to provide a spectrum of support to selected recipients. This support includes:

1. Delivering individualized deep-dive technical assistance, planning, and capacity building to selected communities across pre-development and grant application activities through project development, project funding and financing, and project delivery.

2. Establishing and managing a national Community of Practice to advance policies, practices and projects informed by meaningful public involvement and partnership.

3. Providing targeted technical support as part of the national TCP capacity building network.

TCP applicants should propose how they will build out and deliver a two-year technical assistance, planning, and capacity building program that responds to these three areas of support.

Individualized Deep Dive Support

The primary focus of support through TCP is assisting individual communities—recipients include government agencies and their community partner organizations—to successfully advance a program of projects identified through meaningful public involvement that deliver a broad set of transportation, climate, equity, housing, economic, and other community benefits. Each Capacity Building team will provide individualized deep-dive support to 10–15 communities selected by DOT. DOT will assign recipient communities to a specific Capacity Builder prior to finalizing cooperative agreements. Note that there may be more than one Capacity Builder per Community of Practice; and that the overall anticipated number of communities supported through TCP will be at least thirty.

DOT invites applicants to propose how they could provide deep dive support to additional communities, beyond the 10–15 selected by DOT, within the budget provided or through leveraging other funding or associated technical assistance efforts that the applicant or its team members may also be supporting. Individualized deep-dive support refers to the provision of services to implement the specific technical assistance activities and capacity building goals identified in these work plans.

Selected Capacity Builders are expected to develop detailed work plans and budgets describing their scope of work and how the goals of the TCP will be met. Capacity Builders will provide short-term technical assistance necessary to recipient communities to develop integrated plans, advance projects, conduct pre-development activities and to build longer-term organizational and community capacity.

For instance, this could include but is not limited to:

- Identifying and responding to funding opportunities including Federal discretionary grant applications
- Conducting project scoping, planning, and pre-engineering studies, market, and other technical analysis
- Supplementing local staffing and workforce development capacity
- Establishing leadership, fellowship, pre-apprenticeship, and apprenticeships programs
- Developing systems or structures that improve compliance with Federal grant management, including but not limited to Title VI of the Civil Rights Act, the Americans with Disabilities Act, Section 504 of the Rehabilitation Act, and procurement requirements
- Supporting comprehensive community planning that better coordinate transportation with other land use, housing, and infrastructure development.
- Implementing innovative public engagement strategies, particularly to involve traditionally underrepresented voices in the project identification, planning, and prioritization process.
- Sub-granting to local technical assistance and capacity building partners who bring local expertise and capacity
- Evaluating and establishing emerging transportation and planning technologies, data systems and software

Capacity Builders will develop processes to engage with the selected recipients and their Community Partnerships to co-design a tailored scope of work and set of equitable development outcomes to be achieved over a two-year period of performance. DOT expects that a portion of funding provided to Capacity Builders will be budgeted for direct support to TCP recipients and members of their Community Partnerships.

DOT staff from its regional, division, and headquarters offices can serve as Federal liaisons who help to inform communities of additional existing technical assistance resources provided by DOT or other Federal agencies that can assist in project pre-development, public outreach, planning, financing, and project delivery. The online DOT Navigator (available at *https://www.transportation.gov/dot-navigator*) provides information on existing DOT-supported technical assistance resources that may be a useful reference for Capacity Builders.

HUD's Thriving Communities technical assistance will be available to local governments from TCP communities as well as to other local governmental entities that meet HUD's eligibility requirements. DOT will coordinate linkages between capacity builders, TCP communities and HUD, as necessary.

TCP Community of Practice Support

To build collective and sustained learning, Capacity Builders will support

a TCP Community of Practice that facilitates collaboration across and within communities and that builds local capacity to advance a pipeline of community-driven projects that generate transportation, economic and community benefits. This may include face-to-face meetings as well as web-based collaborative environments to communicate, connect and conduct community activities that collectively facilitate long term capacity building and systems change. Applicants should propose methods and tasks that will be undertaken to create and support a Community of Practice among the communities they are identified to support; and within the individual communities to build capacity between the lead applicant and community partners.

TCP seeks to amplify the program's impact and generate noteworthy practices that can be scaled and replicated in other regions. Within selected deep-dive communities, Community of Practice provide an opportunity to deepen cross-sector collaboration between the lead recipient of technical assistance (*i.e.,* eligible government entities), their identified community partners, and other community stakeholders that have not historically been engaged in infrastructure, economic and community development planning and decision making; or those who bear the heaviest environmental, health, mobility, housing, economic and/or social costs of infrastructure projects.

Targeted Technical Support

DOT may assign Capacity Builders to provide targeted technical and limited support to TCP communities and/or other DOT and federal technical assistance recipients, as needed, to assist disadvantaged communities and government agencies to advance projects and processes aligned with DOT's Strategic Plan and Equity Action Plan priorities for equity, workforce development, labor and hiring preferences, small business development and procurement, climate, safety, technology transformation.

b. Communities of Practice Typology

DOT has identified three different Communities of Practice (''cohorts'') to organize communities and their technical assistance, planning, and capacity building needs in relation to shared demographics, transportation challenges, and programmatic opportunities. The three cohorts are:

- *Main Streets*—Focused on Tribal and rural communities and the interconnected transportation, community, housing, and economic development issues they face.
- *Complete Neighborhoods*—Focused on urban and suburban communities located within Metropolitan Planning Organization (MPO) planning areas working to better coordinate transportation with land use, housing, and economic development.
- *Networked Communities*—Focused on those communities located near ports, airports, freight, and rail facilities to address mobility, access, housing, environmental justice, and economic issues including leveraging their proximity to these facilities for wealth-building and economic development opportunities.

Each cohort is described below with examples of possible transportation topic areas. DOT believes that communities best know the specific challenges and opportunities they face. Capacity Builders will utilize a community-centered approach to work with selected recipient communities to refine the areas of focus for specific places and for the overall Community of Practice.

Main Streets

The Thriving Communities Main Streets cohort consists of eligible rural recipients from Tribal governments, United States territories, rural communities, and small towns, including communities that are not part of an MPO. Less dense populations, longer travel distances, older and changing demographics, declining, or transitioning economies, and smaller government budgets and staff are just a few of the shared challenges faced by this cohort, which also impact the ability of government to deploy innovative workforce development, climate resilience, equity, and technology solutions. Illustrative of the possible transportation issues that this cohort may address are road network improvement and safety projects; improving infrastructure condition alongside strategies to support economic and community revitalization with investments in high-speed internet deployment, water and sewage lines, and electric vehicle charging stations; rural transit, micro mobility and ADA-accessible transportation alternatives including multimodal trails; context sensitive design solutions that will improve mobility and access particularly for disadvantaged populations such as older adults, people with disabilities, youth, and those without access to a personal automobile; transportation worker recruitment and training strategies; and place-making strategies to leverage local cultural, natural and community assets. State DOTs are a critical partner, facility owner, and funder in these communities.

Capacity Builders seeking to support this cohort must demonstrate their expertise and familiarity in working with rural, United States territories, and/or Tribal communities, such as through members of their team that have specific cultural and community ties or proven experience working on federal Tribal and rural transportation, community, housing, and economic development programs.

Complete Neighborhoods

The Complete Neighborhoods cohort consists of eligible urban and suburban local governments, transit agencies, or other political subdivisions that are included in a metropolitan planning organization's (MPO) planning area. This cohort is focused on comprehensive strategies to enhance community connectivity, improve coordination of land use, housing, economic development, and transportation, and to accelerate innovation specifically for disadvantaged communities or neighborhoods. Areas of persistent poverty and declining economies or property values create challenges for some, while other communities in this cohort may be experiencing market-induced or climate-induced gentrification and displacement. Technical assistance and capacity building can advance equity by addressing the inequities and systemic barriers created by decades of discrimination, segregation, urban renewal, and suburban sprawl impacting these communities.

Illustrative of the possible transportation issues that this cohort may address are increasing accessibility to affordable and reliable multi-modal transportation options to reach regional jobs and community facilities such as health care centers, libraries, public schools and grocery stores; deploying transit-oriented and walkable development policies; reducing greenhouse gas emissions and improve air quality; and improving safety for all users of the transportation system including bicyclists, pedestrians and people of all ages and abilities. This cohort will look to leverage planning, project development and transportation projects that serve community and economic development goals and promote revitalization including strategies such as street level retail and community space, urban place-making, and local and economic hiring preferences to support community

wealth building in economically disadvantaged communities within the region. MPOs and other types of regional planning bodies are important infrastructure implementation partners, especially to coordinate transportation with housing and economic development planning and advance projects benefitting disadvantaged communities.

Networked Communities

The Networked Communities cohort consists of eligible recipients from urban, suburban, and rural communities that are located near major transportation facilities such as ports, airports, and freight or passenger rail facilities. These communities may face local environmental justice and mobility access issues exacerbated by their proximity to regionally or nationally significant transportation facilities and/or projects. Yet these types of facilities also provide significant workforce, labor and economic development potential for adjacent communities given the context of each hub.

Illustrative of the possible transportation issues that this cohort may face are community access and connectivity; roadway safety and design improvements including of major arterials and service roads; strategies to reduce air and noise pollution including decarbonization and transitioning to clean technologies; or preparing for new or extended freight or passenger rail service. Private sector partners may play a critical role as utility and facility owners, rail operators, port and airport authorities, whose interests are generally broader than those of the surrounding community. The technical assistance priorities for this cohort can include advancing equity by addressing environmental injustice, mobility, pollution, public health, workforce and economic development, and land use planning through meaningful public involvement for communities, particularly those that are lower income and/or have a higher proportion of people of color residing near these facilities.

B. Federal Award Information

Under the Consolidated Appropriations Act, 2022 (Pub. L. 117–103), Congress provided DOT with $25,000,000 for the Thriving Communities Program, to be obligated by September 30, 2024. Of the funds provided, DOT anticipates awarding at least three separate cooperative agreements to Capacity Builders who demonstrate the ability to develop and provide technical assistance, planning, and capacity building tools to all communities within the specific Community of Practice they are assigned to support. DOT may select a Capacity Builder to specifically work with Tribal governments given unique opportunities to advance Tribal sovereignty, specific requirements associated with the Bureau of Indian Affairs, and to support those Tribal nations that include urban and rural communities. Based on LOI responses, DOT may also select more than one Capacity Builder per Community of Practice. Capacity Builders with demonstrated technical expertise in specific areas that align with DOT strategic priorities may be tapped to provide targeted technical support to multiple communities of practice. If a Capacity Builder is tapped to provide targeted technical support to multiple communities of practice, DOT reserves the right to pair the Capacity Builder with other Capacity Builders. This pairing will take place at the time of award announcement. To enable these pairings, DOT may require some selected Capacity Builders to make subawards to other Capacity Builders.

Cooperative agreements will be managed through substantial involvement by DOT's staff (see Federal Award Administration Information in section F.1 of this NOFO). Selected TCP Capacity Builders should demonstrate compliance with civil rights obligations and nondiscrimination laws, including Titles VI of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), and Section 504 of the Rehabilitation Act, and accompanying regulations. Recipients of Federal transportation funding will also be required to comply fully with regulations and guidance for the ADA, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and all other civil rights requirements. The Department's Office of Civil Rights may work with awarded cooperative agreement recipients as appropriate to ensure full compliance with Federal civil rights requirements.

DOT will determine the amount of funds to be awarded but anticipates a range between $3,500,000 to $6,000,000 for each cooperative agreement. Multiple cooperative agreements are expected, with an aggregate total of approximately $21,000,000. Awards made be 100% federal share. Final decisions on amount of funding per award and number of cooperative agreements will be dependent upon applications received. DOT may elect to award funding through future NOFOs, if necessary.

Subsequent year funding and additional funding from DOT will depend upon priorities established by the Secretary of Transportation, future authorizations and appropriations, and the Thriving Communities' annual performance reviews.

There will be time between selection of applicants and execution of the cooperative agreement to finalize scopes of work to reflect recipient community selections. The period of performance covered by the award amount shall not exceed twenty-four (24) months from the date of execution in DOT's electronic grants management system unless at DOT's discretion, the period of performance is extended before expiration.

C. Eligibility Information

1. Eligible Applicants (Capacity Builders)

Those applying to provide technical assistance, planning and capacity building can apply individually or as part of a team of eligible applicants. DOT seeks Capacity Builders that have technical knowledge across a diverse set of issues and skills, including meaningful public involvement in transportation decision-making processes and project delivery; therefore, the lead applicant is strongly encouraged to partner with other eligible organizations to form a diverse Capacity Builder team. If applying as part of a team, the lead applicant must be clearly identified and submit the application on behalf of the team. The cooperative agreement will be between DOT and the lead organization, which is the primary recipient of DOT TCP funds. The recipient may make subawards to other team members, but the recipient is responsible for compliance with Federal requirements, including 2 CFR parts 200 and 1201.

Eligible applicants are non-profit organizations, state or local governments and their agencies (such as transit agencies or metropolitan planning organizations), Tribes, philanthropic entities, and other technical assistance providers with a demonstrated capacity to develop and provide technical assistance, planning, and capacity building. Priority is given to applicants that demonstrate experience working with state, local, or Tribal governments, United States territories, or other political subdivisions of state or local governments. See section D.2 of this NOFO for details on the information applicants must submit to support eligibility determinations.

2. Cost Sharing and Matching

No cost sharing or matching is required as a condition of eligibility under this competition. DOT will fund up to 100 percent of eligible project costs.

3. Eligible Project Costs

Eligible costs include those that the Capacity Builders undertake to directly assist in the development of technical assistance, planning, or capacity building for communities to carry out eligible projects to integrate transportation, community, and system preservation plans and practices for which the award has been granted.

Eligible costs also include those that Capacity Builders incur or subgrant to build community capacity, including staff and benefits plus other overhead costs such as rent, utilities, and office equipment, hiring of new staff and fellows, building IT systems for application processes and reporting, and website development for education and training.

4. Eligible Activity Costs Must Comply With the Cost Principles set Forth in With 2 CFR Subpart E (i.e., 2 CFR 200.403 and 200.405). DOT Reserves the Right To Make Cost Eligibility Determinations on a Case-By-Case Basis.

D. Application and Submission Information

Applications must include the materials listed in section D.2 of this NOFO to be considered for funding.

1. Address To Request Application Package

Applications will only be accepted electronically through *www.grants.gov* under Opportunity Number DOT–TCP–FY22–01. Potential applicants may also request paper copies of materials at:

Telephone: (202) 366–2414.

Mail: U.S. Department of Transportation, 1200 New Jersey Avenue SE, W12–412, Washington, DC 20590.

2. Content and Form of Application Submission

The table below describes the DOT and Federal grant assistance forms and other documents required for a complete application under this NOFO and may serve as a checklist for applicants in preparing their submissions. A separate application checklist can be found in Appendix A of this NOFO.

Program Design and Substance:
Executive Summary
Technical Assistance and Capacity Building Approach
Applicant Expertise, Staffing, and Project Management
Program Evaluation and Assessment
Budget Narrative and Cost Estimate
Schedule of Milestones and Deliverables
Forms and Supporting Documentation:
Application for Federal Assistance (SF–424)
Budget Information for Non-Construction Programs (SF–424A)
Assurances for Non-Construction Programs (SF–424B)
Certification Regarding Lobbying (CD–511)
Disclosure of Lobbying Activities (SF–LLL)
Organizational Documentation (if applicable, depending on your organization type)
Indirect Cost Rate (ICR) Documentation (if applicable)
Unique Identifier and System for Award √Management (SAM)

a. Executive Summary

The Executive Summary should be a clear, concise, and include a descriptive summary of the proposed approach to technical assistance and capacity building, including a clear identification of which cohort the applicant is applying to support, and a brief description of how the proposed approach will advance Thriving Communities Program goals. Applicants may propose to support multiple cohorts but will only be selected for one, so it is advisable to tailor your narrative and approach to a specific cohort. The executive summary should be no more than 500 words and, if selected for funding, may be used in a public announcement or on DOT's website.

b. Technical Assistance and Capacity Building Approach

In the Technical Assistance and Capacity Building Approach, applicants should provide a detailed description of the proposed program of technical assistance, planning, and capacity building activities that will be tailored to and meet the specific needs of disadvantaged communities that will receive TCP support, including areas for direct support and specific ways in which community partners will be utilized to provide or supplement technical assistance and capacity building. If selected, work plans and budgets will be finalized as part of the cooperative agreement negotiation process.

This section of the application should not exceed 10-single sided, 8.5x11-inch pages, with a minimum 12-point font and 1-inch margins.

Technical Approach

In the narrative describing the program of technical assistance, planning, and capacity building activities, applicants are expected to distinguish between the following—approaches to provide customized, deep-dive support to individual communities; strategies to build and sustain a Community of Practice; and the applicants' areas of expertise that may be tapped for targeted technical assistance. Applicants should distinguish between their proposed approach and activities to provide short-term technical assistance versus providing direct support or resources to build long-term technical and organizational capabilities. Applicants should describe how they will assist program participants identify and apply for funding opportunities, and effectively manage grants administratively and programmatically.

In developing individualized deep-dive technical assistance, applicants should identify the process they will utilize to co-design a scope of work with selected recipients and their community partners. This should include, at a minimum, an assessment of technical capacity including human and community-based, organizational, or institutional, financial, and technical assets and deficiencies relative to meeting needs of the community and goals of the TCP program.

Applicants should highlight their approach, expertise, and how they would propose to evaluate impact related to such practices as, not limited to:

- Equity practices and Civil Rights requirements to support community visioning and inclusive and meaningful engagement strategies, including use of arts, culture, technology, and culturally competent practices.
- Environmental planning and analysis practices including to support transportation decarbonization, climate resilience and adaptation.
- Land use and regulatory practices that improve alignment and efficiencies between transportation networks and service with housing and economic development patterns.
- Transportation practices to advance transformative community and data driven projects through state, metropolitan and Federal transportation and community development planning and project delivery processes.
- Coalition building and collaboration practices that build and sustain cross-sector partners and empower community stakeholders, especially those from disadvantaged communities.

Applicants should also demonstrate how they will provide technical assistance to help recipients transition projects through all stages of the transportation decision-making and project delivery process, including the planning, project development, securing funding, and delivery phases, as appropriate to implementation. If applicable, provide examples of helping organizations navigate and comply with federal regulatory and compliance requirements relative to transportation and environmental planning, grant making, and procurement. This may include examples of how members of the team have previously and successfully worked with state, local, Tribal governments, or United States territories on these types of efforts. Applicants may propose how they would provide deep dive support to additional communities, beyond the 10–15 selected by DOT, within their proposed budget or through leveraging other funding or associated technical assistance efforts that its team members may also be supporting.

To be considered for providing targeted technical assistance, applicants should identify any specific areas of expertise that members of the Capacity Builder team possess on DOT Strategic Plan and Equity Action Plan priorities such as Title VI and civil rights compliance; racial equity and environmental justice; workforce development, local and economic hiring preferences; small and disadvantaged business development and procurement; transportation safety and safe system approaches; meaningful public involvement and inclusive community engagement practices; technology innovation and deployment; and knowledge of requirements related to the National Environmental Policy Act and emerging climate resiliency practices.

Capacity Building Approach

Applicants must describe how they will build short- and long- term capacity for TCP recipients and their community partners, identifying specific services that build an effective Community of Practice. This should include a description of their approach to sub-granting resources to build upon and utilize existing local capacity. Capacity building should focus on ways to improve the ability of an organization to design and undertake the necessary technical, financial, business, data analyses; meet Federal oversight and project management requirements; undertake statewide and metropolitan long-range planning and programming activities; and implement other activities that broadly support project development and delivery. This includes developing long-term community capacity to sustain partnerships and engage non-governmental partners, leadership and workforce development, and program evaluation.

Capacity building approaches should include an element of responsiveness to the needs of individual communities and adaptability over the two-year period of performance. Applicants may propose different areas where they anticipate capacity needs to be the greatest, and strategies they envision deploying to meet these needs through individualized deep-dive support. They should also describe the process they will use to adapt capacity building approaches, as needed.

Applicants should identify specific goals for the Community of Practice and propose a set of activities to address entrenched systemic inequities and barriers; leadership and partnership development; and other needs to strengthen collaboration and facilitate longer-term impact within and across recipient communities. Capacity Builders can identify and resource one or more of the Community Partner organizations to serve as a local implementation partner to support and participate in this work.

c. Applicant Expertise, Staffing, and Project Management Plan

Applications must describe the expertise and capacity of the team or individual organization, that demonstrate the team's ability to perform all activities requested under this NOFO, including project management.

The Applicant Capacity, Staffing and Project Management section should not exceed 7 single-sided, 8.5x11-inch pages, with a minimum 12-point font and 1-inch margins. Resumes do not count against the page limit. Applicants should include the following:

Organization Description

A one-page organization or company profile should be provided for each member of the Capacity Building Team and may be publicly shared as part of the organization introductions. Profiles should include the company name, its role on the team, number of employees; location of office or its geographic scope; whether it is a certified disadvantaged business enterprise, 8(a), small disadvantaged, HUBZone, woman-owned or service-disabled veteran-owned small businesses [1]; a brief summary of the type of services it provides; firm capabilities including relevant experience in providing technical assistance, planning and capacity building to underserved populations and geographies, and involvement of team members that represent the types of communities and stakeholders to be served. Key staff members of each organization should be shown.

The applicant should demonstrate how individual team members represent the different areas of expertise needed to develop and implement a well-structured, feasible, and scalable technical assistance, planning and capacity building plan.

Teaming Arrangement

Applications should include a description of how team members will be overseen and managed. An organizational chart or decision flow-chart may assist in visualizing relationships between team members.

Applications should demonstrate the Capacity Building Team's ability to foster cross-sector collaboration and employ leadership development practices to support and sustain partnerships across a diverse set of organizations and stakeholders

[1] Additional DOT guidance on small business contracting can be found at *https://www.transportation.gov/sites/dot.gov/files/2021-03/508_OSDBU%20Contracting_03102021.pdf.*

including underserved populations and communities.

Previous Project Experience

Preference will be given to applicants who can demonstrate technical knowledge across a diverse set of issues and skills relevant to the cohort they are proposing to support, particularly related to supporting disadvantaged communities and on equity-related issues such as civil rights compliance, equitable development, inclusive and meaningful community engagement including to persons with disabilities, limited English proficient individuals, and other target populations; community wealth building; and any previous experience in helping communities successfully deliver transportation projects, advance policies to integrated community and infrastructure development and/or secure federal funding for such projects.

DOT will prioritize applicants who possess and successfully demonstrate expertise in at least one of the following optional areas, with a preference for multiple areas of expertise specifically working with and empowering disadvantaged communities and equitable transportation approaches:

- Innovative financing and leveraged funding approaches that address the unique challenges of under-resourced, low-tax base and credit-challenged communities.
- Community wealth building and economic development practices including community ownership models, apprenticeship, and business entrepreneurial programs.
- Strategies to nurture small and disadvantaged business participation and development including capacity building initiatives and facilitating supportive services within disadvantaged business enterprise community marketplaces.
- Conducting a mobility needs analysis, racial equity, or health equity analysis to evaluate transportation plans and proposals.
- Incorporating sustainable practices across the lifecycle of projects to reduce greenhouse gas emissions and operations and maintenance costs across the lifecycle of a project.
- Strategies to measure and mitigate natural hazards including flooding or the urban heat island effect, such as siting trees and implementing other nature-based solutions.

Applicants should include a description and evidence of the team's knowledge of federal funding processes, statutes, and technical assistance programs and the transportation planning and project development processes relevant to the cohort being supported to demonstrate its ability to connects TCP communities to existing technical assistance resources available through DOT and other Federal agencies.

Applicants should also include a description and evidence of the team's experience with coordinating and managing peer learning networks, including to develop communication materials; design and facilitate online convenings; and support collaboration between technical assistance recipients, capacity builders, and Federal agency staff.

Staffing Plan

Applications must include a Staffing Plan listing all positions proposed to be charged to the project for each Capacity Builder partner organization, whether as Federal or non-Federal costs. The Staffing Plan must include the position titles, hourly rates, and percentage of time dedicated to the project. The sum of all salaries charged to the project must equal the amount on the ''Personnel'' budget line item on Form SF–424A. The Staffing Plan should provide a description of how the personnel will carry out the proposed project.

Proposals should identify key project staff to provide the identified technical assistance needs. The proposal should include a one-page resume for each key project staff member. This should include a short summary of the individual's relative areas of expertise; years of experience; employment and education history; and brief snapshot of related project history noting work with disadvantaged communities, comprehensive economic or community development, and/or capacity building. Replacement of key staff are subject to DOT approval. At least one key staff member must be identified per Capacity Builder partner organization.

Resumes should be compiled and uploaded together as one PDF file and may be shown as an appendix. Mid-level or junior staff may be shown without identification or resumes. Key staff are defined as project managers, subject matter experts, and individuals who have specialized knowledge key to delivery of technical assistance.

Given that additional technical assistance and capacity building needs may arise in response to the specific needs of selected communities receiving deep dive support, refinements can be made to the proposed staffing structure with DOT approval. The applicants are encouraged to include strategic hiring plan that may be utilized to supplement or hire contingent staff. that may work directly with recipients and their community partners to ensure continuity of services.

d. Program Evaluation and Assessment Plan

Applicants must include specific performance metrics under each of the specific work tasks describing how they will track, analyze, and report on the results and outcomes of the technical assistance, planning, and capacity building they are providing to individual communities and to the specific Community of Practice they are supporting. Performance metrics may be qualitative and/or quantitative and should be described in terms of well-defined outputs, such as number of communities assisted, number of successful grant or funding applications for projects supported through this program; short and long-term capacity increases; and to the extent practical to convey, community-defined impact metrics used to evaluate local equity outcomes of this program that demonstrate positive benefits for disadvantaged communities supported through TCP. DOT will require a final report from Capacity Builders summarizing the goals, impacts, process, and lessons learned from engagement with each recipient community and for the overall Community of Practice. Recipients of technical assistance may be contacted to assess their level of satisfaction with contractor performance.

DOT is interested in the opportunities for broader outreach and shared learning that can be supported through the dissemination of materials developed by Capacity Builders, and by the lessons learned through the technical assistance engagement to inform future program design and impact. This will include quarterly virtual meetings with representatives of the Capacity Builders to be organized and conducted by DOT; and potentially an annual in-person 1.5-day TCP convening that will include participation by Capacity Builders (estimate 4 people) and recipient communities including community partners (estimate 3 people per team). Capacity Builders should allocate a portion of their budget to support this involvement. For the purpose of budget estimation, assume meetings are held in Washington, DC at average-priced travel periods.

The Program Evaluation and Assessment section should not exceed 3 single-sided, 8.5x11-inch pages, with a minimum 12-point font and 1-inch margins.

e. Budget Narrative and Cost Estimate

Applications must include a Budget Narrative that describes the costs associated with each line item on Form SF–424A, distinguishing clearly between costs for direct support to recipients and their community partners and reimbursement of technical assistance services delivered on site by local partners. Applicants should include and clearly identify the costs that the Capacity Building Team undertakes to directly assist in the development of technical assistance, planning, or capacity building. Costs for subgrantees and direct costs should be presented separately.

At least 60% of the total project budget should be for activities that provide direct support to communities. This may include direct costs to provide sub-granting, purchase necessary software, and supplement staffing for TCP recipients and community partners, or to support other activities that enable their long-term capacity created to successfully apply and manage federal funding. DOT also encourages sub-granting or other activities that compensate local community partners who are serving as technical assistance, planning and capacity builders.

Applicants should provide a summary table and narrative that articulates the anticipated costs for the lead organization and team members. Specific information requested in the summary or narrative include:

- Labor categories and fully loaded hourly rates
- Expected total hours for each labor category
- Direct costs that may be charged to the project, including travel, operating capital outlays, tangible goods, software, and other costs described in the narrative
- Overhead, profit, or contingency costs, expressed as a percent. Indicate whether overhead costs are included in fully loaded hourly rates
- Dollar amount or percent of the budget devoted to pass-through spending that supports:
  - deep dive technical assistance to recipients
  - community partner organization who supplements capacity building support to the Community of Practice
  - any associated overhead reduction for pass-through labor or direct costs

DOT will reimburse labor and direct costs incurred by the Capacity Builders, including subcontractor. Capacity Builders should maintain a system for recording all project costs. Invoices may be transmitted to DOT monthly.

The Capacity Builder must notify DOT in writing when 50% of the project budget is expended. Further, work must stop, and DOT be notified in writing when 90% of the project budget is expended. Aggregate payment shall not exceed the cap shown in the cooperative agreement. Costs incurred over the cap shown in the cooperative agreement will not be paid.

The Budget Narrative and Cost Estimate may be submitted as an Excel, Microsoft Word, or PDF document. The Budget and Cost Estimate section should not exceed 2 single-sided, 8.5x11-inch pages, with a minimum 12-point font and 1-inch margins. Organization or company profiles do not count against the page limit and can be compiled and uploaded together as one PDF file and may be shown as an appendix.

f. Schedule of Milestones and Deliverables

Applications must include a proposed set of tasks, schedule detailing the expected start and end date of tasks, and major deliverables described in the proposed approach. Applications should incorporate preparation of the final report and presentation into the project timeline and period of performance. The proposed task organization and schedule will serve as a starting point for cooperative agreement negotiations with the selected teams.

The Schedule of Milestones and Deliverables section should not exceed 2 single-sided, 8.5x11-inch pages, with a minimum 12-point font and 1-inch margins.

g. Standard Forms and Supporting Documentation

All applicants must submit the following Standard Forms (SF), as applicable, as separate PDF documents and do not count toward the overall application page length:

- Application for Federal Assistance (SF–424)
- Budget Information for Non-Construction Programs (SF–424A)
- Assurances for Non-Construction Programs (SF–424B)
- Certification Regarding Lobbying (CD–511)
- Organizational Documentation (if applicable, depending on your organization type)
- Indirect Cost Rate (ICR) Documentation (if applicable)

All relevant forms must be signed electronically by the applicant's Authorized Organizational Representative (AOR); please see sections H of this NOFO for information on AOR requirements. The preferred electronic file format for attachments is Adobe portable document format (PDF); however, DOT will accept electronic files in Microsoft Word or Microsoft Excel formats. DOT will not accept paper, facsimile, or email transmissions of applications. All documentation and data submitted should be current and applicable as of the date submitted. Applicants may contact the appropriate contact listed in section G for technical assistance before submitting an application.

Organizational Documentation

Each applicant and co-applicant must provide documentation that supports each applicant's or co-applicant's organizational status as an eligible entity where applicable (section C.1 of this NOFO).

- States, Indian Tribes, cities or other political subdivisions of States, and institutions of higher education that are 100% publicly controlled are not required to submit organizational documentation.
- Nonprofit organizations must submit documentation that demonstrates their status as nonprofit organizations. This must include articles of incorporation, bylaws, certificate of good standing, and a copy of the most recent (not older than 18 months) IRS Form 990 (Return of Organization Exempt from Income Tax) (without attachments or schedules).
- Other entities, including institutions of higher education that are not 100% publicly controlled, must provide documentation that demonstrates their organization type.

Indirect Costs (If Applicable)

If indirect costs are included in the budget, the applicant must include documentation to support the indirect cost rate they are using (unless claiming the 10 percent de minimis indirect cost rate, discussed below). The applicant must submit a copy of its current, approved, and negotiated indirect cost rate agreement (NICRA). If the applicant does not have a current or pending NICRA, it may propose indirect costs in its budget; however, the applicant must prepare and submit an allocation plan and rate proposal for approval within ninety days from the award start date (unless claiming the 10 percent de minimis indirect cost rate, discussed below). *See* 2 CFR part 200, apps. III, IV, V, VI, VII for guidance. The allocation plan and the rate proposal shall be submitted to DOT. The applicant should include a statement in its Budget Narrative that it does not have a current

or pending NICRA and will submit an allocation plan and rate proposal to DOT or the applicant's cognizant federal agency for approval.

In accordance with 2 CFR 200.414(f), an applicant that does not have a current negotiated (including provisional) rate, may elect to charge a de minimis rate of 10 percent of modified total direct costs (subject to the exceptions of § 200.414(f)). No documentation is required to justify the 10 percent de minimis indirect cost rate; however, an applicant electing to charge a de minimis rate of 10 percent must include a statement in its Budget Narrative that it does not have a current negotiated (including provisional) rate and is electing to charge the de minimis rate.

If the applicant is a state or local unit of government (or an Indian Tribe) that receives less than $35 million in direct federal funding per year it may submit any of the following:

- a Certificate of Indirect Costs from the Department of the Interior (DOI) or DOT;
- an acknowledgment received from the Department of Interior (on behalf of DOT) and a Certificate of Indirect Costs in the form prescribed at 2 CFR part 200, app. VII; or
- a NICRA.

3. Unique Entity Identifier and System for Award Management (SAM)

To enable the use of a universal identifier and to enhance the quality of information available to the public as required by the Federal Funding Accountability and Transparency Act of 2006, applicants are required to: (i) be registered in SAM before submitting an application; (ii) provide a valid unique entity identifier in the application; (iii) make certain certifications; and (iv) continue to maintain an active SAM registration with current information at all times during which they have an active federal award or an application or plan under consideration by a federal awarding agency. DOT may not make a federal award to an applicant until the applicant has complied with all applicable unique entity identifier and SAM requirements and, if an applicant has not fully complied with the requirements by the time the DOT is ready to make an award, DOT may determine that the applicant is not qualified to receive an award and use that determination as a basis for making an award to another applicant. Award recipients will be subject to reporting requirements as identified in OMB guidance published at 2 CFR parts 25 and 170.

4. Submission Dates and Times

The deadline for the receipt of an application is 11:59 p.m. Eastern Time on November 22, 2022. Applications received after this deadline will not be reviewed or considered. Applications will only be accepted electronically through *Grants.gov*. Applicants are advised to carefully read the submission information provided in section D of this NOFO. The date and time that an application will be deemed to be electronically received will be determined in accordance with the electronic submission instructions provided on *Grants.gov*.

Applications received after the application deadline will not be considered for funding. DOT strongly suggests that applicants start early, do not wait until near the application deadline before logging on and reviewing the instructions for submitting an application, and submit applications substantially before the deadline. Applicants should save and print written proof of an electronic submission.

In addition, please note the following:

- DOT will not accept any unsolicited changes, additions, revisions, or deletions to applications after the submission deadline.
- Throughout the review and selection process, DOT reserves the right to seek clarification from applicants whose applications are being reviewed and considered.
- Applicants may be asked to clarify objectives and work plans and modify budgets or other specifics as necessary to comply with federal requirements and provide supplemental information required by the agency before award.
- See section E of this NOFO for application review and selection information.

5. Funding Restrictions

For funding restrictions that may affect an applicant's ability to develop an application and budget consistent with program requirements, see section C of this notice. DOT will not reimburse costs incurred before the cooperative agreement has been signed by DOT and the lead applicant.

The maximum dollar amount of allocable indirect costs for which DOT will reimburse a recipient will be the lesser of the (i) line-item amount for the federal share of indirect costs contained in the DOT approved budget for the award, or (ii) federal share of the total allocable indirect costs of the award based on either (a) the indirect cost rate approved by DOT (or applicable cognizant federal agency), provided that the cost rate is current at the time the costs were incurred and provided that the rate is approved on or before the award end date, or (b) other acceptable documentation as indicated below.

6. Other Submission Requirements

The complete application must be submitted electronically via *Grants.gov*. To find this funding opportunity, search for [opportunity number] via the Funding Opportunity Number field. The most up-to-date instructions for application submission can be found at *https://www.grants.gov/web/grants/applicants/applyfor-grants.html.* In the event of system problems or the applicant experiences technical difficulties, contact *grants.gov* technical support via telephone at 1–800–518–4726 or email at *support@grants.gov.*

Early Registration and Application Submission

In order to submit an application via *Grants.gov*, applicants must register with *SAM.gov* and *Grants.gov*. Registration can take between three to five business days or as long as four weeks. To avoid delays, DOT strongly recommends that applicants start early and not wait until the approaching deadline date before logging in, registering, reviewing the application instructions, and applying.

AOR Requirement

Applicants must register as organizations, not as individuals. As part of the registration process, applicants will register at least one AOR for the organization. AORs registered at *Grants.gov* are the only officials with the authority to submit applications; please ensure that the organization's application is submitted by an AOR. Note that a given organization may designate multiple individuals as AORs for *Grants.gov* purposes. DOT will not accept late submissions caused by registration issues with *Grants.gov*, *SAM.gov*, or other systems.

Field Limitations and Special Characters

Please be advised of the following notice with respect to form field limitations and special characters: *https://www.grants.gov/web/grants/applicants/submitting-utf8-special-characters.html.*

Successful Submission Verification

It is your responsibility as an applicant to verify that your submission was timely received and validated successfully at *grants.gov.* Applicants should use the ''Track My Application'' function (*https://www.grants.gov/web/*

grants/applicants/track-my-application.html). For a successful submission, the application must be received and validated by *Grants.gov*, and an agency tracking number must be assigned. If the date and time your application is validated and timestamped by *Grants.gov* is later than 11:59 p.m. Eastern Time on the application deadline set forth in this NOFO, your application is late. Once validation is complete, the status will change to ''Validated'' or ''Rejected with Errors.'' If the status is ''Rejected with Errors,'' your application has not been received successfully. For more detailed information about why an application may be rejected, please consult with resources such as ''Encountering Error Messages'' (*https://www.grants.gov/web/grants/applicants/encounteringerror-messages.html*) and ''Frequently Asked Questions by Applicants'' (*https://www.grants.gov/web/grants/applicants/applicant-faqs.html*).

DOT encourages applicants to submit early, even if draft, and then resubmit the final application. Applicants should save and print both the confirmation screen provided on the *Grants.gov* website after the applicant has submitted a final application and the confirmation email when the application has been successfully received and validated in the system. If an applicant receives an email from *Grants.gov* indicating that the application was received and subsequently validated but does not receive an email from *Grants.gov* indicating that DOT has retrieved the application package within 72 hours of that email, the applicant may contact the email address listed in section G of this announcement to inquire if DOT is in receipt of the applicant's submission.

Grants.gov System Issues

If you experience a systems issue (*i.e.,* a technical problem or glitch with the website) that you believe threatens your ability to complete a submission in a timely manner, please (i) print any error message received; (ii) contact the *Grants.gov* Support Center at (800) 518–4726 for assistance; and (iii) contact DOT using the contact information in section G of this NOFO. Ensure that you obtain a case number regarding your communications with *Grants.gov*. Please note that problems with an applicant's computer system or equipment are not considered systems issues. Similarly, an applicant's failure to, *e.g.,* (i) complete the required registration, (ii) ensure that a registered AOR submits the application, or (iii) notice receipt of an email message from *Grants.gov* are not considered systems issues. A *Grants.gov* systems issue is an issue occurring in connection with the operations of *Grants.gov* itself, such as the temporary loss of service by due to unexpected volume of traffic or failure of information technology systems, both of which are highly unlikely. In the event of a confirmed systems issue, DOT reserves the right to accept an application in an alternate format.

Applicants should access the following link for assistance in navigating *Grants.gov* and for a list of useful resources: *https://www.grants.gov/web/grants/support.html.* The following link lists ''Frequently Asked Questions by Applicants'': *https://www.grants.gov/web/grants/applicants/applicant-faqs.html.* If you do not find an answer to your question there, contact *Grants.gov* by email at *support@grants.gov* or telephone at (800) 518–4726. The *Grants.gov* Contact Center is open 24 hours a day, seven days a week, except on federal holidays.

DOT, in its sole discretion, may pre-approve in writing submission via an alternate method (*e.g.,* email) due to a systems issue at *Grants.gov* only insofar as any such systems issue is beyond the control of the applicant. However, any submission via this alternate method must be received before the deadline. Late applications will not be accepted for any reason, including but not limited to late submissions caused by issues with *Grants.gov*, SAM, or AOR registrations. In situations described in this subsection, applications must have email or facsimile receipt timestamps no later than the application deadline or must be postmarked or the equivalent on or before the application deadline. An application that is not timestamped or postmarked, as applicable, by the application deadline will not be reviewed.

E. Application Review Information

DOT will review applications in accordance with the requirements of this NOFO. DOT will consider whether the application is clear, concise, and well-organized. Throughout the review and selection process, DOT, at its sole discretion, may seek clarification, including but not limited to written clarifications and corrected or missing documents, from applicants whose applications are being reviewed and considered and require that applicants provide such clarifications or corrections to continue to be considered for an award under this NOFO. DOT will provide applicants a reasonable amount of time to provide any additional documentation. An applicant's failure to provide complete and accurate supporting documentation in a timely manner *when requested by DOT* may result in the removal of that application from consideration. DOT may ask applicants to clarify application materials, objectives, and work plans, or modify budgets or other specifics as necessary to comply with federal requirements.

1. Evaluation Criteria

The following evaluation criteria apply to all applications. Please read each criterion carefully:

- Proven Success
- Quality Project Management
- Alignment with DOT Priorities
- Centering Community
- Flexibility and Innovation
- Impact Size and Longevity

Cost sharing will not be considered in the evaluation except as demonstration of leveraging other funding or resources that expand the impact size and longevity.

Proven Success

Proposals should demonstrate:

- Extensive expertise in providing technical assistance, planning and capacity building to and/or with government organizations to support the needs of underserved populations and geographies.
- Demonstrated ability to build and sustain a Community of Practice to generate shared learning and relationship building across diverse types of government and non-government partners, including equity partners, and a diversity of place types.
- Ability to carry out the proposed scope of work based on staff experience and professional accomplishments.
- Demonstrated ability to assist lead applicants in their efforts to successfully comply with Title VI of the Civil Rights Act of 1964, the National Environmental Policy Act of 1969, and the Americans with Disabilities Act, and other federal regulations.
- Employment of qualified personnel that, as a group, demonstrate project management expertise, as well as demonstrated success in all aspects of the scope of work including commitments to equity, diversity, and inclusion.

Quality Project Management

Does the proposal include:

- Feasible and reasonable budget that addresses all program and Federal accountability concerns and demonstration of a financial plan and necessary accounting systems in place to meet federal 2 CFR part 200 requirements.

• Clearly identified tasks and at least 60% of budget allocated to provide direct support to recipients and community partners to build and utilize local capacity.
• Clearly defined timeline including targets, metrics, milestones, objectives, goals, and deliverables.
• Clear involvement of disadvantaged business enterprises, small businesses or minority owned businesses, and/or community-based organizations in proposed deliverables.
• Realistic performance targets and demonstrated method to measure progress.
• Management plan describing methods for supporting the project goals and managing partner organizations and project staff, including plan to address challenges and risks and proposed mitigation strategies.

Alignment With DOT Priorities

How will the proposed approach:
• Demonstrates multiple areas of expertise identified in section D.2(c) including specifically working with and empowering disadvantaged communities and with transportation approaches that align with DOT strategic priorities and Equity Action Plan commitments.
• Enable development of a national pipeline of transformative projects and comprehensive community development that deliver equity, environmental, safety, mobility, housing, and economic benefits.
• Infuse an equity lens into the design and delivery of technical assistance, planning, and capacity building in a transportation context.
• Improve basic infrastructure conditions and elevate the adoption of transportation decarbonization and climate resilience strategies to benefit disadvantaged communities.
• Adopt equity screening and meaningful public involvement practices to advance transformative community- and data-driven projects through state and metropolitan Transportation Improvement Programs (STIPs and TIPs).
• Support workforce development, hiring and labor practices benefitting local economically disadvantaged communities.

Centering Community

How will the proposed approach:
• Develop a realistic and community-driven assessment of need and corresponding scope of work for each assigned recipient.
• Deploy equity practices to support community visioning and inclusive engagement strategies, including use of arts, culture, technology, and culturally competent practices.
• Demonstrate success in building and sustaining partnership networks for local and regional transportation, economic and community development, housing, public health and/or environmental entities and stakeholders.
• Demonstrate an approach to working with DOT and other relevant federal agencies, including identified regional staff, in providing support to communities and leveraging federal opportunities.

Flexibility and Innovation

How will the proposed approach:
• Increase the ability of communities to deploy innovative technologies and other strategies that reduce greenhouse gas emissions and improve safety, equity, and resilience outcomes in disadvantaged communities.
• Increase or supplement the ability of communities to deploy quantitative skills, analytics, and data visualization to support evidence-based planning and decision-making.
• Include innovative practices to co-design evaluation and performance metrics to ensure program goals are advanced along with along the goals of individual communities.
• Be flexible in modifying or evolving technical assistance provisions as community needs change.

Impact Size and Longevity

How will the proposed approach:
• Maximize the scale of impact by providing comprehensive technical assistance to as many communities as reasonably possible.
• Maximize impact by leveraging additional funding and other resources (whether public, philanthropic, or other private resources).
• Demonstrate success in efficiently taking existing practices to scale; and in aggregating place-based work into key findings, noteworthy practices, and guidance to inform future DOT policy, technical assistance, planning and capacity building efforts.
• Ensure longevity of technical assistance impact by ensuring the long-term transfer of knowledge through documentation and archiving.

2. Review and Selection Process

a. Review for Eligibility and Completeness

For each application, DOT staff will assess whether the applicant is eligible and submitted all the information requested for a complete application. Applications that may not have all the necessary components will be referred to an Evaluation Management Oversight Team, which will contact the applicant if it is determined they are an eligible applicant and request the missing information with a response time of 5 business days. Applicants that do not supply required information in this timeframe will be disqualified. Applications received from ineligible entities will not be considered for funding. Applicants who are determined to be ineligible will be notified in writing, and all determinations will be documented.

b. Evaluation Criteria Review

First-level Review Teams, comprised of staff from DOT, inter-agency Federal staff, and contractor staff, will evaluate all eligible and complete applications received by the deadline for an Evaluation Review against the evaluation criteria in section E.1 of this NOFO.

Ratings will be determined by each reviewer on an individual basis, and a compilation of ratings will be produced. The First-level Review Team will conduct a panel discussion, revise scores as appropriate, and prepare an overall project rating based on majority opinion of the review team.

The First-level Review Team will consider whether the application narrative is responsive to the selection criterion focus areas, which will result in a rating of 'High,' 'Medium,' 'Low,' or 'Non-Responsive.'

Rating scale	High	Medium	Low	Non-responsive
Description	The application is substantively and comprehensively responsive to the criterion. It makes a strong case about advancing the program goals as described in the criterion descriptions.	The application is moderately responsive to the criterion. It makes a moderate case about advancing the program goals as described in the criterion descriptions.	The application is minimally responsive to the criterion. It makes a weak case about advancing the program goals as described in the criterion descriptions.	The narrative indicates the proposal is counter to the criterion or does not contain sufficient information. It does not advance or may negatively impact criterion goals.

Based on the criteria ratings, an overall application merit rating of 'Highly Recommended,' 'Recommended,' or 'Not Recommended' will be assigned by the First-level review team using the following methodology. The ratings on the individual merit criteria translate to the following overall application rating for merit criteria:

Overall merit rating	Individual criteria ratings
Highly Recommended.	• At least four 'High' ratings, • Zero ''Low ratings,'' and • Zero 'Non-Responsive' ratings.
Recommended	• At least two 'High' ratings, • No more than one 'Low rating,' and • Zero 'Non-Responsive' ratings.
Not Recommended.	• Fewer than two 'High' ratings, • Two or more 'Low' ratings, or • One or more 'Non-Responsive' ratings.

c. Leadership Selection Process

Applications that receive an overall application rating of Highly Recommended will be advanced to a Senior Review Team (SRT), which will include senior DOT and HUD leadership, to recommend applicants to the Under Secretary of Transportation for Policy (Under Secretary) for final selection. Final selection will be made with consideration to:

- Geographic, team member and organizational diversity
- Ability to meet anticipated technical assistance needs of communities within the Community of Practice it will be assigned to support
- Potential to positively impact disadvantaged communities
- Demonstrated level and diversity of expertise
- Demonstrated experience working with state, local, or Tribal governments, United States territories, metropolitan planning organizations, transit agencies, or other political subdivisions of state or local governments

The SRT at its sole discretion may elect to review and select for cooperative agreements proposals rated as Recommended if the proposal fulfills technical assistance needs that would not otherwise be met by applications rated as Highly Recommended.

d. Under Secretary of Transportation for Policy Selection Phase

The SRT will present a list of applications for recommended consideration to the Under Secretary for final selection. The SRT may advise the Under Secretary on any application on the list, including options for reduced awards. The Under Secretary will make final selections based on applications that best address program requirements and are most deserving of funding and may consult the Secretary of Transportation on those selections.

3. Additional Information

Prior to award, each selected applicant will be subject to a risk assessment as required by 2 CFR 200.206. DOT must review and consider any information about the applicant that is in the Federal Awardee Performance and Integrity Information System (FAPIIS), the designated integrity and performance system accessible through SAM. An applicant may review information in FAPIIS and comment on any information about itself that a Federal awarding agency previously entered. DOT will consider comments by the applicant, in addition to the other information in FAPIIS, in making a judgment about the applicant's integrity, business ethics, and record of performance under Federal awards when completing the review of risk posed by applicants.

F. Federal Award Administration

1. Federal Award Notice

This NOFO will remain open for 45 days from date of publication. Following the evaluation process, DOT will notify successful applicants of their selection for funding. DOT will also notify other applicants, whose applications were received by the deadline, but have not been chosen for award. The DOT will offer a written or telephonic debrief to provide an explanation of, and guidance regarding, the reasons why the application was not approved.

Final Award. After DOT has made selections, DOT will finalize specific terms of the cooperative agreement and budget in consultation with the selected lead applicant. If DOT and the selected applicant do not finalize the terms and conditions of the cooperative agreement in a timely manner, or the selected applicant fails to provide requested information, an award will not be made to that applicant. In this case, DOT may select another eligible applicant.

DOT will reimburse labor and direct costs incurred by the Capacity Builders, including subcontractors. Capacity Builders should maintain a system for recording all project costs. Invoices may be transmitted to DOT monthly. Aggregate payment will not exceed the cap shown in the cooperative agreement.

Adjustments to Funding. To ensure the fair distribution of funds and enable the purposes or requirements of a specific program to be met, DOT reserves the right to fund less than the amount requested in an application.

DOT Involvement. As the Federal awarding agency, DOT will maintain substantial involvement and oversight throughout the two-year period of performance of the executed cooperative agreements. This includes, but may not be limited to:

- Assigning communities selected to receive support through the TCP with specific Capacity Builders and finalizing work plans for cohort specific Communities of Practice
- Review of deliverables including individualized community deep dive work plans and technical assistance assessment
- Collecting and reviewing quarterly performance reports and final reports
- Convening regular meetings or capacity builder calls to review project activities, schedule, and progress toward the scope of work

- Identifying relevant federal technical assistance programs to be aligned with TCP efforts in specific communities and assigning federal agency staff to serve as liaisons with capacity builders, technical assistance recipients and their community partners.
- Reviewing and approving changes in key personnel or scope changes
- Oversight of ongoing compliance with applicable federal regulations
- Budget oversight, including collecting and reviewing and reimbursing monthly invoices for incurred costs and receiving notification when budgets are 50% and 90% expended.
- Conducting quarterly meetings with Capacity Builders and involvement with an annual TCP convening with Capacity Builders and community partners

2. Administrative and National Policy Requirements

Administrative Budget

DOT requires that a selected applicant participates in negotiations to determine an administrative budget. The administrative budget must clearly identify the labor, associated indirect costs, travel, and material and supply costs associated with your management of the award. The administrative budget must track the different sources of funding and associate administrative costs to each source. Should DOT not be able to successfully conclude negotiations with a selected applicant within a period determined by DOT, an award will not be made.

Performance under the grant program will be governed by and in compliance with the following requirements as applicable to the type of organization of the recipient and any applicable sub-recipients:

All awards will be administered pursuant to the Uniform Administrative Requirements, Cost Principles and Audit Requirements for Federal Awards found in 2 CFR part 200, as adopted by DOT at 2 CFR part 1201.

Other terms and conditions as well as performance requirements will be addressed in further communications with the recipient. The full terms and conditions may vary and are subject to discussions and negotiations.

In connection with any program or activity conducted with or benefiting from funds awarded under this notice, recipients of funds must comply with all applicable requirements of Federal law, including, without limitation, the Constitution of the United States statutory, regulatory, and public policy requirements, including without limitation, those protecting free speech, religious liberty, public welfare, the environment, and prohibiting discrimination; the conditions of performance, non-discrimination requirements, and other assurances made applicable to the award of funds in accordance with regulations of the Department of Transportation; and applicable Federal financial assistance and contracting principles promulgated by the Office of Management and Budget. In complying with these requirements, recipients must ensure that no concession agreements are denied, or other contracting decisions made on the basis of speech or other activities protected by the First Amendment. If the Bureau determines that a recipient has failed to comply with applicable Federal requirements, the Bureau may terminate the award of funds and disallow previously incurred costs, requiring the recipient to reimburse any expended award funds.

Additionally, Executive Order 13858 directs the Executive Branch Departments and agencies to maximize the use of goods, products, and materials produced in the United States through the terms and conditions of Federal financial assistance awards. If selected for an award, grant recipients must be prepared to demonstrate how they will maximize the use of domestic goods, products, and materials, as applicable.

Administration Priorities

It is the policy of DOT to reflect Administration priorities and incorporate criteria for selection considerations related to climate change and sustainability, racial equity including environmental justice, Title VI and other federal Civil Rights laws, and barriers to opportunity, labor, and workforce in its grant programs, to the extent possible and consistent with law. Capacity Builders selected for participation in the TCP are expected to demonstrate in their applications how they will advance all of these priorities via the planning, capacity building, and technical assistance they provide to recipients and community partners during the two-year period of performance of the cooperative agreement. More detail on application requirements is available in section D.2 of this NOFO. DOT will evaluate applicants on the extent to which they successfully describe how they will advance these criteria, as described in section E.1 of this NOFO.

Performance and Program Evaluation

Each cooperative agreement lead organization must submit quarterly progress reports to monitor progress and ensure accountability and financial transparency in the grant program. Each contractor must collect and report to the Bureau performance information on the technical assistance and advisory services being provided. The specific performance information and reporting period will be determined on an individual basis and communicated at the kickoff meeting of the grant. It is anticipated that the Bureau and the contractor will hold regular, informal meetings or calls to review project activities, schedule, and progress toward the scope of work.

Remedies for Noncompliance

Pursuant to 2 CFR 200.340, a Federal award may be terminated in whole or in part if the grantee fails to comply with the terms and conditions of the award or if DOT determines the award no longer effectuates the program goals or agency priorities.

3. Reporting

If the total value of a selected applicant's currently active grants, cooperative agreements, and procurement contracts from all Federal awarding agencies exceeds $10,000,000 for any period of time during the period of performance of this Federal award, then the applicant during that period of time must maintain the currency of information reported to the SAM that is made available in the designated integrity and performance system (currently FAPIIS) about civil, criminal, or administrative proceedings described in paragraph 2 of this award term and condition. This is a statutory requirement under section 872 of Public Law 110–417, as amended (41 U.S.C. 2313). As required by section 3010 of Public Law 111–212, all information posted in the designated integrity and performance system on or after April 15, 2011, except past performance review required for Federal procurement contracts, will be publicly available.

G. Federal Awarding Agency Contacts

If you have questions or need additional information about this NOFO, you may contact *ThrivingCommunities@dot.gov*. Prospective applicants may visit the following website for more information: *https://transportation.gov/thriving-communities*.

H. Other Supporting Information

1. Definitions

Areas of Persistent Poverty: An area of persistent poverty is a county with 20 percent or more of the population living in poverty over the 30 years preceding

the date of enactment of the Infrastructure Investment and Jobs Act (November 15, 2021) as measured by the 1990 and 2000 decennial census and the most recent Small Area Income and Poverty Estimates. Alternatively, data to support eligibility may also be from any census tract with a poverty rate of at least 20 percent as measured by the 2013–2017, five-year data series available from the American Community Survey of the Census Bureau.

Authorized Organization Representative (AOR) is the person authorized to submit applications on behalf of the organization via *Grants.gov*. The AOR is authorized by the E-Biz point of contact in the System for Award Management. The AOR is listed on the SF–424.

Capacity Building: Activities designed to improve the ability of an organization to design and implement the necessary technical, financial, business, data analysis, and management skills of grantees to access Federal funding, meet Federal requirements, undertake statewide and metropolitan long-range planning and programming activities, and implement other activities that broadly support project development and delivery. This includes developing long-term community capacity to sustain partnerships and engage non-governmental partners, leadership and workforce development, and program evaluation.

Community-based organizations: The term ''community-based organization'' means a public or private nonprofit organization of demonstrated effectiveness that—(A) is representative of a community or significant segments of a community; and (B) provides educational or related services to individuals in the community.

Disadvantaged Community: (1) Any Tribal land or any territory or possession of the United States and (2) those census tracts (a) experiencing disproportionate effects (as defined by Executive Order 12898); (b) that contain areas of persistent poverty as defined in 49 U.S.C. 6702(a)(1); (c) that are historically disadvantaged as defined by DOT's mapping tool for Historically Disadvantaged Communities; or (d) other federally designated community development zones.

Equitable development: Equitable development is a development approach for meeting the needs of all communities, including underserved communities through policies and programs that reduce disparities while fostering livable places that are healthy and vibrant for all.

Grants.gov: The website serving as the Federal government's central portal for searching and applying for Federal financial assistance throughout the Federal government. Registration on *Grants.gov* is required for submission of applications to prospective agencies unless otherwise specified in this NOFO.

Historically Disadvantaged Community: Any Tribal land or any territory or possession of the United States, or certain census tracts in the top 50% (75% for resilience) in at least four of the following categories—transportation access, health, environmental, economic, resilience, and equity disadvantage. For more information see *https://www.transportation.gov/grants/dot-navigator/federal-tools-determine-disadvantaged-community-status*.

Location-efficient housing: Housing that benefits from being located in communities near work, schools, services, and amenities and has accessibility to public transportation networks.

Meaningful Public Involvement: A process that proactively seeks full representation from the community, considers public comments and feedback, and incorporates that feedback into a project, program, or plan when possible. The impact of community contributions encourages early and continuous public involvement and brings diverse viewpoints and values into the decision-making process. This process enables the community and agencies to make better-informed decisions through collaborative efforts.

Place-making: A multi-faceted and collaborative approach to the planning, design, and management of the public realm to re-activate or co-create active, accessible and inviting public spaces that promote the well-being of people.

Planning: Efforts that support inclusive public participation and community engagement in developing and implementing a range of activities to identify, assess, and evaluate community needs, including but not limited to environmental reviews, data and mapping visualization, market and mobility studies, health and safety impacts, and climate vulnerability assessments. Planning assistance may involve developing or designing for a program or project that aligns with the goals of the DOT Strategic Plan.

Rural: For the purposes of this NOFO, rural jurisdictions are those outside of Urbanized Areas with populations below 50,000. See U.S. Census Bureau resources on Rural America and Maps of Urbanized Areas. A list of Urban Areas for the 2010 Census is available in the **Federal Register**.

Statewide Transportation Improvement Program (STIP): means a statewide prioritized listing/program of transportation projects covering a period of 4 years that is consistent with the long-range statewide transportation plan, metropolitan transportation plan, and TIPs, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

Technical Assistance: Programs, processes, and resources that provide targeted support, knowledge or expertise to a community, region, organization, or other beneficiary to help them access and utilize Federal funding to develop, analyze, design, and deliver transportation plans and projects.

Transportation Improvement Program (TIP): means a prioritized listing/program of transportation projects covering a period of 4 years that is developed and formally adopted by an MPO as part of the metropolitan transportation planning process, consistent with the metropolitan transportation plan, and required for projects to be eligible for funding under title 23 U.S.C. and title 49 U.S.C. chapter 53.

Issued in Washington, DC, on October 6, 2022.

Christopher Coes,

Assistant Secretary for Transportation Policy, Department of Transportation.

Appendix A. Full Application Checklist

Before you submit your application to DOT, please ensure that the following elements are included in your submission.

☐	Requirement	Location in NOFO
☐	Executive Summary *(should be 500 words or less)*	Section D.2.a.
☐	Technical Assistance and Capacity Building Approach *(should not be more than 10-single sided, 8.5 x 11-inch pages, with a minimum 12-point font and 1-inch margins).*	Section D.2.b.
☐	Applicant Expertise, Staffing, and Project Management Plan *(should not be more than 7 single-sided, 8.5 x 11-inch pages, with a minimum 12-point font and 1-inch margins. Resumes do not count against the page limit).*	Section D.2.c.

☐	Requirement	Location in NOFO
☐	Program Evaluation and Assessment Plan *(should not be more than 3 single-sided, 8.5 x 11-inch pages, with a minimum 12-point font and 1-inch margins).*	Section D.2.d.
☐	Budget Narrative and Cost Estimate *(Excel, Microsoft Word, or PDF document. The Budget and Cost Estimate section should not exceed 2 single-sided, 8.5 x 11-inch pages, with a minimum 12-point font and 1-inch margins. Organization or company profiles do not count against the page limit and can be compiled and uploaded together as one PDF file and may be shown as an appendix).*	Section D.2.e.
☐	Schedule of Milestones and Deliverables *(should not be more than 2 single-sided, 8.5 x 11-inch pages, with a minimum 12-point font and 1-inch margins).*	Section D.2.f.
☐	All required forms *(SF–424, SF–424A, SF–424B, CD–511, Organizational Documentation, ICR Documentation; submitted as separate PDF attachments to application).*	Section D.2.g.

[FR Doc. 2022–22682 Filed 10–18–22; 8:45 am]
BILLING CODE 4910–9P–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Tribal and Indian Affairs, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under the Federal Advisory Committee Act, 5 U.S.C. app. 2., that the Advisory Committee on Tribal and Indian Affairs will meet at the VA Central Office, 810 Vermont Avenue NW, Sonny Montgomery Room 230, Washington, DC on November 8, 9, and 10, 2022. The meeting sessions will begin, and end as follows:

Dates:	Times:
November 8, 2022	1:00 p.m.–4:00 p.m.—Eastern Standard Time (EST).
November 9, 2022	11:00 a.m.–4:00 p.m. EST.
November 10, 2022 ..	10:00 a.m.–12:00 p.m. EST.

The Advisory Committee on Tribal and Indian Affairs meetings will be open to the public (virtually) during the meeting times listed.

The purpose of the Committee is to advise the Secretary on all matters relating to Indian tribes, tribal organizations, Native Hawaiian organizations, and Native American Veterans. This includes advising the Secretary on the administration of healthcare services and benefits to American Indians/Alaska Native and Native Hawaiian Veterans; thereby assessing those needs and whether VA is meeting them. The Advisory Committee on Tribal and Indian Affairs is a newly formed FACA Committee.

On November 8, 2022, from 1:00 p.m. to 4:00 p.m. EST, the agenda will include opening remarks from the Committee Chair, Executive Sponsor, and other VA officials. There will be updates and proposed recommendations from the health subcommittee.

On November 9, 2022, from 11:00 a.m. to 4:00 p.m. EST, the agenda will include updates from the benefits and administrative subcommittees for proposed recommendations from each of the subcommittees. From 2:45 p.m. to 3:30 p.m. there will be Public Comment from those public members who have provided a written summary.

On November 10, 2022, from 10:00 a.m. to 12 p.m. EST, the Committee will receive updates from the VA Office of Tribal Health. The committee will hold open discussion on topics relevant to the Committee and address follow-up and action items including dates for next meeting.

The meetings are open to the public (virtually) and will be recorded. Members of the public can attend the meeting by joining the Zoom meeting at the link below. The link will be active from 12:00 p.m.–4:00 p.m. on Tuesday, 11:00 a.m.—4:00 p.m. on Wednesday, and 10:00 a.m.–12:00 p.m. on Thursday, November 8–10, 2022.

Meeting Link: https://www.zoomgov.com/meeting/register/vJItcOmvpj0iE4NNl8171rq4-5GHvmMQHyk.

Individuals who speak are invited to submit a 1–2-page summary of their comments no later than October 31, 2022, for inclusion in the official meeting record. Members of the public may also submit written statements for the Committee's review to Mr. David Clay Ward, at *david.ward@va.gov.* Any member of the public seeking additional information should contact Mr. David Clay Ward at 202–461–7445.

Dated: October 14, 2022.

Jelessa M. Burney,

Federal Advisory Committee Management Officer.

[FR Doc. 2022–22699 Filed 10–18–22; 8:45 am]
BILLING CODE P

FEDERAL REGISTER

Vol. 87 Wednesday,
No. 201 October 19, 2022

Part II

Department of Energy

10 CFR Parts 429 and 431
Energy Conservation Program: Test Procedure for Electric Motors; Final Rule

DEPARTMENT OF ENERGY

10 CFR Parts 429 and 431

[EERE–2020–BT–TP–0011]

RIN 1904–AE62

Energy Conservation Program: Test Procedure for Electric Motors

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Final rule.

SUMMARY: This final rule amends the existing scope of the U.S. Department of Energy (''DOE'') test procedures for electric motors consistent with related updates to the relevant industry testing standard (*i.e.,* for air-over electric motors, electric motors greater than 500 horsepower, electric motors considered small, inverter-only electric motors, and synchronous electric motors); adds test procedures, an appropriate metric, and supporting definitions for additional electric motors covered under the amended scope; and updates references to industry standards to reference current versions. Furthermore, DOE is adopting certain industry provisions related to the prescribed test conditions to further ensure the comparability of test results. DOE is also amending provisions pertaining to certification testing and the determination of represented values for electric motors other than dedicated-purpose pool pump motors, and re-locating such provisions consistent with the location of the certification requirements for other covered products and equipment. Finally, DOE is adding provisions pertaining to certification testing and the determination of represented values for dedicated-purpose pool pump motors.

DATES: The effective date of this rule is November 18, 2022. The final rule changes will be mandatory for product testing starting April 17, 2023. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register on November 18, 2022. The incorporation by reference of certain other publications listed in the rule was approved by the Director as of June 4, 2012 and February 3, 2021.

ADDRESSES: The docket, which includes **Federal Register** notices, webinar attendee lists and transcripts, comments, and other supporting documents/materials, is available for review at *www.regulations.gov.* All documents in the docket are listed in the *www.regulations.gov* index. However, some documents listed in the index, such as those containing information that is exempt from public disclosure, may not be publicly available.

A link to the docket web page can be found at *www.regulations.gov/docket?D=EERE-2020-BT-TP-0011.* The docket web page contains instructions on how to access all documents, including public comments, in the docket.

For further information on how to review the docket contact the Appliance and Equipment Standards Program staff at (202) 287–1445 or by email: *ApplianceStandardsQuestions@ee.doe.gov.*

FOR FURTHER INFORMATION CONTACT: Mr. Jeremy Dommu, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121. Telephone: (202) 586–9870. Email *ApplianceStandardsQuestions@ee.doe.gov.*

Mr. Michael Kido, U.S. Department of Energy, Office of the General Counsel, GC–33, 1000 Independence Avenue SW, Washington, DC, 20585–0121. Telephone: (202) 586–8145. Email: *Michael.Kido@hq.doe.gov.*

SUPPLEMENTARY INFORMATION: DOE maintains standards previously approved for incorporation by reference and incorporates by reference the following industry standards into part 431:

CSA C390:10 (reaffirmed 2019), ''Test methods, marking requirements, and energy efficiency levels for three-phase induction motors,'' including Updates No. 1 through 3, Revised January 2020 (''CSA C390–10'').

CSA C747–09 (reaffirmed 2019), ''Energy Efficiency Test Methods for Small Motors,'' including Update No. 1 (August 2016), dated October 2009 (''CSA C747–09'').

Copies of CSA C390–10 and CSA C747–09 can be obtained from Canadian Standards Association (''CSA''), Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or by visiting *www.shopcsa.ca/onlinestore/welcome.asp.*

IEC 60034–12:2016, Edition 3.0 2016–11, ''Rotating Electrical Machines, Part 12: Starting Performance of Single-Speed Three-Phase Cage Induction Motors,'' Published November 23, 2016 (''IEC 60034–12:2016'').

IEC 60072–1, ''Dimensions and Output Series for Rotating Electrical Machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080,'' Sixth Edition, 1991–02, clauses 2, 3, 4.1, 6.1, 7, and 10, and Tables 1, 2 and 4. (''IEC 60072–1'')

IEC 60079–7:2015, Edition 5.0 2015–06, ''Explosive atmospheres—Part 7: Equipment protection by increased safety 'e,' '' Published June 26, 2015 (''IEC 60079–7:2015'').

IEC 61800–9–2:2017, ''Adjustable speed electrical power drive systems—Part 9–2: Ecodesign for power drive systems, motor starters, power electronics and their driven applications—Energy efficiency indicators for power drive systems and motor starters,'' Edition 1.0, March 2017 (''IEC 61800–9–2:2017'').

Copies of IEC 60034–12:2016, IEC 60079–7:2015 and IEC 61800–9–2:2017 may be purchased from International Electrotechnical Commission (''IEC''), 3 rue de Varembé, 1st floor, P.O. Box 131, CH–1211 Geneva 20–Switzerland, +41 22 919 02 11, or by visiting *https://webstore.iec.ch/home.*

IEEE 114–2010, ''Test Procedure for Single-Phase Induction Motors,'' December 23, 2010 (''IEEE 114–2010'').

Copies of IEEE 114–2010 can be obtained from: Institute of Electrical and Electronics Engineers (''IEEE''), 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, (732) 981–0060, or by visiting *www.ieee.org.*

ANSI/NEMA MG 1–2016 (Revision 1, 2018), ''Motors and Generators,'' ANSI approved June 15, 2021 (''NEMA MG 1–2016'').

Copies of NEMA MG 1–2016 may be purchased from National Electrical Manufacturers Association (''NEMA''), 1300 North 17th Street, Suite 900, Arlington, Virginia 22209, +1 703 841 3200, or by visiting */www.nema.org.*

National Fire Protection Association (''NFPA'') 20, 2022 Edition, ''Standard for the Installation of Stationary Pumps for Fire Protection,'' Approved by ANSI on April 8, 2021 (''NFPA 20–2022'').

Copies of NFPA 20–2022 may be purchased from National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, +1 800 344 3555, or by visiting *www.nfpa.org.*

See section IV.N of this document for a further discussion of these standards.

Table of Contents

I. Authority and Background

Electric motors are included in the list of ''covered equipment'' for which the U.S. Department of Energy (''DOE'') is authorized to establish and amend energy conservation standards and test procedures. (42 U.S.C. 6311(1)(A)) DOE's energy conservation standards and test procedures for electric motors are currently prescribed at 10 CFR 431.25 and appendix B to subpart B of 10 CFR part 431 (''appendix B''), respectively. The following sections discuss DOE's authority to establish test procedures for electric motors and relevant background information regarding DOE's consideration of test procedures for this equipment.

A. Authority

The Energy Policy and Conservation Act, as amended (''EPCA''),[1] authorizes DOE to regulate the energy efficiency of a number of consumer products and certain industrial equipment. (42 U.S.C. 6291–6317) Title III, Part C[2] of EPCA, added by the National Energy Conservation Policy Act, Pub. L. 95–619, Title IV, section 441(a), established the Energy Conservation Program for Certain Industrial Equipment, which sets forth a variety of provisions designed to improve energy efficiency. These equipment include electric motors, the subject of this document. (42 U.S.C. 6311(1)(A))

The energy conservation program under EPCA consists essentially of four parts: (1) testing, (2) labeling, (3) Federal energy conservation standards, and (4) certification and enforcement procedures. Relevant provisions of EPCA include definitions (42 U.S.C. 6311), test procedures (42 U.S.C. 6314), labeling provisions (42 U.S.C. 6315), energy conservation standards (42 U.S.C. 6313), and the authority to require information and reports from manufacturers (42 U.S.C. 6316; 42 U.S.C. 6296).

The Federal testing requirements consist of test procedures that manufacturers of covered equipment must use as the basis for: (1) certifying to DOE that their equipment complies with the applicable energy conservation standards adopted pursuant to EPCA (42 U.S.C. 6316(a); 42 U.S.C. 6295(s)), and (2) making other representations about the efficiency of that equipment (42 U.S.C. 6314(d)). Similarly, DOE must use these test procedures to determine whether the equipment complies with relevant standards promulgated under EPCA. (42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

Federal energy efficiency requirements for covered equipment established under EPCA generally supersede State laws and regulations concerning energy conservation testing, labeling, and standards. (42 U.S.C. 6316(a) and 42 U.S.C. 6316(b); 42 U.S.C. 6297) DOE may, however, grant waivers of Federal preemption for particular State laws or regulations, in accordance with the procedures and other provisions of EPCA. (42 U.S.C. 6316(b)(2)(D))

Under 42 U.S.C. 6314, EPCA sets forth the criteria and procedures DOE must follow when prescribing or amending test procedures for covered equipment. EPCA requires that any test procedures prescribed or amended under this section must be reasonably designed to produce test results which reflect energy efficiency, energy use or estimated annual operating cost of a given type of covered equipment during a representative average use cycle (as determined by the Secretary) and requires that test procedures not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(2))

EPCA, pursuant to amendments made by the Energy Policy Act of 1992, Pub. L. 102–486 (Oct. 24, 1992) (''EPACT 1992''), specifies that the test procedures for electric motors subject to the standards prescribed in 42 U.S.C. 6313 shall be those specified in National Electrical Manufacturers Association (''NEMA'') Standards Publication MG1–1987 and the Institute of Electrical and Electronics Engineers (''IEEE'') Standard 112 Test Method B, as in effect on October 24, 1992. (42 U.S.C. 6314(a)(5)(A)). If these industry test procedures are amended, DOE must

[1] All references to EPCA in this document refer to the statute as amended through the Energy Act of 2020, Pub. L. 116–260 (Dec. 27, 2020), which reflect the last statutory amendments that impact Parts A and A–1 of EPCA.

[2] For editorial reasons, upon codification in the U.S. Code, Part C was redesignated Part A–1.

amend its own test procedures to conform to such amended test procedure requirements, unless DOE determines by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the statutory requirements related to the test procedure representativeness and burden. (42 U.S.C. 6314(a)(5)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including electric motors, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1))

In addition, if the Secretary determines that a test procedure amendment is warranted, the Secretary must publish proposed test procedures in the **Federal Register**, and afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures. (42 U.S.C. 6314(b)). If DOE determines that test procedure revisions are not appropriate, DOE must publish its determination not to amend the test procedures.

DOE is publishing this final rule in satisfaction of its statutory obligations specified in EPCA.

B. Background

On December 17, 2021, DOE published a notice of proposed rulemaking (''NOPR'') for the electric motors test procedure. 86 FR 71710 (''December 2021 NOPR''). In the December 2021 NOPR, DOE proposed to revise the current scope of the test procedures to add additional electric motors and implement related updates needed for supporting definitions and metric requirements as a result of this expanded scope; incorporate by reference the most recent versions of the referenced industry standards; incorporate by reference additional industry standards used to test additional electric motors that DOE had proposed to include within its scope; clarify the current test procedure's scope and test instructions by adding definitions for specific terms; revise the current vertical motor testing instructions to reduce manufacturer test burden; clarify that the current test procedure permits removal of contact seals for immersible electric motors only; revise the provisions pertaining to certification testing and determination of represented values; and add provisions pertaining to certification testing and determination of represented values for dedicated purpose pool pump (''DPPP'') motors. *Id* The NOPR provided an opportunity for submitting written comments, data, and information on the proposal by February 15, 2022.

On February 4, 2022, DOE published a notice granting an extension of the public comment period to allow public comments to be submitted until February 28, 2022. 87 FR 6436.

DOE received comments in response to the December 2021 NOPR from the interested parties listed in Table II.1.

TABLE II.1—LIST OF COMMENTERS WITH WRITTEN SUBMISSIONS IN RESPONSE TO THE DECEMBER 2021 NOPR

Commenter(s)	Reference in this final rule	Docket No.	Commenter type
ABB Motors and Mechanical Inc	ABB	18	Manufacturer.
Air Movement and Control Association International	AMCA	21	Industry Motor Trade Association.
American Gear Manufacturers Association	AGMA	14	Industry Gear Manufacturer Trade Association.
Appliance Standards Awareness Project, American Council for an Energy-Efficient Economy, Natural Resources Defense Council, New York State Energy Research and Development Authority.	Joint Advocates	27	Efficiency Organizations.
Association of Home Appliance Manufacturers; Air-Conditioning, Heating, and Refrigeration Institute.	AHAM and AHRI	36	Industry OEM Trade Association.
The Australian Industry Group[i]	AI Group	25	Industry Motor Trade Association.
ebm-papst Inc	ebm-papst	23	Manufacturer.
European Committee of Manufacturers of Electrical Machines and Power Electronics.	CEMEP	19	Industry Electrical Machines and Power Electronics Trade Association.
Franklin Electric Co, Inc	Franklin Electric	22	Manufacturer.
Grundfos Americas Corporation	Grundfos	29	OEM/Pump manufacturer.
Hydraulics Institute	HI	30	Industry Pump Trade Association.
International Electrotechnical Commission	IEC	20	Industry Standards Organization.
Johnson Controls	JCI	34	Manufacturer.
Lennox International	Lennox	24	Manufacturer.
National Electrical Manufacturers Association	NEMA	26	Industry Trade Association.
North Carolina Advanced Energy Corporation	Advanced Energy	33	Independent Testing Laboratory.
Northwest Energy Efficiency Alliance (NEEA), Northwest Power and Conservation Council (NWPCC).	NEEA/NWPCC	37	Non-profit organization/interstate compact agency.
Pacific Gas and Electric Company (PG&E), San Diego Gas and Electric (SDG&E), and Southern California Edison (SCE).	CA IOUs	32.1 and 32.2	Utilities.
Regal Rexnord	Regal	28	Manufacturer.
Sumitomo Machinery Corporation of America	Sumitomo	17	Manufacturer.
Trane Technologies	Trane	31	OEM.
Water Systems Council	WSC	35	Industry Trade Association.

[i] The AI group submitted multiple comments to the docket. One comment was an email cover letter, while the other two were preliminary and final submission of their comments. In their cover letter, the AI group attested that there were no changes between the final and preliminary submissions. Therefore, in this final rule, DOE's reference to AI group's comment submission is the final submission.

To the extent that DOE received comments relating to the energy conservation standards for electric motors subject to DOE's proposal to expand the test procedure's scope, those comments fall outside of the focus of this rulemaking, which addresses only the test procedure itself. Comments related to any potential standards that DOE may consider for electric motors will be discussed in the separate energy conservation standards rulemaking docket (EERE–2020–BT–STD–0007).[3]

Regarding the general rulemaking timeline, ABB requested that DOE issue a Supplemental NOPR and schedule a meeting to discuss the test procedure before a final rule is issued. (ABB, No. 18 at p. 3) NEMA requested a Supplemental NOPR be added to this rulemaking asserting that significant changes to the scope and test methods are needed to ensure the test procedure is reasonable, accurate, and repeatable. (NEMA, No. 26 at p. 6) CA IOUs suggested that DOE consider forming an ASRAC Working Group to engage on cross-segment electric motor topics. (CA IOUs, No. 32.1 at p. 50)

As discussed in this final rule, DOE is amending the scope of the test procedure and adopting corresponding test procedure provisions consistent with the most current applicable industry test standard. The test procedure adopted in this final rule is generally consistent with the test procedure proposed in the December 2021 NOPR. Therefore, DOE has determined that additional actions such as an SNOPR or ASRAC Working Group are not appropriate and is proceeding with this final rule. Additionally, as stated, EPCA requires DOE to evaluate the test procedures at least once every seven years to determine whether amendments to the test procedure are needed to more fully meet the statutory requirement that the test procedure be representative of an average use cycle without being unduly burdensome. (42 U.S.C. 6314(a)(1)) Accordingly, DOE is proceeding with a final rule as discussed in the following sections.

II. Synopsis of the Final Rule

In this final rule, DOE amends the test procedure as follows:

(1) Update the existing definitions for IEC Design N and H motors to reflect industry standard updates; amend the existing scope to reflect updates in industry nomenclature, specifically for new industry motor design designations IEC Design NE, HE, NEY and HEY, and include corresponding definitions;

(2) Amend the definition of ''basic model'' to rely on the term ''equipment class'' and add a definition for ''equipment class'' to make the electric motor provisions consistent with the provisions for other DOE-regulated products and equipment;

(3) Add test procedures, a full-load efficiency metric, and supporting definitions for air-over electric motors; electric motors greater than 500 horsepower (''hp''); electric motors considered small (*i.e.,* SNEMs); inverter-only electric motors, and synchronous electric motors;

(4) Incorporate by reference the most recent versions of NEMA MG 1 (*i.e.,* NEMA MG 1–2016 (Revision 1, 2018) ANSI-approved 2021) and CSA C390–10 (*i.e.,* reaffirmed 2019), as well as other referenced industry standards *i.e.,* IEC 60034–12:2016, Edition 3.0 2016–11, ''Rotating Electrical Machines, Part 12: Starting Performance of Single-Speed Three-Phase Cage Induction Motors,''; IEC 60079–7:2015, Edition 5.0 2015–06, ''Explosive atmospheres—Part 7: Equipment protection by increased safety 'e,' '', which is referenced within IEC 60034–12:2016 and is necessary for the test procedure; and NFPA 20 ''Standard for the Installation of Stationary Pumps for Fire Protection'' 2022 Edition (''NFPA 20–2022'');

(5) Incorporate by reference additional industry test standards and test instructions to support testing of the additional motors included in the amended test procedure scope: CSA C747–09 (reaffirmed 2019) (''CSA C747–09''), IEEE 114–2010, and IEC 61800–9–2:2017;

(6) Provide additional detail in the test instructions for electric motors by adding definitions for the terms ''rated frequency'' and ''rated voltage;''

(7) Update the testing instructions for vertical electric motors to reduce manufacturer test burden;

(8) Add a definition of ''independent'' as it relates to nationally recognized certification and accreditation programs;

(9) Permit manufacturers to certify an electric motor's energy efficiency using one of three options: (i) testing the electric motor at an accredited laboratory and then certifying on its own behalf or having a third-party submit the manufacturer's certification report; (ii) testing the electric motor at a testing laboratory other than an accredited laboratory and then having a nationally recognized certification program certify the efficiency of the electric motor; or (iii) using an alternative efficiency determination method (''AEDM'') and then having a third-party nationally recognized certification program certify the efficiency of the electric motor. Using these provisions would be required for certification starting on the compliance date for any new or amended standards for electric motors published after January 1, 2022;

(10) Revise the provisions pertaining to the determination of represented values applied starting on the compliance date of the next final rule adopting new or amended energy conservation standards for electric motors;

(11) Revise the AEDM provisions for electric motors and apply them to all electric motors covered in the scope of the test procedure;

(12) Revise the procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs as applied to electric motors and apply these provisions to all electric motors covered in the scope of the test procedure;

(13) Move provisions pertaining to certification testing, AEDM, and determination of represented values from 10 CFR part 431 to 10 CFR part 429; and

(14) Add provisions pertaining to certification testing and determination of represented values for DPPP motors.

The adopted amendments are summarized in Table II–1 compared to the test procedure provision prior to the amendment, as well as the reason for the adopted change.

TABLE II–1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE

Current DOE test procedure	Amended test procedure	Attribution
Applies to Design N and H motors defined at 10 CFR 431.12.	Reflects updates in industry nomenclature, specifically, new motor design designations IEC Design HE, HY, HEY, NE, NY and NEY, and includes corresponding definitions.	Update to industry testing standard IEC 60034–12.

[3] The parenthetical reference provides a reference for information located in the docket of DOE's rulemaking to develop test procedures for electric motors. (Docket No. EERE–2020–BT–TP–0011, which is maintained at *www.regulations.gov*). The references are arranged as follows: (commenter name, comment docket ID number, page of that document).

TABLE II–1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE—Continued

Current DOE test procedure	Amended test procedure	Attribution
Exempts air-over electric motors	Includes test methods, full-load efficiency metric, and supporting definitions for air-over electric motors.	Update to industry testing standard NEMA MG 1 2016 with revisions through 2021 which include a test method for air-over electric motors.
Includes electric motors with a horsepower equal to or less than 500 hp.	Includes test methods and full-load efficiency metric for electric motors with a horsepower greater than 500 and equal to or less than 750 hp.	Statute allowance to extend applicability of the test procedure to these electric motors.
Includes electric motors with a horsepower equal to or greater than 1 hp.	Includes test methods and full-load efficiency metric for electric motors considered small (*i.e.,* small non-small-electric-motor electric motors, or SNEMs).	Statute allowance to extend applicability of the test procedure to these electric motors.
Exempts inverter-only electric motors.	Includes test methods, full-load efficiency metric, and supporting definitions for inverter-only electric motors.	New industry testing standard (IEC 61800–9–2:2017).
Includes electric motors that are induction motors only.	Includes test methods, full-load efficiency metric, and supporting definitions for certain synchronous electric motors.	New developments in motor technologies and new industry testing standard (IEC 61800–9–2:2017).
Incorporates by reference NEMA MG 1–2009, CSA 390–10, IEC 60034–12 Edition 2.1 2007–09, and NFPA 20–2010.	Incorporates by reference the most recent versions of NEMA MG 1 (*i.e.,* NEMA MG 1–2016), CSA 390 (*i.e.,* CSA C390–10), as well as other referenced industry standards (*i.e.,* IEC 60034–12 Edition 3.0 2016 and NFPA 20–2022). In addition, incorporates by reference IEC 60079–7:2015, which is referenced within IEC 60034–12:2016 and is necessary for the test procedure. Incorporates by reference additional industry test standards and testing instructions to support testing of the additional motors included in scope: CSA C747–09, IEEE 114–2010, and IEC 61800–9–2:2017.	Updates to industry testing standards NEMA MG 1, CSA 390, IEC 60034–12 and NFPA 20–209. Incorporates industry standards for additional motors included in scope.
Specifies testing at rated frequency, and rated voltage but does not define these terms.	Provides additional detail in the test instructions for electric motors by adding definitions for the terms ''rated frequency,'' and ''rated voltage''.	Harmonizes with definitions from NEMA MG 1 and improves the repeatability of the test procedure.
Specifies one method of connecting the dynamometer to vertical electric motors.	Updates the vertical electric motor testing requirements to allow alternative methods for connecting to the dynamometer.	Reduce manufacturer testing burden.
Includes a description of ''independent'' at 10 CFR 431.19(b)(2), 431.19(c)(2), 431.20(b)(2) and 431.20(c)(2).	Adds a definition for ''independent'' as it relates to nationally recognized certification and accreditation programs and replace the descriptions of ''independent'' at 10 CFR 431.19(b)(2), 431.19(c)(2), 431.20(b)(2) and 431.20(c)(2) by this definition.	Required by 42 U.S.C. 6316(c).
Allows a manufacturer to both test in its own accredited laboratories and directly submit the certification of compliance to DOE for its own electric motors.	Continues to allow a manufacturer to both test in its own accredited laboratories and directly submit the certification of compliance to DOE for its own electric motors. Also now permits certification of compliance using one of three options: (1) a manufacturer can have the electric motor tested using an accredited laboratory and then certify on its own behalf or have a third-party submit the manufacturer's certification report; (2) a manufacturer can test the electric motor at a testing laboratory other than an accredited laboratory and then have a nationally recognized certification program certify the efficiency of the electric motor; or (3) a manufacturer can use an alternative efficiency determination method and then have a third-party nationally recognized certification program certify the efficiency of the electric motor. DOE adopts to require these provisions on or after the compliance date for any new or amended standards for electric motors published after January 1, 2021.	Required by 42 U.S.C. 6316(c).
Includes provisions pertaining to the determination of the represented value at 10 CFR 431.17.	Revises the provisions pertaining to the determination of the represented values (*i.e.,* nominal full-load efficiency and average full-load efficiency) and requires use of these provisions for all electric motors subject to energy conservation standards at 10 CFR 431, subpart B, on or after the compliance date of the final rule adopting new or amended energy conservation standards for electric motors. Moves the provisions to 10 CFR 429.64. Applies these provisions to all electric motors included in the scope of the test procedure.	Align the determination of the average and nominal full-load efficiency with the definitions at 10 CFR 431.12. Harmonizes sampling requirements with other covered equipment and covered products at 10 CFR 429.70.
Includes AEDM provisions at 10 CFR 431.17.	Revises the AEDM provisions and applies these provisions to all electric motors included in the scope of the test procedure.	Harmonizes the AEDM requirements with other covered equipment and covered products at 10 CFR 429.70.
Includes provisions pertaining to nationally recognized accreditation bodies and certification programs at 10 CFR 431.19, 431.20, and 431.21.	Revises the procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs as applied to electric motors. Applies these provisions to all electric motors included in the scope of the test procedure.	Transfer provisions related to certification at 10 CFR part 429.

TABLE II–1—SUMMARY OF CHANGES IN THE AMENDED TEST PROCEDURE—Continued

Current DOE test procedure	Amended test procedure	Attribution
Includes a definition of basic model that relies on the term ''rating''.	Amends the definition of ''basic model'' to rely on the term ''equipment class.'' Adds a definition for ''equipment class''.	Align the definition of basic model with other DOE-regulated products and equipment and eliminate the ambiguity of the term ''rating.''
Does not include any certification, sampling plans, or AEDM provisions for DPPP Motors.	Adds certification, sampling plans, and AEDM provisions for DPPP Motors.	Aligns DPPP motor provisions with the provisions for electric motors subject to the requirements in subpart B of 10 CFR part 431.

DOE has determined that the amendments described in section III of this final rule would not alter the measured efficiency of those electric motors that are currently within the scope of the test procedure and that are currently required to comply with energy conservation standards.

The effective date for the amended test procedures adopted in this final rule is 30 days after publication of this document in the **Federal Register**. Representations of energy use or energy efficiency must be based on testing in accordance with the amended test procedures beginning 180 days after the publication of this final rule. DOE notes that manufacturers of electric motors that have been added to the scope of the test procedure per this final rule are not required to use the test procedure for Federal certification or labeling purposes until such time as energy conservation standards are established for such electric motors. But, if manufacturers, distributors, retailers, and private labelers choose to make any representations respecting the energy consumption or cost of energy consumed by such motors, then such voluntary representations must be made in accordance with the test procedure and sampling requirements, and such representation must also fairly disclose the results of such testing. In addition, manufacturers of electric motors subject to energy conservation standards at 10 CFR part 431, subpart B, will be required to follow the newly adopted certification provisions at 10 CFR 429.64(d) through (f) beginning on the compliance date of the final rule adopting new or amended energy conservation standards for electric motors.

Similarly, DOE notes that manufacturers of dedicated-purpose pool pump motors falling within the scope of the test procedure at 10 CFR 431.484 are not required to use the test procedure for Federal certification or labeling purposes until such time as energy conservation standards are established for those motors. But, if manufacturers, distributors, retailers, and private labelers choose to make any representations respecting the energy consumption or cost of energy consumed by such motors, then such voluntary representations must be made in accordance with the test procedure and sampling requirements, and such representation must also fairly disclose the results of such testing. In addition, manufacturers of dedicated-purpose pool pump motors subject to any energy conservation standards at 10 CFR part 431, subpart Z, will be required to follow the newly adopted certification provisions at 10 CFR 429.65 starting on the compliance date of the final rule adopting new energy conservation standards for these motors.

III. Discussion

A. Scope of Applicability

The term ''electric motor'' is defined as ''a machine that converts electrical power into rotational mechanical power.'' 10 CFR 431.12. Manufacturers are required to test those electric motors subject to energy conservation standards according to the test procedure in appendix B.[4] (*See generally* 42 U.S.C. 6314(a)(5)(A); see also the introductory paragraph to 10 CFR part 431, subpart B, appendix B) Currently, energy conservation standards apply to certain categories of electric motors provided that they meet the criteria specified at 10 CFR 431.25(g). These categories of electric motors are NEMA Design A motors,[5] NEMA Design B motors,[6] NEMA Design C motors,[7] IEC Design N motors,[8] IEC Design H motors,[9] and fire

[4] The amendments do not address *small electric motors,* which are covered separately under 10 CFR part 431, subpart X. A *small electric motor* is ''a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987, including IEC metric equivalent motors.'' 10 CFR 431.442.

[5] ''NEMA Design A'' motor means a squirrel-cage motor that: (1) Is designed to withstand full-voltage starting and developing locked-rotor torque as shown in NEMA MG 1–2009, Paragraph 12.38.1 (incorporated by reference, see § 431.15); (2) Has pull-up torque not less than the values shown in NEMA MG 1–2009, Paragraph 12.40.1; (3) Has breakdown torque not less than the values shown in NEMA MG 1–2009, Paragraph 12.39.1; (4) Has a locked-rotor current higher than the values shown in NEMA MG 1–2009, Paragraph 12.35.1 for 60 hertz and NEMA MG 1–2009, Paragraph 12.35.2 for 50 hertz; and (5) Has a slip at rated load of less than 5 percent for motors with fewer than 10 poles. 10 CFR 430.12.

[6] ''NEMA Design B motor'' means a squirrel-cage motor that is: (1) Designed to withstand full-voltage starting; (2) Develops locked-rotor, breakdown, and pull-up torques adequate for general application as specified in Paragraphs 12.38, 12.39 and 12.40 of NEMA MG1–2009 (incorporated by reference, see § 431.15); (3) Draws locked-rotor current not to exceed the values shown in Paragraph 12.35.1 for 60 hertz and 12.35.2 for 50 hertz of NEMA MG1–2009; and (4) Has a slip at rated load of less than 5 percent for motors with fewer than 10 poles. *Id.*

[7] ''NEMA Design C'' motor means a squirrel-cage motor that: (1) Is Designed to withstand full-voltage starting and developing locked-rotor torque for high-torque applications up to the values shown in NEMA MG1–2009, Paragraph 12.38.2 (incorporated by reference, see § 431.15); (2) Has pull-up torque not less than the values shown in NEMA MG1–2009, Paragraph 12.40.2; (3) Has breakdown torque not less than the values shown in NEMA MG1–2009, Paragraph 12.39.2; (4) Has a locked-rotor current not to exceed the values shown in NEMA MG1–2009, Paragraphs 12.35.1 for 60 hertz and 12.35.2 for 50 hertz; and (5) Has a slip at rated load of less than 5 percent. *Id.*

[8] IEC Design N motor means an electric motor that: (1) Is an induction motor designed for use with three-phase power; (2) Contains a cage rotor; (3) Is capable of direct-on-line starting; (4) Has 2, 4, 6, or 8 poles; (5) Is rated from 0.4 kW to 1600 kW at a frequency of 60 Hz; and (6) Conforms to Sections 6.1, 6.2, and 6.3 of the IEC 60034–12 edition 2.1 (incorporated by reference, see § 431.15) requirements for torque characteristics, locked rotor apparent power, and starting. *Id.*

[9] IEC Design H motor means an electric motor that (1) Is an induction motor designed for use with three-phase power; (2) Contains a cage rotor; (3) Is capable of direct-on-line starting (4) Has 4, 6, or 8 poles; (5) Is rated from 0.4 kW to 160 kW at a frequency of 60 Hz; and (6) Conforms to Sections 8.1, 8.2, and 8.3 of the IEC 60034–12 edition 2.1 (incorporated by reference, see § 431.15) requirements for starting torque, locked rotor apparent power, and starting. *Id.*

pump electric motors.[10] See 10 CFR 431.25(h)–(j). The current energy conservation standards apply to electric motors within the identified categories only if they:

(1) Are single-speed, induction motors;

(2) Are rated for continuous duty (MG 1) operation or for duty type S1 (IEC);

(3) Contain a squirrel-cage (MG 1) or cage (IEC) rotor;

(4) Operate on polyphase alternating current 60-hertz (Hz) sinusoidal line power;

(5) Are rated 600 volts or less;

(6) Have a 2-, 4-, 6-, or 8-pole configuration;

(7) Are built in a three-digit or four-digit NEMA frame size (or IEC metric equivalent), including those designs between two consecutive NEMA frame sizes (or IEC metric equivalent), or an enclosed 56 NEMA frame size (or IEC metric equivalent);

(8) Produce at least one horsepower (hp) (0.746 kilowatt (kW)) but not greater than 500 hp (373 kW), and

(9) Meet all of the performance requirements of one of the following motor types: A NEMA Design A, B, or C motor or an IEC Design N or H motor.

10 CFR 431.25(g).

In the test procedure final rule published on December 13, 2013 (''December 2013 Final Rule''), DOE identified certain categories of motors that meet the definition of ''electric motor'' but for which DOE determined the referenced industry test procedures do not provide a standardized test method for determining the energy efficiency. 78 FR 75962, 75975, 75987–75989. Motors that fall into this grouping are not currently regulated by DOE and consist of the following categories:

- Air-over electric motors;
- Component sets of an electric motor;
- Liquid-cooled electric motors;
- Submersible electric motors; and
- Inverter-only electric motors.

10 CFR 431.25(l).

In this final rule, DOE is clarifying that certain equipment that are designated with IEC Design letters NE, HE, NY, NEY, HY, and HEY are within the scope of the current electric motors test procedure. Furthermore, DOE is establishing test procedure requirements for certain categories of electric motors not currently subject to energy conservation standards. These categories are (1) air-over electric motors; (2) certain electric motors greater than 500 hp; (3) electric motors considered small (*i.e.,* small not-small-electric-motor electric motors or ''SNEMs''); and (4) inverter-only electric motors. Finally, DOE is also including within the scope of the test procedure synchronous electric motors. DOE is covering these motors under its ''electric motors'' authority. (42 U.S.C. 6311(1)(A))

DOE notes that manufacturers of electric motors for which DOE is including within the scope of the test procedure, but that are not currently subject to an energy conservation standard, are not required to use the test procedure for Federal certification or labeling purposes until such time as amended or new energy conservation standards are established for such electric motors. However, any voluntary representations by manufacturers, distributors, retailers, or private labelers about the energy consumption or cost of energy for these motors must be based on the use of the test procedure beginning 180 days following publication of this final rule, and such representation must also fairly disclose the results of such testing. DOE's rule does not require manufacturers who do not currently make voluntary representations to then begin making public representations of efficiency. (42 U.S.C. 6314(d)(1)) Manufacturers not currently making representations of efficiency would be required to test such motors in accordance with the test procedure only when compliance is required with a labeling or energy conservation standard requirement if such a requirement should be established. (42 U.S.C. 6315(b); 42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

In the December 2021 NOPR, DOE proposed an amended scope for the electric motors test procedure that is generally consistent with the amendments established in this final rule and also proposed to include submersible electric motors. 86 FR 71710, 71716. In general, NEEA/NWPCC supported DOE's proposed changes to expand the scope of the electric motors test procedure to include additional motor sizes and topologies. They stated that the current test procedure is limited to one category of motor, excluding many commonly used general purpose motors, and most advanced motor technologies. NEEA/NWPCC recommended the electric motors test procedure apply to as broad a range of motor technologies, designs, and categories as possible to enable consumers to make fair comparisons and informed decisions. NEEA/NWPCC commented that these motors are installed in the same applications as regulated motors, yet are not subject to the same test procedure and standard. (NEEA/NWPCC, No. 37 at p. 2) DOE also received a number of specific comments on each category of electric motor included in the scope of the test procedure, which are discussed in the following sections.

1. Motor Used as a Component of a Covered Product or Equipment

In the December 2021 NOPR, DOE proposed not to exclude motors used as a component of a covered product or covered equipment from the test procedure scope. This includes any proposed expanded scope electric motors. Specifically, DOE noted that the current electric motors test procedure applies to definite purpose and special purpose electric motors, and DOE is not aware of any technical issues with testing such motors using the current DOE test procedure. 86 FR 71710, 71728. In response, DOE received a number of comments, many of whom objected to DOE's approach.

AHAM and AHRI filed joint comments opposing DOE's proposed expansion of the test procedure's scope of coverage to include special-and definite-purpose electric motors, specifically air-over electric motors, inverter-only electric motors, synchronous motors, and SNEMs. They explained that Original Equipment Manufacturer (''OEM'') products have been built around special/definite purpose motors or that these motors are specially built to be installed inside OEM products. AHAM and AHRI stated that those finished products are already regulated by DOE and many manufacturers turn to more efficient designs that include components such as more efficient motors to meet more stringent energy conservation standards. (AHAM and AHRI, No. 36 at pp. 1–3) AHAM and AHRI added that special purpose and definite purpose motors are distinct and different from general purpose motors and noted that despite the reworking of the ''electric motor'' definition in the Energy Independence and Security Act of 2007, special purpose and definite purpose motors are still defined separately. *Id.*

AHAM and AHRI commented that efficient electric motors destined for finished products are already a major part of the energy equation when OEMs consider which design options to apply to meet new standards and added that DOE's proposed test procedure, which would rate motor efficiency at full-load, fails to adequately capture representative load conditions for finished products and equipment that

[10] ''Fire pump electric motor'' means an electric motor, including any IEC-equivalent motor, that meets the requirements of Section 9.5 of NFPA 20. *Id.*

are largely optimized for, and regulated on, part-load performance. AHAM and AHRI commented that regulating special and definite purpose motors, particularly with the proposed third-party nationally recognized certification program requirements, will add cost, reduce market choices, and do little, if anything, to realize further energy savings over time. AHRI and AHAM asserted that in the near-term, the proposed rules will counter intuitively create a recipe for setbacks in energy savings. They stated that the timing of these proposed changes will also exacerbate supply chain disruption, further delaying products reaching U.S. consumers and inflating the cost of finished goods. *Id.*

AHAM and AHRI provided information on the market size represented by their respective member companies, stating that it represents a significant segment of the economy. AHRI and AHAM commented that regulation of a single component product can have ramifications to other components throughout the product. AHAM and AHRI stated that durable products work as a system to achieve their purpose for the consumer and as such, requested DOE carefully consider the perspective of the end-purchasers and users of the categories of small electric motors (''SEMs'') that would be governed by the proposed regulation. (AHAM and AHRI, No. 36 at pp. 1–3)

Further, AHAM and AHRI commented that small electric motors that are components of covered equipment are, and should continue to be, appropriately afforded an exemption from energy conservation standards and test method, and SNEMs should be given similar treatment. AHAM and AHRI stated that DOE's proposal to not exclude motors that are components of regulated products was contrary to DOE's previously published public opinion (regarding SEMs) and the intent of Congress as expressed in the EPCA Amendments of 1992. (AHAM and AHRI, No. 36 at pp. 3–5) AHAM and AHRI further commented that in the April 2020 Small Electric Motors Proposed Determination (*see* 85 FR 24146, 24152 (April 30, 2020)), DOE acknowledged, ''the term 'small electric motor' has a specific meaning under EPCA,'' codified in 42 U.S.C. 6311(13)(G) and 10 CFR 431.442. AHAM and AHRI commented that DOE's preliminary findings, outlined in the 2011 RFI for Increased Scope of Coverage for Electric Motors (*see* 76 FR 17577, 17578 (March 30, 2011)), noted explicitly that many of the motors contemplated for coverage by DOE's proposed test procedure require separate analysis from general purpose motors. AHAM and AHRI commented that the notable exceptions from scope outlined in the final rule published May 29, 2014, Energy Conservation Standards for Commercial and Industrial Electric Motors Final Rule (79 FR 30934 (''May 2014 Final Rule''), are fractional horsepower motors. They agreed with DOE's previous determination related to small electric motors (81 FR 41378, 41394–41395) in which the agency recognized that Congress intentionally excluded these motors from coverage by DOE regulation when such motors are used as components of products and equipment that are already subject to DOE regulation. (AHAM and AHRI, No. 36 at pp. 3–5)

AHAM and AHRI commented that regulating SNEMs directly conflicts with Congress's vision that components of EPCA-covered products and equipment remain unregulated. AHAM and AHRI commented that given DOE's claimed similarities between small electric motors and the SNEMs category, DOE nevertheless proposes to deny to SNEMs a key exemption that Congress expressly provided for small electric motors. AHAM and AHRI stated that when Congress amended EPCA through the Energy Policy Act of 1992 and defined ''small electric motors,'' it expressly required that energy conservation standards ''shall not apply to any small electric motor which is a component of a covered product under section 6292(a) of this title or covered equipment under section 6311 of this title.'' 42 U.S.C. 6317(b)(3) (emphasis added). AHAM and AHRI commented that DOE provides no rationale or explanation for the disparate treatment of small electric motors and SNEMs when it comes to their use as components. (AHAM and AHRI, No. 36 at pp. 3–5)

Similarly, Lennox stated that the exemption for SEMs that are components of larger regulated equipment (42 U.S.C. 6317(b)(3)) should also apply to SNEMs, particularly with respect to the heating, ventilation, air-conditioning, and refrigeration (''HVACR'') context. (Lennox, No. 24 at pp. 5–6)

AI Group stated that SNEMs often go into regulated equipment and that double regulation should be avoided. (AI Group, No. 25 at p. 3) NEMA argued that the creation of the SNEM category violated the intent of 42 U.S.C. 6317(b)(3)'s prohibition against applying the SEM standards to an SEM that is used as a component in another regulated product. (NEMA, No. 26 at p. 5) NEMA also stated that much of the SNEM expanded scope includes definite and special-purpose motors that have been designed for specific applications. (NEMA, No. 26 at p. 5) Trane commented that SNEMs are designed for end-product performance requirements and that applying efficiency standards to the motor specifically would add burden without providing energy savings, and on that basis opposed including them in the scope of the test procedure. (Trane, No. 31 at p. 3)

In addition, JCI generally opposed the proposed scope expansion to mandate new test procedures to include special and definite purpose motors—which specifically includes air-over, inverter, synchronous as well as SNEMs—because these motors are already being regulated at the system level and are, in its view, clearly exempted under 42 U.S.C. 6317(b)(3). (JCI, No. 34 at p. 1) JCI commented that component level regulations will not result in significant savings or performance benefits to consumers, and that consumers do not inquire about component level efficiency and only are concerned with system-level efficiency. In its view, this double regulation stifles design and limits improvements because of the higher constraints without benefit. It stated that the motor is typically not the least efficient component with air conditioners, heat pumps, or furnaces and double regulation only serves to add unnecessary cost. (JCI, No. 34 at p. 1)

In contrast, the Joint Advocates and the CA IOUs supported including motors falling within the scope of the test procedure that are installed into other DOE covered products. (Joint Advocates, No. 27 at p. 5; CA IOUs, No. 32.1 at p. 45) The CA IOUs cautioned, however, that DOE consider the manufacturer burdens associated with regulation, and to not push manufacturers towards offering less diverse product lines. (CA IOUs, No. 32.1 at pp. 45–46)

In their joint comments, NEEA/NWPCC recommended that DOE include all electric motors that directly compete against each other in this test procedure so that they can be fairly compared against other motor designs. NEEA/NWPCC noted that some of these motor categories and designs are known for having low efficiencies but are commonly chosen by consumers and OEMs because they are cheaper than other motors. They added that because of the incomplete coverage of the current test procedure and standard, unregulated inefficient motor categories have a competitive advantage compared to more efficient motors and—in spite of

their cheaper initial costs—result in increased operating costs for consumers. (NEEA/NWPCC, No. 37 at p. 3)

DOE is not addressing any potential standards in this rulemaking; standards for electric motors are addressed in a separate rulemaking procedure (see docket number EERE–2020–BT–STD–0007). Rather, this rulemaking addresses only the scope of the test procedure.

As discussed in the final rule published on May 4, 2012 (the ''May 2012 Final Rule''), EPCA, as amended through EISA 2007, provides DOE with the authority to regulate the expanded scope of motors addressed in this rule. 77 FR 26608, 26612–26613. Before the enactment of EISA 2007, EPCA defined the term ''electric motor'' as any motor that is a general purpose T-frame, single-speed, foot-mounting, polyphase squirrel-cage induction motor of the NEMA, Design A and B, continuous rated, operating on 230/460 volts and constant 60 Hertz line power as defined in NEMA Standards Publication MG1–1987. (*See* 42 U.S.C. 6311(13)(A) (2006)) Section 313(a)(2) of EISA 2007 removed that definition and the prior limits that narrowly defined what types of motors would be considered as electric motors. In its place, EISA 2007 inserted a new ''Electric motors'' heading, and created two new subtypes of electric motors: General purpose electric motor (subtype I) and general purpose electric motor (subtype II). (42 U.S.C. 6311(13)(A)–(B) (2011)) In addition, section 313(b)(2) of EISA 2007 established energy conservation standards for four types of electric motors: general purpose electric motors (subtype I) (*i.e.,* subtype I motors) with a power rating of 1 to 200 horsepower; fire pump motors; general purpose electric motor (subtype II) (*i.e.,* subtype II motors) with a power rating of 1 to 200 horsepower; and NEMA Design B, general purpose electric motors with a power rating of more than 200 horsepower, but less than or equal to 500 horsepower. (42 U.S.C. 6313(b)(2)) The term ''electric motor'' was left undefined.

As described in the May 2012 Final Rule, a regulatory definition for ''electric motor'' was necessary, and therefore DOE adopted the broader definition of ''electric motor'' currently found in 10 CFR 431.12. Specifically, DOE noted that the absence of a definition may cause confusion about which electric motors are required to comply with mandatory test procedures and energy conservation standards. 77 FR 26608, 26613. Further, in the May 2012 Final Rule, DOE noted that this broader approach would allow DOE to fill the definitional gap created by the EISA 2007 amendments while providing DOE with the flexibility to set energy conservation standards for other types of electric motors without having to continuously update the definition of ''electric motors'' each time DOE sets energy conservation standards for a new subset of electric motors. *Id.*

Congress specifically defined what equipment comprises an SEM—specifically, ''a NEMA general purpose alternating current single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987.'' (42 U.S.C. 6311(13)(G)) (DOE clarified, at industry's urging, that the definition also includes motors that are IEC metric equivalents to the specified NEMA motors prescribed by the statute. See 74 FR 32059, 32061–32062; 10 CFR 431.442)) In conjunction with this definition, Congress also exempted any SEM that is a component of a covered product or a covered equipment from the standards that DOE was required to establish under 42 U.S.C. 6317(b). Congress did not, however, similarly restrict electric motors.

SNEMs, which are electric motors, are not SEMs because they do not satisfy the more specific statutory SEM definition—or even the arguably broader clarifying definition that DOE adopted to accommodate electric motors that were IEC metric equivalents of the NEMA motors falling under the SEM definition of that term and therefore not subject to the exclusion explicitly established for SEMs. Accordingly, DOE is declining to adopt the suggestions offered by commenters to exclude SNEMs installed as components in other DOE regulated products and equipment from the test procedure being promulgated in this final rule.

DOE is not establishing energy conservation standards for SNEMs in this final rule. Were DOE to consider energy conservation standards for SNEMs, DOE would evaluate the efficiency of SNEMs on the market for their various applications, as well as opportunities for improved efficiency while still being able to serve those applications.

DOE is also including in the scope of the test procedure special purpose and definite purpose motors.

DOE notes that manufacturers of electric motors for which DOE is including within the scope of the test procedure, but that are not currently subject to an energy conservation standard, would not be required to use the test procedure for Federal certification or labeling purposes until such time as amended or new energy conservation standards are established for such electric motors.

Further discussion on each of the expanded scope categories are provided in the following sections. Discussion on maintaining the full-load metric in this test procedure is provided in section III.E. of this document.

2. ''E'' and ''Y'' Designations of IEC Design N and H Motors

Currently regulated electric motors include those motors designated as IEC Design N and IEC Design H motors. In the December 2021 NOPR, DOE discussed that IEC 60034–12:2016 includes industry nomenclature updates to IEC Design N and IEC Design H motors, whose designations are augmented with the designations IEC Design NE, HE, NY, NEY, HY, and HEY. 86 FR 71710, 71716–71717. DOE stated that all six additional categories are described as electric motors that are variants of IEC Design N and IEC Design H electric motors that DOE currently regulates, with the only differences being the premium efficiency attribute (indicated by the letter ''E''), and starting configuration [11] (''star-delta'' starter [12] indicated by the letter ''Y''). *Id.* Accordingly, DOE proposed to revise 10 CFR 431.25 to reflect the inclusion of IEC Design NE, NEY, and NY motors as IEC Design N motors and to make a similar set of revisions to reflect the inclusion of IEC Design HE, HEY, and HY motors as IEC Design H motors. DOE clarified that to the extent IEC Design N and IEC Design H motors are subject to the DOE regulations for electric motors, such coverage already includes IEC Design NE, NY, NEY, HE, HY and HEY motors. *Id.*

In response, CEMEP, NEMA and Grundfos supported DOE's proposed clarification regarding the additional IEC designations. (CEMEP, No. 19 at p. 1; NEMA, No. 26 at p. 6; Grundfos, No. 29 at p. 1) For the reasons discussed in the previous paragraph, DOE is adopting its proposal to reflect the inclusion of IEC Design NE, NEY, and NY motors as IEC Design N motors and to make a similar set of revisions to reflect the

[11] For induction motors, the starting configuration refers to the manner in which the three-phase input terminals are connected to each other, and the star configuration results in a lower line-to-line voltage than the delta configuration. *See* Sections 2.62 and 2.64 of NEMA MG 1–2016 (with 2018 Supplements) and 2021 updates for further detail.

[12] A ''star-delta starter'' refers to a reduced voltage starter system arranged by connecting the supply with the primary motor winding initially in star (''wye'' or ''Y'') configuration, then reconnected in a delta configuration for running operation. In the star configuration, all three supply lines are connected at a single point and the circuit diagram resembles the letter Y. In the delta configuration each supply line is connected at one end with the next supply line and the circuit diagram resembles the Greek letter delta (Δ).

inclusion of IEC Design HE, HEY, and HY motors as IEC Design H motors. In this final rule, DOE is revising 10 CFR 431.25(g)–(i) to reflect the inclusion of IEC Design N and H variants as it relates to current energy conservation standards.

DOE received comments regarding the definitions proposed for the IEC Design designations, which are addressed separately in section III.B.1. of this document.

3. Air-Over Electric Motors

DOE defines an ''air-over electric motor'' as an electric motor rated to operate in and be cooled by the airstream of a fan or blower that is not supplied with the motor and whose primary purpose is providing airflow to an application other than the motor driving it. 10 CFR 431.12. These motors are currently exempt from the energy conservation standards. 10 CFR 431.25(l)(4). In the December 2021 NOPR, DOE reviewed NEMA MG 1–2016, Part 34: Air-Over Motor Efficiency Test Method, as well as Section 8.2.1 of IEEE 114–2010 and Section 5 of CSA C747–09, and initially determined that sufficient information was available to propose a test method for air-over electric motors, and therefore proposed to include air-over electric motors in the scope of the test procedure. 86 FR 71710, 71718. Further, DOE also proposed an amended definition for air-over electric motors (86 FR 71710, 71730–71731), which is discussed further in section III.B.4 of this rulemaking. Accordingly, DOE requested comment on its proposal to add air-over electric motors in scope. *Id.*

In response to the expanded scope proposal, a number of stakeholders supported the inclusion of air-over electric motors. (AMCA, No. 21 at p. 2; ebm-papst, No. 23 at pp. 2, 6; CA IOUs, No. 32.1 at p. 10) NEMA agreed with the proposal in concept, but disagreed with several testing provisions, which are discussed further in section III.D.1 of this document. (NEMA, No. 26 at p. 6) Lennox opposed the inclusion of air-over motors, citing that component-level regulation should be avoided when system-level regulation is possible. Lennox stated that the cost of component-level regulation outweighs the benefit when DOE could more effectively use system-level regulation (HVAC in this case). (Lennox, No. 24 at p. 1–2) Regal opposed including air-over motors to the scope of test procedure, explaining that it already tests the motors according to DOE requirements for the equipment into which these motors would be installed, and that regulating these motors separately would increase costs while yielding no benefit. (Regal, No. 28 at p. 1) AI Group referenced a 2019 Australian testing standard for three-phase cage induction motors that includes testing requirements for totally enclosed air-over motors. (AI Group, No. 25 at p. 3)

DOE is covering air-over electric motors under its ''electric motors'' authority. (42 U.S.C. 6311(1)(A)) As discussed in section III.A of this document, the statute does not limit DOE's authority to regulate an electric motor with respect to whether they are stand-alone equipment items or as components of a covered product or covered equipment. See 42 U.S.C. 6313(b)(1) (providing that standards for electric motors be applied to electric motors manufactured ''alone or as a component of another piece of equipment'') DOE's previous determination in the December 2013 Final Rule to exclude air-over electric motors from scope was due to insufficient information available to DOE at the time to support establishment of a test method. 78 FR 75962, 75974–75975. Since that time, NEMA published a test standard for air-over motors in Section IV, ''Performance Standards Applying to All Machines,'' Part 34 ''Air-Over Motor Efficiency Test Method'' of NEMA MG 1–2016 (''NEMA Air-over Motor Efficiency Test Method''). The air-over method was originally published as part of the 2017 NEMA MG–1 Supplements and is also included in the latest version of NEMA MG 1–2016. Therefore, DOE does not consider including air-over electric motors within its test procedure scope significantly burdensome because the NEMA test method (which is an industry-accepted method) has existed since 2017. Further, based on a general market review, DOE notes that several manufacturers have already been representing the performance of their air-over electric motors in marketing materials. Based on the additional information and the development of an industry standard appropriate for air-over electric motors, DOE is including air-over electric motors within scope of the test procedure. DOE believes that including such a test procedure within its regulations will provide consistent and comparable efficiency ratings for consumers and provide manufacturers with a level playing field.

DOE notes that air-over electric motors are not currently subject to energy conservation standards in 10 CFR 431.25(l)(1). Manufacturers would not be required to use the test procedure for certification, until such time as a standard is established. If a manufacturer voluntarily chooses to make representations about the energy consumption or cost of energy for these motors such representations must be based on the use of that test procedure beginning 180 days following publication of a final rule. DOE's amendments do not require manufacturers who do not currently make voluntary representations to then begin making public representations of efficiency. (42 U.S.C. 6314(d)(1)) Manufacturers would be required to test such motors in accordance with the DOE test procedure at such time as compliance is required with a labeling or energy conservation standard requirement should such a requirement be established. (42 U.S.C. 6315(b); 42 U.S.C. 6316(a); 42 U.S.C. 6295(s))

In addition, DOE notes that the industry test procedure incorporated by reference (see section III.D.1) are only applicable to air-over motors that are induction motors and capable of operating without an inverter. As such, they are not applicable to air-over electric motors that are synchronous electric motors and to air-over electric motors that are inverter-only. Accordingly, DOE clarifies that it did not propose and is not adopting to include air-over electric motors that are synchronous electric motors and air-over electric motors that are inverter-only in the scope of the test procedure. DOE adopts to add a clarification in the scope section of the test procedure in appendix B to subpart B to specify which air-over electric motors are included in the test procedure.

DOE also received a number of comments on the air-over electric motor definition and test method, which are discussed in section III.B.4 and section III.D.1 of this document, respectively.

4. AC Induction Electric Motors Greater Than 500 Horsepower

DOE currently specifies that its test procedures and energy conservation standards for electric motors do not apply to motors that produce greater than 500 horsepower (373 kW). 10 CFR 431.25(g)(8); appendix B, Note.

In the December 2021 NOPR, DOE proposed to expand the scope of the test procedure to include induction electric motors with a horsepower rating greater than 500 hp and up to 750 hp, that otherwise meet the criteria provided in 10 CFR 431.25(g) and are not currently listed at 10 CFR 431.25(l)(2)–(4). 86 FR 71710, 71719.

In response, CEMEP supported expanding the test procedure's scope to include motors between 500 and 750 hp that otherwise meet the conditions of 10 CFR 431.25(g). (CEMEP, No. 19 at p. 2) NEMA supported adding motors

between 500 and 750 hp to the energy conservation standards but noted there are currently no NEMA Design A, B, or C performance requirements for this horsepower range, and that these requirements would need to be developed. (NEMA, No. 26 at p. 7) The CA IOUs supported DOE's inclusion of 500+ hp motors to the test procedure. (CA IOUs, No. 32.1 at p. 46) The Joint Advocates supported expanding the scope beyond 500 hp and suggested the upper limit should be 1000 hp and identified models that they asserted would be included in scope even with a limit of 600V input voltage. (Joint Advocates, No. 27 at p. 3) Grundfos questioned how many motors were sold in this range and what energy savings could be captured by including 500 to 750 hp motors into the scope of the test procedure. (Grundfos, No. 29 at p. 2) Advanced Energy stated that motors of this size are outside of its lab test capabilities, but as a nationally recognized certification program for electric and small electric motor efficiency, its certification scheme allows it to certify motors of this size by witnessing testing in manufacturer's accredited labs. Accordingly, they commented that they offer certification services for covered motor products above 250 hp. (Advanced Energy, No. 33 at p. 3)

As discussed in the December 2021 NOPR, DOE's review of catalog offerings identified large induction motors rated up to 750 hp currently being sold in the market, and the majority of the models identified listed full-load efficiencies even though DOE currently does not regulate electric motors greater than 500 hp. 86 FR 71710, 71719. Based on discussions with a subject matter expert, DOE understands that most of these large motors rely on the alternative efficiency determination method (''AEDM'') permitted under 10 CFR 431.17 to determine full-load efficiencies for regulated electric motors at and under 500 hp.[13] *Id.* Accordingly, DOE understands that there are motors sold in the range between 500 and 750 hp. DOE was unable to identify any motors for sale greater than 750 hp with input voltages up to 600 volts. Accordingly, DOE will not be expanding the horsepower limit of the test procedure beyond 750 hp. While there may be motors available at input voltages greater than 600 volts, in this final rule, DOE is maintaining the approach from the December 2021 NOPR proposal to limit the voltage to 600 volts, consistent with other in-scope electric motors defined by 10 CFR 431.25(g).

DOE notes that the proposed expanded scope would have required that an electric motor meet all of the performance requirements of one of the following motor types: A NEMA Design A, B, or C motor or an IEC Design N or H motor. 10 CFR 431.25(g)(9) While DOE agrees with NEMA's comment that there are no NEMA Design A, B, or C performance requirements for motors greater than 500 hp, there are performance requirements for IEC Design N or H motors for the same range. As such, the IEC Design N or H performance requirements would be applicable for this horsepower range instead of the NEMA Design A, B, or C performance requirements.

Accordingly, consistent with the proposed scope expansion and related discussion from the December 2021 NOPR and the reasons set forth in the preceding paragraphs, DOE is expanding the scope of the test procedure to include induction electric motors with a horsepower rating greater than 500 hp and up to 750 hp that otherwise meet the criteria provided in 10 CFR 431.25(g) and are not currently listed at 10 CFR 431.25(l)(2)–(4).

5. SNEMs

An SEM is a NEMA general purpose AC single-speed induction motor, built in a two-digit frame number series in accordance with NEMA Standards Publication MG1–1987, including IEC metric equivalent motors. *See* 42 U.S.C. 6311(G); see also 10 CFR 431.442 (clarifying that the statutory definition for ''small electric motor'' includes IEC metric equivalent motors). Table III–1 and Table III–2 provide a general description of currently regulated small electric motors and electric motors.

TABLE III–1—GENERAL DESCRIPTION OF SINGLE-PHASE INDUCTION MOTORS CURRENTLY SUBJECT TO ENERGY CONSERVATION STANDARDS AND TEST PROCEDURES

	NEMA frame size	
Motor enclosure construction	2-Digit NEMA frame size	3-Digit NEMA frame size or above
Open	NEMA general purpose capacitor-start induction run, capacitor-start capacitor run motors between 0.25 and 3 hp.	None.
Enclosed	None	None.

Note: this table provides a high-level description. Full description of motors currently subject to energy conservation standards and test procedures available at 10 CFR part 431 subpart B and subpart X.

TABLE III—2 GENERAL DESCRIPTION OF POLYPHASE PHASE INDUCTION MOTORS CURRENTLY SUBJECT TO ENERGY CONSERVATION STANDARDS AND TEST PROCEDURES

Motor enclosure construction	NEMA frame size	
	2-Digit NEMA frame size	3-Digit NEMA frame size or above
Open	NEMA general purpose motor between 0.25 and 3 hp	Between 1–500 hp.
Enclosed	NEMA 56-frame size only between 1–500 hp	Between 1–500 hp.

Note: this table provides a high-level description. Full description of motors currently subject to energy conservation standards and test procedures in available at 10 CFR part 431 subpart B and subpart X.

[13] An AEDM may be used to determine the average full-load efficiency of one or more of a manufacturer's basic models if the average full-load efficiency of at least five of its other basic models is determined through testing. 10 CFR 431.17(a)(1). An AEDM applied to a basic model must be: (i) derived from a mathematical model that represents the mechanical and electrical characteristics of that basic model, and (ii) based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of performance data. 10 CFR 431.17(a)(2).

This section addresses electric motors that do not fall within the SEM definition as described above but that are generally considered ''small'' by industry (*i.e.,* ''small, non-small-electric-motor electric motor,'' or ''SNEM''). In this section, DOE specifically discusses SNEMs that are induction motors. Some of these motors are marketed as general purpose by manufacturers, although they do not meet the definition of small electric motor at 10 CFR 431.442.[14] Non-induction motor topologies (specifically certain synchronous electric motors) are discussed in section III.A.7 of this document.

In the December 2021 NOPR, DOE proposed to include test procedures for additional electric motors not covered under the current electric motors test procedure and that do not meet the definition of small electric motors in 10 CFR part 431, subpart X, but are nonetheless considered ''small,'' *i.e.,* SNEMs. 86 FR 71710, 71719–71725. DOE proposed to distinguish SNEMs from SEMs by specifying combinations of frame size, rated motor horsepower, enclosure construction, and additional performance criteria that are not currently included in the existing electric motors and small electric motors regulations at 10 CFR part 431 subpart B and subpart X (*See* Table III–1 and Table III–2 for electric motors and small electric motors that are currently regulated). *Id.*

Accordingly, DOE proposed the following definition for this expanded scope in the December 2021 NOPR:

Small non-small-electric-motor electric motor (''SNEMs'') means an electric motor that:

(a) Is not a small electric motor, as defined at § 431.442 and is not dedicated-purpose pool pump motors as defined at § 431.483;

(b) Is rated for continuous duty (MG 1) operation or for duty type S1 (IEC);

(c) Is capable of operating on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power (with or without an inverter);

(d) Is rated for 600 volts or less;

(e) Is a single-speed induction motor;

(f) Produces a rated motor horsepower greater than or equal to 0.25 horsepower (0.18 kW); and

(g) Is built in the following frame sizes: any frame sizes if the motor operates on single-phase power; any frame size if the motor operates on polyphase power, and has a rated motor horsepower less than 1 horsepower (0.75 kW); or a two-digit NEMA frame size (or IEC metric equivalent), if the motor operates on polyphase power, has a rated motor horsepower equal to or greater than 1 horsepower (0.75 kW), and is not an enclosed 56 NEMA frame size (or IEC metric equivalent).

86 FR 71710, 71780.

DOE received a number of comments on how the criteria for SNEMs was defined. Some commenters supported including SNEMs in the scope of the test procedure as proposed. Commenters noted that these motors are very similar in application, construction, and performance to existing covered equipment, and therefore should be covered. (Advanced Energy, No. 33 at p. 3; NEEA/NWPCC, No. 37 at p. 3) Further, NEEA/NWPCC encouraged DOE to include all motors that directly compete against each other in the test procedure so that they can be fairly compared against other motor designs. (NEEA/NWPCC, No. 37 at p. 3) Other commenters, however, criticized DOE's approach. ABB stated that the criteria for establishing if a product is in the proposed scope as an SNEM are not adequately defined, and recommended that DOE list the criteria that an SNEM must satisfy, citing the nine criteria DOE has already listed for electric motors in 10 CFR 431.25. (ABB, No. 18 at p. 1) NEMA added that the proposed SNEM definition needs to be clearer since it does not allow manufacturers to clearly identify what motors in their inventory would fall within the SNEM category. NEMA requested that DOE provide specific examples of SNEMs and better identify whether an electric motors is an SNEM. (NEMA, No. 26 at p. 7) HI offered a similar view, noting that the proposed SNEM scope is too broad and that the proposed definition's overly-broad nature prevented HI from identifying areas of concern. (HI, No. 30 at p. 2)

DOE proposed to distinguish SNEMs by specifying combinations of frame sizes, rated motor horsepower, enclosure construction, and additional performance criteria that are not currently included in the existing electric motors and small electric motors regulations at 10 CFR part 431 subpart B and subpart X (*See* Table III–1 and Table III–2, and proposed definition for SNEM earlier in this section). DOE proposed seven specific criteria to identify whether an electric motor is a SNEM, an approach similar to how DOE identifies those electric motors that are subject to the standards at 10 CFR 431.25. If an electric motor meets the seven proposed criteria, then it is an SNEM. ABB recommended listing criteria to identify the appropriate scope (ABB, No. 18 at p. 1), which DOE notes is consistent with the approach DOE proposed in the December 2021 NOPR and is consistent with how specifications are provided for motors currently in scope in 10 CFR 431.25(g). Further, other commenters did not identify any specific areas of confusion. In the December 2021 NOPR, DOE provided a detailed description on how the SNEM scope was determined based on the current SEM and electric motor scope. 86 FR 71710, 71719–71725. In all, it is DOE's understanding that the proposed specifications are sufficient to specify the SNEM scope. DOE is, however, clarifying some of the proposed criteria related to frame size, speed, and power supply in response to other comments.

For example, the Joint Advocates suggested that multi-speed SNEMs should be included in the scope as well, and that including only single-speed SNEMs is inconsistent with the proposed broader test procedure scope that includes variable-speed motors. They raised the concern of a loophole with inefficient multi-speed SNEMs replacing more efficient single-speed SNEMs. (Joint Advocates, No. 27 at pp. 3–4) The CA IOUs recommended including multi-speed SNEMs to the test procedure's scope, citing as support the scenario where a consumer seeks to replace a failed variable-speed electrically commutated motor (''ECM'') in a residential furnace fan with a lower first cost, less efficient, multi-speed permanent split capacitor (''PSC'') motor. They also stated that multi-speed PSC and shaded-pole motors are in widespread use. (CA IOUs, No. 32.1 at p. 42)

After careful consideration of these comments, DOE has decided at this time to retain its single-speed limitation for SNEMs. As explained, DOE is taking this step to ensure coverage of those motors that are generally considered small by industry that have similarities to motors that DOE currently regulates as SEMs at 10 CFR part 431 subpart X—the scope of which only includes single-speed induction motors. *See* 10 CFR 431.442.

Commenters also had some concerns with the inclusion of the clause ''with or without an inverter'' within the SNEM definition. Specifically, Grundfos stated that the proposed SNEM definition is confusing and that DOE should clarify the intent with the ''single speed'' and ''with or without an inverter'' requirements to remove any ambiguity on the intention. (Grundfos, No. 29 at p. 2) HI stated that for clarity, the clause ''with or without an inverter'' should be removed from the criteria. (HI, No. 30 at p. 2) DOE re-evaluated the proposed text relevant to inverters. DOE's intention with the proposal was

[14] Based on DOE review of catalogs from four major manufacturers, out of 3262 SNEMs in scope identified, 1300 were marketed either general (1128) or definite purpose (172).

to ensure that in-scope electric motors that satisfy the SNEM definition would be either: (1) single-speed and capable of operating without an inverter; or (2) inverter-only electric motors operating with an inverter and capable of varying speed.[15] Therefore, to clarify this intent, DOE is revising the language used to describe SNEMs to state this more directly. First, to add clarity, DOE is replacing the proposed criteria ''Is capable of operating on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power (with or without an inverter)'' with ''Operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power; or is used with an inverter that operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power.'' Second, to clarify its intent, DOE is replacing the proposed criterion ''Is a single-speed induction motor'' with a revised one that accounts for inverter-only electric motors as follows: ''Is a single-speed induction motor capable of operating without an inverter or is an inverter-only electric motor.''

Separately, HI had concerns regarding how the frame sizes should be identified within the SNEM definition. HI commented that DOE should explicitly list the NEMA and IEC equivalents frame sizes that are covered. (HI, No. 30 at p. 2) Further, HI noted that the proposed phase ''any frame size'' in the SNEM definition is not defined, and could imply a motor of any dimensions, or a motor of any defined NEMA or IEC frame size is covered. They suggested that this ambiguity needs to be remedied. *Id.* DOE clarifies in this final rule that the proposed ''any frame size'' is intended to designate ''any NEMA or IEC-equivalent'' frame size. As such, in this final rule, DOE is modifying the term ''any frame size'' to ''any two-, or three- digit NEMA frame size (or IEC-equivalent).'' DOE notes that there are no four-digit frames sizes that qualify as SNEMs.

Finally, DOE also received comments regarding the proposed term ''small non-small-electric-motor electric motor,'' or ''SNEM''. NEEA/NWPCC recommended that DOE reconsider the use of the term ''small non-small-electric-motor electric motor'' because it is a confusing term for these motors. NEEA/NWPCC suggested ''Other Small HP Motors (OSHM)'' or ''Other Small Electric Motors (OSEM)'' as two possible options. (NEEA/NWPCC, No. 37 at p. 3) Grundfos stated that the DOE should identify a more suitable, and less confusing name for this class of motors. (Grundfos, No. 29 at p. 2) DOE did not receive any other recommendations regarding an alternate to the proposed ''SNEM'' term. DOE notes that the term explicitly states that it is a ''non-small-electric-motor.'' This specifies that SEMs, as defined in 10 CFR 431.442, are not part of this scope. Accordingly, DOE is maintaining the term ''SNEM'' in this final rule.

Accordingly, DOE is finalizing the scope to cover SNEMs, which DOE is defining as:

Small non-small-electric-motor electric motor (''SNEM'') means an electric motor that:

(a) Is not a small electric motor, as defined § 431.442 and is not a dedicated-purpose pool pump motor as defined at § 431.483;

(b) Is rated for continuous duty (MG 1) operation or for duty type S1 (IEC);

(c) Operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power; or is used with an inverter that operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power;

(d) Is rated for 600 volts or less;

(e) Is a single-speed induction motor capable of operating without an inverter or is an inverter-only electric motor;

(f) Produces a rated motor horsepower greater than or equal to 0.25 horsepower (0.18 kW); and

(g) Is built in the following frame sizes: any two-, or three- digit NEMA frame size (or IEC metric equivalent) if the motor operates on single-phase power; any two-, or three-digit NEMA frame size (or IEC metric equivalent) if the motor operates on polyphase power, and has a rated motor horsepower less than 1 horsepower (0.75 kW); or a two-digit NEMA frame size (or IEC metric equivalent), if the motor operates on polyphase power, has a rated motor horsepower equal to or greater than 1 horsepower (0.75 kW), and is not an enclosed 56 NEMA frame size (or IEC metric equivalent).

6. AC Induction Inverter-Only Electric Motors

The current electric motor test procedures apply to AC induction motors except for those AC induction motors that are ''inverter-only electric motors.'' [16] These motors are an exempted category of electric motors listed at 10 CFR 431.25(l)(5).[17] As it noted in its May 2014 Final Rule, DOE exempted these electric motors from its standards at 10 CFR 431.25 in the absence of a reliable and repeatable method to test their efficiency. 79 FR 30934, 30945. In the December 2021 NOPR, DOE noted that in the interim since its 2014 rule was published, the industry has developed several methods to test inverter-only motors. As a result of this development, DOE proposed to include within the electric motor test procedure's scope those AC induction inverter-only electric motors that meet both the criteria listed at 10 CFR 431.25(g) and the proposed SNEM scope. 86 FR 71710, 71725–71726. Further, as discussed in section III.A.4 of this section, DOE also separately proposed to include within the test procedure's scope those induction electric motors with a horsepower rating greater than 500 hp and up to 750 hp that otherwise meet the criteria provided in 10 CFR 431.25(g) and are not currently listed as exempt at 10 CFR 431.25(l)(2)–(4). 86 FR 71710, 71719.

In response, several stakeholders objected to the inclusion of inverter-only electric motors and suggested that DOE continue to exempt them from coverage under the test procedure. (NEMA, No. 26 at p. 7; CEMEP, No. 19 at p. 2; Lennox, No. 24 at p. 6; AI Group, No. 25 at p. 4; Regal, No. 28 at p. 1; Trane, No. 31 at pp. 3, 5–6) Further, CEMEP suggested that DOE address inverter-only electric motors in a separate (presumably dedicated) rulemaking. (CEMEP, No. 19 at p. 2) ABB supported NEMA's request that inverter-only motors be excluded from the test procedure because inverter-only motors are different from currently covered electric motors that are operated from inverters (presumably inverter-capable) to operate continuous loads like pumps and fans. On the other hand, ABB noted that inverter-only motors are rated by the amount of torque they produce and are generally not used for continuous fixed loads; instead, they operate at widely varying loads or directions in applications such as sawmill carriage drives, machine tools and other high-performance machinery. ABB also commented that

[15] See discussion of the term ''inverter-only electric motor'' in section III.B.3 of this document.

[16] NEMA MG–1 2016, Paragraph 30.2.1.5 defines the term ''control'' for motors receiving AC power, as ''devices that are also called inverters and converters. These are ''electronic devices that convert an input AC or DC power into a controlled output AC voltage or current..''.'' Converters can also be found in motors that receive DC power and include electronic devices that convert an AC or DC power input into a controlled output DC voltage or current. *See* section III.B.3 of this final rule.

[17] DOE defines an ''inverter-only electric motor'' as an electric motor that is capable of rated operation solely with an inverter, and is not intended for operation when directly connected to polyphase, sinusoidal line power.'' 10 CFR 431.12 DOE notes that more generally, the requirement to operate with an inverter also means that that inverter-only motors are not intended for operation when directly connected to single-phase, sinusoidal line power or to DC power. *See* section III.B.3 of this final rule.

inverter-only motors may have a special voltage/frequency combination that allows them to operate at very high speeds with up to 400 Hz input, and these motors are normally cooled by separately powered fans and may have their laminations exposed with no external frame. Finally, regarding inverters, ABB stated that inverters may vary from micro designs to very large drives with widely varying topography, and some newer drive topographies may result in a more efficient drive but at the expense of producing additional harmonics, heating, and reduced efficiency from the motor. (ABB, No. 18 at pp. 2–3) AI Group stated that inverter-only motors are rarely general-purpose motors and have non-continuous duty applications with high cycling and high-performance demands. In its view, these special characteristics and the low volume of sales for inverter-only motors favor excluding them from the scope of the test procedure. (AI Group, No. 25 at p. 4)

Similarly, NEMA, along with a number of individual electric motor manufacturers, also supported excluding inverter-only motors from the test procedure's scope. It explained that the motor and drive combination required to operate is a ''motor-drive system''—not an electric motor—and should not fall within the scope of an electric motor test procedure. It further stated that inverter-only motors are not general purpose and have unique performance requirements that complicate expressions of efficiency. (NEMA, No. 26 at p. 7) Regal also opposed including inverter-only motors within the scope of DOE's test procedure. They stated that they already test the motors according to DOE requirements for the equipment into which these motors are installed, and that regulating these motors separately would increase costs for no benefit. (Regal, No. 28 at p. 1) Trane commented that inverter-only motors should not be included in the scope because, in its view, there are no energy savings gained and that testing related to these electric motors should occur as part of the overall system in which they are installed. (Trane, No. 31 at pp. 3, 5–6)

In contrast, several stakeholders supported the inclusion of inverter-only electric motors as part of the test procedure's scope. (Joint Advocates, No. 27 at p. 4; Grundfos, No. 29 at p. 2; CA IOUs, No. 32.1 at p. 19; Advanced Energy, No. 33 at pp. 3–4; NEEA/NWPCC, No. 37 at p. 3) The CA IOUs commented that the inclusion of inverter-only motors will provide end-users with a representative method to compare these motors with conventional induction motors combined with variable-frequency drives. (CA IOUs, No. 32.1 at p. 19) The CA IOUs also provided examples of case studies where inverter-only motors have successfully substituted conventional induction motors combined with VFDs. (CA IOUs, No. 32.2 at pp. 1–15) The Joint Advocates commented that inverter-only motors with variable-speed capabilities may serve as more energy efficient replacements for currently covered and newly included (*e.g.,* SNEM) AC induction motors, and that inclusion of these more energy efficient motor types may unlock significant potential energy savings. (Joint Advocates, No. 27 at p. 4) Advanced Energy stated that in the past, DOE excluded inverter-only motors because these motors can only be operated continuously when connected to an inverter, and there may be difficulty testing the combined motor and inverter. However, it noted that in practice, there are induction machines marked as ''inverter-only'' that can be relatively more easily tested than synchronous motors. (Advanced Energy, No. 33 at pp. 3–4)

As discussed in section III.A.1, EPCA previously defined the term ''electric motor'' as encompassing specific motors that are general purpose. (*See* 42 U.S.C. 6311(13)(A) (2006)) Section 313(a)(2) of EISA 2007 removed that definition and the prior limits that narrowly defined what types of motors would be considered as electric motors. Further, section 313(b)(2) of EISA 2007 established energy conservation standards for four types of electric motors (42 U.S.C. 6313(b)(2)) The term ''electric motor'' was left undefined. EPCA does not limit ''electric motors'' to ''general purpose.''

In the May 2012 Final Rule, DOE determined a regulatory definition for ''electric motor'' was necessary, and therefore DOE adopted the broader definition of ''electric motor'' currently found in 10 CFR 431.12. Specifically, DOE noted that the absence of a definition may cause confusion about which electric motors are required to comply with mandatory test procedures and energy conservation standards. 77 FR 26608, 26613. Further, DOE noted that this broader approach would allow DOE to fill the definitional gap created by the EISA 2007 amendments while providing DOE with the flexibility to set energy conservation standards for other types of electric motors without having to continuously update the definition of ''electric motors'' each time DOE sets energy conservation standards for a new subset of electric motors. *Id.*

In addition, the statute does not limit DOE's authority to regulate an electric motor with respect to whether ''electric motors'' are stand-alone equipment items or components of a covered product or covered equipment. See 42 U.S.C. 6313(b)(1) (providing that standards for electric motors be applied to electric motors manufactured ''alone or as a component of another piece of equipment'') As such, inverter-only electric motors not being general purpose or components of another covered product or equipment have no bearing on whether DOE may regulate these motors.

Further, an inverter-only electric motor requiring an inverter to operate also has no bearing on whether DOE may regulate these motors. An electric motor is defined as a machine that converts electrical power into rotational mechanical power. 10 CFR 431.12. Inverter-only electric motors require the inverter to operate in the field to convert electrical power into rotational mechanical power. Inverter-only motors cannot be run continuously when directly connected to a 60-hertz, AC polyphase sinusoidal power source. Therefore, a separate, special electronic controller, called an inverter, is used to alter the power signal to the motor. The inverter can be physically combined with the motor into a single unit, may be physically separate from the motor, or may not be included in the motor, but the motor is unable to operate without a drive. As such, this electric motor would remain inoperable if it does not include an inverter and would need to include both the inverter-only electric motor and the inverter-component to convert electrical power into rotational mechanical power. For this reason, the combination of these two components, in DOE's view, meets the definition of an electric motor and DOE has included this combination within the scope of its test procedure.

In the December 2013 Final Rule, DOE considered inverter-only electric motors as part of the scope and only excluded these motors from the test procedure due to the absence of a reliable and repeatable method to test them for efficiency. 78 FR 75962, 75989. In the December 2021 NOPR, DOE noted that in the interim since the December 2013 Final Rule, the industry has developed several methods to test inverter-only motors. 86 FR 71710, 71725–71726. These industry test methods are discussed further in section III.D.3.

Accordingly, DOE is including inverter-only electric motors within the scope of this test procedure. Establishing test procedures for these

motors would allow for standardized representations of efficiency of motors.

As proposed in the December 2021 NOPR, DOE will only be including within scope the following inverter-only electric motors: (1) AC induction inverter-only electric motors that meet the criteria listed at 10 CFR 431.25(g); and (2) Inverter-only motors that meet the SNEM definition. In addition, as discussed in section III.A.3 of this document, DOE is not including air-over inverter-only electric motors. In response to stakeholder comments, DOE is clarifying some of the requirements. First, the criteria in 10 CFR 431.25(g) and the SNEM scope presented in section III.A.5 both require that the motor be rated for continuous duty. Therefore, non-continuous duty motors are not included. Second, per 10 CFR 431.25(g) and the SNEM definition, in-scope inverter-only electric motors would be those motors built using certain NEMA (or IEC equivalent) frame sizes. Third, DOE is requiring that the rated frequency be limited to 60 Hz (see section III.G.1). As such, the scope of the test procedure is limited to inverter-only electric motors with a rated frequency of 60 Hz, where the rated frequency corresponds to the frequency of the electricity supplied to the inverter (see section III.G.1). Finally, DOE is requiring that inverter-only electric motors be tested with an inverter (see section III.D.3); therefore, the efficiency determined would be a combined efficiency of the motor and inverter, not just the efficiency of the motor or the inverter measured individually and would account for any interactions between the motor and the inverter (*e.g.* increase in harmonics). As such, only inverter-only electric motors that meet the specific requirements in 10 CFR 431.25(g) and are SNEMs, including those discussed in this paragraph, would be included in scope of the test procedure.

In this final rule, DOE is incorporating the proposed inverter-only electric motors in scope. Further discussion on the test procedure is provided in section III.D.3 of this document, and discussion of the metric is provided in section III.E. of this document.

7. Synchronous Electric Motors

The current electric motor test procedures apply only to induction electric motors. 10 CFR 431.25(g)(1), appendix B, Note.

The ''induction motor'' criteria exclude synchronous electric motors from the scope. A ''synchronous electric motor'' is an electric motor in which the average speed of the normal operation of the motor is exactly proportional to the frequency of the power supply to which it is connected, regardless of load.[18] In contrast, in an induction electric motor, the average speed of the normal operation of the motor is not proportional to the frequency of the power supply to which the motor is connected.[19] For example, a 4-pole synchronous electric motor will rotate at 1800 rpm when connected to 60 Hz power even when the load varies while a 4-pole induction electric motor in the same setup will slow down as load increases.

Synchronous electric motors can operate as either direct-on-line (connected directly to the power supply) or inverter-fed (connected to an inverter). Some inverter-fed electric motors require being connected to an inverter to operate (*i.e.,* inverter-only electric motors) while others are capable of operating both direct-on-line or connected to an inverter (*i.e.,* inverter-capable electric motors).

In the December 2021 NOPR, DOE stated that it identified new industry standards that apply to synchronous electric motors, and on the basis of this finding, proposed to include within the test procedure's scope synchronous electric motors with the following characteristics: [20]

TABLE III–3—SYNCHRONOUS ELECTRIC MOTORS PROPOSED FOR INCLUSION IN SCOPE

Criteria No.	Description
1	Are not dedicated-purpose pool pump motors as defined at 10 CFR 431.483.
2	Are synchronous electric motors;
3	Are rated for continuous duty (MG 1) operation or for duty type S1 (IEC);
4	Capable of operating on polyphase or single-phase alternating current 60-hertz (Hz); sinusoidal line power (with or without an inverter);
5	Are rated 600 volts or less;
6	Have a 2-, 4-, 6-, 8-, 10-, or 12-pole configuration.
7	Produce at least 0.25 horsepower (hp) (0.18 kilowatt (kW)) but not greater than 750 hp (373 kW).

86 FR 71710, 71726–71727.

Several stakeholders agreed with including synchronous electric motors in scope and with the proposed criteria. (Grundfos, No. 29 at p. 2; NEEA/NWPCC, No. 37 at p. 3) The Joint Advocates supported DOE's proposed expansion of scope to include synchronous motors. (Joint Advocates, No. 27 at pp. 4–5)

On the other hand, several commenters urged continuing to exempt synchronous electric motors from the test procedure's scope, with some suggesting that DOE evaluate these motors in a separate dedicated rulemaking. (ABB, No. 18 at p. 3; CEMEP, No. 19 at p. 2; AI Group, No. 25 at p. 4; NEMA, No. 26 at p. 8) Specifically, ABB commented that synchronous motors could be used in widely differing product categories, like AC servo motors, which are not used for continuous load applications but for incremental motion and positioning as on machine tools and industrial robots. It added that other larger synchronous motors are often used in freshwater pumps and fans, both extended products that have a DOE regulation in effect or in development. (ABB, No. 18 at p. 3) CEMEP also did not support the scope of the definition as it would include servo-motors. (CEMEP, No. 19 at p. 2) AI Group stated that synchronous motors are not general purpose motors and have many different designs, characteristics, and definitions as to what constitutes a synchronous

[18] NEMA MG 1–2016 Paragraph 1.17.3.4 defines a ''synchronous machine,'' as an ''alternating-current machine in which the average speed of the normal operation is exactly proportional to the frequency of the system to which it is connected.''

[19] NEMA MG 1–2016 Paragraph 1.17.3.3 defines an ''induction machine,'' as an ''an asynchronous machine that comprises a magnetic circuit interlinked with two electric circuits or sets of circuits, rotating with respect to each other and in which power is transferred from one circuit to another by electromagnetic induction.''

[20] DOE notes that while the preamble section of the December 2021 NOPR proposed to specify that synchronous electric motors ''are rated for continuous duty (MG 1) operation or for duty type S1 (IEC),'' (*see* 86 FR 71710, 71727) the proposed regulatory text of the notice did not include that requirement (*see* 86 FR 71710, 71780). DOE is clarifying in this final rule that the regulatory text mistakenly excluded this requirement.

motor, and as such should be excluded from the scope of the test procedure. (AI Group, No. 25 at p. 4)

As already discussed in section III.A.1 and section III.A.7 of this document, EPCA, as amended through EISA 2007, provides statutory authority for the regulation of expanded scope of motors. EPCA does not limit ''electric motors'' to ''general purpose.'' In addition, the statute does not limit DOE's authority to regulate an electric motor with respect to whether they are stand-alone equipment items or are components of a covered product or covered equipment. See 42 U.S.C. 6313(b)(1) (providing that standards for electric motors be applied to electric motors manufactured ''alone or as a component of another piece of equipment'') Whether synchronous electric motors fall outside the category of being general purpose (*i.e.,* being special purpose or definite purpose) or are used as components of other covered products and equipment have no bearing on DOE's authority to regulate these motors.

Further, as DOE presented in the December 2021 NOPR, industry standards exist that apply to in-scope synchronous electric motors. 86 FR 71710, 71726–71727. Establishing test procedures for these motors would allow for standardized representations of motor efficiency. DOE notes that these motors are typically used as higher efficiency replacements for single-speed induction motors that DOE currently regulates. Accordingly, establishing a test procedure for standardized representations of synchronous electric motors would reduce market confusion by providing comparable ratings for substitutable induction motors. As discussed in section III.E, DOE is requiring expanded scope motors, including synchronous electric motors, to be represented based on average full-load efficiency, similar to current in-scope electric motors. Accordingly, a test procedure for synchronous electric motors would ensure that end users are provided with ratings from a uniform test method that can be used to compare and select between electric motors of competing technologies that would ultimately be used in the same end-use applications. DOE notes that, as proposed in the December 2021 NOPR, DOE is only including within the test procedure's scope those synchronous motors that are rated for continuous duty (MG 1) operation. As a result, non-continuous duty synchronous electric motors would continue to remain out of scope.

The following paragraphs summarize comments and responses regarding several specific criteria for synchronous electric motors that DOE proposed in the December 2021 NOPR (See Table III–3 describing the proposal).

The Joint Advocates stated that DOE should clarify the definition of synchronous motors to more explicitly include inverter-fed synchronous motors. Specifically, the Joint Advocates noted potential concerns about whether the proposed definition could be interpreted as requiring a synchronous motor to start and run on sinusoidal line power (*i.e.,* not inverter-fed), which would conflict with their understanding that DOE intended to exclude only those synchronous motors that start and run directly from a DC power source. (Joint Advocates, No. 27 at pp. 4–5) In the December 2021 NOPR, DOE's intention for the synchronous electric motor scope was to include those that operate either direct-on-line (connected directly to the power supply) or as inverter-fed (connected to an inverter). 86 FR 71710, 71727; See Criterion 4 in Table III.8. DOE acknowledged a number of inverter-fed synchronous electric motors that are not currently included in the test procedures for electric motors, including line start permanent magnet (''LSPM''); [21] permanent magnet AC (''PMAC,'' also known as permanent magnet synchronous motor (''PMSM'') or brushless AC); switched reluctance (''SR''); synchronous reluctance motors (''SynRMs''); and electronically commutated motor (''ECMs'').[22] 86 FR 71710, 71726. Accordingly, to clarify in this final rule, DOE has updated the description that motors used with an inverter that operate on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power are included in the synchronous electric motor scope.

While Advanced Energy supported including synchronous motors in scope, it requested a modification to the proposed pole criteria. Advanced Energy explained that synchronous motors cannot be classified in the same manner as induction motors regarding magnetic pole configuration. It noted that some synchronous motors have significantly more poles than what designates the operating speed, and this designation may be present on the motor nameplate. Rather than pole count, Advanced Energy suggested DOE use rated speed. (Advanced Energy, No. 33 at p. 4)

DOE's proposal to include the pole configuration in the synchronous electric motors description sought to maintain consistency with how DOE describes current in-scope electric motors in 10 CFR 431.25(g)(6). The synchronous speed of any electric motor is determined by the pole count and the input frequency to the motor. For direct-on-line induction motors, the input frequency is a fixed value determined by the electricity supply grid the motor is connected to, so the synchronous speed would then only vary as the pole count varies. For synchronous motors, the input frequency to the motor is not fixed because the inverter supplying power to the motor can supply different frequencies on command, allowing two synchronous motors with different pole counts to have the same synchronous speed. As such, DOE agrees with Advanced Energy that pole configuration is not as critical a characteristic of synchronous electric motor compared to induction motors. Because of this inconsistency between synchronous motors and induction motors, DOE no longer sees a need to maintain consistency on the pole count scope criterion between the two groups of electric motors. Since pole count is not nearly as critical to the operation of a synchronous motor, DOE is removing the proposed pole configuration requirement from the synchronous electric motor description.

ebm-papst commented that synchronous air-over motors do not fit into the scope of NEMA MG 1–2016 Part 34's air-over electric motor test method. (ebm-papst, No. 23 at p. 3) DOE clarifies in this final rule that DOE is not including in the test procedure's scope synchronous electric motors that are also air-over electric motors. DOE agrees that the test procedure for air-over electric motors is only specific to induction motors and not the synchronous electric motors at issue in this rulemaking. (See further discussion in section III.D.1 of this document).

Accordingly, in this final rule, DOE is defining synchronous electric motor as follows:

[21] Advanced Energy noted that LSPM motors are synchronous motors. Though these motors have a squirrel cage, they do not operate on the principle of induction as is attributed to regular induction motors. The cage is simply for starting the motor and these motors are essentially synchronous motors. (Docket No. EERE–2017–BT–TP–0047; Advanced Energy, No. 25 at p. 3) This technology is described further in Chapter 3 of the technical support document accompanying the May 2014 Final Rule: During the motor transient start up, the squirrel cage in the rotor contributes to the production of enough torque to start the rotation of the rotor, albeit at an asynchronous speed. When the speed of the rotor approaches synchronous speed, the constant magnetic field of the permanent magnet locks to the rotating stator field, thereby pulling the rotor into synchronous operation. See DOE Technical Support Document (Electric Motors Standards Final Rule) (May 2014) (Docket No. EERE–2010–BT–STD–0027–0108).

[22] All 5 topologies are referred to as ''advanced motor technologies'' and represent motor technologies that have been more recently introduced on the market and have variable speed capabilities.

A Synchronous Electric Motor means an electric motor that:

(a) Is not a dedicated pool pump motor as defined at § 431.483, or is not an air-over electric motor;

(b) Is a synchronous electric motor;

(c) Is rated for continuous duty (MG 1) operation or for duty type S1 (IEC);

(d) Operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power; or is used with an inverter that operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power;

(e) Is rated 600 volts or less; and

(f) Produces at least 0.25 hp (0.18 kW) but not greater than 750 hp (559 kW).

8. Submersible Electric Motors

DOE defines a ''submersible electric motor'' as an electric motor that: (1) is intended to operate continuously only while submerged in liquid; (2) is capable of operation while submerged in liquid for an indefinite period of time; and (3) has been sealed to prevent ingress of liquid from contacting the motor's internal parts. 10 CFR 431.12. These motors are currently exempt from the energy conservation standards. 10 CFR 431.25(l)(4). In the December 2021 NOPR, DOE proposed to include submersible electric motors within the test procedure's scope. 86 FR 71710, 71718–71719. DOE's proposal was informed in part by its initial determination that the air-over test methods developed by NEMA could be adapted as a test method for submersible electric motors either by using an external blower to cool the motor or without the need to submerge the motor in a liquid during testing to cool the motor. With this potential modification to the air-over test method in mind, DOE proposed to include submersible electric motors within the scope of DOE's test procedures. 86 FR 71710, 71749–71750.

Several commenters suggested that the current definition of submersible electric motors is too broad for the purpose of adding them to the test procedure scope, in that the definition could cover a wide range of products, each of which have different design constraints and should be tested differently. (CEMEP, No. 19 at p. 2; Franklin Electric, No. 22 at p. 2; HI, No. 30 at p. 1; WSC, No. 35 at p. 1) The CA IOUs recommended refining the definition of submersible electric motors based on appropriate classifications for different designs of submersible motors, and recommended DOE consider multiple industry definitions. (CA IOUs, No. 32.1 at p. 18) Several commenters also raised concerns with having a single test procedure for all types of submersible electric motors. They noted that several different types of submersible motors exist, each having different technical performances and design constraints. Accordingly, they suggested that type-specific test procedures may be needed to provide accurate representations of efficiency. (CEMEP, No. 19 at p. 2; Grundfos, No. 29 at p. 1; HI, No. 30 at p. 1; WSC, No. 35 at p. 1)

NEMA questioned the merits of testing submersible motors in open air conditions, as these motors are designed to operate submerged. It noted that because the proposed test procedure does not require submersion for cooling, it is neither representative, nor accurate, nor repeatable. (NEMA, No 26 at p. 6) It stated that submersible motors are often designed with a much higher power density than open-air motors because the specific heat capacity of water is approximately 4 times that of air, allowing much more heat dissipation to be accounted for in the design. It noted that because of the design difference, in most cases it is not sufficient to rely on air flow to cool submersible electric motors with such high power densities. It provided motor performance modeling data for a 15 hp submersible motor built in a NEMA 184 frame. NEMA showed that using a typical value of minimum required air velocity for the manufacturer's air-over motors at the same frame size (*i.e.,* at 12 mph), the AEDM predicts that the maximum horsepower at which the motor would stabilize is at 12.5 hp, at which point the predicted average winding temperature rise would reach 442 °C. Because IEEE 112–2017 requires that the load temperature test be performed before taking efficiency measurements, conducting the load temperature test at an average winding temperature rise of 442 °C would likely result in motor failure even before the efficiency measurements could be made, which in turn would subject personnel performing the measurements to potential safety hazards. Even at the maximum air velocity that this manufacturer's AEDM is capable of reaching (*i.e.,* at 114 mph), the AEDM predicts this motor would stabilize at 14.8 HP, for which the predicted average winding temperature rise is 322.2 °C, which would also likely result in motor failure. (NEMA, No. 26 at pp. 21–22)

CEMEP stated that NEMA part 34.4 was not applicable to submersible motors. (CEMEP, No. 19 at p. 4) CEMEP stated that some submersible motors would not be sufficiently cooled by air alone as would occur under the proposed test procedure. They provided an example of a 45 kW motor needing to dissipate 8 kW of heat losses while operating. They also stated that the bearings and seals would not be properly lubricated when tested under the conditions of the proposed test procedure—which would effectively be by air rather than by a liquid as would occur during the normal operation of submersible motors. (CEMEP, No. 19 at p. 8)

Franklin Electric opposed using NEMA 34.4 as the test method for submersible motors, arguing that no standardized test procedure exists; the proposed test procedure was not validated on a diverse enough group of motors; many submersible motor bearings require liquid to be used to lubricate seals and bearings during operation, the lack of which would damage the motor and present additional frictional losses not representative as part of the motor's intended use; many submersible motors are not designed to operate in a horizontal configuration as proposed by the test procedure; the leads for submersible motors are often designed with liquid cooling in mind, and using thermocouples on the surface of the motor is not a reliable means of evaluating the winding temperature—particularly when different liquids are used to encapsulate the windings. (Franklin Electric, No. 22 at pp. 3–4) Further, Franklin Electric noted that no non-manufacturer test lab has the capability to certify a motor using the proposed method, (Franklin Electric, No. 22 at p. 5), and added that submersible motor manufacturers already have custom in-house tests that accommodate water cooling and vertical orientation of the motor to provide accurate and repeatable efficiency testing. It stated that using air-cooling would actually be more burdensome than liquid for submersible motors larger than 5 hp. (Franklin Electric, No. 22 at p. 4)

In response to DOE's comments on whether the proposed test procedure should only apply to a certain horsepower range, Franklin Electric stated that even if the submersible test method scope was limited to 10 hp, that limit would exclude from scope most sizes other than 4-inch diameter submersible motors. It noted that this cut-off would result in a very small fraction of products being added to the test procedure and therefore, would create confusion around efficiency ratings of an in-scope submersible motor vs. out of scope submersible motor. (Franklin Electric, No. 22 at p. 5) For these reasons, Franklin Electric argued that the submersible test procedure is

both technologically infeasible and not economically justified and disagreed with DOE's initial view that the proposed changes would not constitute a ''significant'' regulatory action. (Franklin Electric, No. 22 at p. 6)

AI Group stated that submersible motors should be tested according to a procedure that has them submerged in water. (AI Group, No. 25 at p. 3) Grundfos offered a similar critique, asserting that the proposed submersible motor test procedure is inadequate because these motors are designed to operate while submerged in a liquid and the proposed test method has them tested in air. Grundfos stated that testing these motors in air rather than submerged in water would not accurately reflect their efficiency in their intended application. It explained that the proposed method for determining winding temperatures is impractical and for some motors impossible—and it specifically noted that DOE's proposed test method in air does not consider the ''heat rejection'' efficiency of the motors and forces them to reach winding temperatures the motor may never reach under normal operating conditions. (Grundfos, No. 29 at pp. 1, 7–8) Grundfos added that no amount of modification to the air-over method would make it an appropriate method for accurately evaluating the efficiency of submersible motors (Grundfos, No. 29 at p. 1)

HI also criticized the proposed approach. It stated that no internationally recognized test standard exists for evaluating the efficiency of borehole and submersible wastewater motors and that the proposed approach of using air cooling will not result in an accurate measurement of motor performance. It argued that any test procedure for submersible wastewater motors would need to better reflect the specific aspects of these motors and require multiple product categories, definitions, and test methods to properly test and represent the efficiencies for these specialized motors. HI also stated that many submersible motors rely liquid for lubrication. Further, it asserted that the proposed test method was not repeatable and reproducible across test facilities and that DOE's testing of only two small motors does not adequately address this concern. HI also stated that the proposed temperature measurement provisions do not address all submersible motor designs required to accurately obtain winding temperature measurements to ensure testing is conducted within the defined temperature tolerances. (HI, No. 30 at pp. 1–2)

WSC commented that testing submersible motors in air will not result in accurate values of motor performance. It noted that submersible motors have multiple designs, and any test procedure will need multiple product testing categories and methods to accurately separate out the motor losses from these different designs. It also noted manufacturers have developed their own specialized methods that are capital intensive. It added that wastewater submersible motors have specific designs (oil filled, air filled, single seal, dual seal, lip seal, seal materials) that impact utility, which in turn would require any test method that DOE adopts to consider these factors through the use of multiple product testing categories and appropriate testing methods for each. WSC also asserted that DOE's sample size was too small to prove a repeatable test method. (WSC, No. 35 at pp. 1–2)

CEMEP, WSC, and Grundfos all recommended that a test method for submersible motors should be developed by international standardization committees. (CEMEP, No. 19 at pp. 8–9; WSC, No. 35 at p. 2; Grundfos, No. 29 at p. 1)

In contrast to those commenters who objected to the adoption of DOE's proposed test method for submersible electric motors, other commenters supported DOE's proposal—but with reservations. Advanced Energy stated that the submersible test method appears repeatable for 5 hp or smaller submersible motors, and that there is opportunity to evaluate this test method for larger hp motors. (Advanced Energy, No. 33 at p. 16) The Joint Advocates and CA IOUs supported including submersible electric motors in scope and encouraged DOE to continue to investigate options for submersible motor testing to support development of test procedures. (Joint Advocates, No. 27 at p. 2; CA IOUs, No. 32.1 at pp. 17–18) The CA IOUs commented that Japan, China, and Brazil have standards for submersible motors. They noted that China has published testing standards for waste submersible motor-pumps, submersible motors for deep wells, and submersible motor-pumps. Further, they noted that India has published a case study and three test methods for submersible motors. (CA IOUs, No. 32.1 at p. 17) The CA IOUs also stated that IEEE is developing a submersible motor test standard and provided links to the currently published IEEE recommendations for testing submersible motors. They also suggested that NEMA Part 34 would need more modification to be used as the test procedure, or that a completely new test procedure needs to be developed for these motors. (CA IOUs, No. 32.1 at pp. 17–18)

DOE re-evaluated the proposed test method based on concerns noted by stakeholders. DOE agrees that further testing is needed to ensure that any test method(s) would be both applicable and representative for submersible electric motors of all designs and sizes. Further, DOE also agrees that a test procedure based on air cooling as opposed to water cooling may not accurately capture intended performance. In addition, DOE acknowledges concerns that liquid is needed to lubricate seals and bearings during operation, the lack of which could potentially damage the motor and present additional frictional losses. Finally, DOE understands that the applicability of the proposed test procedure at higher horsepowers may result in winding temperature rises that may cause motor failure. Accordingly, based on comments received and further review, DOE is not including submersible electric motors within scope of this test procedure. Therefore, submersible electric motors will continue to be exempt from the test procedures and energy conservation standards.

9. Other Exemptions

Currently, DOE exempts (1) component sets of an electric motor; and (2) liquid-cooled electric motors. 10 CFR 431.25(l)(2) and (3).

DOE defines ''component set'' as a combination of motor parts that require the addition of more than two endshields (and their associated bearings) to create an operable motor. These parts may consist of any combination of a stator frame, wound stator, rotor, shaft, or endshields. 10 CFR 431.12. DOE defines ''liquid-cooled electric motor'' as a motor that is cooled by liquid circulated using a designated cooling apparatus such that the liquid or liquid-filled conductors come into direct contact with the parts of the motor. *Id.* DOE is amending the definition for ''liquid-cooled electric motor'' in this final rule, as discussed in section III.B.5 of this document. In the December 2021 NOPR, DOE requested comment on maintaining the exemptions. 86 FR 71710, 71727–71728.

Certain stakeholders supported continuing to exempt components set of electric motors from the scope of the test procedure. (CEMEP, No. 19 at p. 2; ebm-papst, No. 23 at p. 3; NEMA, No. 26 at p. 8; Grundfos, No. 29 at p. 2) Certain stakeholders also supported excluding liquid-cooled electric motors from scope. (CEMEP, No. 19 at p. 3; NEMA, No. 26 at p. 8; Grundfos, No. 29 at p.

3) Advanced Energy supported continuing to exclude liquid-cooled electric motors stating that they are highly specialized motors and often prioritize power density over other performance requirements. (Advanced Energy, No. 33 at p. 5) Comments received regarding the liquid-cooled definition are addressed in section III.B.5. of this document.

Based on the discussion presented in the December 2021 NOPR and in the preceding paragraphs in this final rule, DOE is continuing to exempt component sets of an electric motor and liquid-cooled electric motors from the scope of the electric motors test procedure.

B. Definitions

In this final rule DOE is modifying 10 CFR 431.12 by amending and adding certain definitions applicable to electric motors. These amendments and additions are discussed in further detail in the following sections.

1. Updating IEC Design N and H Motors Definitions and Including New Definitions for IEC Design N and H ''E'' and ''Y'' Designations

As discussed in section III.A.2 of this document, DOE is clarifying in this final rule that IEC Design HE, HEY, HY, NE, NEY, and NY motors are within the scope of the test procedure. In the December 2021 NOPR, DOE proposed to add definitions for these ''E'' and ''Y'' designations for IEC Design N and H motors based on IEC 60034–12:2016. 86 FR 71710, 71728–71729.

In response to this proposal, Advanced Energy stated that the proposed updates are not consistent with the definitions as they appear in IEC 60034–12:2016. It stated the IEC standard states a ''Y'' designation represents ''star-delta starting'' as opposed to ''direct-on-line'' starting for both IEC Design HEY and NEY. Further, Advanced Energy also commented that the upper limit of output power for IEC Design H was not consistent with Section 5.5 of IEC 60034–12:2016. (Advanced Energy, No. 33 at p. 5) DOE did not receive any other comments regarding the definition of the ''E'' and ''Y'' variants of IEC Design N and H motors.

Based on the comment from Advanced Energy and additional review of IEC 60034–12:2016, DOE agrees that the IEC Design N and H motors with the ''Y'' variant are capable of star-delta starting, not direct-on-line starting. DOE is finalizing the definitions for IEC Design N and H that include the Y variant (IEC Design HY, HEY, NY, NEY) accordingly.

Regarding the upper limit for the Design H definition, DOE notes that the current DOE definition for IEC Design H motor in 10 CFR 431.12 extends to 1600 kW. DOE established this definition in the December 2013 Final Rule. 78 FR 75962, 75969–75970. In the December 2013 Final Rule, DOE explained that in defining IEC Design H and IEC Design N motors, DOE specified the characteristics and features that identify these types of motors, so that manufacturers designing to the IEC standards can easily tell whether their motor is subject to DOE's regulatory requirements. DOE could not identify a justification for why DOE's definition of IEC Design H included an upper limit of 1600 kW instead of the 160 kW limit consistent with the IEC definition of Design H. Although standards are limited by a horsepower range (*see* 10 CFR 431.25(g)(8)), DOE stated that it does not need to limit the DOE definitions to the same power range as the standards to describe whether a given motor falls under Design H or Design N. *Id.* Since the definition of Design H in IEC 60034–12:2016 already limits Design H motors to 160 kW, bringing the upper limit in DOE's definitions to be consistent with IEC 60034–12:2016 will not change the scope of the test procedure. Accordingly, in this final rule, DOE is amending the upper horsepower limit for Design H (and E and Y variations) to 160 kW.

2. Updating Definitions To Reference Current NEMA MG 1–2016

In the December 2021 NOPR, DOE proposed to revise a number of definitions at 10 CFR 431.12 by updating references from NEMA MG 1–2009 to NEMA MG 1–2016 (with 2018 Supplements). 86 FR 71710, 71729–71730. DOE noted that the following definitions reference provisions of NEMA MG 1–2009 that have changed between the 2009 and 2016 versions: ''definite purpose motor,'' ''definite purpose electric motor,'' ''general purpose electric motor,'' ''NEMA Design A Motor,'' ''NEMA Design B Motor,'' ''NEMA Design C motor,'' and ''nominal full-load efficiency.'' DOE initially determined that the changes in NEMA MG 1–2016 (with 2018 Supplements) do not substantively change these definitions. *Id.*

In response, NEMA commented that updating the reference of NEMA MG 1 to the 2016 version (with 2018 Supplements) would not substantially change the definitions currently prescribed in 10 CFR 431.12. It further stated the definitions of NEMA Design A, B, and C should be updated to reflect the revised subsection references of 12.35 in NEMA MG 1–2016. (NEMA, No. 26 at p. 10)

Since the December 2021 NOPR, NEMA has published a revised version of NEMA MG 1–2016. On June 15, 2021, ANSI approved the revised version, which is referred to in this document as NEMA MG 1–2016. DOE understands that NEMA continues to title this standard as ''NEMA MG 1–2016,'' even with the latest 2021 updates. In reviewing the latest standard, DOE notes that this revision only appears to unify the supplements and the rest of NEMA MG 1 into one continuous document and does not include any substantial changes to the content of the standard that was reviewed in the December 2021 NOPR. While the December 2021 NOPR requested comment on the definitions based on the latest version at the time [NEMA MG 1–2016 (with 2018 Supplements)], because DOE has since concluded that the latest version [NEMA MG 1–2016 ((Revision 1, 2018) ANSI-approved 2021)] is not substantially different, the assessment conducted in the December 2021 NOPR is still relevant for the latest version of the standard. As such, in this final rule, DOE is incorporating by reference and including within the definitions the latest NEMA MG 1–2016 standard.

In addition, DOE reviewed the subsection references contained in the definitions of NEMA Design A, B, and C in NEMA MG 1–2016 and notes that there have been no updates to the content of the updated subsections. Accordingly, in this final rule, DOE has updated the definitions to include the new subsection references as they appear in NEMA MG 1–2016.

3. Inverter, Inverter-Only, and Inverter-Capable

DOE defines an ''inverter-only electric motor'' as an electric motor that is capable of rated operation solely with an inverter, and is not intended for operation when directly connected to polyphase, sinusoidal line power.'' DOE also defines an ''inverter-capable electric motor'' as an ''electric motor designed to be directly connected to polyphase, sinusoidal line power, but that is also capable of continuous operation on an inverter drive over a limited speed range and associated load.'' 10 CFR 431.12. Inverter-only and inverter-capable electric motors can be sold with or without an inverter.

In the December 2021 NOPR, DOE proposed to revise the definitions for ''inverter-only electric motor'' and ''inverter-capable electric motor.'' Further, DOE also proposed a definition for ''inverter.'' 86 FR 71710, 71730. DOE

noted that, in addition to not being designed for operation when directly connected to polyphase, sinusoidal power, inverter-only motors are also not designed for operation when directly connected to single-phase, sinusoidal line power or to DC power. *Id.* To provide a more complete definition, DOE proposed to revise the definition of inverter-only electric motor as follows: ''an electric motor that is capable of continuous operation solely with an inverter, and is not designed for operation when directly connected to AC sinusoidal or DC power supply.'' *Id.* Similarly, DOE proposed to revise the definition of an inverter-capable electric motor as follows: ''an electric motor designed to be directly connected to AC sinusoidal or DC power, but that is also capable of continuous operation on an inverter drive over a limited speed range and associated load.'' *Id.*

Finally, Paragraph 30.2.1.5 of NEMA MG 1 2016 defines the term ''control'' for motors receiving AC power, as ''devices that are also called inverters and converters. They are electronic devices that convert an input AC or DC power into a controlled output AC voltage or current''. Converters can also be found in motors that receive DC power and also include electronic devices that convert an input AC or DC power into a controlled output DC voltage or current. Therefore, to support the definition of ''inverter-only motor,'' in the December 2021 NOPR, DOE proposed to define an inverter as ''an electronic device that converts an input AC or DC power into a controlled output AC or DC voltage or current. An inverter may also be called a converter.'' *Id.*

Grundfos and Advanced Energy supported the proposed definitions for ''inverter,'' ''inverter-only electric motor,'' and ''inverter-capable electric motors.'' (Grundfos, No. 29 at p. 3; Advanced Energy, No. 33 at p. 6) NEMA, CEMEP, and AI commented that the definitions should be amended to harmonize with the definitions in IEC 60034–1 Edition 14. (NEMA, No. 26 at p. 11; CEMEP, No. 19 at p. 3; AI Group, No. 25 at p. 4)

In response to these comments, DOE reviewed the definitions contained in IEC 60034–1 Ed. 14. IEC 60034–1 Ed. 14 contains specifications for the ratings and performance of rotating electrical machines and defines a ''converter duty machine'' as an ''electrical machine designed specifically for operation fed by a power electronic frequency converter with a temperature rise within the specified insulation thermal class or thermal class.'' DOE notes that this definition was not in edition 13 of IEC 60034–1 and was not available for consideration in the December 2021 NOPR since edition 14 was published in 2022. DOE also notes that the IEC definition is generally similar to the definition proposed in the December 2021 NOPR with only minor differences. The IEC definition uses the term ''electrical machine'' where DOE used ''electric motor'' and ''power electronic frequency converter'' where DOE used ''inverter.'' DOE also understands that the temperature rise clause in the IEC definition is similar to the ''continuous operation'' clause of the DOE definition since overheating (potentially through gradually breaking down the motor's insulation) is a common mode of failure caused by an inverter feeding a non-inverter-rated motor. As such, DOE is adopting the IEC definition to harmonize with industry standards, with only minor modifications to be consistent with the terminology currently used in the rulemaking process. Specifically, in this final rule, DOE is defining an ''inverter-only electric motor'' as an ''electric motor designed specifically for operation fed by an inverter with a temperature rise within the specified insulation thermal class or thermal limits.''

IEC 60034–1 Ed. 14 also defines a ''converter capable machine'' as an ''electrical machine designed for direct online start and suitable for operation on a power electronic frequency converter without special filtering.'' DOE understands that the IEC definition for ''converter capable machine'' is largely similar to the term ''inverter-capable electric motor'' in the same way as how the IEC definition for ''converter duty machine'' is largely similar to the term ''inverter-only electric motor.'' Specifically, the IEC definition uses the clause ''suitable for operation'' whereas the proposed DOE definition included an analogous clause ''capable of continuous operation.'' Further, the IEC definition uses the term ''power electronic frequency converter,'' whereas the proposed DOE definition included the term ''inverter.''

In reviewing the IEC definition for ''converter capable machine'' and the proposed definition for ''inverter-capable electric motor,'' DOE identified two additional differences. The first difference DOE identified was the proposed inclusion of the clause ''over a limited speed range and associated load''—a qualification not included with the IEC definition. However, DOE understands that this additional clause would not create a significant difference between the two definitions as all motors effectively have a limited speed range or associated load by nature of their construction. Therefore, DOE concludes that adopting the IEC definition would not modify the currently proposed scope of this test procedure.

The second difference DOE identified was the clause ''without special filtering,'' which is included in the IEC definition but not in the DOE proposed definition. DOE understands that the inclusion of this clause in the IEC definition is to ensure that non-inverter-rated motors are not considered inverter-capable when a filter is used between the inverter and motor to filter out the higher-order harmonics to prevent damage to the non-inverter-rated motor. This understanding is consistent with the intent of the DOE proposed definition of ''inverter-capable electric motor.'' Therefore, to harmonize with industry standards, DOE is adopting the IEC definition with minor modifications to keep the terminology consistent. Specifically, in this final rule, DOE is defining an ''inverter-capable electric motor'' as an ''electric motor designed for direct online start and suitable for operation on an inverter without special filtering.''

4. Air-Over Electric Motors

Certain general-purpose electric motors have an internal fan attached to the shaft that forces air through the motor and prevents it from overheating during continuous use. Air-over electric motors do not have a factory-attached fan and require a separate means of forcing air over the frame of the motor. The external cooling maintains internal motor winding temperatures within the permissible temperature rise for the motor's insulation class or to a maximum temperature value specified by the manufacturer.[23] Without an external means of cooling, an air-over electric motor would overheat during continuous operation. Air-over motors can be found in direct-drive axial fans, blowers, and several other applications; for example, single-phase air-over motors are widely used in residential and commercial HVAC systems, appliances, and equipment as well as in agricultural applications. The current definition for air-over electric motors in 10 CFR 431.12 is as follows: an electric motor rated to operate in and be cooled by the airstream of a fan or blower that is not supplied with the motor and

[23] Sections 12.42 and 12.43 of NEMA MG 1–2016 specifies the maximum temperature rises corresponding to four insulation classes (A, B, F, and H). Each class represents the maximum allowable operating temperature rise at which the motor can operate without failure, or risk of reducing its lifetime.

whose primary purpose is providing airflow to an application other than the motor driving it.

In the December 2021 NOPR, DOE noted that the absence of a fan is not a differentiating feature specific to air-over electric motors. 86 FR 71710, 71730–71731. For example, there is little difference between a totally enclosed fan-cooled electric motor (''TEFC'') and a totally enclosed air-over electric motor (''TEAO''). A user could remove the fan on a TEFC electric motor, and then place the motor in an airstream of the application to obtain an air-over electric motor configuration. Further, other motor categories such as totally enclosed non-ventilated (''TENV'') electric motors do not have internal fans or blowers and are similar in construction to TEAO electric motors.[24] Finally, DOE also noted that to differentiate air-over motors from totally-enclosed pipe-ventilated (''TEPV'') motors, it needed to specify that the external cooling is obtained by a free flow of air rather than external cooling that is directed onto the motor via a duct or a pipe.[25] *Id.*

In the December 2021 NOPR, DOE explained that what differentiates air-over motors from non-air-over motors is that air-over motors require external cooling by a free flow of air to prevent overheating during continuous operation.[26] 86 FR 71710, 71730–71731. Further, DOE noted that the free flow of air was needed for the air-over motor to thermally stabilize. Accordingly, DOE proposed a revised definition of air-over electric motor in consideration of the above specifications—*i.e.,* ''an electric motor that does not reach thermal equilibrium (*i.e.,* thermal stability) during a rated load temperature test according to section 2 of appendix B, without the application of forced cooling by a free flow of air from an external device not mechanically connected to the motor.'' 86 FR 71710, 71730–71731.

In response to DOE's proposal, Advanced Energy supported DOE's proposed definition of air-over electric motor. (Advanced Energy, No. 33 at p. 6) NEMA commented that the definition was adequate, but pointed out that DOE should preserve and allow all three potential stabilization methods. (NEMA, No. 26 at p. 11) Lennox commented that while it supported the proposed definition, it stated that DOE must continue to exempt HVACR air-over motors from component level-regulation when such motors are used in equipment already regulated at the systems level. (Lennox, No. 24 at p. 7)

Trane commented that the current definition of air-over electric motor is appropriate and that changing it to include thermal equilibrium is inappropriate because the motor could still reach equilibrium without forced-air through heat dissipation. However, the same motor would still be defined as an air-over motor because the manufacturer specifies certain minimum airflow requirements to maintain winding temperatures within permissible limits. (Trane, No. 31 at p. 4)

As discussed previously, DOE proposed the updated definition to ensure that air-over electric motors are correctly distinguished from TEFC, TENV, and TEPV motors. The proposed definition for air-over electric motor specifies reaching thermal equilibrium with forced cooling at a target temperature[27] according to section 2 of appendix B, which is the air-over electric motor test procedure. As discussed in section III.D.1 of this document, the air-over electric motor test procedure allows the use of the motor temperature rise if it is indicated by the manufacturer to specify the target temperature, or if it is not indicated, requires use a target temperature of 75 °C. Based on the updated definition, if the electric motor can thermally stabilize below the target temperature without airflow, then that motor is not considered an air-over electric motor. Without an external means of cooling, an air-over electric motor would overheat during continuous operation. Therefore, if the motor is able to stabilize and operate below the target temperature, then there is no requirement for external means of cooling. On the other hand, the electric motor would still be considered an air-over electric motor if it can thermally stabilize without airflow at a temperature above the target temperature. The updated definition does not limit this occurrence, as it is only specifying that thermal equilibrium must be met during a rated load temperature test according to section 2 of appendix B (*i.e.,* using the temperature rise indicated by the manufacturer to determine target temperature, or if it is not indicated, a target temperature of 75 °C). Accordingly, having an external means of cooling would still be required during continuous operation at the manufacturer specified target temperature.

AMCA stated that the proposed definition for air-over motors is ambiguous and would exclude many intended air-over motors because of the provision ''without the application of forced cooling by a free flow of air from an external device not mechanically connected to the motor'' would exclude air-over motors which are cooled by an external fan driven by the motor's shaft. AMCA recommended as an alternate definition: ''an electric motor that does not reach thermal equilibrium (*i.e.,* thermal stability) during a rated load temperature test according to section 2 of appendix B, without the application of forced cooling by a free flow of air from an external device not supplied for permanent use with the motor.'' (AMCA, No. 21 at pp. 2–3) ebm-papst supported AMCA's suggested definition of an air-over motor and stated that DOE's proposed definition was too broad. (ebm-papst, No. 23 at p. 5)

As described in the NOPR, air-over motors do not have a factory-attached fan and require a separate means of forcing air over the frame of the motor. 86 71710, 71730. DOE interprets the concerns from AMCA and ebm-papst as being that requiring the free flow of air to come from an external device *not mechanically connected to the motor* would unintentionally exclude certain air-over electric motors that should be included, such as air-over motors that are sold with a fan mechanically connected to the motor's shaft (in this case, the fan is used to provide function beyond cooling of the motor and an air over-motor is used to drive the fan). DOE agrees with AMCA and ebm-papst, that such motors must not be excluded from the air-motor electric motor definition. DOE's intent in specifying ''external device'' and ''not mechanically connected'' in the proposed definition was to distinguish air-over motors that do not incorporate a fan within the motor's enclosure from motors that do incorporate a fan in the motor's enclosure, where the fan is used for the sole purpose of cooling the motor. Therefore, in response to the recommendations by AMCA and ebm-

[24] TENV electric motors are ''built in a frame-surface cooled, totally enclosed configuration that is designed and equipped to be cooled only by free convection'' 10 CFR 431.12.

[25] DOE did not find any pipe-ventilated motors in the proposed scope of applicability of this test procedure but is aware that some motors may exist in such configurations. TEPV motors are cooled by supply air which is piped into the motor and ducted out of the motor. They are typically used to overcome heat dissipation difficulties and when air surrounding the motor is not clean (*e.g.,* dust).

[26] Without the application of free-flowing air, the internal winding temperatures of an air-over electric motor would exceed the maximum permissible temperature (*i.e.,* the motor's insulation class's permissible temperature rise or a maximum temperature value specified by the manufacturer).

[27] The amount of ventilation required during the test is based on motor winding temperature reaching a target temperature. See section III.D.1 of this document.

papst, for clarification, DOE is adopting a modified version of the proposed definition instead. DOE is specifying that the external device should also not be supplied within the motor enclosure. In general, DOE prefers to rely on physical features instead of intended usage (*i.e.,* ''for permanent use'') when establishing equipment definitions.

As such, in this final rule, DOE adopts the following definition of air-over electric motor: an electric motor that does not reach thermal equilibrium (*i.e.,* thermal stability), during a rated load temperature test according to section 2 of appendix B, without the application of forced cooling by a free flow of air from an external device not mechanically connected to the motor within the motor enclosure.

5. Liquid-Cooled Electric Motors

Liquid-cooled electric motors are definite-purpose motors typically designed for high power density applications. The higher power density from these applications causes a liquid-cooled electric motor to generate more heat over a given volume than a conventional air-cooled electric motor. To prevent the motor from overheating, it relies on a liquid to be forced through and over components of the motor to provide better cooling than an internal fan would. DOE currently defines a liquid-cooled electric motor as: a motor that is cooled by liquid circulated using a designated cooling apparatus such that the liquid or liquid-filled conductors come into direct contact with the parts of the motor. 10 CFR 431.12.

In the December 2021 NOPR, DOE proposed to revise this definition to read as ''a motor that is cooled by liquid circulated using a designated cooling apparatus such that the liquid or liquid-filled conductors come into direct contact with the parts of the motor, but is not submerged in a liquid during operation.'' DOE proposed this revision to better distinguish liquid-cooled electric motors from submersible electric motors. 86 FR 71710, 71731–71732.

NEMA supported the proposed definition of liquid-cooled electric motor. (NEMA, No. 26 at p. 11) Grundfos commented that ''designated cooling apparatus'' is not clearly defined and believe that the proposed definition makes it unclear as to what constitutes a liquid-cooled motor. (Grundfos, No. 29 at p. 3)

In the December 2013 Final Rule, DOE discussed that liquid-cooled electric motors rely on a special cooling apparatus that pumps liquid into and around the motor housing. 78 FR 75962, 75987–75988. The liquid is circulated around the motor frame to dissipate heat and prevent the motor from overheating during continuous-duty operation. The December 2013 Final Rule amended the definition of liquid-cooled electric motor to better differentiate liquid-cooled electric motors from other types of electric motors, and the term ''designated cooling apparatus'' was added to specify that a cooling apparatus is required for a motor to be designated as a liquid-cooled electric motor. *Id.* In this final rule, DOE further specifies that a ''designated cooling apparatus'' is any apparatus that circulates a liquid in order to cool a liquid-cooled electric motor. One example of such an apparatus is an external pump that forces a liquid through the motor for cooling purposes.

For the reasons discussed in the December 2021 NOPR and with the modification discussed in the preceding paragraph, DOE is adopting the definition of liquid-cooled, as proposed.

6. Basic Model and Equipment Class

In the December 2021 NOPR, DOE proposed to amend the definition of ''basic model'' in 10 CFR 431.12 to make it similar to the definitions used for other DOE-regulated products and equipment, and to eliminate an ambiguity found in the current definition. 86 FR 71710, 71732. The definition in 10 CFR 431.12 specifies that basic models of electric motors are all units of a given type manufactured by the same manufacturer, which have the same rating, and have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics that affect energy consumption or efficiency. For the purposes of this definition, the term ''rating'' is specified to mean one of 113 combinations of horsepower, poles, and open or enclosed construction. *See id.* The reference to 113 combinations dates from the Department's implementation of EPACT 1992, which established initial standards for motors based on that categorization. Since then, EISA 2007 and DOE's regulations have established standards for additional motor categories. *See* 10 CFR 431.25. To clarify that the concept of a ''basic model'' reflects the categorization in effect under the prevailing standard, as it stands today, and as it may evolve in future rulemakings, DOE proposed to refer only to the combinations of horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction for which 10 CFR 431.25 prescribes standards; and to remove the current reference to 113 such combinations. 86 FR 71710, 71732. As such, DOE proposed to replace the term ''rating'' with the term ''equipment class'' in the basic model definition. In addition, DOE proposed to define ''equipment class'' as one of the combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to a category of electric motor for which § 431.25 prescribes nominal full-load efficiency standards. *Id.* This proposal would also limit confusion between the use of the term ''rating'' in this specific case and the use of the term as it applies to represented values of other individual characteristics of an electric motor, such as its rated horsepower, voltage, torque, or energy efficiency. *Id.*

DOE did not receive any comments on these definitions and adopts the definitions of equipment class and basic model as proposed.

C. Updates to Industry Standards Currently Incorporated by Reference

In the December 2021 NOPR, DOE reviewed each of the industry standards that are currently incorporated by reference as test methods for determining the energy efficiency of electric motors or that are referenced within the definitions prescribed in 10 CFR 431.12, and identified updates for each as provided in Table III–4 of this document. 86 FR 71710, 71732–71734.

TABLE III–4—UPDATED INDUSTRY STANDARDS PROPOSED IN THE DECEMBER 2021 NOPR

Existing reference	Updated version	Type of update
IEC 60034–12 Edition 2.1 2007–09	IEC 60034–12 Edition 3.0 2016	Revision.
NFPA 20–2010	NFPA 20–2019	Revision.
CSA C390–10	CSA C390–10 (Reaffirmed 2019)	Reaffirmed.
NEMA MG 1–2009	NEMA MG 1–2016	Revision.

Through the review, DOE tentatively concluded that updating the industry standards to the latest version would not alter the measured efficiency of electric motors and would not be unduly burdensome to conduct. Therefore, DOE proposed to incorporate by reference the updated versions of the industry standards. *Id.*

DOE also proposed to incorporate by reference IEC 60079–7:2015 as it is referenced within IEC 60034–12:2016 and is necessary for the test procedure. Sections 5.2.7.3 and 5.2.8.2 of IEC 60079–7:2015 describe the additional starting requirements of increased safety ''eb'' and ''ec'' motors. The ''eb'' and ''ec'' designations are the two levels of protection offered by the increased safety ''e'' designation and are intended for use in explosive gas atmospheres, according to Section 1 of IEC 60079–7:2015. Section 5.2.7.3 specifies the application of protective measures to prevent airgap sparking while Section 5.2.8.2 specifies the application of starting current requirements and when a current-dependent safety device is required. 86 FR 71710, 71733. Also, to ensure consistency in the versions of the referenced standards used when testing, DOE proposed to specify the publication year for each of the industry standards referenced by Section 12.58.1 of NEMA MG 1–2016, which are as follows: IEEE 112–2017, CSA C390–10, and IEC 60034–2–1:2014. 86 FR 71710, 71734.

In response, CEMEP agreed that DOE's assessment of the updates to NEMA 12.58.1 of MG 1–2016 with its 2018 Supplements was accurate, and supported updating the IEEE, CSA, and IEC standards to their latest versions. (CEMEP, No. 19 at p. 4) However, CEMEP stated that IEC 60079–7:2015 contains some specific requirements for 'eb' motors related to the safety of such protection type, and for 'ec' motors, there are no requirements regarding starting performance. Accordingly, CEMEP recommended against including IEC 60079–7:2015. (CEMEP, No. 19 at p. 4)

NEMA agreed with DOE's assessment of the updates to IEC 60034–12:2016, and supported referencing both IEC 60034–12:2016 and IEC 60079–7:2015. It commented that while IEC 60034–12 is currently under revision, substantial changes were not expected. (NEMA, No. 26 at p. 11) Further, NEMA agreed with DOE's assessment of the updates to Paragraph 12.58.1 of NEMA MG 1–2016, and asserted that updating the references to IEEE 112–2017, CSA C390–10, and IEC 60034–2–1:2014 should not affect the measured efficiency of electric motors currently in scope of the test procedure. (NEMA, No. 26 at pp. 11–12) Finally, NEMA also supported DOE updating to the 2019 version of NFPA 20. *Id.* NEMA stated that ''including any IEC equivalent'' should remain in DOE's definition of fire pump for clarity even if NFPA 20 section 9.5 now includes that clause. (NEMA, No. 26 at p. 11)

Grundfos did not believe updating to the 2016 version of NEMA MG 1 (with 2018 Supplements) would alter the measured efficiency of electric motors. (Grundfos, No. 29 at p. 3) Further, Grundfos agreed with DOE's assessment and proposed inclusion of IEC 60034–12:2016 and the proposed updates to Section 12.58.1 of NEMA MG 1. It also supported including IEC 60034–2–1:2014 as part of the DOE test procedure. (Grundfos, No. 29 at pp. 3–4) Advanced Energy agreed with DOE's assessment on the updates to Section 12.58.1 of NEMA MG 1–2016 (with 2018 Supplements), and agreed with updating DOE's test procedures to reference the most recent IEEE, CSA, and IEC standards because it would be consistent with current industry practice. (Advanced Energy, No. 33 at p. 7)

Since the December 2021 NOPR, there have been updates to two of the standards: (1) NFPA 20–2019 has been revised to a 2022 version; and (2) NEMA MG 1–2016 has been updated to an ANSI approved June 15, 2021, version that includes updates to parts 0, 1, 7, 12, 30, and 31, along with Part 34 (separately published).

For the 2022 update to NFPA–20, new requirements were added to address numerous recent advancements in the field of stationary pumps for fire protection, which is not relevant for the scope of this rulemaking. The updates to Section 9.5 of NFPA–20 provide further clarifications on calculating values for locked rotor current for motors rated at voltages other than 230 V presented in that section. Otherwise, section 9.5 remains the same as the 2019 version. Accordingly, referencing the most current version (NFPA 20–2022) would not change the applicability of the definition of fire pump electric motor for the purposes of DOE's regulations. Further, DOE is maintaining ''including any IEC equivalent'' within the fire pump electric motor definition.

For the 2021 update to NEMA MG 1–2016, this revision consolidates the supplements and the rest of NEMA MG 1 into one document. DOE did not identify any substantial changes compared to the prior version of NEMA MG 1. Accordingly, as with the updates to NFPA–2020, referencing the most current would not alter the measured efficiency of electric motors, and would not be unduly burdensome to conduct.

Further, as discussed in the December 2021 NOPR, IEC 60034–12:2016 references IEC 60079–7:2015 to determine locked rotor apparent power for motors with type of protection ''e'' '—which are eligible to be considered IEC Design N or H motors. 86 FR 71710, 71733. Considering IEC 60079–7:2015 is necessary to test using IEC 60034–12:2016, DOE is incorporating by reference both test procedures in this final rule.

Accordingly, for the reasons discussed in the December 2021 NOPR and discussed in the preceding paragraphs, DOE is updating its test procedure regulations to incorporate the current industry standards to the latest references, as summarized in Table III–5.

TABLE III–5—UPDATED INDUSTRY STANDARDS IN THIS FINAL RULE

Existing reference	Updated version	Type of update
IEC 60034–12 Edition 2.1 2007–09	IEC 60034–12 Edition 3.0 2016 (including IEC 60079–7:2015).	Revision.
NFPA 20–2010	NFPA 20–2022	Revision.
CSA C390–10	CSA C390–10 (Reaffirmed 2019)	Reaffirmed.
NEMA MG 1–2009	NEMA MG 1–2016	Revision.

D. Industry Standards Incorporated By Reference

This section discusses industry test standards that DOE is incorporating by reference for testing the additional electric motors for inclusion in the scope of the DOE test procedure.

EPCA includes specific test procedure-related requirements for electric motors subject to energy conservation standards under 42 U.S.C. 6313. The provisions in EPCA require that electric motors be tested in accordance with the test procedures specified in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency, as in effect on October 24, 1992 (*See* 42 U.S.C. 6314(a)(5)) As discussed in section III.C of this document, both publications have been replaced with the more recent version IEEE 112–2017 and NEMA MG 1–2016.

The additional electric motors DOE is adding to the scope of the DOE test procedure are not addressed by the standards that are currently applicable under 42 U.S.C. 6313. DOE notes that the industry test procedures incorporated by reference for air-over electric motors and for SNEMs are included in NEMA MG 1–2016. *See* Section IV, Part 34: Air-Over Motor Efficiency Test Method and Section 12.30. Section 12.30 of NEMA MG 1–2016, specifies the use of IEEE 112 and IEEE 114 for all single-phase and polyphase motors.[28] As further discussed in section III.D.2 of this document, DOE is requiring testing of SNEMs other than air-over and inverter-only electric motors according to IEEE 112–2017 (or CSA C390–10 or IEC 60034–2–1:2014, which are equivalent to IEEE 112–2017) and IEEE 114–2010 (or CSA C747–09 or IEC 60034–2–1:2014, which are equivalent to IEEE 114–2010). This amendment satisfies the test procedure requirements under 42 U.S.C. 6314(a)(5).

The methods listed in Section 12.30 of NEMA MG 1–2016, for testing AC motors apply only to AC induction motors that can be operated when directly connected to the power supply (direct-on-line) and do not apply to electric motors that are inverter-only or to synchronous electric motors that are not AC induction motors. Therefore, for these additional electric motor types, DOE is specifying the use of different industry test procedures, as further discussed in section III.D.3. of this document.

AI Group stated that DOE should harmonize with IEC international standards with respect to the electric motor test procedures, efficiency classes, and scope of regulation. (AI Group, No. 25 at p. 2)

DOE's test procedures currently incorporate by reference several IEC test methods for testing current in-scope electric motors. *See* 10 CFR 431.15(c). As part of this rulemaking, DOE reviewed a number of industry standards that would be relevant for testing the additional electric motors that DOE proposed to include within the scope of the DOE test procedure. Several of those industry standards include IEC standards, which are discussed in sections III.D.2 and III.D.3 of this document.

1. Test Procedures for Air-Over Electric Motors

a. Test Method

In the December 2021 NOPR, DOE evaluated three test methods published by NEMA in NEMA MG 1–2016 that are used to measure the efficiency of an air-over electric motor. 86 FR 71710, 71735–71739. The first alternative test method (*i.e.,* Part 34.3) specifies that the temperature test must be conducted by thermally stabilizing the motor at the rated full-load conditions using an external airflow according to the end user specifications in terms of air-velocity ratings in feet per minute. The second alternative test method (*i.e.,* Part 34.4) includes a temperature test conducted with the use of an external blower, but the amount of airflow is not specified; therefore, the amount of ventilation required is based on motor winding temperature reaching a target temperature. Finally, the third alternative test method (*i.e.,* Part 34.5) includes a temperature test performed without the use of an external blower while not loading the motor at its rated load. Instead, the motor is gradually loaded until the motor winding temperature reaches the required target temperature. *Id.*

As part of the review of the test methods, in the December 2021 NOPR, DOE did not consider Part 34.3 because testing with an external airflow according to the customer or application specific requirements as specified in the first alternative test method could result in testing the same motor at different winding temperature during the test, which would impact the measurement of efficiency. Therefore, DOE tentatively concluded that results from applying the first test method according to Part 34.3 would not ensure relative comparability of efficiency for air-over electric motors. 86 FR 71710, 71737–71738.

Otherwise, DOE considered the other two test methods (Parts 34.4 and 34.5) and conducted testing to evaluate the repeatability and equivalency of the methods. 86 FR 71710, 71737–71738. DOE conducted a series of efficiency tests for a test sample that included seven air-over motor models spanning a range of 0.25 to 20 hp and represented both single-phase and polyphase motors. DOE observed the percentage difference in losses between Parts 34.5 and 34.4 range from −0.4 (on the lower end) to +10.9 (on the higher end), and the units at the higher end of the percentage difference spanned a wide range of hp ratings. These units included both single-phase and polyphase motor types, indicating no clear or consistent trend that could be used to define criteria by which the two methods would produce equivalent results. As such, DOE found that the two test methods could not be considered equal. *Id.*

To determine which of the two test methods (Part 34.4 or 34.5) to propose for air-over electric motors, DOE tested a subset of the seven air-over motors to evaluate the repeatability of each test methods. 86 FR 71710, 71737. The test results indicated that for three units, Part 34.4 showed less variation between subsequent tests compared to the Part 34.5. However, for one unit, Part 34.4 test method showed greater variation than Part 34.5. Based on these results, DOE concluded that Part 34.4 may provide more repeatability than Part 34.5 for air-over motors. *Id.* As such, DOE proposed to require that air-over motors be tested only according to Part 34.4. *Id.*

Regarding the test method, CEMEP supported using Part 34.4 but recommended allowing the use of other methods present in NEMA Part 34, but offered no specific justification for its view. (CEMEP, No. 19 at p. 1) AI Group referred DOE to Australian standards that included efficiency requirements for air-over motors and what test procedure Australia uses to test these motors.[29] (AI Group, No. 25 at p. 3) AMCA supported the use of Section 34.4 as the test method for air-over motors only if the motor is: (1) induction, (2) constructed in a NEMA/IEC standard frame, and (3) the motor target temperature test is verified by means of the winding resistance method or a temperature detector closely

[28] As previously mentioned, NEMA MG 1–2016 does not specify the publication year of the referenced test standards and instead specifies that the most recent version should be used.

[29] The Australian test method includes a requirement for an externally- and independently-generated air-steam, similar to Parts 34.3 and 34.4. *https://www.legislation.gov.au/Details/F2019L00968.*

coupled to the stator winding. (AMCA, No. 21 at p. 3) ebm-papst agreed with AMCA that the scope of the air-over test procedure should be limited to induction motors built in standard NEMA/IEC frames. (ebm-papst, No. 23 at p. 5)

The CA IOUs stated that they conducted testing on the proposed air-over test method and reported their preliminary findings as follows: (1) NEMA MG 1 Parts 34.4 and 34.5 appear to be repeatable, (2) some totally enclosed air-over (TEAO) motors stabilize before the target temperature is reached, suggesting the need for modifications to the test procedure for those motors, (3) manufacturer-specified airflow differs across different designs, with some having no specification, and (4) TEAO motor designs have varying responses to airflow and varying relationships to measured efficiency and target winding temperature. Relying on their preliminary test data, the CA IOUs agreed with DOE's initial finding that Part 34.4 meets DOE's test procedure requirements for repeatability and supported the use of Part 34.4 for rating TEAO motors. However, the CA IOUs also suggested an approach that they anticipated would significantly increase the representativeness of the test procedure for a broader range of field applications (which are discussed in section III.D.1.b) (CA IOUs, No. 32.1 at pp. 10–11)

Advanced Energy stated that the air-over test method has proven to be repeatable and reliable. Advanced Energy also supported the conclusion that Part 34.4 of NEMA Part 34 is more repeatable than Part 34.5 for air-over electric motors. It commented that boths Part 34.4 and 34.5 are repeatable but that the data presented by DOE suggest Part 34.4 is more repeatable. (Advanced Energy, No. 33 at pp. 2, 8–9) Further, Advanced Energy stated it has tested air-over motors up to 20 hp and has not found blower capacity to be a limiting factor. It stated that if its testing were limited by the blower, a larger blower could be used to permit the test to be conducted according to the test procedure. (Advanced Energy, No. 33 at p. 9)

NEMA disagreed with the December 2021 NOPR's conclusion that Part 34.4 is less repeatable than Part 34.5. NEMA further noted that the methods in Part 34.4 and Part 34.5 are useful depending on in-situ factors and should both remain available as needed. NEMA commented that a fair assessment of repeatability required understanding the potential sources of variations in test results. NEMA suggested certain potential sources of error to investigate for discrepancies, specifically: power meter capability, temperature measurement, torque acquisition, tachometer, and torque transducer capability. (NEMA, No. 26 at pp. 13–14) NEMA recommended that air-over motors be tested in accordance with any of the three test methods in Part 34, without exception and modification, and provided reasoning why Part 34.3 and Part 34.5 test methods should also be allowed: (1) for Part 34.3, NEMA noted that motor manufacturers are approached by OEMs to develop a motor with application specific fit, form, and function constraints, and motor design and development is frequently performed as a system approach and includes the motor, the OEM's fan, baffles, support structure and ducting. Accordingly, it commented that reproducing system operating conditions of airflow and temperature while coupled to a dynamometer is the most desirable case for determining motor efficiency; (2) for Part 34.5, it stated that not all laboratories have the equipment and resources to design a blower system and measure the airflow while the motor is coupled to a dynamometer, and therefore a test without airflow is an effective test method in these cases. NEMA did not directly comment on the accuracy and equivalency of the test methods, asserting simply (without offering more) that there is a significant risk that an equivalent test procedure option could be rejected for inclusion in the electric motor test procedure if feedback is submitted based on data comprised of unexplained test error. (NEMA, No. 26 at pp. 13–15) Lennox stated that a generic component-level test method would not yield results that are representative of an average use cycle for definite purpose motors because a component-level test procedure would fail to capture system operating characteristics that affect motor efficiency. Lennox also identified relevant system operating characteristics—*e.g.,* motor mounting, motor tuning, and how the air moving systems relate to the heat exchanging equipment—as variables that factor into the system efficiency of the finished product. (Lennox, No. 24 at p. 3)

DOE notes that neither NEMA nor CEMEP provided data supporting equivalency of the three test methods in Part 34. The CA IOUs also did not provide the data underlying their preliminary findings. Absent data other than that generated by the DOE testing, DOE is unable to conclude that Parts 34.4 and 34.5 are equivalent.

DOE understands that the different test methods in Part 34 may be useful depending on in-situ factors. However, this test procedure rulemaking focuses solely on the electric motor independent of the product or equipment into which the electric motor may be installed. This focus necessarily means that DOE must consider a test method that is repeatable for the electric motor as stand-alone equipment. As noted, Part 34.3 allows testing with an external airflow according to the customer, which could result in testing the same motor at different winding temperature during the test, which would impact the measurement of efficiency. With regard to Parts 34.4 and 34.5, testing performed as part of the December 2021 NOPR indicated that they did not provide equivalent results. Further, DOE has not received any new test data that indicates the three test methods in Part 34 are equivalent. Accordingly, at this time DOE cannot conclude that the three test methods in Part 34 are equivalent. Therefore, in this final rule, DOE is adopting Part 34.4 as the only test method for air-over electric motors.

b. Target Temperature Specification

Part 34.4 specifies that, if a motor temperature rise is not indicated, polyphase air-over electric motors use a target temperature that depends on the motor's insulation class. This target temperature is then used as the temperature at which the load test is conducted. In contrast, for all single-phase motors, the target temperature is specified at 75 °C, regardless of insulation class. In the December 2021 NOPR, DOE reported that it conducted testing to understand how much the temperature target could affect measured efficiency. 86 FR 71710, 71738. That testing demonstrated different measurements of efficiency at different test temperatures, and therefore, DOE tentatively concluded that defining a single test temperature, rather than using a target temperature that depends on the motor's insulation class, would produce measured efficiency values that are more comparable across insulation classes. Accordingly, DOE proposed to use a single target temperature for polyphase motors regardless of insulation class. 86 FR 71710, 71738–71739.

In response, the Joint Advocates opposed a single target temperature for all air-over motors and asserted that this single target temperature could give a testing advantage to motors that are designed to run hotter than the target temperature. (Joint Advocates, No. 27 at p. 3) AMCA stated that testing a motor of an insulation class higher than insulation class A (a 75 °C limit) at a target temperature of 75 °C would result

in lower I^2R losses than when the motor is used as intended. (AMCA, No. 21 at p. 3) CEMEP stated that a fixed temperature target would penalize or reward certain motors depending on the temperatures at which they were designed to operate. (CEMEP, No. 19 at pp. 4–5) ebm-papst commented that higher temperatures lead to higher losses in the stator, rotor, and other current-carrying components of the motor. (ebm-papst, No. 23 at p. 5) ebm-papst also stated that many definite purpose motors would stabilize under the 75 °C target temperature and would be unable to use the proposed test procedure. (ebm-papst, No. 23 at pp. 6)

NEMA disagreed with modifying Section 34.4 to have a single target temperature of 75 °C, regardless of insulation class. It commented that although the proposal indicated that the single target temperature would apply to all motors even if the temperature rise is indicated, the proposed updates to the regulatory text in section 2.2.1 of appendix B appear to only apply to motors without an indicated temperature rise.[30] NEMA commented that if a manufacturer does not want its motor to be tested at the upper bounds of its insulation class, then all the manufacturer has to do is indicate the temperature rise. NEMA suggested that DOE adopt Section 34.4 without modification. In support, NEMA provided data from a motor performance simulation that predicted the required airflow for different target temperatures. In cases where a motor is designed to have a higher temperature rise than the 75 °C target, NEMA stated that the motor could need an unfeasibly large amount of airflow to get to the temperature to the proposed 75 °C target. (NEMA, No. 26 at pp. 12–15) It explained that in situations where the motor temperature rise under testing is significantly higher than the motor temperature rise in the actual application, the efficiency test would be biased towards higher losses and lower efficiency than the intended application. NEMA recommended that a manufacturer in that situation should simply indicate the motor temperature rise. (NEMA, No. 26 at p. 12) Separately, NEMA also noted that a default 75 °C condition could be specified for cases where a manufacturer does not indicate motor temperature rise, although NEMA still preferred that the test procedure in Part 34.4 be followed without modification. (NEMA, No. 26 at p. 15)

AHAM and AHRI disagreed that a single temperature should be used to test air-over motors, due to potential impracticalities of test setup. For example, AHAM and AHRI stated that some motors may not reach 75°C during normal operation at the intended load and that air-over motors constructed with open enclosures may incorporate an internal cooling fan and operate continuously at rated load with a total temperature less than 75 °C. They stated that one reason an open motor with self-ventilation may be applied to an air over application is because the hub diameter of the fan may prevent sufficient air velocity from flowing over the surface of the motor and that temperature rises of 20 °C to 40 °C are not uncommon for small motors with open enclosures. They cited this as an example where thermally stabilizing the motor at 75 °C would result in a full-load operating temperature that is greater than the full-load operating temperature of the motor while it is operating in its intended air-over application. (AHAM and AHRI, No. 36 at p. 9)

Lennox did not support the single target temperature and stated that the operating temperature of motors used in HVAC applications vary widely. It also commented that air-over motors can be designed to stabilize below the proposed target temperature. (Lennox, No. 24 at p. 8) Trane commented that testing motors without their associated appliance is not beneficial to the end-user or the appliance manufacturer. To this end, Trane provided performance data showing that efficiency varied with horsepower and operating temperature for a given motor and stated that the test conditions need to reflect the operating conditions within the appliance. (Trane, No. 31 at p. 2)

The CA IOUs suggested using two target temperatures and taking the average efficiency of the two temperatures to be the most representative of field use. They commented that certain TEFC-like and TENV-like TEAO motors may be capable of thermally stabilizing below the rated insulation class temperature without added airflow, suggesting the need for a TEAO custom testing approach that can address temperature stabilization issues. Accordingly, they suggested a two-target temperature approach in which the first temperature would be the temperature at which the motor stabilizes if less than 75 °C, or 75 °C if the motor stabilizes above that, and the second would be the insulation class target temperature. They stated that if the motor stabilizes below 75 °C, that is the measured efficiency; if above, the measured efficiency would be the average of the 75 °C and insulation class target. They provided data regarding how varied manufacturer specified airflow is, and stated that the minimum airflows would stabilize the motors at much lower temperatures than the required 75 °C. They also provided data regarding winding temperature response vs. applied airflow for three different air-over motors. (CA IOUs, No. 32.1 at pp. 11–15)

Advanced Energy supported the 75 °C target temperature for air-over electric motors. (Advanced Energy, No. 33 at p. 8) Advanced Energy also stated that many air-over motors they have tested have stabilized below the 75 °C target temperature, and that when this occurs, the motor should be treated as a totally enclosed, non-ventilated (''TENV'') motor since it does not need air from an external source to stabilize. (Advanced Energy, No. 33 at p. 9)

In considering the comments received, in this final rule, DOE is specifying a single target temperature requirement for polyphase motors that do not indicate a specified temperature rise. DOE understands that the indicated motor insulation class does not correlate to the intended target temperature and is adopting its proposed modification to Section 34.4. As discussed in the December 2021 NOPR, DOE understands that if a particular motor that was designed with a higher temperature insulation class than a second motor, that fact does not necessarily mean that the first motor would operate or is designed to operate at a higher temperature than the second motor; instead it means that the first motor is capable of running at the higher temperature associated with its insulation class. 86 FR 71710, 71736. Therefore, determining target temperature based on insulation class when motor temperature rise is not indicated would not necessarily be the most representative of motor operation.

As adopted in this final rule, the test procedure specifies the use of motor temperature rise if it is indicated in terms of insulation class (*i.e.,* the temperature rise being defined in terms of an insulation class) or numerical value (*i.e.,* the actual temperature rise), as specified in Sections 34.4.1.b and 34.4.1.c of NEMA MG 1–2016. For units for which the motor temperature rise is not otherwise indicated (*i.e.,* in Section 34.4.1.a.1 of NEMA MG 1–2016), DOE is requiring a target temperature of 75 °C for both polyphase and single-phase

[30] In the December 2021 NOPR, the proposed section 2.2.1 of appendix B stated ''the provisions in Paragraph 34.4.1.a.1 NEMA MG 1–2016 (with 2018 Supplements) related to the determination of the target temperature for polyphase motors must be replaced by a single target temperature of 75 °C for all insulation classes.'' 86 FR 71710, 71780. However, Paragraph 34.4.1.a.1 NEMA MG 1–2016 (with 2018 Supplements) is a method for determining target temperature only if a motor temperature rise is not otherwise indicated.

electric motors, as proposed in the December 2021 NOPR.

In section III.B.4 of this document, DOE discussed that in-scope air-over electric motors are those that reach thermal equilibrium during a rated load test according to section 2 of appendix B, and with the application of forced cooling by a free flow of air from an external device. Therefore, any motor not meeting these criteria would not meet the air-over electric motor definition as finalized in this final rule. If a motor can thermally stabilize during a load test below the target temperature (whether it be based on motor temperature rise if it is indicated in terms of insulation class, numerical value; or whether it be based on 75 °C when motor temperature rise is not indicated) without applying forced cooling by a free flow of air from an external device, then it would not be an in-scope air-over electric motor. DOE notes that Section 34.4.1.c of NEMA MG 1–2016 provides that if a motor temperature rise is indicated as a numerical value, then the target temperature for the test is the sum of that temperature rise and the reference ambient temperature of 25°C, which can be less than 75 °C.

As such, DOE's approach for the test procedure is consistent with NEMA MG 1–2016, except for polyphase motors that do not indicate a specified temperature rise. Otherwise, allowing the use of manufacturer indicated temperature rise, as required by NEMA MG 1–2016, maintains current industry requirements and is the most representative because the manufacturer indicated temperature rise generally reflects motor operation in the field. While DOE acknowledges the CA IOUs two-temperature approach, DOE cannot currently determine that this approach is more representative than what industry has developed as part of NEMA MG 1–2016. In addition, as presented in this final rule, DOE is not requiring testing at the same target temperature for all air-over electric motors, regardless of manufacturer indicated temperature rise. As previously discussed, one of the CA IOUs' main concerns was that testing at one target temperature would not credit motors with efficient heat shedding designs. To avoid this potential problem, this final rule specifies that the requirement to use a single target temperature of 75 °C only applies to air-over motors that do not have a specified temperature rise and that if the temperature rise is specified on the motor, such temperature rise will be used to determine the target temperature.

2. Test Procedures for SNEMs

In the December 2021 NOPR, DOE proposed to require testing of SNEMs (other than inverter-only, and air-over electric motors) according to the industry test methods identified in Table III–6 of this document. 86 FR 71710, 71739.

TABLE III–6—ADDITIONAL INDUSTRY TEST STANDARDS PROPOSED IN THE DECEMBER 2021 NOPR FOR INCORPORATION BY REFERENCE FOR SNEMS

Topology	Industry test standard incorporated by reference
Single-phase	IEEE 114–2010, CSA C747–09, IEC 60034–2–1:2014.
Polyphase with rated horsepower less than 1 horsepower	IEEE 112–2017, CSA C747–09, IEC 60034–2–1:2014.
Polyphase with rated horsepower equal to or greater than 1 horsepower.	IEEE 112–2017, CSA C390–10, IEC 60034–2–1:2014.

DOE initially determined that polyphase motors at or above 1 hp can be tested with the same methods as would be applicable to electric motors currently subject to the DOE test procedure (*i.e.,* IEEE 112–2017, CSA C390–10, and IEC 60034–2–1:2014). See section 2 of appendix B. The referenced industry standards applicable to electric motors are also consistent with those referenced for small electric motors that are for polyphase motors greater than 1 hp. 10 CFR 431.444(b). For SNEMs that are polyphase motors with a horsepower less than 1 hp and for SNEMs that are single-phase motors, DOE initially determined that, consistent with the DOE test method established for regulated small electric motors (which also include polyphase motors with rated motor horsepower less than 1 hp and single-phase motors), IEEE 114–2010, CSA C747–09 and IEC 60034–2–1:2014 are appropriate test procedures for SNEMs. Additionally, DOE notes that Section 12.58.1 of NEMA MG 1–2016 also lists IEEE 114 and CSA C747 as the selected industry standards for measuring and determining the efficiency of polyphase motors below with a horsepower less than 1 hp and single-phase motors. 86 FR 71710, 71739.

The CA IOUs agreed with the proposed test methods and suggested that industry-accepted test methods exist for the SNEM topologies. (CA IOUs, No. 32.1 at p. 43) CEMEP stated that single-phase motors should be tested using a ''direct measurement'' according to IEC 60034–2–1, CSA 747, or IEEE 114 and that polyphase motors should be tested using a separation of losses method according to IEC 60034–2–1, CSA C390, IEEE 112. (CEMEP, No. 19 at p. 5) Grundfos agreed with the test methods proposed for SNEMs. (Grundfos, No. 29 at p. 5) Grundfos also separately recommended breaking this large category of motors down into smaller subcategories to make testing requirements clearer. (*e.g.,* single-phase, 2-digit NEMA (excluding 56) fractional motors). (Grundfos, No. 29 at p. 2). Advanced Energy agreed with the prescribed test methods DOE proposed for SNEMs and stated that these methods are consistent with the many tests it has conducted on these motors. (Advanced Energy, No. 33 at p. 10)

NEMA stated that single-phase motors should not be tested with the summation of losses method, and instead should use a direct output/input power measurement. It provided data of a 10 hp single-phase motor tested 30 times that indicated how the range and average efficiency measured was different for the two test types. NEMA also cited a 2009 paper published by Advanced Energy comparing the differences in measured efficiency produced by the direct vs. indirect methods.[31] In the paper, Advanced Energy found that the direct method would vary in measured efficiency within a range of 1.26 percent points higher or 1.86 percent points lower compared to the indirect method and is too large of a difference for reporting purposes.[32] NEMA stated that results

[31] DOE notes that the cited paper analyzed polyphase induction motors and did not focus on single-phase motors.

[32] E.B. Agamloh, ''A Comparison of direct and indirect measurement of induction motor efficiency,'' 2009 IEEE International Electric Machines and Drives Conference, 2009, pp. 36–42, doi: 10.1109/IEMDC.2009.5075180. Available at: *ieeexplore.ieee.org/document/5075180* (last accessed on 6/29/22).

obtained from the direct method should have different loss tolerances applied from those measured through the indirect method. NEMA also stated that single-phase motors should be removed from this rulemaking and given its own, separate rulemaking. (NEMA, No. 26 at pp. 8–9)

The December 2021 NOPR proposed the following test methods for single-phase SNEMs: IEEE 114–2010, CSA C747–09, and Method 2–1–1A of IEC 60034–2–1:2014. 86 FR 71710, 71739. These test methods are consistent with those currently applicable to single-phase small electric motors in 10 CFR 431.444(b)(2). All of the proposed test methods for single-phase SNEMs are direct output/input power measurement test methods. Specifically, the test methods require determining efficiency as follows: (1) Section 8.2 of IEEE 114–2010 states, ''A determination of efficiency is based on measurements of input power and output power. Efficiency is calculated as the ratio of the measured output power to the corrected input power, where the measured input power is corrected for ambient temperature;'' (2) Section 6.10 of CSA C747–09 requires efficiency to be calculated using direct measurements of input power torque and speed; and (3) Method 2–1–1A of IEC 60034–2–1:2014 is titled as the ''direct measurement of input and output.'' Comments provided by the CA IOUs (CA IOUs, No. 32.1 at p. 43), and comments DOE received in response to the July 2009 small electric motors test procedure rulemaking,[33] also indicated that these test procedures rely on direct measurement of input and output. Given the support from interested parties and consistency with the test methods for SEMs, DOE concludes that the proposed test methods are relevant for single-phase SNEMs that are not air-over electric motors and not inverter-only electric motors and is therefore finalizing the proposed test methods in this final rule.

3. Test Procedures for AC Induction Inverter-Only Electric Motors and Synchronous Electric Motors

a. Test Method

In the December 2021 NOPR, DOE proposed test methods for various inverter-only electric motors and synchronous electric motors. These proposed test methods are presented in Table III–7 of this document. In addition, DOE proposed that for inverter-only electric motors sold without an inverter, testing would be performed using an inverter that is listed as recommended in the manufacturer's catalog. If more than one inverter is listed as recommended in the manufacturer's catalog or if more than one inverter is offered for sale with the electric motor, DOE noted that it would consider requiring that testing be performed using the least efficient inverter. 86 FR 71710, 71742.

TABLE III–7—TEST STANDARDS PROPOSED FOR INCORPORATION BY REFERENCE FOR SYNCHRONOUS ELECTRIC MOTORS AND AC INDUCTION INVERTER-ONLY MOTORS

Motor configuration	Equipment tested	Industry test standard incorporated by reference
Synchronous motors that are direct-on-line or inverter-capable	Motor	IEC 60034–2–1:2014.
Synchronous or AC Induction Inverter-only	Motor + Inverter	IEC 61800–9–2:2017.

In response to this proposal, both CEMEP and AI Group stated that IEC 60034–2–3 is the correct test procedure for inverter-only motors sold without an inverter and IEC 61800–9–2 is the correct procedure if the motor is sold with an inverter. (CEMEP, No. 19 at p. 6; AI Group, No. 25 at p. 5)

Advanced Energy supported testing synchronous motors according to IEC 60034–2–1 and IEC 61800–9–2. It stated that in the case of switched reluctance inverter-only motors, it would be difficult to measure only the motor's efficiency, because measuring the power input to the motor is not straightforward. Accordingly, for such motors, Advanced Energy stated that they supply system efficiency only for the motor drive system and not a separate motor efficiency and inverter efficiency. (Advanced Energy, No. 33 at pp. 10–11) Advanced Energy also stated that DOE should designate the motor wire to be used when testing inverter-only or inverter-capable motors with inverters unless the manufacturer documentation states differently. With regard to this point, it provided the wire requirements of AHRI 1210 Section 5.1.6. (Advanced Energy, No. 33 at pp. 11–13) Advanced Energy also stated that an inverter-only motor should be allowed to be certified with any of the recommended inverters listed in the manufacturer catalog and that different inverters will produce different measured efficiencies when paired with a motor. It commented that the settings of the inverter could influence measured efficiency, and that these values should be specified either directly or through reference to an industry standard. To this end, it provided the settings listed in AHRI 1210 Section 5.1.5. (Advanced Energy, No. 33 at p. 12)

For inverter-only electric motors, NEEA/NWPCC agreed with DOE that these motors should be tested using IEC 61800–9–2:2017, and for inverter-only motors that do not include an inverter, testing must be conducted using an inverter as recommended in the manufacturer's catalogs or that is offered for sale with the electric motor. For inverter-only motors that do not include an inverter, NEEA/NWPCC recommended that the efficiency should include the losses of an inverter. NEEA/NWPCC commented that if the inverter losses are not accounted for, this would create an unlevel playing field when compared to inverter-only motors sold with an inverter (*e.g.,* ECMs). NEEA/NWPCC commented that they do not recommend adding ''Reference Complete Drive Module (RCDM)'' losses as laid out in IEC 61800–9–2:2017, because these losses are not well aligned with actual inverter losses. NEEA/NWPCC recommended that such equipment be tested and rated using an inverter recommended by the manufacturer or that DOE develop its own default losses that are more representative of equipment currently available on the market. (NEEA/NWPCC, No. 37 at p. 6) Grundfos further stated that these equipment should require ratings that reflect the inverter and motor efficiency. (Grundfos, No. 29 at p. 2)

For inverter-capable electric motors, NEEA/NWPCC recommended that they be tested with IEC 61800–9–2 instead of DOE's proposed IEC 60034–2–1. They

[33] See comments from Advanced Energy and NEEA in the small electric motor test procedure final rule published on July 7, 2009. 74 FR 32059, 32065.

commented that IEC 60034–2–1 does not account for harmonic losses that are present when motors are supplied by inverters. By testing to IEC 60034–2–1 and not including the harmonic losses, this approach would create an unlevel playing field for inverter-capable motors that compete with inverter-only motors. NEEA/NWPCC commented that when a consumer is in the market for a variable-speed motor, it can choose to purchase either inverter-capable or inverter-only motors. NEEA/NWPCC stated that if all inverter-capable motors appear to have a higher efficiency because of a difference in test procedure, the consumer would be more likely to choose that motor over a lower-rated inverter-only motor. They contended that if inverter-only motors are not rated or rated with a different metric, end users will not be able to evaluate them equitably. Accordingly, NEEA/NWPCC recommended that both inverter-only and inverter-capable motors should be tested and rated with the same test procedure. (NEEA/NWPCC, No. 37 at pp. 3; 7)

ebm-papst stated that switched-reluctance motors are not in the scope of IEC 61800–9–2, and suggested that wire-to-shaft testing of these motors requires a combination of two standards: IEC 60034–2–3 to measure shaft output and IEC 61800–9–2 to measure converter input. (ebm-papst, No. 23 at p. 3)

NEMA stated that IEC 60034–2–3 is the correct test procedure for all inverter motors, but that it is not structured for use in testing for energy conservation standards. It stated that IEC 61800–9–2 is for complete drive modules, a factor that led NEMA to suggest that DOE conduct a separate rulemaking because of the unique rules and definitions needed for these motors. NEMA stated that aspects needing additional consideration are: inverter switching frequency, cable distance between motor and inverter, voltage ramp and boost settings, inverter capacitance values, and inverter control. (NEMA, No. 26 at p. 17)

IEC 61800–9–2:2017 specifies test methods for determining inverter (or complete drive module, ''CDM'') [34] and motor-inverter combination (*i.e.,* power-driven system or ''PDS'') losses.[35] Using this test method, the motor is tested with its inverter (either integrated or non-integrated), and the measured losses includes the losses of the motor and of the inverter. Inverter-capable electric motors subject to the current test procedures are currently required to be tested without the use of an inverter, and rely on the test set-ups used when testing a general purpose electric motor. *See* 78 FR 75962, 75972. DOE is not adopting to change the test procedure for currently regulated induction inverter- capable electric motors. The approach for testing inverter-capable synchronous electric motors without the use of an inverter therefore aligns with the existing method for induction inverter-capable electric motors.

Further, DOE understands that many general purpose induction motors are rated as inverter-capable but are more commonly operated as direct-on-line motors (*i.e.,* without an inverter), and as such, the results of testing without an inverter would be more representative. Additionally, because inverter-capable motors are more commonly operated direct-on-line, such electric motors would more closely compete with typical induction electric motors rather than inverter-only electric motors. DOE further notes that not including the inverter when testing inverter-capable motors is consistent with how the efficiency classification of inverter-capable motors is established in accordance with IEC 60034–30–1:2014. Accordingly, DOE is requiring inverter-capable synchronous electric motors to be tested without the use of an inverter.

Regarding NEMA's comment that additional definitions are needed for inverter-only motor testing and Advanced Energy's comment that the inverter settings should be further specified, DOE reviewed Section 5.1.5 ''Drive Settings'' of AHRI Standard 1210 (I–P):2019 and considered if new definitions were required. Section 5.1.5 specifies that the VFD [referred to in this document as an inverter] shall be set up according to the manufacturer's instructional and operational manual included with the product specifies that manufacturers must provide a parameter set-up summary that at least includes the: (1) carrier switching frequency, (2) max frequency, (3) max output voltage, (4) motor control method, (5) load profile setting, and (6) saving energy mode (if used). DOE notes that testing at the manufacturer's recommended operating conditions would be consistent with how other input values for electric motors are treated in the test procedure, like rated voltage. Accordingly, in this final rule, DOE specifies inverter set-up requirements consistent with Section 5.1.5 of AHRI 1210 (I–P):2019.

To address those comments claiming that switched-reluctance motors do not fall within the scope of IEC 61800–9–2, DOE reviewed this testing standard and how switched-reluctance motors operate. These motors do not use a permanent magnet rotor and the rotor itself does not carry a current. Torque is generated by making use of the different values of reluctance [36] the rotor will have in different positions. The rotor will attempt to orient itself to give the magnetic flux a path of least reluctance through the rotor while the current in each stator pole is switched to create a continuous rotation in the rotor. While these motors are similar to synchronous reluctance motors in how they generate torque, the two main differences in their construction are how the stators are built and how the inverter supplies current to the motor. Synchronous reluctance stators are built in a way that resembles an induction motor stator whereas a switched-reluctance motor has a concentrated winding for each stator tooth. The inverters used for switched-reluctance motors have to be built to handle higher phase currents (for a given horsepower output) compared to an inverter used for a synchronous reluctance motor. DOE also reviewed the scope of IEC 61800–9–2 and notes that Section 1 of that testing standard states that the standard includes methods for determining the losses of the PDS (*i.e.,* motor and inverter combination) and does not limit its application to specific motor topologies. DOE also notes that the input-output method described in Section 7.7.2 requires measuring the electrical input to the PDS and the mechanical output of the PDS, both of which would be feasible when evaluating switched-reluctance motors. Accordingly in this final rule, as proposed in the December 2021 NOPR, DOE is specifying that Section 7.7.2 of IEC 61800–9–2 is the test method to be used to determine the efficiency of all synchronous and inverter-only electric motors.

[34] IEC 61800–9–2:2017 defines a CDM, or drive, or drive controller as a ''drive module consisting of the electronic power converter connected between the electric supply and a motor as well as extension such as protection devices, transformers and auxiliaries.''

[35] IEC 61800–9–2:2017 also provides a mathematical model to determine the losses of a reference CDM, reference motor and reference PDS which are then used as the basis for comparing other CDMs, motors, and PDSs and establishing efficiency classes (IES classes). PDS shall be classified as ''IES 0'' if its losses are more than 20 percent higher than the value specified for a reference PDS. *See* Section 6.4 of IEC 61800–9–2:2017.

[36] Reluctance is the resistance to magnetic flux in a given magnetic circuit. In electric motors, the motor contains a magnetic circuit where the flux flows to and from the stator poles through the rotor.

b. Comparable Converter

In the 2021 December NOPR, DOE proposed to require testing inverter-only synchronous electric motors that include an inverter, and inverter-only AC induction motors that include an inverter, in accordance with Section 7.7.2 of IEC 61800–9–2:2017, and using the test provisions specified in Section 7.7.3.5 and testing conditions specified in Section 7.10 of that same testing standard. DOE proposed to test inverter-only synchronous electric motors that do not include an inverter, and AC induction inverter-only motors that do not include an inverter, in accordance with IEC 61800–9–2:2017 [37] and to specify that testing must be performed using an inverter as recommended in the manufacturer's catalogs or offered for sale with the electric motor. If more than one inverter is available in manufacturer's catalogs or offered for sale with the electric motor, DOE considered requiring that testing occur using the least efficient inverter. 86 FR 71710, 71742. DOE further requested feedback in the December 2021 NOPR on how to test an inverter-only motor that is sold without an inverter, and on whether DOE should consider testing these motors using a comparable converter as specified in Section 5.2.2. of IEC 60034–2–3:2020. 86 FR 71710, 71742–71743.

In response, the CA IOUs recommended that DOE develop a method for testing an inseparable PDS (*i.e.,* motor and inverter combinations) as a paired unit. Since the PDS is inseparable, the CA IOUs noted that such an approach would be appropriate for a PDS unlikely to be distributed in commerce with other CDM drive (*i.e.,* inverter) components and suggested IEC 61800–9–2 as a starting point for testing these motors. The CA IOUs also commented that DOE should specify a ''comparable inverter'' for testing inverter-only motors that are distributed in commerce for use with various CDMs, including motors paired with a drive on-site. The CA IOUs suggested IEC 61800–9–2 as a starting point for this approach as well. (CA IOUs, No. 32.1 at p. 38) The CA IOUs recommended testing with a ''comparable inverter'' for products sold without a paired drive module, and that this comparable inverter be evaluated in each rulemaking to keep up with advancing drive technology. They cautioned that applying IEC 61800–9–2 to a ''comparable inverter'' for current products is challenging because of what they described as the high reference inverter losses used by the standard to calculate the losses of a minimum-performance inverter. The CA IOUs provided data that they stated show how IE 0, the least efficient class of inverters defined by IEC 61800–9–2, is estimated to yield significantly higher losses than any inverter they found on the market and that the inverter efficiency classes in IEC 61800–9–2 were developed before the adoption of Silicon Carbide converters. The CA IOUs asserted that the disparity between reference losses and real-world converter losses is even greater for smaller output drives (<7.5 kW output) and noted that these drives make up two-thirds of the low-voltage drive market. They suggested that DOE work with the project managers of a study currently being conducted on inverter efficiency, and to use the data provided from that study to inform how DOE considers inverter losses in the test procedure. (CA IOUs, No. 32.1 at pp. 36–37) The CA IOUs also recommended that DOE follow the IEC's test procedure framework for inverter-only motors and drives. (CA IOUs, No. 32.1 at p. 33)

Advanced Energy stated that it would be beneficial if DOE provided guidance on what inverter to use for testing if an inverter is not recommended in a manufacturer's catalog, and it suggested the use of a ''comparable converter'' according to IEC 60034–2–3 in this case. (Advanced Energy, No. 33 at p. 10)

NEMA opposes the use of a reference converter during testing. NEMA stated that the only way a fair test could be conducted on an inverter-only motor is to use the exact inverter specified by the manufacturer, and that a reference inverter that was ''close'' would incur a heavy risk of having the motor test as less efficient than it would with the intended inverter. (NEMA, No. 26 at p. 18) Grundfos stated that a ''comparable inverter'' as stated in IEC 60034–2–3:2020 should only be used when a manufacturer does not sell an inverter to go with the motor. (Grundfos, No. 29 at pp. 5–6) Trane commented that a ''comparable inverter'' would result in inaccurate representations of energy use and that testing the inverter and motor combinations separately provides no value to the appliance manufacturer or end user. (Trane, No. 31 at p. 6)

DOE notes that the test method proposed for inverter-only motors according to Section 7.7.2 of IEC 61800–9–2:2017 does not make use of inverter efficiency classes outlined in that document. Accordingly, DOE will not be addressing concerns about those efficiency classes. Regarding the CA IOUs comment suggesting the use of a ''comparable converter'' for inverter-only motors that have multiple CDMs (*i.e.,* inverters) recommended, DOE disagrees because the efficiency of the motor/inverter combination depends on the inverter chosen for selection and the ''comparable converter'' may not be one of manufacturer recommended inverters. To ensure the test results are representative of average use, one of the inverters recommended by the manufacturer should be the inverter used during the efficiency test since the motor is most likely to be paired with one of those inverters during field use.

In cases where no inverter is specified by the manufacturer to pair with an inverter-only motor, DOE still needs to choose an inverter to pair with the motor during the test. NEMA's concern regarding the use of a ''comparable converter'' does not apply because no inverter was specified for use with the motor, and Trane's concern does not apply because the motor and inverter are not tested separately. As such, DOE cannot at this time identify an option more representative of average use than the ''comparable converter'' in cases where no inverter is specified for use with an inverter-only motor.

After reviewing the comments submitted by stakeholders, DOE has decided to adopt the method proposed in the December 2021 NOPR for testing synchronous and AC induction inverter-only motors that include an inverter, in accordance with IEC 61800–9–2:2017. DOE is also adopting the methods proposed in the December 2021 NOPR for synchronous and AC induction inverter-only motors that do not include an inverter, and to specify must be tested in accordance with IEC 61800–9–2:2017 and to specify that testing must be performed using an inverter as recommended in the manufacturer's catalogs or offered for sale with the electric motor. In addition, DOE did not receive any comments on selecting the least efficient inverter. Under the approach taken in this final rule, if more than one inverter is listed as recommended in the manufacturer's catalog or if more than one inverter is offered for sale with the electric motor testing using the least efficient inverter will be required. DOE is requiring the use of ''the least efficient inverter'' to ensure consistent testing of inverter-only motors with multiple recommended inverters. DOE notes that the test specified in Section 7.7.2 of IEC 61800–9–2 is based on an input-output measurement and does not rely on

[37] Specifically, in accordance with Section 7.7.2 of IEC 61800–9–2:2017, and using the test provisions specified in Section 7.7.3.5 and testing conditions specified in Section 7.10. The proposed method corresponds to an input-output test of the motor and inverter combination.

''reference losses'' [38] in IEC 61800–9–2:2017 to characterize the inverter performance. Instead, the motor and inverter combination are tested using an input-output test.

In addition, to address the case where there are no inverters recommended in the manufacturer's catalogs or offered for sale with the electric motor, DOE is specifying the use of a ''comparable converter'' based on Section 5.2.2 of IEC 60034–2–3, and to require that the motor manufacturer specify the manufacturer, brand and model number of the inverter used for the test.

E. Metric

The represented value of nominal full-load efficiency is currently used to make representations of efficiency for electric motors subject to standards in subpart B of part 431, based on the average full-load efficiency as measured in accordance with the provisions at 10 CFR 431.17.

In the December 2021 NOPR, for electric motors subject to energy conservation standards at 10 CFR 431.25 (which are AC induction single-speed motors), DOE proposed to maintain the current use of the nominal full-load efficiency metric. For the additional electric motors proposed for inclusion within the scope of the test procedures, DOE also proposed to use the nominal full-load efficiency as the metric. DOE proposed to evaluate the efficiency of the motor with or without the inclusion of the inverter depending on the motor configuration: (1) for the additional non-inverter-only electric motors proposed for inclusion within the test procedure's scope (*i.e.,* direct-on-line or inverter-capable),[39] DOE proposed to determine the efficiency of the motor at full-load (*i.e.,* measure the full-load efficiency), consistent with how electric motors currently subject to standards at 10 CFR 431.25 are evaluated; (2) for the additional inverter-only electric motors proposed for inclusion within the test procedure's scope, DOE proposed to evaluate the efficiency of the motor and inverter combination at 100 percent rated speed and rated torque (*i.e.,* measure the full-load efficiency). In addition, DOE stated that it may consider requiring manufacturers to disclose the part-load performance efficiency of the additional motors proposed for inclusion within the scope of this test procedure as part of any future energy conservation standard related to these electric motors.[40] Finally, similar to currently regulated electric motors, for the additional electric motors proposed for inclusion, DOE proposed sampling requirements to calculate the average full-load efficiency of a basic model and provisions to determine a tested motor's nominal full-load efficiency. (*See* section III.N of this document). 86 FR 71710, 71743–71745.

CEMEP stated that an efficiency metric that includes both inverter and motor efficiency should not be used for inverter-only and inverter-capable electric motors sold without an inverter. In its view, the efficiency metric DOE adopts should reflect only the efficiency of the motor itself. (CEMEP, No. 19 at p. 7)

The scope of the current test procedure includes inverter-capable electric motors, which are tested without the use of an inverter.[41] DOE is not changing the current test procedure for inverter-capable motors, and continues to require testing these motors without the use of an inverter. Further, as discussed in section III.D.3 of this document, DOE is adopting an approach to test inverter-only motors inclusive of the inverter. Therefore, DOE is adopting a metric inclusive of the inverter efficiency for these motors. As stated in the December 2021 NOPR, because inverter-only motors require an inverter to operate, measuring the motor efficiency independent of the inverter would not be as representative of field performance as would measuring the combined motor and inverter efficiency. 86 FR 71710, 71743. In addition, some inverter-only motors are sold with an integrated [42] inverter such that measuring motor-only efficiency is not technically feasible.

In response to the December 2021 NOPR, Grundfos supported measuring motor efficiency at the proposed load points. (Grundfos, No. 29 at p. 6).

Several stakeholders opposed using a full-load metric, as discussed in the next paragraphs.

The Joint Advocates recommended that DOE amend the test procedure to incorporate efficiency at multiple load points to ensure a level playing field for manufacturers and to better inform purchasers. The Joint Advocates stated that while it is generally true that an AC induction electric motor with a tested full-load efficiency will have smaller losses than another electric motor with a lower tested full-load efficiency within its typical range of operation, many advanced motor technologies (*e.g.,* synchronous motors) included in the proposed expanded scope have loss profiles (*e.g.,* losses as a function of load) that deviate significantly from those of single-speed AC induction motors. In particular, the Joint Advocates stated that advanced motor technologies typically maintain higher efficiency at low loads and evaluating electric motor efficiency at a single load point is therefore not representative of real-world energy use and will not provide accurate relative rankings across different motor topologies. In addition, citing data from DOE's Motor Systems Market Assessment report,[43] the Joint Advocates also commented that motors operating in variable-load applications with an average load factor between 40 and 75 percent represent the largest portion of motor energy use, and that a metric that included part-load efficiency would be more representative.[44] (Joint Advocates, No. 27 at pp. 5–6)

With regard to inverter-only motors, the CA IOUs commented that DOE should incorporate a weighted part-load efficiency metric rather than using a full-load efficiency metric. The CA IOUs provided data from DOE's Motor Systems Market Assessment report and from the California Public Utilities Commission showing (in their view) that the majority of motors operate at variable-load.[45] The CA IOUs expressed concern that the proposed full-load metric for inverter-only motors would not meet DOE's statutory requirement that metrics be ''representative of average use.'' Instead, the CA IOUs recommended that DOE collaborate with industry stakeholders to develop a metric for inverter-only motors. The CA IOUs referenced other rules that have incorporated part-load metrics. (CA IOUs, No. 32.1 at pp. 2–3; 20–24) The CA IOUs also commented that the largest differences in performance

[38] IEC 61800–9–2 provides references losses for inverters that can be used to calculate the combine motor and inverter efficiency based on a calculation-based method.

[39] These include air over electric motors, electric motors larger than 500 hp, certain SNEMs, and certain synchronous motors.

[40] DOE did not propose to require this in the December 2021 NOPR, as labelling requirements are typically not in the scope of the test procedure and included as part of energy conservation standards.

[41] The test methods described in section 2 of Appendix B to Subpart B do not require the use of an inverter.

[42] Integrated means that the drive and the motor are physically contained in a single unit.

[43] Rao, P., Sheaffer, P., Chen, Y., Goldberg, M., Jones, B., Cropp, J., and J. Hester. *U.S. Industrial and Commercial Motor System Market Assessment Report Volume 1: Characteristics of the Installed Base.* Lawrence Berkeley National Laboratory, January 2021, *https://eta-publications.lbl.gov/sites/default/files/u.s._industrial_and_commercial_motor_system_market_assessment_report_volume_1-_characteristics_of_the_installed_base_p_rao.pdf.*

[44] *Note:* the data provided by the Joint Advocates were in terms of relative energy consumption and not motor counts.

[45] *Note:* the data provided by the CA IOUs were in terms of relative energy consumption and not motor counts.

between synchronous inverter motors and induction inverter motors occur at low loads and that a full-load metric would not capture this difference. To illustrate this point, they provided efficiency curves for a 5 hp and a 20 hp permanent magnet inverter-only electric motor as well as for a 5 hp and 2 0hp induction electric motor, showing that the permanent magnet inverter-only motor had a higher efficiency than the induction electric motor, specifically at lower load. (CA IOUs, No. 32.1 at p. 25) The CA IOUs added that a full-load efficiency metric would not enable the comparison of inverter-only motors and induction motor/inverter combinations that have peak efficiencies at different operating speeds and different positions on the torque curve. The CA IOUs provided part-load efficiency data showing that different motor topologies of synchronous inverter-only motors (*e.g.,* synchronous reluctance motors, permanent magnet motors) and induction motor/inverter combinations each experienced increases in efficiency at different load regions. The CA IOUs explained that the selected load point would change the rank order of the motor performance of inverter-only motors (CA IOUs, No. 32.1 at pp. 26–28) To illustrate this point, the CA IOUs compared the efficiency rankings for a synchronous reluctance motor, a permanent magnet motor, and an induction motor/inverter combination in selected load-profiles, using part-load and full-load metrics. For the selected load-profiles in the example, the CA IOUs claimed that the weighted part load metrics provided a performance ranking that was more representative of the expected performance in the field and the CA IOUs recommended that DOE adopt a metric that can differentiate motors with peak efficiencies at different operating speeds and different positions on the torque curve. (CA IOUs, No. 32.1 at pp. 26–31)

NEMA agreed in concept with the proposed metrics except for synchronous and inverter-only motors—both of which NEMA opposes for inclusion as part of the test procedure's scope. NEMA commented that these motors are not intended to be operated at full-load. NEMA did not recommend alternate approaches to test the performance of these motors, but instead voiced its general opposition to their inclusion in the scope of the test procedure. NEMA added that inverter-only and synchronous motors lend themselves to be evaluated with system efficiency, rather than motor-only efficiency, and that inverter-only motors should be regulated in a separate rulemaking due to the complexity of their testing and applications. (NEMA, No. 26 at p. 19) NEMA stressed that the extended product rulemakings (commercial and industrial pumps, fans and compressors) are the appropriate path to energy savings and that component level regulation does not assure energy savings in the overall application. (NEMA, No. 26 at p. 4)

Regal opposed using a full-load efficiency metric for inverter-type motors and stated that this metric does not capture any of the value added by an inverter-only motor's higher efficiency at part-load conditions. (Regal, No. 28 at p. 1) Trane commented that measuring synchronous motors with a full-load only metric is not useful to the end-user nor applicable to the equipment in which the motor is installed. (Trane, No. 31 at p. 3) AHAM and AHRI were concerned with the use of a full-load metric for inverter-only and synchronous electric motors, which by definition are not intended to be operated at full-load. (AHAM and AHRI, No. 36 at p. 9)

NEEA/NWPCC recommended that DOE add representative load points and implement a weighted-average metric that accounts for performance at part-load. NEEA/NWPCC commented that a weighted metric that takes into account various load points will not be unduly burdensome and is essential to showing the actual performance of motors. NEEA/NWPCC cited data from DOE's Motor Systems Market Assessment report showing that the majority of motor-connected horsepower operates below 75 percent load, and commented that a test procedure that does not include load points below full-load is not representative an average period of use. (NEEA/NWPCC, No. 37 at pp. 4–6) NEEA/NWPCC added that while using full-load efficiency may have been adequate when considering induction electric motors only, many of the synchronous motor topologies claim to have flatter efficiency curves compared to induction motors: the motor maintains its efficiency at reduced loads or reduced speeds better than induction motors. NEEA/NWPCC commented that a test procedure that measures efficiency only at full-load would not capture the difference in performance of synchronous motors at lower loads compared to induction motors. In addition, NEEA/NWPCC noted that the majority of commercial and industrial motors are not operated at full-load and commented that a metric that does not include part-load points is not representative of an average period of use as required by EPCA. (NEEA/NWPCC, No. 37 at p. 8)

Currently regulated electric motors typically have flat efficiency profiles, *i.e.,* efficiency does not substantively vary based on the loading condition. The efficiency profile of smaller motors (less than one hp) is almost flat in the 40–100 percent load range, and the profile of larger motors (at or above 20 hp) is almost flat between 30–100 percent load.[46] DOE found that the estimates published in DOE's Motor Systems Market Assessment report for polyphase motors show that the majority of electric motors operate above the 40 percent loading point. The report also indicates that significantly underloaded motors (*i.e.,* those under a variable or constant load below a 0.4 loading factor) represent a small percentage of the installed base (4 percent).[47] A motor is considered underloaded when it is operated in the range where efficiency drops significantly with decreasing load. Therefore, DOE has determined that the majority of polyphase motors (which include regulated electric motors) operate in a range where efficiency is relatively flat as a function of load.

Further, DOE reviewed the data provided by the Joint Advocates and the CA IOUs indicating that electric motors primarily operate at variable-load. DOE notes that the estimates provided were based on a percentage of energy use or connected load and not motor counts (*i.e.,* number of motor units included in the sample). DOE believes motor counts are a better indicator when assessing representativeness because each individual motor basic model is certified regardless of its size or energy use. When using motor counts, the DOE Motor Systems Market Assessment report shows that in the industrial sector, constant load motors operating at motor load factors greater than 0.75 represent 43 percent of all industrial motor systems. Overall, in the industrial

[46] A. de Almeida, H. Falkner, J. Fong, *EuP Lot 30, Electric Motors and Drives. Task 3: Consumer Behaviour and Local Infrastructure.* ENER/C3/413–2010, at p.6, Final April 2014. Available at: *https://www.eceee.org/static/media/uploads/site-2/ecodesign/products/special-motors-not-covered-in-lot-11/eup-lot-30-task-3-april-2014.pdf.* DOE also analyzed published part-load efficiency data for regulated electric motors and found that on average, the efficiency at 50 percent load is 99 percent of the full-load efficiency, while the efficiency at 75 percent load is 1.004 percent of the full-load efficiency (average based on 7,199 units).

[47] *See: motors.lbl.gov/inventory/analyze/9–0713.*

sector, the report finds that there are nearly twice as many constant-load motors as variable-load motors.[48] In the commercial sector, the report states that variable-load motors operating at load factors between 0.4 and 0.75 represent 36 percent of all commercial sector motor systems, followed by constant load systems operating at motor load factors greater than 0.75, at 27 percent. Overall, in the commercial sector, the report states that constant-load motors represent 43 percent and variable-load motors represent 52 percent of electric motors (with 5 percent unknown). Across both sectors, the report shows that constant-load represents 44 percent of electric motors and variable-load represents 48 percent of electric motor systems (with 7 percent unknown).[49] Further, the estimated average load factor for motors between 1 and 500 hp ranges from approximately 0.52 to 0.68 depending on the motor horsepower.[50]

DOE has determined that currently regulated electric motors are used equally in both constant-load and variable-load applications and primarily operate in a range where efficiency is relatively flat as a function of load. For these reasons, DOE has determined that measuring the performance of these motors at full-load is representative of an average use cycle. In addition, given the variability in applications and load profiles, an average load profile may not be representative. For example, a constant torque load application cannot be represented using the load profile of a variable torque application. Further, currently regulated electric motors have internationally-harmonized efficiency test standards and efficiency classes (*e.g.,* IE3 and NEMA Premium classes) [51] and using a metric based on a weighted-average efficiency across different part-load points would be a departure from internationally harmonized practices without adding benefits in terms of better representation. As noted in the December 2021 NOPR, for motors that are not inverter-only, although the IEC 60034–2–1:2014 test standard includes testing at part-load, IEC 60034–30–1:2014 establishes efficiency classes (*e.g.,* IE3) based on the motor full-load efficiency. 86 FR 71710, 71744. In addition, rating these motors at full-load or part-load would not change the rank order by performance (*i.e.,* if motor A is better than B based on full-load efficiency, motor A will perform better than motor B in the field). For these reasons, in this final rule, DOE maintains the current nominal full-load efficiency metric for currently regulated motors. DOE may consider requiring manufacturers to display the part-load efficiency as part of any future energy conservation standard related to these electric motors.

For those additional motors that DOE is incorporating in the scope of the test procedure, which are not inverter-only, given that the operating load data from the DOE Motor Systems Market Assessment report apply to all polyphase motors above 1 horsepower, DOE determined that the findings discussed for regulated electric motors also apply to those additional in-scope polyphase electric motors that are not inverter-only and are above 1 horsepower (*i.e.,* polyphase air-over motors and electric motors larger than 500 hp). Therefore, for these electric motors, DOE is adopting the nominal full-load efficiency metric. Further, for synchronous motors that are not inverter-only (*i.e.* line-start permanent magnet motors), DOE found that the efficiency curve as a function of load is also flat in the typical motor operating range.[52] Therefore, DOE has determined that measuring the performance of these motors at full-load is representative of an average use cycle and DOE adopts the nominal full-load efficiency metric as proposed for synchronous motors that are not inverter-only.

Finally, for SNEMs that are not inverter-only (including air-over motors), DOE did not find data specific to SNEMs (the DOE Motor Systems Market Assessment report only considered polyphase motors above 1 horsepower). Assuming these motors operate at an average load between 0.66 and 0.67,[53] and considering the relatively flat efficiency curve in that range,[54] DOE believes a metric based on full-load efficiency is appropriate and representative of an average use cycle for these motors. In addition, rating these motors at full-load or part-load would not change the rank order by performance (*i.e.,* if motor A is better than B based on full-load efficiency, motor A will perform better than motor B in the field). Further, a metric based on full-load efficiency is consistent with the test method for small electric motors and would enable performance comparisons between SNEMs and SEMs.[55] For these reasons, DOE is adopting the nominal full-load efficiency metric as proposed. For the additional non-inverter-only motors that DOE is incorporating in the scope of the test procedure, DOE may consider requiring manufacturers to display the part-load efficiency as part of any future energy conservation standard related to these electric motors.

For inverter-only electric motors, DOE agrees that synchronous motors typically maintain a flatter efficiency at lower loads compared to inverter-only induction motors.[56] However, as previously discussed, very few electric motors operate at these lower loads (*i.e.,* below 40 percent). Instead, electric motors, including inverter-only electric motors, typically operate in a region where the efficiency is relatively flat. Therefore, although inverter-only motors operate at part-load, DOE has determined that a metric based on full-load efficiency is representative of an average energy use cycle. In addition, because inverter-only motors tend to also have flat efficiency curves above a 40 percent load, rating these motors at

[48] *See* pp. 76 and 81 of the DOE's Motor Systems Market Assessment report available at: *https://eta-publications.lbl.gov/sites/default/files/u.s._industrial_and_commercial_motor_system_market_assessment_report_volume_1-_characteristics_of_the_installed_base_p_rao.pdf.*

[49] *See: https://motors.lbl.gov/inventory/analyze/9–0713.*

[50] *See* pp. 78 and 83 of the DOE's Motor Systems Market Assessment report available at: *https://eta-publications.lbl.gov/sites/default/files/u.s._industrial_and_commercial_motor_system_market_assessment_report_volume_1-_characteristics_of_the_installed_base_p_rao.pdf.*

[51] An IE class is a table of full-load efficiency ratings provided at different motor rated power and poles. For example, the IE class ''IE3'' is considered largely equivalent to the current energy conservation standards in Table 5 at 10 CFR 431.25 or ''NEMA Premium.''

[52] *See* Arash Hassanpour Isfahani, Sadegh Vaez-Zadeh, Line start permanent magnet synchronous motors: Challenges and opportunities, Energy, Volume 34, Issue 11, 2009, Pages 1755–1763, ISSN 0360–5442, *https://www.sciencedirect.com/science/article/pii/S0360544209001303 and* A. T. De Almeida, F. J. T. E. Ferreira and A. Q. Duarte, ''Technical and Economical Considerations on Super High-Efficiency Three-Phase Motors,'' in IEEE Transactions on Industry Applications, vol. 50, no. 2, pp. 1274–1285, March–April 2014, doi: 10.1109/TIA.2013.2272548.

[53] This estimate is based on the average load factor for motors between 1 and 5 hp as provided in DOE's Motor Systems Market Assessment report. *See* pp. 78 and 83 of the DOE's Motor Systems Market Assessment report available at: *https://eta-publications.lbl.gov/sites/default/files/u.s._industrial_and_commercial_motor_system_market_assessment_report_volume_1-_characteristics_of_the_installed_base_p_rao.pdf.*

[54] DOE analyzed published part-load efficiency data for SNEMs and found that on average, the efficiency at 75 percent load is 97 percent of the full-load efficiency (average based on 2,585 units).

[55] DOE notes however that SEMs do not rely on nominal full-load efficiency values but rather on average full-load efficiency.

[56] DOE notes that in their comment, the CA IOUs provide an example which compares the efficiency of 5 and 20 hp synchronous permanent magnet motors with an inverter-only induction motor and variable frequency drive at loads between 12.5 and 50 percent. (CA IOUs, No. 32.1 at p. 29) While the example shows that the difference in efficiency between the synchronous permanent magnet motor with an inverter-only induction motor increases at load (below 40 percent) the example shows that this difference is relatively constant between a 40 and 50 percent load. *Id.*

full-load or part-load would not change the rank order by performance (*i.e.,* if motor A is better than B based on full-load efficiency, motor A will perform better than motor B in the field).[57] Further, as noted in the December 2021 NOPR, for inverter-only and inverter combination electric motors, although the IEC 61800–9–2:2017 test standard includes eight standardized test points, the IEC efficiency classification is based on the performance at a unique point at full-load (100 percent rated speed and 100 percent rated torque) and establishing a metric based on a weighted average load would be a departure from internationally harmonized practices without adding significant (if any) benefits in terms of better representation. 86 FR 71710, 71744. For these reasons, DOE is adopting the nominal full-load efficiency as the metric for inverter-only motors.

The Joint Advocates further commented that the current electric motors test procedure does not capture the energy saving benefits associated with speed control. The Joint Advocates commented that motors with controls may be at a disadvantage relative to single-speed AC induction motors since the energy usage of the inverter (*e.g.,* in a inverter-equipped inverter-only AC induction motor) would be included in the overall efficiency, while the benefits of the inverter (*e.g.,* speed reduction at part load) are not. The Joint Advocates stated that the test procedure should capture the benefits of speed control capability. (Joint Advocates, No. 27 at p. 6).

The CA IOUs recommended that DOE establish a metric for inverter-only motors that will capture the energy saving benefits of variable-speed control as these motors are most often used in variable load and variable torque applications. In addition, the CA IOUs noted that speed control can provide energy savings benefits in constant-load applications by matching the load to the motor output power to meet the requirements of the application instead of using throttling valves or dampers. The CA IOUs commented that 90 percent of inverter-only motors are used in variable torque applications such as air compressors, pumps, fans and blowers. (CA IOUs, No. 32.1 at pp. 20–21)

NEEA/NWPCC also recommended that DOE adopt a metric that would capture the energy savings of speed control for all electric motors. NEEA/NWPCC noted that DOE already has several test procedures and metrics that have switched from full-load efficiency to more representative metrics [58] and recommended that a weighted-average input power metric be used for electric motors in line with the Pump Energy Index metric used for pumps and the recent Power Index Metric as described in a standard published by NEMA.[59] NEEA/NWPCC commented that a motor weighted-average input power metric would be calculated for both constant-speed motors and variable-speed motors (both inverter-capable and inverter-only) and suggested calculation methods and recommended weights at each recommended load point (*i.e.,* load profiles). NEEA/NWPCC stated that a weighted-average input power metric is more representative than a weighted-average efficiency metric because inverter-controlled motors will inherently have an ''efficiency'' loss at each independent load point but will generally use less energy overall. Therefore, NEEA/NWPCC asserted that using a weighted input power metric instead of efficiency will show the lower input power more equitably. (NEEA/NWPCC, No. 37 at pp. 8–11)

Similar to the approach taken in the commercial and industrial pump and air compressor rulemakings,[60] DOE proposed to evaluate equipment with variable-speed capability separately from single-speed equipment. The metric adopted for inverter-only motors, which includes the inverter efficiency, is not directly comparable with the metric proposed for electric motors that are not inverter-only, as these motors are not tested using an inverter. As such, DOE does not believe that motors with controls would be at a disadvantage relative to single-speed AC induction motors when testing and evaluating them under the proposed conditions.

Regarding the adoption of a metric that would capture the benefits of controls, such as the approach suggested by NEEA/NWPCC, which uses an input power-based metric and a load profile based on a variable-torque load profile for inverter-motors (both inverter-only and inverter-capable), inverter-motors would always show better ratings (*i.e.,* a lower weighted average input power) than single-speed motors due to the cubic relationship between power and speed (*i.e.,* affinity laws) [61] specific to variable-torque load applications (*e.g.,* a reduction in speed by a factor of 3 is associated to a reduction in power by a factor of 9).[62] Variable-speed capability can provide energy savings in some applications compared to single-speed operation. However, not all applications benefit equally from variable-speed control. DOE estimates that 90 percent of the installed base of variable-load electric motor applications are variable-torque.[63] Applying speed control to these applications (primarily fans, compressors, and pumps), will provide energy savings due to the affinity laws specific to these applications. However, affinity laws do not apply to other variable-load applications that are not variable-torque (*e.g.,* material handling, material processing) where speed control is not expected to provide the same level of energy savings, if any. In addition, AC induction inverter-only motors are primarily used in constant torque applications.[64] Applying a metric based on an average load profile that captures the benefits of speed control

[57] DOE notes that in the example provided by the CA IOUs, where the rank order of inverter-only motors changes based on considering a load profile vs. a full-load operation, the motor is assumed to operate 40 percent of the time at low load which is not representative of typical inverter-only motors (load in percent of horsepower is the product of speed and torque, in the CA IOUs example, 15 and 10 percent load points were considered *i.e.,* 50 percent speed, 30 percent torque and 50 percent speed, 20 percent torque). In addition, in the example provided, the inverter-only induction motor has a flatter efficiency curve than the synchronous reluctance motor which is contrary to what is expected from a typical synchronous motors and not representative. (CA IOUs, No. 32.1 at p. 29).

[58] NEEA and NWPCC cited the example of the seasonal energy efficiency ratio used for air conditioning equipment and the Pump Energy Index used for commercial and industrial pumps.

[59] Available at *https://www.techstreet.com/nema/standards/nema-mg-10011-2022?product_id=2247918.*

[60] For air compressors and pumps, variable speed or variable-load and single speed or constant load equipment are in separate equipment classes and evaluated separately. 10 CFR 431.345 and 10 CFR 431.465.

[61] The affinity laws express the relationship between power, speed, flow, and pressure or head. Specifically, power is proportional to the cube of the speed.

[62] In addition, DOE reviewed the load points recommended for variable speed moors by NEEA and NWPCC and found that the points recommended do not reflect the load points for variable load motors in the DOE Motor Systems Market Assessment report (which are provided in terms of percentage of horsepower divided by the motor full-load horsepower). NEEA and NWPCC characterized the load range from 0 to 40 percent using a (25,25) (% speed, % torque) point which is equal to 6.25 percent load; the load range between 40 and 75 percent using a (50,50) (% speed, % torque) point which is equal to 25 percent load, and the range above 75 percent using (75,75) and (100,100) (% speed, % torque) points which is equal to 56.25 percent and 100 load. As such the points recommended do not reflect the typical motor loads for inverter-only motors.

[63] See counts of motors by load factor by application as provided by the DOE Motor Systems Market Assessment report, available at *https://motors.lbl.gov/inventory/analyze/3-0825.*

[64] Inverter-only motors are capable of providing full-rated torque at zero speed as well as operating well over their nominal speed and are typically selected when operating at extremely low speeds, particularly when serving a constant torque load. *See: https://www.nrel.gov/docs/fy13osti/56016.pdf.*

(*i.e.,* a variable-torque load profile as recommended by NEEA/NWPCC), would assume that benefits of speed controls are always realized and could potentially significantly underestimate the input power experienced by a consumer. In the case of electric motors, such a metric could be misleading to consumers purchasing an electric motor for a non-variable torque applications. In other contexts where a more specific application was identified as in the case for pumps (which are all variable-torque applications), DOE was able to identify a specific load profile and use a metric that captures the energy savings potential of speed controls. However, for electric motors, because of the variability in applications, and because the majority of AC induction inverter-only electric motors are used in constant-torque applications, it is more representative to rely on a full-load efficiency metric rather than to rely on a weighted power-input metric based on a variable torque load profile, and to provide disaggregated information on the electric motor's part-load efficiency (inclusive of the inverter or not) to consumers to allow them to perform the power input calculation that is specific to their application. In addition, as previously stated, DOE understands that many general purpose induction motors are rated as inverter-capable but are more commonly operated direct-on-line, and as such, the results of testing without an inverter would be more representative. Consequently, DOE is not including an input power-based metric in the electric motors test procedure. DOE may consider requiring manufacturers to disclose the part-load performance efficiency of the additional motors proposed for inclusion within the scope of this test procedure as part of any future energy conservation standard related to these electric motors.[65]

F. Rated Output Power and Breakdown Torque of Electric Motors

The current energy conservation standards for electric motors at 10 CFR 431.25 are segregated based on rated motor horsepower, pole configuration, and motor enclosure. Pole configuration and motor enclosure are both observable properties of a motor and straightforward to use for testing purposes. In contrast, the rated motor horsepower (*i.e.,* rated output power) is not easily observable and DOE has not discerned a single uniform method to determine this value through testing. In the December 2021 NOPR, DOE proposed to specify rated output power based on the electric motor's breakdown torque for those electric motors that are subject to energy conservation standards at 10 CFR 431.25, electric motors above 500 horsepower, air-over electric motors, and SNEMs. 86 FR 71710, 71745–71747. DOE based this proposal on the already-established definitions for rated output power and breakdown torque as they relate to small electric motors (*see* 10 CFR 431.442). *Id.*

In the December 2021 NOPR, DOE reviewed NEMA MG 1–2016 (with 2018 Supplements), and noted the complexity identified by CA IOUs in determining rated output power based on breakdown torque, in that the performance requirements for a NEMA Design A, B or C motor in Section 12.39 specify the minimum breakdown torque as a percentage of full-load torque; therefore, the breakdown torque can only describe the largest possible rated output power but cannot uniquely identify a rated output power. However, DOE also noted that it understands that the economics of motor manufacturing prevent manufacturers from down-rating the output power of motors (*i.e.,* manufacturers are disincentivized to down-rate motors because of the implications of cost-competitiveness), but NEMA MG 1–2016 (with 2018 Supplements) does not inherently eliminate that possibility. Regardless, DOE proposed to specify how to determine the rated output power of an electric motor based on its breakdown torque to provide further specificity. 86 FR 71710, 71745–71747.

Grundfos stated that rated output power is a manufacturer declaration (and should not be included as a regulatory requirement), and that breakdown torque is only published for informational purposes. (Grundfos, No. 29 at p. 6)

AI Group disagreed with the use of breakdown torque to determine power rating. It warned that running a motor above its rated torque to the breakdown torque limit will result in high winding temperature, winding failure and unsafe operation should the motor stall. It commented that a motor will not be able to continuously deliver power exceeding its rated power without high over-temperature and eventual failure through winding burnout. (AI Group, No. 25 at p. 6) CEMEP also disagreed with the use of breakdown torque in determining rated output power and stated that breakdown torque has never been a design criterion for efficiency. It stated that output power ratings are based on frame sizes and other motor performance metrics. (CEMEP, No. 19 at p. 7)

NEMA stated that the proposed specification of rated output power does not accurately describe how manufacturers are currently determining the rated output power for polyphase motors. (NEMA, No. 26 at p. 19) It stated that breakdown torque only establishes the output power the motor can momentarily deliver successfully and does not establish the output power the motor can deliver continuously. NEMA commented that other parameters, such as temperature rise, must be considered to determine the output power the motor can deliver continuously. Further, NEMA provided examples of how a motor's output power would be rated if DOE's proposal were considered for adoption. According to NEMA, rated output power based on DOE's proposal would result in much higher values than manufacturer-declared output power, which in turn would result in motors overheating during the rated load temperature tests and potentially being ineffective for the efficiency test.[66] *Id.* at pp. 19–20.

Further, NEMA commented that Section 12.39 of NEMA Standard MG–1 2016 (with 2018 Supplements) only defines a lower bound for breakdown torque and not an upper bound, and that there is nothing in that procedure prohibiting manufacturers from designing motors that are subject to that section with a breakdown torque value much higher than the minimum required value when attempting to optimize other aspects of the motor's performance. (NEMA, No. 26 at p. 20) On the other hand, NEMA noted that motors subject to Section 12.37 of NEMA Standard MG–1 2016 (with 2018 Supplements) (polyphase small motors) have a defined lower breakdown torque limit they do not have an upper limit. As such, NEMA asserted that the possibility of overheating the electric motor makes the proposal unfeasible. In addition, NEMA asserted that the proposal may also be unfeasible for single-phase induction motors because there is a tolerance on the breakdown torque values for these motors that the proposal does not address. (NEMA, No. 26 at p. 20)

After receiving feedback from stakeholders and reviewing the capabilities of motor test labs, DOE has concerns regarding the feasibility of determining the breakdown torque of larger motors and how breakdown

[65] DOE did not propose to require this in the December 2021 NOPR. DOE typically includes such requirements (*e.g.,* labeling) as part of its energy conservation standards rulemakings.

[66] IEEE 112–2017 Test Method B (currently incorporated by reference in 10 CFR 431.15 and one of the test methods in Section 2 of appendix B) requires that a rated load temperature test be performed prior to taking efficiency measurements.

torque could be used to determine rated output power. DOE understands that motors above 100 horsepower are rarely physically tested due to the complexity and cost of supplying a load of that size during testing. Instead, manufacturers rely on simulations and performance modeling to determine the performance characteristics of motors this size.

DOE also understands that while breakdown torque may be used to determine the rated output power of small electric motors (or ''small motors'' as the term is generally used), manufacturers do not typically use only this value for larger motors, and there are other parameters used to determine rated output power. DOE has determined that there is no single uniform method that manufacturers currently use to determine rated output power; manufacturers instead view this issue as an optimization problem that changes depending on what function the motor is providing. Electric motors designed for higher horsepower outputs tend to have more electrically-active and inactive material to safely achieve the higher power output. Due to this relationship between active material and power output, DOE understands that rating a motor at a lower horsepower rather than the maximum that can be safely achievable for an application would result in a motor with more active and inactive material than the other motors at the lower horsepower. The added cost of excess material in the oversized motor would result in a motor that is not cost-competitive with motors at the lower horsepower. As such, DOE understands that the under-rating of motor horsepower is not a significant issue since manufacturers are incentivized to rate a motor at a higher hp based on cost-effectiveness.

In light of the difficulty of determining breakdown torque for larger motors and the potential of overheating when determining rated output power based on DOE's proposal, at this time, DOE is not adopting its proposed specification of rated output power. Therefore, the test procedure and representations will be based on manufacturer representations of the rated output power of an electric motor. DOE is also declining to define the term ''breakdown torque'' as it will not be needed in light of the absence of a requirement to determine the rated output power of an electric motor.

G. Rated Values Specified for Testing

1. Rated Frequency

Electricity is supplied at a sinusoidal frequency of 60 Hz in the United States while other regions of the world (*e.g.,* Europe) use a frequency of 50 Hz. The frequency supplied to a motor (or to the inverter, if the motor is connected to an inverter) inherently affects the performance of the motor (or motors and inverter, if the motor is connected to an inverter). ''Rated frequency'' is a term commonly used by industry standards for testing electric motors (*e.g.,* Section 6.1 in IEEE 112–2004, and Section 6.1 in CSA C390–10), and refers to the frequency at which the motor is designed to operate. A motor's rated frequency is typically provided by the manufacturer on the electric motor nameplate. Multiple rated frequencies are sometimes provided if a manufacturer intends to sell a particular model in all parts of the world. In the case where an electric motor is designated to operate at either 60 or 50 Hz, the current test procedure does not explicitly specify the frequency value at which an electric motor is tested. Similarly, inverters used to operate inverter-only motors can be rated at multiple frequencies.

In the December 2021 NOPR, DOE proposed to add the term ''rated frequency'' to the definitions located at 10 CFR 431.12 and to define the term as ''60 Hz.'' 86 FR 71710, 71747. DOE stated that because the test procedures and energy conservation standards established under EPCA apply to motors distributed in commerce within the United States, DOE expressly proposed to use 60 Hz. *Id.*

Grundfos commented that DOE should make it clear that the definition for rated frequency would not apply for inverter-only motors. (Grundfos, No. 29 at p. 6) DOE did not receive any other comments on this proposal.

In this final rule, DOE specifies that the rated frequency describes the frequency of the electricity supplied either: (1) directly to the motor, in the case of electric motors capable of operating without an inverter; or (2) to the inverter in the case of inverter-only electric motors. Accordingly, DOE is adopting the following definition for ''rated frequency'': Rated frequency means 60 Hz and corresponds to the frequency of the electricity supplied either: (1) directly to the motor, in the case of electric motors capable of operating without an inverter; or (2) to the inverter in the case on inverter-only electric motors.

2. Rated Load

The term ''rated load'' is a term used in industry standards to specify the load that is applied to an electric motor during testing. This rated load typically equals the rated output power of an electric motor, and efficiency representations of ''full-load efficiency'' are in reference to the rated full-load (or the rated load) of a motor. In the December 2021 NOPR, DOE proposed to define ''rated load'' as ''the rated output power of an electric motor.'' DOE also proposed qualifying that the term ''rated output power is equivalent to the terms ''rated load,'' ''rated full-load,'' ''full rated load,'' or ''full-load'' as used in the various industry standards used for evaluating the energy efficiency of electric motors. 86 FR 71710, 71747.

DOE received a comment from Grundfos in support of this proposed definition, (Grundfos, No. 29 at pp. 6–7), and received no comments opposing it.

For the reasons discussed in the December 2021 NOPR and in the preceding paragraphs, DOE is adopting the definition of rated load as proposed in the December 2021 NOPR and clarifying that the term is interchangeable with the terms full-load, full rated load, and rated full-load as used in other current industry testing standards for electric motors.

3. Rated Voltage

The rated voltage of a motor typically refers to the input voltage(s) that an end-user can supply to the motor and expect the motor to deliver the performance characteristics detailed on its nameplate. When performing an efficiency test at the rated load, the motor is supplied with one of the voltages listed on its nameplate. Currently, the referenced industry standards listed in appendix B direct that motors to be tested at the rated voltage, without specifying how to test when multiple voltages are provided on the nameplate and marketing material. DOE has found that some motor nameplates are labeled with a voltage rating including a range of values, such as ''208–230/460 volts,'' or other qualifiers, such as ''230/460V, usable at 208V.''

In the December 2021 NOPR, DOE presented the results of electric motors that were tested at two rated voltages of 230V and 460V. The results indicated that the tests that were conducted at the higher voltage rating (460V) resulted in fewer losses than at the lower voltage rating (230V). 86 FR 71710, 71747–71749. DOE noted that under current industry practice, a manufacturer can select the voltage for testing; however, the electric motor must meet all performance requirements of NEMA MG 1–2016 (with 2018 Supplements) at all rated voltages. Therefore, in the December 2021 NOPR, DOE proposed to define the term ''rated voltage'' as ''any

of the nameplate input voltages of an electric motor or inverter, including the voltage selected by the motor's manufacturer to be used for testing the motor's efficiency.'' 86 FR 71710, 71748. DOE further clarified that the proposed definition would also require a motor to meet all performance requirements at any voltage listed on its nameplate. Therefore, a manufacturer would not be permitted to make representations regarding other voltages at which an electric motor could operate unless that motor also satisfied all of the related performance standards. DOE sought comment on this proposal and the proposal to allow voltages that appeared on the nameplate as ''Usable At'' to be selected for testing. *Id.*

In response, CEMEP stated that the rated voltage is the voltage at which the manufacturer provides all other rated values like current, torque, and power factor of a motor. (CEMEP, No. 19 at p. 8) AI Group stated that the rated voltage should be the voltage at which the manufacturer guarantees performance data of the motor (including efficiency). (AI Group, No. 25 at p. 6) Trane commented that having to test motors at all voltages on the nameplate creates an undue burden to the manufacturer due to the nature of the input rectification circuit, and that manufacturers should be allowed to test at only one voltage as long as that voltage is reported in the certification. (Trane, No. 31 at pp. 6–7)

NEMA commented that ''Usable At'' voltages are included to inform the customer that the motor could operate at that voltage but its inclusion on the nameplate makes no claims regarding efficiency at that voltage. (NEMA, No. 26 at p. 21) Grundfos opposed including ''Usable At'' voltages in the definition of rated voltage, stating that this proposed change will force manufacturers to design motors for specific voltages and limit motor utility and consumer options. It stated that this requirement would have a large impact on manufacturers that ship to multiple markets with different voltages (*e.g.* U.S., Brazil, Japan, EU) and that it could force them to double their offerings to design motors specifically optimized for their ''Usable At'' voltages, and that DOE needs to account for the added costs for the design and certification of these motors if the proposed change is adopted. (Grundfos, No. 29 at p. 7)

DOE notes that Section 12.50 of NEMA MG 1–2016 states that ''When a small or medium polyphase motor is marked with a single (*e.g.,* 230 V), dual (*e.g.,* 230/460), or broad range (*e.g.* 208–230) voltage in the Voltage field, the motor shall meet all performance requirements of MG 1, such as efficiency, at the rated voltage(s).'' The section further states that ''When a voltage is shown on a nameplate field (*e.g.,* ''Useable at 208 Volts'') . . . other than the Voltage field, the motor is not required to meet all performance requirements of this standard (*e.g.,* torques and nameplate nominal efficiency) at this other voltage.'' DOE understands that these ''Usable At'' voltages and broad range voltages allow manufacturers to serve multiple national markets with a single product offering.

In this final rule, DOE clarifies that its proposal to allow any nameplate voltage to be selected for testing does not mean a manufacturer will have to certify a motor's efficiency at every rated voltage. Instead, DOE is requiring that a manufacturer will only have to certify the efficiency of the motor at one voltage, but that DOE could select any nameplate voltage for enforcement testing. DOE considers ''Usable At'' voltages that appear on the nameplate as a nameplate voltage, and thus could be selected for testing. In DOE's view, at any voltage at which the manufacturer declares that an electric motor may be installed and operated by making a representation in its nameplate, the electric motor must meet the standards when measured by the DOE test procedure. However, DOE notes that if a ''Usable At'' voltage is included in marketing materials but is not printed on the nameplate, then that voltage would not be selected for testing as it would be for reference only.

Grundfos also stated that DOE needs to consider that the rated voltage for an inverter-only motor may be different than the rated voltage of the inverter to which it is connected. (Grundfos, No. 29 at p. 7) NEMA commented that the term ''inverter'' should be removed from the definition of rated voltage (without providing further details). (NEMA, No. 26 at pp. 20–21) Regarding how rated voltage should be defined for expanded scope, NEMA commented that motors that are not inverter-only should be tested at the rated voltage on the nameplate; motors with an inverter (inverter-only, converter-only, or synchronous motors) should be tested in accordance with the requirements of the inverter, in accordance with IEC 60034–2–3. (NEMA, No. 26 at p. 21)

As discussed in section III.D.3 of this document, DOE is requiring inverter-only electric motors to be tested with an inverter. As such, DOE notes that the voltage of the accompanying inverter to the inverter-only motor is important for determining its rated voltage. DOE specified in the proposal that ''any of the nameplate input voltages of an electric motor or inverter'' could be considered as the rated voltage, and that the motor would have to meet all performance requirements at any of the voltages listed on its nameplate (inverter or motor).

Accordingly, in this final rule, DOE is adopting its proposed rated voltage definition. Further, DOE is clarifying that a motor would have to meet all performance requirements at any voltage listed on its nameplate (inverter or motor's nameplate). DOE is also clarifying that for any motor that is tested with an inverter, the rated input voltages that could be selected for testing are only the voltages that appear on the inverter nameplate. This clarification is being added to ensure that when the motor input voltage differs from the inverter input voltage, the incorrect voltage does not get fed into the inverter.

H. Contact Seals Requirement

Certain electric motors come equipped with contact seals that prevent liquid, debris, and other unwanted materials from entering (or exiting) the motor housing. These contact seals cause friction on the shaft, which can cause a motor to have higher losses than if the motor were operating without those contact seals. In the December 2021 NOPR, DOE proposed to clarify that motors (other than immersible motors) that have contact seals should be tested with those seals installed. 86 FR 71710, 71750–71751.

NEMA, IEC, CEMEP, AI Group, AGMA, and Sumitomo all opposed the proposal. (NEMA, No. 26 at pp. 22–23; IEC, No. 20 at pp. 2–3; CEMEP, No. 19 at p. 9; AI Group, No. 25 at pp. 2, 6–7; AGMA, No. 14 at pp. 1–2; Sumitomo, No. 17 at pp. 1, 4–5) IEC, AI Group, and Sumitomo cited concerns about the added test burden if manufacturers were required to test every unique ''motor plus contact seal'' combination individually. (IEC, No. 20 at pp. 2–3; AI Group, No. 25 at pp. 2, 6–7; Sumitomo, No. 17 at pp. 6–7) CEMEP noted that numerous seal types are available, and the losses will be different in each case, which will lead to a high number of different basic models. (CEMEP, No. 19 at p. 9) IEC, and Sumitomo also cited concerns about the variability of frictional losses in contact seals and how this variability would make the test procedure less repeatable. (IEC, No. 20 at pp. 2–3; AI Group, No. 25 at pp. 2, 6–7; Sumitomo, No. 17 at pp. 6–7) Specifically, IEC, and Sumitomo stated that bearing friction and losses reduce as the motor runs and these bearings wear-in. *Id.* Further, NEMA and Sumitomo commented that some

bearings can take up to 200 hours of run time to wear-in, an amount of run time they argued would be unduly burdensome for a single efficiency test. (NEMA, No. 26 at p. 23; Sumitomo, No. 17 at p. 5)

NEMA disagreed with requiring electric motors to be tested with the seals installed because of the larger number of new models that would need to be certified and the added uncertainty introduced to the test procedure because of the many variables that affect seal losses. It referenced a statement from Advanced Energy,[67] who noted that because the ''run-in'' period of seals is not uniform across all motors—and can be long enough to make testing infeasible—testing these motors without their seals would be the reasonable approach for DOE to take. (NEMA, No. 26 at p. 23)

Sumitomo stated that, unlike past requirements, if DOE requires motors to be tested with their contact seals installed, testing a combination of randomly-selected sample motors per DOE's established methodology to verify calculated efficiency models will be impossible. It commented that all the motors will need to be tested until a new AEDM is developed that compensates for the reality that seal drag varies by a variety of factors such as total time in operation, lubrication, seal design, and surface speed. Since dimensions may vary depending on ''reducer frame size,'' multiple AEDMs may be required for a given motor. (Sumitomo, No. 17 at p. 6) Further, Sumitomo stated that the DOE proposal on contact seals would cause undue burden and it requested that DOE confirm that any required shaft contact seal be deemed part of an electric motor's mating gearbox associated with the reducer and not a necessary part of the electrical motor itself, such that contact seals be removed for testing. Accordingly, Sumitomo recommended that DOE an approach where the electric motor shaft seals of any variety shall be removed for testing if they are contact seals—regardless of whether the motor under test is an immersible electric motor. It noted that the problem with including seals on a gearmotor for testing is that seal friction causes loss of energy power output, but the losses are inconsistent and vary depending on seal size, number of seals, seal design, seal material, lubrication, and time in operation. By comparison, Sumitomo stated that motor efficiency tests that include fresh, dry seals do not simulate real-world operating conditions and may not be indicative of actual efficiency. Accordingly, Sumitomo recommended that to allow for meaningful comparison between gearmotors and conventional motors, contact seals should be excluded from the test. (Sumitomo, No. 17 at pp. 1, 4–5)

ABB stated that tests will need to be performed to determine frictional losses for shaft seals and sealed bearings for each type of seal and seal combination by rating and frame size. (ABB, No. 18 at p. 2) CEMEP asked DOE to clarify whether the proposed approach would treat every unique motor plus contact seal combination as a new basic model requiring separate certification. (CEMEP, No. 19 at p. 10)

AGMA argued that, to allow for meaningful comparison between gearmotors and conventional motors, contact seals should be excluded from the test. It stated that modeling seal drag and its attendant increase in motor losses may be difficult and that seal losses are a function of run time and lubrication and can vary across manufacturers and among individual pieces. It mentioned that motor efficiency tests that include fresh, dry seals do not simulate real-world operating conditions and may not be indicative of actual efficiency. It stated that requiring an integral gear motor with the mechanically required shaft contact seal to meet the same energy efficiency levels as the vast majority of electrical motors that have no need for such a shaft contact seal is an inconsistent application of the DOE's motor efficiency mandate and will result in an ''unlevel playing field.'' It encouraged DOE to consider any required shaft contact seal as part of the motor's driven load and not a necessary part of the electrical motor. (AGMA, No. 14 at pp. 1–2)

Grundfos stated that the proposed clarification for contact seals is adequate but that DOE must clearly define the term ''contact seals'' with respect to immersible motors to ensure clarity. (Grundfos, No. 29 at p. 8)

Advanced Energy stated that the proposed clarification on shaft seals may be inconsistent with how manufacturers have interpreted DOE's regulations and suggested that DOE add language allowing manufacturers to request a no-load run-in prior to efficiency testing to allow the bearings and seals to wear-in. The no-load run-in ensures the shaft seals (along with bearings and lubricant) are well-seated prior to loading the motor. Advanced Energy also explained that when it performs efficiency testing, it conducts a no-load test and waits until the input power has stabilized before moving onto the next stage of the test, with run-in time varying based on the motor. (Advanced Energy, No. 33 at p. 16)

DOE reviewed the comments submitted and further researched the complexities of measuring the efficiency of an electric motor with the contact seals installed. DOE understands that the frictional losses of contact seals reduce as the motor runs but the rate that these losses reduce over time is not uniform across all types of contact seals. DOE considered allowing manufacturers to use a run-in period that allowed for motor losses to stabilize before the efficiency test is conducted but is concerned that this period could be arduously long in the case of contact seals that could take up to 200 hours of runtime before the frictional losses stabilized. At this time, DOE has not found a practical way to account for the variation in frictional losses of contact seals when testing with the seals installed. Accordingly, in this final rule, DOE is declining to adopt its proposal that motors (other than immersible motors) that have contact seals should be tested with those seals installed.

I. Vertical Electric Motors Testing

In the December 2021 NOPR, DOE proposed to modify the vertical electric motor test requirements in section 3.8 of appendix B to permit the connection of a dynamometer with a coupling of torsional rigidity greater than or equal to that of the motor shaft.[68] 86 FR 71710, 71750. DOE proposed this updated language in response to NEMA's comments that industry's common practice is to use a disconnectable coupling or adapter to connect hollow motor shafts to dynamometers rather than the current requirements direct welding of a solid shaft to the motor's drive end. NEMA commented that using an adaptor or coupling causes no loss of testing accuracy, but carries the advantage of easy reversibility; whereas welding may permanently alter the motor. (NEMA, No. 2 at p. 3) In the December 2021 NOPR, DOE tentatively concluded that so long as the coupling is sufficiently rigid, it would be unlikely that it would reduce test procedure repeatability, and permitting use of a coupling could reduce burden, as

[67] *https://www.regulations.gov/comment/EERE-2012-BT-TP-0043-0008.*

[68] Specifically, DOE proposed removing the instructional text reading, ''Finally, if the unit under test contains a hollow shaft, a solid shaft shall be inserted, bolted to the non-drive end of the motor and welded on the drive end. Enough clearance shall be maintained such that attachment to a dynamometer is possible'' to ''If necessary, the unit under test may be connected to the dynamometer using a coupling of torsional rigidity greater than or equal to that of the motor shaft.'' 86 FR 71710, 71750.

removal of such a connector may be less laborious than reversing a welding process. 86 FR 71710, 71750. Consequently, DOE proposed to update its vertical electric motor testing requirements in the manner NEMA suggested and sought comment on that approach. *Id*

NEMA agreed with the proposed changes to testing requirements for certain vertical electric motors and that the proposed changes for coupling torsion are adequate. (NEMA, No. 26 at p. 22) Advanced Energy supported the proposed change to the definition as it relates to vertical electric motors and stated that the change is consistent with its current testing practice. (Advanced Energy, No. 33 at p. 16) Further, Advanced Energy supported the additional requirement of torsional rigidity of the coupling used to measure the motor output power. *Id.* Grundfos also supported the specifications on torsional rigidity. (Grundfos, No. 29 at p. 8)

For the reasons discussed, DOE is adopting the December 2021 NOPR proposal in this final rule, which provides an alternate specification of using a coupling for testing vertical electric motors.

J. Proposed Testing Instructions for Those Electric Motors Being Added to the Scope of Appendix B

In the December 2021 NOPR, DOE discussed how sections 3.1 through 3.8 of appendix B provide additional testing instructions for certain electric motors. 86 FR 71710, 71751. Specifically, the testing instructions provided are for (1) brake electric motors; (2) close-coupled pump electric motors and electric motors with single or double shaft extensions of non-standard dimensions or design; (3) electric motors with non-standard endshields or flanges; (4) electric motors with non-standard bases, feet or mounting configurations; (5) electric motors with a separately-powered blower; (6) immersible electric motors; (7) partial electric motors; and (8) vertical electric motors and electric motors with bearings incapable of horizontal operation. In the December 2021 NOPR, DOE reviewed these instructions and found that they would also apply to the additional motors proposed for inclusion in scope, to the extent that the additional motors fall into one of the eight categories of electric motors already listed in sections 3.1–3.8 of appendix B. *Id.* DOE requested comments on the proposed application of the additional testing instructions in sections 3.1 through 3.8 of appendix B to the additional electric motors proposed for inclusion in scope of the test procedure. *Id.*

In response, two stakeholders supported DOE's view that the additional testing instructions for certain electric motors would also apply to the additional electric motors proposed for inclusion in scope of the test procedure. Grundfos stated that the additional test instructions in sections 3.1–3.8 of 10 CFR part 431 appendix B would apply to the additional motor types proposed in scope. (Grundfos, No. 29 at p. 8) NEMA commented that to the extent that existing test procedures can be accurately and repeatedly applied to the additional electric motors proposed for inclusion in scope, the accommodations in sections 3.1–3.8 of appendix B remain adequate. (NEMA, No. 26 at p. 24)

The test methods adopted in this final rule reference specific industry test methods. Further, as discussed in section III.D of this document, DOE has concluded that the test methods for those additional electric motors DOE is including within the scope of the test procedure are designed to produce results reflecting a motor's energy efficiency during a representative average use cycle and are not unduly burdensome to conduct. As such, because DOE has concluded that the test procedures can be accurately and repeatedly applied to the additional electric motors, DOE maintains that the additional testing instructions in sections 3.1–3.8 of appendix B also apply to the additional motors DOE is adding to the test procedure's scope, to the extent that the additional motors fall into one of the eight categories of electric motors listed in sections 3.1–3.8 of appendix B. Consequently, DOE is adopting these additional testing instructions as proposed.

In the December 2021 NOPR, DOE also proposed to amend the definition of standard bearing by expanding it to include 600 series bearings—*i.e.,* ''a 600 or 6000 series, either open or grease-lubricated double-shielded, single-row, deep groove, radial ball bearing.'' 86 FR 71710, 71751. DOE proposed this amendment to accommodate categories of bearings contained in motors with smaller shafts that are found in SNEMs. *Id.* DOE requested comment on this proposal but received none. Therefore, DOE is adopting this proposal in this final rule.

K. Testing Instructions for Brake Electric Motors

Section 3.1. of Appendix B to Subpart B currently includes testing instructions for brake electric motors. In the NOPR, DOE did not propose any changes to these testing instructions.

IEC commented that as long as auxiliary devices, such as mechanical brakes, are not an integral part of the basic motor design, the test for efficiency should be performed on basic motors without auxiliary devices installed. It recommended removing mechanical brakes from an electric motor during testing because testing with the brakes installed will significantly increase the uncertainty in the test results. Moreover, it noted that manufacturers offer different types of brakes with their electric motors, making it impracticable to test all of the variations that are produced. Finally, IEC explained that removing the brakes before testing is consistent with IEC 600034–30–1 and IEC 600034–30–2. (IEC, No. 20 at pp. 3–4)

DOE notes that section 3.1 of appendix B instructs that brake electric motors must be tested with the brake component not activated during testing. Specifically, the power supplied to prevent the brake from engaging is not included in the efficiency calculation. Further, the test procedure allows the brake to be disengaged from the motor if such a mechanism to disengage to brake is installed and if doing so does not yield a different efficiency value than when separately powering the brake electrically. Accordingly, in DOE's view, the current test methods already permit the brakes to be disengaged and exclude any energy use associated with the brake component from the motor's calculated efficiency.

L. Transition to 10 CFR Part 429

DOE proposed to amend its electric motor regulations by amending and moving those portions pertaining to certification testing and the determination of represented values from 10 CFR part 431 to 10 CFR part 429. (86 FR 71710, 71751–71752) DOE also proposed amending other sections of 10 CFR part 431, subpart B, to ensure the regulatory structure comprising 10 CFR part 431, subpart B, and 10 CFR part 429 remains coherent. *Id.* DOE also proposed making changes to the general provisions in 10 CFR part 429 to reflect the addition of electric motor provisions related to certification testing and to the determination of represented values. *Id.* DOE did not receive any comments related to transitioning the provisions pertaining to certification testing and the determination of represented values from 10 CFR part 431 to 10 CFR part 429 and is adopting these changes as proposed, consistent with other covered products and equipment.

In the December 2021 NOPR, DOE proposed to largely retain the procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs as it exists at 10 CFR 431.21, with one change to the current provisions at 10 CFR 431.21(g) to clarify the timeline and process of withdrawal of recognition by DOE as follows: if the certification program is failing to meet the criteria of paragraph (b) of § 429.73 or § 429.74, DOE will issue a Notice of Withdrawal (''Notice'') stating which criteria the entity has failed to meet. The Notice will request that the entity take appropriate corrective action(s) specified in the Notice. The entity must take corrective action within 180 days from the date of the Notice of Withdrawal or dispute DOE's allegations within 30 days from the issuance of the Notice. If, after 180 days, DOE finds that satisfactory corrective action has not been made, DOE will withdraw its recognition from the entity. DOE did not receive comments related to this topic and is adopting the proposed provisions related to the recognition and withdrawal of recognition of accreditation bodies and certification programs. In DOE's view, these additional requirements to the procedures for recognition and withdrawal of recognition will provide added clarity for those entities that may be affected by this provision.

TABLE III–8—ELECTRIC MOTORS CERTIFICATION AND COMPLIANCE CFR TRANSITIONS

Subpart B—electric motors [69]	Proposed location	Final location
10 CFR 431.14 Sources for information and guidance	Moved to 10 CFR 429.3	Moved to 10 CFR 429.3.
10 CFR 431.17 Determination of efficiency	Moved to 10 CFR 429.64 and 10 CFR 429.70 as relevant, edits to general provisions in 10 CFR 429 as needed.	Moved to 10 CFR 429.64 and 10 CFR 429.70 as relevant, edits to general provisions in 10 CFR 429 as needed.
10 CFR 431.18 Testing laboratories	Retained and added additional provisions at 10 CFR 429.64.	Retained and added additional provisions at 10 CFR 429.64.
10 CFR 431.19 Department of Energy recognition of accreditation bodies.	Moved to 10 CFR 429.74	Moved to 10 CFR 429.74.
10 CFR 431.20 Department of Energy recognition of nationally recognized certification programs.	Moved to 10 CFR 429.73	Moved to 10 CFR 429.73.
10 CFR 431.21 Procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs.	Moved to 10 CFR 429.75	Moved to 10 CFR 429.75.

In addition, the December 2021 NOPR included some revisions in 10 CFR 429.11 that were not discussed in the NOPR preamble. In this final rule, DOE does not implement those changes (other than to update the cross-reference to 10 CFR 429.65).

M. Certification of Electric Motors

Manufacturers must certify electric motors as compliant with the applicable standard through the use of an ''independent testing or certification program nationally recognized in the United States.'' (42 U.S.C. 6316(c)) DOE is adopting changes to the provisions related to certification testing to ensure consistency with the statutory language found in 42 U.S.C. 6316(c). These updates are described in section III.M.1 and section III.M.2 of this document.

1. Independent Testing

DOE codified at 10 CFR 431.17(a)(5) the statutory requirement prescribing that manufacturers must certify electric motors as compliant with the applicable standard through the use of an ''independent testing or certification program nationally recognized in the United States.'' (42 U.S.C. 6316(c)) In the existing regulations, DOE addresses the requirement to use an independent testing program nationally recognized in the United States by requiring that testing laboratories be accredited by the National Institute of Standards and Technology (''NIST'')/National Voluntary Laboratory Accreditation Program (''NVLAP''),[70] a laboratory accreditation program having a mutual recognition program with NIST/NVLAP, or an organization classified by DOE as an accreditation body. 10 CFR 431.18. The term ''accredited laboratory'' is used to designate a testing laboratory to which accreditation has been granted. 10 CFR 431.12.

In the December 2021 NOPR, DOE proposed that, prior to 180 days following the publication of this final rule, in those cases when a certification program is not used, certifying a new basic model pursuant to 10 CFR 431.36(e) must be based on testing conducted in an accredited laboratory that meets the requirements of § 431.18. However, on or after 180 days following the publication of this final rule, when certifying a new basic model pursuant to 10 CFR 431.36(e) and when a certification program is not used, DOE proposed to require that testing be conducted by a nationally recognized testing program as further described in the remainder of this section. DOE proposed to replace the use of the term ''accredited laboratory'' (currently defined at 10 CFR 431.12) with the term ''nationally recognized testing program'' to better reflect the requirement that the testing program be nationally recognized in the United States. (42 U.S.C. 6316(c)) 86 FR 71710, 71752. DOE further proposed to add a definition for ''independent'' to appear in 10 CFR 429.2 that would define the term as referring to an entity that is not controlled by, or under common control with, electric motor manufacturers, importers, private labelers, or vendors. It would also require that the entity have no affiliation, financial ties, or contractual agreements, apparently or otherwise, with such entities that would: (1) Hinder the ability of the program to evaluate fully or report the measured or calculated energy efficiency of any electric motor, or (2) Create any potential or actual conflict of interest that would undermine the validity of said evaluation. The proposed definition also provided that for the purposes of the proposed definition, financial ties or contractual agreements between an electric motor manufacturer, importer, private labeler or vendor and a nationally recognized testing program, certification program,

[69] As it appeared at 10 CFR part 431, subpart B, in the 10 CFR parts 200 to 499 edition revised as of January 1, 2020.

[70] A list of NIST/NVLAP accredited laboratories is available here: *https://www-s.nist.gov/niws/index.cfm?event=directory.results.*

or accreditation program exclusively for testing, certification, or accreditation services would not negate an otherwise independent relationship. 86 FR 71710, 71752–71753. This proposed definition was largely based on the descriptions of independence currently found in 10 CFR 431.19(b)(2), 431.19(c)(2), 431.20(b)(2) and 431.20(c)(2). DOE further proposed to remove these descriptions in their entirety and rely solely on the proposed definition of independent that would appear in 10 CFR 429.2. 86 FR 71710, 71752–71753. DOE indicated that these proposed requirements would apply starting 180 days after publication of the final rule.

In response to the December 2021 NOPR, DOE received many comments criticizing the proposal. AI Group strongly opposed not allowing accredited manufacturer laboratories to conduct testing and submit results for certification. (AI Group, No. 25 at p. 7) Franklin Electric, Trane, ABB, Regal, CEMEP, AHRI and AHAM, and NEMA all commented that requiring the use of third-party testing laboratories would add financial and time burdens on manufacturers. Franklin Electric opposed requiring manufacturers to certify through a third-party test facility and stated that imposing the proposed requirement to do so would be an expensive burden for motor manufacturers. It elaborated that this proposal would be particularly difficult to meet in the case of submersible motors because third-party facilities would need time to implement the new test procedure and there are currently no third-party certification bodies available to test and certify for these motors. (Franklin Electric, No. 22 at p. 6) Trane commented that testing all the new in-scope motors at independent facilities would not be possible in the timeframe allotted and that testing components of covered products creates unnecessary financial and time burdens on manufacturers. It added that requiring third-party laboratories to test and certify these motors will create a supply bottleneck. (Trane, No. 31 at p. 7) Regal stated that there are too few third-party labs to test the motors that would be added to the test procedure's scope and that this testing will create longer lead times and backlogs in an already supply-constrained environment. (Regal, No. 28 at p. 1) ABB commented that if all motor manufacturers are required to use the limited number of external partners (who all have finite testing capacity), it believed that the required testing could take longer than 3 years to complete. ABB commented that the 180-day time frame for requiring manufacturers to test at an independent, nationally recognized testing facility is unrealistic. (ABB, No. 18 at p. 2) Grundfos expressed concern with DOE's proposed definition of ''independent'' since it would preclude manufacturers from engaging with an independent third-party for purposes not related to certification—such as prototype testing. Grundfos did not elaborate on this point. Grundfos generally agreed, however, with the proposed methods of certification. (Grundfos, No. 29 at p. 8) Advanced Energy supported DOE's proposed definition of ''independent.'' (Advanced Energy, No. 33 at p. 17)

The industry trade associations harbored similar concerns. CEMEP commented that requiring the use of a third-party laboratory is an extreme burden and a trade barrier to manufacturers. It noted the potential for higher adverse impacts on small- and medium-sized businesses in the form of additional time, effort, and financial and administrative costs to meet the proposed requirement, particularly in light of the small number of motors that these entities produce for the U.S. market. (CEMEP, No. 19 at p. 9) AHAM and AHRI commented that they were aware of only three third-party labs and stressed that these labs would be unable to handle the magnitude of testing required under DOE's proposal, particularly within the specified 180-day timeframe. (AHAM and AHRI, No. 36 at p. 9) AHAM and AHRI also commented that the proposed certification changes may drive motor manufacturers to limit the number of motors currently available to downstream OEMs in an effort to reduce testing and certification burdens. AHRI and AHAM commented that this development would limit OEM choice, may increase costs, and could negatively impact the performance of the end-use products. *Id.* NEMA, in referencing the three third-party certification bodies noted by AHRI and AHAM, stressed that these testing entities will not have the capacity to handle the inflow of reports and become a bottleneck. It strongly opposed not allowing accredited manufacturer laboratories to conduct testing and submit results for certification. (NEMA, No. 26 at pp. 24, 28) In addition, NEMA noted that third-party test labs have lower capacities than in-house manufacturer test labs and are only able to test a smaller range of horsepower motors. (NEMA, No. 26 at p. 30)

In addition, AHAM and AHRI stated that because DOE has not provided adequate reasoning for its view that NIST/NVLAP-certified labs are not sufficiently independent, commenters have been prevented from providing meaningful comments on this topic. (AHAM and AHRI, No. 36 at p. 10) NEMA commented that DOE should examine potential changes with the individual NVLAP, International Laboratory Accreditation Cooperation (ILAC), and the Occupational Safety and Health Administration Nationally Recognized Testing Laboratory (NRTL) program if there are issues with the certification process and not impose on manufacturers without justification and analysis of the burden this change would incur. NEMA added that the industry has made investments to participate in these programs and that DOE should engage with the parent organizations to address its concerns. Industry participates in these programs in accordance with the current regulations and should not be penalized. NEMA commented that DOE's proposal could be interpreted to imply that the Department has lost control of the process and its certification database and added that the proposed changes would not address systemic failures in oversight, if they exist. NEMA added that DOE provided no justification or reasons for this change and cannot add this burden without justification and corresponding economic analysis of the time and burdens it conveys. (NEMA, No. 26 at p. 24)

EPCA requires that with respect to any electric motor for which energy conservation standards are established at 42 U.S.C. 6313(b), the Secretary shall require manufacturers to certify, through an independent testing or certification program nationally recognized in the United States, that such motor meets the applicable standard. (42 U.S.C. 6316(c)) DOE reviewed the requirements that a testing laboratory must meet to obtain NIST/NVLAP accreditation related to proficiency testing, resources (*e.g.,* personnel records, specific experience and competence of technical manager, competency review, training, equipment), process (*e.g.,* selection, verification and validation of methods, sampling, reporting results), and management systems (*e.g.,* control of records, internal audits).[71] In addition, NIST/NVLAP conducts on-site assessments that consist of an independent, documented process for determining laboratory competence and other relevant information by NVLAP assessors with the objective of determining the extent to which NVLAP

[71] See NIST/NVLAP requirement documents at *www.nist.gov/nvlap/efficiency-electric-motors-lap.*

requirements are fulfilled. Based on this review, DOE has determined that NIST/NVALP accreditation is sufficient to satisfy the statutory requirement to use an ''independent testing [. . .] nationally recognized in the United States'' (42 U.S.C. 6316(c)) and that no changes are necessary. Therefore, DOE has decided to not adopt its proposal to require the use of an independent testing program and to instead to continue permitting the use of accredited labs as currently described at 10 CFR 431.17(a)(5). These provisions would be moved, consistent with the proposal, to 10 CFR 429.64.

In response to the December 2021 NOPR, DOE did not receive any comments on its proposal to replace the descriptions of independence currently found in 10 CFR 431.19(b)(2), 431.19(c)(2), 431.20(b)(2) and 431.20(c)(2) with references to the proposed definition of independent as it relates to nationally recognized certification and accreditation programs. *Id.* In this final rule, DOE adopts the proposed definition of independent as it relates to nationally recognized certification and accreditation programs. DOE is also replacing the descriptions of independence currently in 10 CFR 431.19(b)(2), 431.19(c)(2), 431.20(b)(2) and 431.20(c)(2) by referring to the definition of independent.

In addition to the proposals discussed in the NOPR, DOE notes that the current description of the NIST/NVLAP accreditation program at 10 CFR 431.18(b) and the referenced NIST/NVLAP handbooks and IEC guides listed at 10 CFR 431.14 are outdated. The more recent versions of the NIST/NVLAP handbooks include references to DOE's latest test procedures and replace the references to various IEC guides, which have now been withdrawn, by a reference to IEC 17025:2017 ''General Requirements for the Competence of Testing and Calibration Laboratories.'' DOE did not receive any comments related to these reference documents. In this final rule, DOE updates these references to cite their most recent versions. (*See* Table III–9)

TABLE III–9—UPDATED SOURCES FOR INFORMATION AND GUIDANCE

Current version listed at 10 CFR 431.14	Updated version in final location at 10 CFR 429.3
NVLAP Handbook 150, Procedures and General Requirements, February 2006	NVLAP Handbook 150, Procedures and General Requirements, February 2020.
NVLAP Handbook 150–10, Efficiency of Electric Motors, February 2007	NVLAP Handbook 150–10, Efficiency of Electric Motors, February 2020.
NIST Handbook 150–10 Checklist, Efficiency of Electric Motors Program, (2007–05–04)	NIST Handbook 150–10 Checklist, (2020–06–25).
NVLAP Lab Bulletin Number: LB–42–2009, Changes to NVLAP Efficiency of Electric Motors Program, March 19, 2009.	Removed.
ISO/IEC Guide 25, General requirements for the competence of calibration and testing laboratories, 1990 ..	ISO/IEC 17025:2017 General requirements for the competence of testing and calibration laboratories.
ISO Guide 27, Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk, 1983.	
ISO/IEC Guide 28, General rules for a model third-party certification system for products, 2004.	
ISO/IEC Guide 58, Calibration and testing laboratory accreditation systems—General requirements for operation and recognition, 1993.	
ISO/IEC Guide 65, General requirements for bodies operating product certification systems, 1996.	

2. Certification Process for Electric Motors

As mentioned previously, DOE codified at 10 CFR 431.17(a)(5) the statutory requirement that manufacturers must certify electric motors for which energy conservation standards are established at 42 U.S.C. 6313(b) as compliant with the applicable standard through the use of an ''independent testing or certification program nationally recognized in the United States.'' (42 U.S.C. 6316(c))

Consistent with the requirements of 42 U.S.C. 6316(c), DOE proposed continuing to permit the use of independent testing (via an independent, nationally recognized testing program) or a nationally recognized certification program and to further specify which parties can test electric motors and certify compliance with the applicable energy conservation standards to DOE. DOE proposed that these provisions be required starting on the compliance date for any amended standards for electric motors published after January 1, 2021, as this was the date of the most recent print edition of the Code of Federal Regulations. DOE proposed three options in this regard: (1) a manufacturer can have the electric motor tested using a nationally recognized testing program (as described in the proposed § 429.64(d)) and then certify on its own behalf or have a third-party submit the manufacturer's certification report; (2) a manufacturer can test the electric motor at a testing laboratory other than a nationally recognized testing program (as described in the proposed § 429.64(d)) and then have a nationally recognized certification program (as described in the proposed § 429.73) certify the efficiency of the electric motor; or (3) a manufacturer can use an alternative efficiency determination method (''AEDM,'' as described in the proposed § 429.70) and then have a third-party nationally recognized certification program certify the efficiency of the electric motor. Under the proposed regulatory structure, a manufacturer cannot both test in its own laboratories and directly submit the certification of compliance to DOE for its own electric motors. 86 FR 71710, 71753.

In response to the December 2021 NOPR, CEMEP commented against the three certification options as proposed in the December 2021 NOPR. CEMEP commented that the proposed time schedule was not suitable and suggested keeping the existing system for transmitting data and testing motors. (CEMEP, No. 19 at pp. 9–10) Lennox opposed requiring third-party certification and stated that it would significantly increase burden to HVACR manufacturers without any benefit to the consumer. (Lennox, No. 24 at p. 9) NEMA also opposed the three proposed certification options and stressed that

NEMA opposed any proposal that would prevent certification through accredited laboratories operated by manufacturers. (NEMA, No. 26 at p. 24) Advanced Energy supported the three offered motor certification options and saw them as being consistent with other motor certifications related to safety or efficiency that manufacturers must satisfy in other countries. (Advanced Energy, No. 33 at p. 17)

As already noted, this final rule will not require testing at an independent testing program and continues to allow the use of an accredited laboratory for testing and certification purposes. Therefore, in this final rule, DOE is revising its proposed Option (1) to reflect its current practice (detailed at 10 CFR 431.17(5)) by allowing a manufacturer to test an electric motor using an accredited laboratory (as described at 10 CFR 431.18) and then to certify that motor on its own behalf or have a third-party submit the manufacturer's certification report. DOE is adopting Option (2) as proposed, which is consistent with the current provisions at 10 CFR 431.17(5)—no changes are being made to the current manner in which a manufacturer who conducts testing at a non-accredited lab must certify its electric motor. As to Option (3), DOE does not view the requirements of an AEDM as satisfying the statutory requirement of ''independence.'' Therefore, DOE believes that when using an AEDM, the results of the AEDM must be certified by a third-party certification program that is nationally recognized in the United States under the newly adopted § 429.73.

In summary, consistent with the requirements of 42 U.S.C. 6316(c), DOE continues to offer the option of using independent testing (via an accredited laboratory) or a nationally recognized certification program and further specifies which parties can test electric motors and certify compliance with the applicable energy conservation standards to DOE. This final rule specifies three options in this regard: (1) a manufacturer can have the electric motor tested using an accredited laboratory (as described at 10 CFR 431.18) and then certify on its own behalf or have a third-party submit the manufacturer's certification report; (2) a manufacturer can test the electric motor at a testing laboratory other than an accredited laboratory (as described at 10 CFR 431.18) and then have a nationally recognized certification program (as described in the newly established § 429.73) certify the efficiency of the electric motor; or (3) a manufacturer can use an alternative efficiency determination method (''AEDM,'' as described in § 429.70) and then have a third-party nationally recognized certification program certify the efficiency of the electric motor. Under this structure, a manufacturer would retain the ability to test in its own laboratories and directly submit the certification of compliance to DOE for its own electric motors as long as the laboratory is an accredited laboratory in accordance with 10 CFR 431.18, 429.64(f) and 429.65(d).

In addition, DOE proposed that these provisions would be required starting on the compliance date for any new or amended standards for electric motors. DOE is adopting this timeline as proposed and believes this timeline and combination of three options will provide sufficient time and alternatives for manufacturers. In addition, the compliance date to certify using these three options would be on or after the compliance date of the final rule adopting new or amended energy conservation standards for electric motors, Any associated costs related to these aspects of this final rule will be addressed in conjunction with any potential energy conservation standards rulemaking that DOE conducts for these affected electric motors. (See section III.Q of this document for more details related to test procedure costs and impacts).

In response to the December 2021 NOPR, NEMA stated that DOE should invest in an AEDM certification body that is independent from the current facility that also offers AEDM services for manufacturers who may not have the resources to develop their own AEDM because of the conflict of interest that comes with the same entity being both a certifier and provider of AEDMs. (NEMA, No. 26 at pp. 29–30)

DOE is not aware of any third-party, nationally recognized certification body that would develop AEDMs and conduct AEDM simulations on behalf of manufacturers and also certify the resulting efficiencies. In addition, the current regulations at 10 CFR 431.20 require that a nationally recognized certification program must be independent of electric motor manufacturers, importers, distributors, private labelers or vendors. It cannot be affiliated with, have financial ties with, be controlled by, or be under common control with any such entity. 10 CFR 431.20(b)(2) In addition, any petitioning organization should identify and describe any relationship, direct or indirect, that it or the certification program has with an electric motor manufacturer, importer, distributor, private labeler, vendor, trade association or other such entity, as well as any other relationship it believes might appear to create a conflict of interest for the certification program in operating a certification system for compliance by electric motors with energy efficiency standards. It should explain why it believes such a relationship would not compromise its independence in operating a certification program. 10 CFR 431.20(c)(2). As previously noted, in this final rule, DOE is adopting a definition of ''independent'' as it pertains to certification program (and nationally recognized accreditation program) that requires that the entity be not controlled by, or under common control with, electric motor manufacturers, importers, private labelers, or vendors, and that has no affiliation, financial ties, or contractual agreements, apparently or otherwise, with such entities that would: (1) hinder the ability of the program to evaluate fully or report the measured or calculated energy efficiency of any electric motor, or (2) create any potential or actual conflict of interest that would undermine the validity of said evaluation. Therefore, the adopted definition of ''independent'' sufficiently addresses NEMA's concern. DOE notes the requirement to be independent ensures that the entity conducting the AEDM for a basic model would not be the same as the entity certifying that same basic model. Further as noted previously, this final rule requires that when a manufacturer relies on an AEDM, a third-party nationally recognized certification program must certify the efficiency of the electric motor.

NEMA also questioned who would be responsible for certification in the case of a motor and inverter being sold together, particularly when they are manufactured by separate companies. (NEMA, No. 26 at p. 17) DOE's test procedure applies to the inverter motor. The motor manufacturer would be responsible for testing and certifying the motor, based on the test procedure established in this final rule.

AHAM and AHRI commented that the changes proposed in the NOPR expanded the definition of ''manufacturer'' and questioned whether OEMs that attach, for example, an impeller to an otherwise finished air-over motor would be considered the manufacturer responsible for certification. AHAM and AHRI commented that, in the case of any finished goods manufactured overseas, DOE's proposal would treat the OEM as the electric motor manufacturer, and they opposed this change. (AHAM and AHRI, No. 36 at p. 11).

DOE's proposals did not change the definition of manufacturer. The manufacturer of the motor would be responsible for certification. Electric motors are comprised of several primary components that include a rotor, stator, stator windings, stator frame, two endshields, two bearings, and a shaft. As stated in section III.A.9, DOE continues to exclude component sets from the scope of the test procedure. A component set of an electric motor comprises any combination of these motor parts that does not form an operable motor. For example, a component set may consist of a wound stator and rotor component sold without a stator housing, endshields, or shaft. These components may be sold with the intention of having the motor parts mounted inside other equipment, with the equipment providing the necessary mounting and rotor attachments for the components to operate in a manner similar to a stand-alone electric motor. Component sets may also be sold with the intention of a third-party using the components to construct a complete, stand-alone motor. In such cases, the end manufacturer that ''completes'' the motor's construction must certify that the motor meets any pertinent standards. (*See* 42 U.S.C. 6291(1)(10) (defining ''manufacture'' to include manufacture, produce, assemble, or import.))

N. Determination of Represented Values

For electric motors subject to standards, DOE established sampling requirements applicable to the determination of the nominal full-load efficiency. 10 CFR 431.17. The purpose of these sampling plans is to provide uniform statistical methods for determining compliance with any prescribed energy conservation standards and for making representations of energy consumption and energy efficiency on labels and in other locations such as marketing materials. The current regulations require that each basic model must either be tested or rated using an AEDM. 10 CFR 431.17(a). Section 431.17 specifies the requirements for use of an AEDM, including requirements for substantiation (*i.e.,* the initial validation) and verification of an AEDM. 10 CFR 431.17(a)(2)–(4).

DOE is adopting several edits to the current regulatory language to revise the existing requirements that manufacturers must follow when determining the represented value of nominal full-load efficiency of a basic model. The revised provisions regarding the determination of the represented value of nominal full-load efficiency, certification provisions, and the validation and verification of an AEDM, consistent with DOE's overall approach for consolidating the locations of its certification and compliance provisions, will be placed in 10 CFR 429.64 and 429.70. In addition, the revised provisions regarding the determination of the represented value of nominal full-load efficiency, enforcement provisions, and the validation and verification of an AEDM will also apply to the newly-added electric motors now falling within the scope of the test procedure in those cases where a manufacturer of such motors would be required to use the DOE test procedure. These provisions are discussed in more detail in sections III.N.1 through III.N.4 of this document.

1. Nominal Full-Load Efficiency

DOE defines ''nominal full-load efficiency,'' with respect to an electric motor, as a representative value of efficiency selected from the ''nominal efficiency'' column of Table 12–10, NEMA MG 1–2009, that is not greater than the average full-load efficiency of a population of motors of the same design. (10 CFR 431.12) As proposed in the December 2021 NOPR, DOE is not adopting any changes to this definition other than updating the reference to the latest version of NEMA MG 1 as discussed in section III.C of this document. 86 FR 71710, 71754. DOE discusses how to determine the average full-load efficiency of a basic model in the following sections. *See* 10 CFR 429.64(e) as established by this final rule.

Manufacturers currently rely on the nominal full-load efficiency to represent the performance of electric motor basic models. In the December 2021 NOPR, DOE proposed to allow manufacturers to alternatively use the average full-load efficiency of a basic model of electric motor as the represented efficiency (instead of the nominal full-load efficiency) provided that the manufacturer uses the average full-load efficiency consistently on all marketing materials, and as the efficiency value reported on the nameplate. This proposed provision would apply starting on the compliance date for any new or amended standards for electric motors published after January 1, 2021. 86 FR 71754

Grundfos, a pump manufacturer, supported allowing average full-load efficiency to be an alternate to represented value as long as both nominal and average full-load efficiency do not need to be declared on the nameplate (*i.e.,* a manufacturer can post one or the other) (Grundfos, No. 29 at p. 9) NEMA opposed using average full-load efficiency as alternative represented values for electric motors because it would be inconsistent with harmonizing North American, IEC, and other global standards and regulatory practices. (NEMA, No. 26 at p. 27)

In the NOPR, DOE proposed this alternative as an option to allow manufacturers to rate less conservatively than potentially required by the use of a nominal full-load efficiency value. The current DOE standards for electric motors are based on nominal full load efficiency. 10 CFR 431.25. Further, as suggested by NEMA, the current IEC classification of motor efficiency (*i.e.,* the ''IE-code'') in IEC 60034–30–1 is also based on nominal efficiency limits. Therefore, in this final rule, DOE is not adopting the proposed approach to allow manufacturers to alternatively use the average full-load efficiency of a basic model of electric motor as the represented efficiency (instead of the nominal full-load efficiency). DOE is maintaining its current approach to remain in alignment with harmonized international standards.

2. Testing: Use of an Accredited Laboratory

Manufacturers who do not use a certification program and test basic models in an accredited laboratory must follow the criteria for selecting units for testing, including a minimum sample size of five (5) units in most cases, as specified at 10 CFR 431.17(b)(2). The sample of units must be large enough to account for reasonable manufacturing variability among individual units of the basic model or variability in the test methodology such that the test results for the overall sample will be reasonably representative of the average full-load efficiency of the whole population of production units of that basic model. DOE notes that the current regulations do not limit the sample size and manufacturers can increase their sample size to narrow the margin of error.

In the December 2021 NOPR, DOE proposed that manufacturers continue to follow the current provisions in 10 CFR 431.17 (including the formula at 10 CFR 431.17(b)(2)(i)) related to the determination of the represented value. Manufacturers would continue to follow this procedure until DOE amends its electric motor standards. However, DOE proposed to move these provisions in the newly proposed §§ 429.64(b) and 429.64(c). In addition, starting on the compliance date for any new or amended standards for any electric motors published after January 1, 2021, DOE proposed that manufacturers

follow the amended provisions in accordance with the newly proposed §§ 429.64(d) through 429.64(f). 86 FR 71710, 71754.

NEMA disagreed with the proposed change of the mathematical symbol given in the second formula in the current regulation at 10 CFR 431.17(b)(2)(i), which DOE proposed to move to 10 CFR 429.64. Specifically, it disagreed with the proposed symbol change from ''greater than or equal to'' to ''equal to'' and argued that the original equation and ''greater than or equal to'' symbol should be restored. (NEMA No. 26, at p. 29)

DOE reviewed the formula in the December 2021 NOPR and identified a typographical error. As stated in the December 2021 NOPR, prior to the compliance date for any new or amended standards for electric motors published after January 1, 2021, DOE proposed that manufacturers continue to follow the current provisions in 10 CFR 431.17 related to the determination of the represented value. In addition, DOE proposed to move these provisions to the newly proposed §§ 429.64(b) and 429.64(c). 86 FR 71710, 71754. DOE's intent was to move the provisions from 10 CFR 431.17(b)(2)(i) to 429.64 without modification. In this final rule, based on the feedback from NEMA, DOE is revising the second formula in § 429.64(c)(2)(i) to match the second formula in the current regulation § 431.17(b)(2)(i) by replacing the ''equal to'' sign with a ''greater than or equal to'' sign.

In the December 2021 NOPR, DOE proposed that the average full-load efficiency of a basic model would be the arithmetic mean of the tested efficiencies of a sample of electric motors. The average full-load efficiency of a basic model is determined using the definition of ''average full-load efficiency''—*i.e.,* the arithmetic mean of the full-load efficiencies of a population of electric motors of duplicate design. 10 CFR 431.12. This requirement would need to be met starting on the compliance date for any new or amended standards for electric motors published after January 1, 2021, DOE proposed to add regulatory text to implement the definition of ''average full-load efficiency'' such that, when conducting testing, the average full-load efficiency of a basic model would be calculated as the arithmetic mean of the full-load efficiencies of a sample of electric motors selected in accordance with the sampling requirements at 10 CFR 431.17(b)(2). In addition, in the case of manufacturers making representations of energy efficiency starting on the compliance date of any new or amended standards for any electric motors that DOE may set, DOE proposed to remove the equations at 10 CFR 431.17(b)(2)(i)–(ii).[72] Finally, to ensure a high level of quality control and consistency of testing performance within the basic model, DOE proposed to add a requirement to verify that no motor tested would be able to sustain losses exceeding 15 percent of those permitted by the applicable energy conservation standard. 86 FR 71710, 71755.

ABB commented that if the currently permitted five percent additional loss allowance is eliminated, then the sample size required to predict the nominal efficiency with a high degree of probability would increase from five motors to over 100 motors and would take years to complete. (ABB, No. 18 at p. 2) CEMEP stated that the new statistical allowances would require multiple years to comply with and need a wholesale redesign of entire product portfolios. (CEMEP, No. 19 at p. 10) NEMA opposed the changes to the sampling plan at 10 CFR 429.64(e)(1) and commented that the additional test burden would be unmanageable, or that manufacturers would be required to redesign most or all of their existing basic models to a higher average efficiency level to maintain compliance. NEMA commented that the proposal in 10 CFR 429.64(e)(1) to remove the five percent loss allowance permitted in 10 CFR 431.17(b)(2) for the average of the samples relative to the represented efficiency forces a need for the samples chosen to estimate the mean value of efficiency of the basic model population with a low margin of error. NEMA commented that an increase in the number of required sample motors from the present value of 5 to an estimated value of approximately 120 to 140 would be required to estimate the average of the population within a margin of error of 0.05. Alternatively, NEMA commented that to maintain a sample size of 5 units, a redesign of existing basic models would be required to achieve an increase in average population efficiency that is estimated to be between 50 and 62.5 percent of a nominal efficiency band. NEMA believed forcing this redesign would be outside of the scope of a test procedure rulemaking and would need to be done through an energy conservation standards rulemaking where the economic justification and technological feasibility are assessed. (NEMA, No. 26 at pp. 2, 24–27) NEMA provided the results of several statistical simulations to support their comments in appendix A and B of their comments. (NEMA, No. 26 at pp. 31–44)

The Joint Advocates supported the proposed requirement that an electric motor's represented nominal efficiency be less than or equal to the average efficiency based on testing. Specifically, the Joint Advocates supported DOE's proposal that the nominal full-load efficiency of a basic model must be less or equal to the average full-load efficiency determined either through testing or AEDM. (Joint Advocates, No. 27 at p. 5) Grundfos agreed with DOE's proposal to specify how to determine the nominal full-load efficiency of a basic model when the average efficiency of that basic model is known. Grundfos further agreed with DOE's proposal to require that manufacturers must calculate the average full-load efficiency of a basic model as the arithmetic mean of the full-load efficiencies of a sample of electric motors starting on the compliance date for any new or amended electric motor standards. Grundfos further supported DOE's proposal to add a requirement that no electric motor tested in the sample has losses exceeding 15 percent of those permitted by the applicable energy conservation standard. (Grundfos, No. 29 at p. 9)

DOE reviewed NEMA's statistical analysis, which purported to show that an increase of up to approximately 120 to 140 units would be required to ensure that the average of a sample is greater than or equal to the average of the population within a margin of 5 percent. (NEMA, No. 26 at pp. 31–32) That analysis showed that a sample of 120–140 units would be required in order to estimate the 95th percentile value of the population, within a margin of 5 percent. It does not show that a sample of 120–140 units would be required to obtain an average value that is equal to the average of the population within a 5 percent tolerance. DOE is not requiring manufacturers to provide an average value that is equal to the average of the population within a 5 percent tolerance (see discussion related to DOE' typical sampling plans in the remainder of this section). Therefore, DOE disagrees that testing of over a hundred units would be required.

In addition, DOE reviewed the statistical analysis provided by NEMA

[72] The equation at § 431.17(b)(2)(i) currently allows manufacturers to select a value of nominal full-load efficiency that is greater than the average of the tested full-load efficiency of a sample of electric motors and corresponds to 5 percent losses less than the average losses of the sample. The equation at § 431.17(b)(2)(ii) verifies that no motor in the sample has losses exceeding 15 percent of the losses corresponding to the nominal full-load efficiency. *Note:* Motor losses (L) and efficiency (Eff) of motor of a given horsepower (hp) are related by the following equation: $L = hp\ (1/Eff - 1)$.

to support its view that removing the 5 percent tolerance on a basic model currently rated at 95 percent would require redesigning the motors from an average efficiency of 95.076 (average of the population required to meet the current 5 percent tolerance) to 95.316 (average of the population required if the 5 percent tolerance is removed) in order to ensure, based on a 97.5 percent confidence level, that a randomly selected 5-sample set drawn from the population will have a sample mean greater than or equal to 95 percent. NEMA did not provide any data to support the actual shape of the distribution and its analysis is based on a hypothetical population distribution, with a known mean and standard deviation while, in reality, the mean of the population is unknown. Assuming the same hypothetical statistical distribution as presented by NEMA applies, DOE agrees that to ensure that any randomly selected 5-sample set drawn from the population will have a sample mean greater than or equal to 95 percent, the mean of the population would have to be greater than 95 percent. However, DOE is not requiring that all samples (or 97.5 percent of all samples) of a basic model rated at 95 percent full-load nominal efficiency have an average value of full-load efficiency that is less than or equal to 95 percent.[73] DOE emphasizes that not every, individual unit of a motor basic model must be at or above the standard; however, the represented nominal efficiency must not exceed the population mean. In view of the comments received, DOE believes stakeholders may be confusing the provisions used to determine the represented value of a basic model at 10 CFR 431.17 (b)(2) with the formulas used by DOE to determine if a basic model is in compliance in 10 CFR part 431, appendix A to subpart U. DOE imposes one set of sampling provisions for manufacturers to use when rating their products and a second separate set of sampling provisions for DOE to use when evaluating the compliance of those products. The sampling provisions for determining a represented value (*e.g.,* nominal efficiency) reflect the fact that an important function of represented values is to inform prospective purchasers how efficiently various products operate. In light of that purpose, DOE designed the regulation with respect to represented value so that purchasers are more likely than not to buy a unit that actually performs as efficiently as advertised. The enforcement statistical formulas are designed to determine if a basic model is compliant with the applicable energy conservation standard, and are weighted in favor of the manufacturer to minimize the likelihood of erroneous noncompliance determinations. The certification statistical formulas are designed to protect purchasers; the enforcement statistical formulas are designed to protect manufacturers. The enforcement statistical formulas for electric motors are in 10 CFR part 431, appendix A to subpart U. DOE did not propose, and is not adopting, any changes to these provisions. In other words, while DOE proposed changes in the formulas used to determine the represented value of a basic model, DOE did not propose to change how the compliance of a given basic model is determined. The compliance or non-compliance of a basic model would remain unchanged by the publication of this final rule. Therefore, DOE disagrees with NEMA that basic model redesigns would be required to ensure compliance.

With the current formulas used to determine the represented values of a basic model, a basic model could have a represented value of nominal efficiency that equals or exceeds the current energy conservation standard levels but fails the compliance test in accordance with the existing formulas at 10 CFR part 431, appendix A to subpart U. DOE cannot allow manufacturers to make valid representations of nominal full-load efficiency of a basic model for which the average efficiency of a manufacturer's production is less than the represented value. The risk of a product or equipment being falsely determined to be out of compliance (manufacturer's risk) is balanced against the risk of a product being inaccurately represented (consumer's risk) by establishing a reasonable sampling and testing regime. While the stakeholders' recommendation to rely on a 5 percent tolerance would reduce manufacturer risk, DOE is concerned that it would give rise to too high a risk that a manufacturer may state a nominal efficiency for a basic model that is greater than the actual population mean for that model, or that a manufacturer may state a nominal efficiency for a basic model that is equal to or greater than the current energy conservation standard level while the basic model fails the compliance test at 10 CFR part 431, appendix A to subpart U.

The average (or ''mean'') full-load efficiency of the population is unknown but can be estimated using confidence limits for the mean, which are an interval estimate for the mean. The design of the sampling plan is intended to determine an accurate assessment of product or equipment performance, within specified confidence limits, without imposing an undue testing or economic burden on manufacturers. Different samples from the same population will generate different values for the sample average. An interval estimate quantifies this uncertainty in the sample estimate by computing lower and upper confidence limits (''LCL'' and ''UCL'') of an interval (centered on the average of the sample) which will, with a given level of confidence, contain the population average. Instead of a single estimate for the average of the population (*i.e.,* the average of the sample), a confidence interval generates a lower and upper limit for the average of the population. The interval estimate indicates how much uncertainty there is in the estimate of the average of the population.[74] Confidence limits are expressed in terms of a confidence coefficient. For covered equipment and products, the confidence coefficient typically ranges from 90 to 99 percent.[75] The confidence coefficient (*e.g.,* 97.5 percent) means that if an infinite number of samples are collected, and the confidence interval computed, 97.5 percent of these intervals would contain the average of the population. In other words, although the average of the entire population is not known, there is a high probability (97.5 percent confidence level) that it is greater than or equal to the LCL and less than or equal to the UCL.

To ensure that the represented value of efficiency is no greater than the population average, the sampling plans for determination of the represented value typically consist of testing a representative sample to ensure that any represented value of energy efficiency is no greater than the lower of the average of the sample ($\bar{x}$), or the LCL divided by a constant ''K''. The degree of confidence level associated with the LCL and the value of K varies by product or equipment type and are selected based on an expected level of variability in product performance and

[73] Assuming a normal distribution, if an infinite number of 5-sample sets are drawn, 50 percent will have an average at or above the population average, and 50 percent will fall at or below the population average.

[74] *NIST/SEMATECH e-Handbook of Statistical Methods, https://www.itl.nist.gov/div898/handbook/eda/section3/eda352.htm.*

[75] 10 CFR part 429 outlines sampling plans for certification testing for product or equipment covered by EPCA.

measurement uncertainty.[76] 10 CFR part 429, subpart B. Requiring that the represented value be less than or equal to the LCL ensures that the represented value of efficiency is no greater than the population average. DOE divides the LCL by K to provide additional tolerance to account for variability in product performance and measurement uncertainty.[77] The comparison with the average of the sample further ensures that if the quotient of the LCL divided by K is greater than $\bar{x}$, the represented value is established using average of the sample. DOE relies on a one-sided confidence limit to provide the option for manufacturers to rate more conservatively.

For electric motors, with a given sample and sample average, the average of the population ($\bar{X}$) is unknown but can be estimated using the LCL and UCL interval ($LCL \leq \bar{x} \leq UCL$). Because the average of the population is greater than or equal to LCL, while the average full-load efficiency of the population is unknown, requiring that the represented value be less than or equal to the LCL would ensure that the represented value of efficiency (*i.e.,* the nominal full-load efficiency) is no greater than the population average, as required by the definition of nominal full-load efficiency. Instead, as previously discussed, DOE proposed to require that the represented value be less than or equal to the average of the sample. Because the average of the sample is greater than the LCL,[78] this proposal is less stringent than requiring that the represented value be less than or equal to the LCL, and provides additional tolerance to manufacturers while balancing the risk that an electric motor has a represented value that is higher than the population average. In addition, if a manufacturer believes that a given random 5-unit sample set does not lead to a full-load efficiency rating that is representative of the population, the manufacturer can increase the size of the sample.

For these reasons, while the average full-load efficiency of the population is unknown, DOE believes requiring that the nominal full-load efficiency be less than or equal to the average of the sample satisfies the requirements of ''nominal full-load efficiency'' as defined, while balancing the manufacturer's risk against the consumer's risk. Therefore, DOE is adopting the requirement that manufacturers determine the nominal full-load efficiency of a basic model, as a representative value of efficiency selected from the ''nominal efficiency'' column of Table 12–10, NEMA MG 1–2009, that is not greater than the average full-load efficiency of a basic model. This requirement would apply starting on the compliance date for any new or amended electric motor standards final rule that published after January 1, 2021, to all electric motors subject to energy conservation standards regardless of whether the final rule prescribes new or amended energy conservation standards for certain electric motors. DOE further specifies in this rule that the average full-load efficiency of a basic model is the arithmetic mean of tested efficiencies of a sample of electric motors. In addition, DOE is removing the equations at 10 CFR 431.17(b)(2)(i)–(ii). *Id.*

NEMA stated that manufacturers must use the most recent test procedure once implemented and thus the changes to 10 CFR 429.64(e)(1) would be implemented 180 days after the test procedure final rule and not whenever the energy conservation standards were finalized. (NEMA, No. 26 at p. 25) NEMA commented that any changes that would require currently certified electric motors to be retested and recertified once new test procedures come into effect, which as proposed is 180 days, would be untenable. (NEMA, No. 26 at p. 5)

As previously stated, in the December 2021 NOPR, prior to the compliance date for any new or amended standards for electric motors published after January 1, 2021, DOE proposed that manufacturers of electric motors currently subject to energy conservation standards would continue to follow the current provisions in 10 CFR 431.17 (now moving to 10 CFR 429.64) that relate to the determination of a motor's represented value. This final rule adopts the same timeline and requirements—specifically, the provisions in 10 CFR 429.64(e)(1) for electric motors currently subject to energy conservation standards would only become mandatory once new or amended energy conservation standards are established (for any category of electric motors subject to energy conservation standards, regardless of whether the final rule prescribes new or amended energy conservation standards for certain electric motors). As noted previously, while DOE proposed changes in the formulas used to determine the represented value of a basic model, DOE did not propose changing how the compliance of a given basic model would be determined. In addition, DOE notes that manufacturers of electric motors that are not currently subject to energy conservation standards would not be required to use the test procedure for Federal certification or labeling purposes, until such time as new or amended energy conservation standards are established for such electric motors. However, if manufacturers, distributors, retailers, and private labelers choose to make any representations respecting the energy consumption or cost of energy consumed by such motors, then such voluntary representations must be made in accordance with the test procedure and sampling requirements adopted at 10 CFR 429.64(e).

3. Testing: Use of a Nationally Recognized Certification Program

For manufacturers using a nationally recognized certification program as described in 10 CFR 431.17(a)(5), the selection and sampling requirements are typically specified in the certification program's operational documents but are not always described in detail. In the December 2021 NOPR, DOE proposed additional requirements to ensure that the certification program follows the provisions proposed in 10 CFR 429.64, as well as the AEDM validation procedures, and periodic AEDM verification procedures proposed in 10 CFR 429.70(i). DOE intended for these proposals to ensure consistency between basic model ratings obtained with and without the use of a certification program and would have no impact on how nationally certification programs operate. 86 FR 71710, 71755.

Advanced Energy supported the proposed requirements to ensure that the certification program follows the provisions proposed in 10 CFR 429.64. Advanced Energy stated that this requirement was consistent with its certification scheme (which follows the existing AEDM regulation in 10 CFR 431.17) and would not change the manner in which it currently conducts its testing. (Advanced Energy, No. 33 at p.18) Grundfos agreed with the proposal to add the provisions in 10 CFR 429.64 and 429.70(i) to the requirements that a nationally recognized certification program must satisfy. (Grundfos, No. 29 at p. 9) NEMA disagreed with the requirement due to its relationship with other provisions that would prevent a manufacturer from certifying through the use of its nationally accredited laboratory. (NEMA, No. 26 at p. 28)

[76] The confidence level associated with the LCL, typically ranges from 90 to 99 percent, while K, an adjustment factor, typically ranges from 0.9 to 0.99.

[77] For example, if DOE expects that the variability for measured performance is within a margin of 3 percent, DOE will use a K value of 0.97. *See* for example 79 FR 32019, 32037 (June 3, 2014).

[78] By definition, the confidence interval is such that $LCL \leq \bar{x} \leq UCL$, where $\bar{x}$ is the average of the sample.

The proposal to require that nationally recognized certification program follow the sampling provisions proposed in 10 CFR 429.64, as well as the AEDM validation procedures, and periodic AEDM verification procedures proposed in 10 CFR 429.70(i) is unrelated to the three certification requirement options discussed in section III.M.2. of this document. Therefore, DOE is adopting the proposed additional requirements to ensure that the certification program follows the provisions proposed in 10 CFR 429.64, as well as the AEDM validation procedures, and periodic AEDM verification procedures in 10 CFR 429.70(j).[79]

In addition, after any updates to DOE's electric motors regulations, DOE proposed that, within one year of publication of the final rule, all certification programs must either submit a letter to DOE certifying that no change to their program is needed, or submit a letter describing the measures implemented to ensure the criteria in the proposed 10 CFR 429.73(b) are met. If a certification program submits a letter describing updates to their program, DOE proposed that the current certification program would still be recognized until DOE evaluates any newly implemented measures and decides otherwise. 86 FR 71710, 71755.

In response, Advanced Energy stated that it follows the sampling and minimum test requirements as prescribed, and that it is beneficial to have consistency across all motor efficiency certification body schemes. (Advanced Energy, No. 33 at p. 18) DOE did not receive any additional comments on this issue and is adopting its proposal to require that, within one year of publication of the final rule, all certification programs must either submit a letter to DOE certifying that no change to their program is needed, or submit a letter describing the measures implemented to ensure the criteria in the proposed § 429.73(b) are met. If a certification program submits a letter describing updates to their program, the current certification program would still be recognized until DOE evaluates any newly implemented measures and decides otherwise.

4. Use of an AEDM

Section 431.17 also specifies the requirements for using an AEDM (10 CFR 431.17(a)(2)), including requirements for substantiation (*i.e.,* the initial validation) (10 CFR 431.17(a)(3), 10 CFR 431.17(b)(3)) and subsequent verification of an AEDM (10 CFR 431.17(a)(4)). Those requirements ensure the accuracy and reliability of the AEDM both prior to use and then through ongoing verification checks on the estimated efficiency.

In the December 2021 NOPR, DOE proposed to replace the term ''substantiation'' with the term ''validation'' to better align the relevant terminology with the AEDM provisions in 10 CFR 429.70. 86 FR 71710, 71755. DOE did not receive any comments on this topic and is amending its regulations to replace the term ''substantiation'' with the term ''validation.''

In the December 2021 NOPR, DOE also proposed to modify one of the requirements for AEDM validation. Currently, the provisions in 10 CFR 431.17(a)(3)(ii) require that the simulated full-load losses for each basic model selected for AEDM validation testing must be within plus or minus ten percent of the average full-load losses determined from the testing of that basic model.[80] DOE proposed to change that language to a one-sided 10 percent tolerance to allow manufacturers flexibility when choosing to rely on a more conservative AEDM. (*i.e.,* the simulated full-load losses for each basic model selected for AEDM validation testing, calculated by applying the AEDM, must be greater or equal to 90 percent of the average full-load losses determined from the testing of that basic model). This proposal would not require manufacturers to update their AEDMs and basic model ratings. *Id.*

In response to the December 2021 NOPR, Grundfos agreed with the proposed validation requirements for AEDMs. (Grundfos, No. 29 at p. 9) DOE did not receive any additional comments on this proposal. Consequently, it is adopting the proposed one-sided tolerance requirement for the reasons discussed as proposed.

In addition, DOE proposed to specify how to obtain the nominal full-load efficiency of a basic model using the simulated full-load efficiency of that basic model determined through the application of an AEDM: the nominal full-load efficiency of a basic model must be less than or equal to the simulated full-load efficiency of that basic model determined through the application of an AEDM. 86 FR 71710, 71754. DOE did not receive any comments on this issue. As a result, it is adopting its proposal to require that when using an AEDM, the nominal full-load efficiency of a basic model must be less than or equal to the simulated full-load efficiency of that basic model determined through the application of an AEDM.

Paragraph (b) of 10 CFR 431.17 provides further clarity regarding testing if a certification program is not used. Basic models used to validate an AEDM must be selected for testing in accordance with paragraph (b)(1), and units of each such basic model must be tested in accordance with paragraph (b)(2). 10 CFR 431.17(b)(3). Paragraph (b)(1) explains the criteria for selecting a minimum of 5 basic models for certification testing (in an accredited laboratory) to validate an AEDM. Paragraph (b)(2) provides the criteria for selecting units for testing, which includes a minimum sample size of 5 units in most cases.[81] For manufacturers using AEDMs, paragraph (b)(2) applies to those basic models selected for validating the AEDM. Paragraph (b)(3) also explains that the motors tested to validate an AEDM must either be in a certification program or must have been tested in an accredited laboratory. 10 CFR 431.17(b)(2)–(3).

In the December 2021 NOPR, DOE proposed to revise the current regulatory language to specify that, when manufacturers use an accredited laboratory or a nationally recognized testing program for testing the basic models used to validate the AEDM, the selection criteria and sampling requirements as described in paragraph (b)(2) apply, including the requirement to select a minimum of 5 basic models that must comply with the energy conservation standards at 10 CFR 431.25 (if any exist). In addition, when using an accredited laboratory or nationally recognized testing program for testing, DOE proposed that the average full-load

[79] The AEDM validation procedures for electric motors that DOE proposed for 10 CFR 429.70(i) in the December 2021 NOPR are being adopted at 10 CFR 429.70(j) in this rule. After the December 2021 NOPR, a separate rule published on July 22, 2022, added provisions at 10 CFR 429.70(i). 87 FR 45195. Accordingly, the AEDM validation procedures are renumbered in this final rule.

[80] The output of the AEDM is the average full-load efficiency of the basic model. The represented value of nominal full-load efficiency is obtained by applying the provisions discussed in section III.N.1 of this document. The average full-load losses predicted by the AEDM can be calculated as $hp \times (1/Eff - 1)$ where hp is the motor horsepower and Eff is the average full-load efficiency predicted by the AEDM.

[81] As discussed previously and in the remainder of this section, the provisions for selecting units within a basic model and minimum sample size described in paragraph 10 CFR 431.17(b)(2) apply to three different situations: when (1) testing at an accredited laboratory; (2) using an AEDM and selecting units for substantiating the AEDM; and (3) using an AEDM and selecting units for periodic verification testing.

efficiency of each basic model selected to validate the AEDM must be determined based on the provisions discussed in section III.N.2. Further, to reduce testing burden, DOE proposed to replace the requirement in paragraph (b)(1) that two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in ''the prior year'' with the phrase in ''the prior 5 years''. The extension from 1 year to 5 years would reduce testing burden in the case of a year-to-year variation in the basic models with the highest unit volumes of production and would not impact basic model ratings. 86 FR 71710, 71756.

In this final rule, DOE adopts the basic model selection requirements as proposed with the exception of one provision as discussed in this paragraph. In response to the December 2021 NOPR, NEMA commented that the proposed requirement regarding basic model selection for validation of an AEDM in the proposed §§ 429.70(a)(i)(2)(i)(D) and 429.70(a)(j)(2)(i)(D) (''Each basic model must have the lowest average full-load efficiency among the basic models within the same equipment class'') should be changed as follows to be consistent with the current provisions in § 431.17(b)(1)(i)(D): ''Each basic model must have the lowest nominal full-load efficiency among the basic models within the same equipment class.'' NEMA explained that relying on the ''lowest average full-load efficiency'' introduces the possibility of a basic model not being valid for purposes of validating an AEDM simply because there is another basic model with the same nominal full-load efficiency but with an average full-load efficiency that is slightly higher by a virtually unmeasurable amount and places an unreasonable burden on the manufacturer that is not justified by any benefit with respect to validating the accuracy of the AEDM. In this final rule, DOE maintains the current language in § 431.17(b)(1)(i)(D) and requires that each basic model must have the lowest nominal full-load efficiency among the basic models within the same equipment class in line with the DOE metric (*i.e.,* ''nominal full-load efficiency'').

Currently, the periodic verification of an AEDM can be achieved in one of three ways: through participation in a certification program; by additional, periodic testing in an accredited lab; or by verification by a professional engineer. When using periodic testing in an accredited laboratory, a sample of units must be tested in accordance with the DOE test procedure and 10 CFR 431.17(b)(2). 10 CFR 431.17(a)(4)(A). The current regulatory text does not specify how often the periodic testing must be conducted.

In the December 2021 NOPR, DOE proposed to add that manufacturers must perform a sufficient number of periodic verification tests to ensure the AEDM maintains its accuracy and reliability. Paragraph (b)(2) currently provides the criteria for selecting units for testing (in an accredited laboratory) when conducting periodic AEDM verification, including a minimum sample size of 5 units in most cases. DOE proposed to revise the 5-unit minimum requirement on the sample size and to replace it by requiring that manufacturers test at least one unit of each basic model. DOE believes that at least one unit comprises a sufficient sample size when conducting an AEDM verification and would reduce testing burden. 86 FR 71710, 71756.

Advanced Energy commented that the term ''periodic'' as used in reference to AEDM subsequent verification is very broad, and that DOE should request information from manufacturers on how often their AEDMs are updated. Advanced Energy stated that there are many reasons a manufacturer would update its AEDM, and noted that its subsequent verification is performed annually. Advanced Energy further agreed that one basic model is sufficient for subsequent verification testing, but that DOE should be clear on which basic model needs verifying, and that requiring one unit of every basic model would increase test burden to manufacturers. (Advanced Energy, No. 33 at pp. 19)

In this final rule, rather than specifying a verification testing frequency, DOE adopts the proposed AEDM verification provision which specifies that sufficient testing must be conducted to ensure the AEDM maintains its accuracy and reliability. DOE believes the manufacturer is responsible for determining what constitutes a sufficient number of periodic verification tests to ensure the AEDM maintains its accuracy and reliability.

Paragraph (b)(2) also currently includes the equations to use when conducting periodic AEDM verification. 10 CFR 431.17(b)(2)(i)–(ii). The equations in paragraph (b)(2) are used after the represented value of the basic model has already been determined (*e.g.,* by AEDM) [82] ''in a test of compliance with a represented average or nominal efficiency.'' The equations are applied to verify that the average full-load efficiency of the sample and the minimum full-load efficiency of the sample of the basic model, are within a prescribed margin of the represented value as provided by applying the AEDM (*i.e.,* a test of compliance with a represented average or nominal efficiency). In addition, the equations in paragraph (b)(2) also imply that the represented value of the basic model has already been determined (*e.g.,* by AEDM). As previously noted, DOE proposed to revise the current regulatory text to remove the equations currently located in 10 CFR 431.17(b)(2)(i)–(ii). Instead, for manufacturers conducting periodic AEDM verification using testing, DOE proposed that manufacturers would rely on the same criteria used for the AEDM validation at 10 CFR 429.70(i)(2)(iv) and compare the average of the measured full-load losses of the basic model [83] to the simulated full-load losses of the basic model as predicted by the AEDM.

NEMA commented in reference to the requirements in proposed §§ 429.70(a)(i)(3)(A) and 429.70(a)(j)(3)(a): ''the simulated full-load losses for each unit must be greater than or equal to 90 percent of the measured full-load losses (*i.e.,* $0.90 \times$ average of the measured full-load losses ≤ simulated full-load losses).'' NEMA commented that the clarification in parenthesis was acceptable but the phrase ''for each unit'' that precedes it is confusing because there are not unique simulated full-load losses for each unit but, rather, for each basic model. NEMA added that for further clarity and consistency with the AEDM validation procedure in § 429.70(a)(i)(2)(iv), the words ''measured full-load losses'' should be changed to ''average of the measured full-load losses.'' (NEMA, No. 26, at pp. 28–29)

DOE agrees with NEMA. As written, the proposed regulatory text only accounted for a situation where a single unit per basic model was selected when conducting AEDM verification. In this final rule, DOE is amending the regulatory text to align with the preamble discussion and specify that if more than one unit per basic model is selected: (1) the requirement is for the simulated full-load losses for each basic model; and (2) ''measured full-load

[82] The AEDM output is the simulated full-load efficiency. The represented value of nominal full-load efficiency as predicted by the AEDM is obtained by applying the provisions discussed in section I.A.1 of this document.

[83] The sample could include a single unit, in which case, the average measured full-load losses of the basic model are the measured full-load losses of the unit.

losses'' is replaced by the ''average of the measured full-load losses.''

If a certification program to conduct the AEDM verification is used, the provisions at 10 CFR 431.17(a)(4)(i)(B) specify that a manufacturer must periodically select basic models to which it has applied the AEDM and have a nationally recognized certification program certify its nominal full-load efficiency. The provision does not specify the criteria to use when comparing the output of the AEDM of the tested and certified values of nominal full-load efficiency. In the December 2021 NOPR, DOE stated it was considering three options to further specify how the manufacturer must conduct the AEDM verification when using a certification program. DOE considered proposing: (1) that manufacturers rely on the same 10 percent tolerance used for the AEDM validation at 10 CFR 429.70(i)(2)(iv) and compare the losses corresponding to the tested and certified nominal full-load efficiency of the basic model to the nominal full-load efficiency of the basic model as predicted by the AEDM; [84] (2) that manufacturers rely on a higher tolerance (*e.g.,* a 15 percent tolerance rather than 10 percent) than used for the AEDM validation at 10 CFR 429.70(i)(2)(iv) and compare the losses corresponding to the tested and certified nominal full-load efficiency of the basic model to the nominal full-load efficiency of the basic model as predicted by the AEDM; or (3) to continue to not specify any requirements but require that certification programs provide a detailed description of the method used to verify the AEDM. 86 FR 71710, 71756.

Advanced Energy commented that of the three options to specify how a manufacturer must conduct AEDM verification when using a certification program, Advanced Energy supported Option (1), which is consistent with its current practice, and that Option (3) is the same as Option (1) in its case since it follows the recommended AEDM subsequent verification procedure provided in the current version of 10 CFR 431.17. (Advanced Energy, No. 33 at p. 19)

In this final rule, DOE specifies how the manufacturer must conduct the AEDM verification when using a certification program and requires that manufacturers must rely on the same 10 percent tolerance used for the AEDM validation at 10 CFR 429.70(j)(2)(iv) [85] and compare the losses corresponding to the simulated and certified nominal full-load efficiency of the basic model to the nominal full-load efficiency of the basic model as predicted by the AEDM.

In the December 2021 NOPR, DOE further proposed to remove the option to rely on a professional engineer to conduct AEDM verification because this is not an option that is used by manufacturers. 86 FR 71710, 71756. DOE did not receive any comments on this proposal and is removing it as proposed.

Finally, in the December 2021 NOPR, DOE explained that the proposed AEDM provisions would also apply to the additional electric motors proposed for inclusion in the scope of the test procedure, when a manufacturer of such motors would be required to use the DOE test procedure. DOE did not receive any comments specific to that issue. *Id.* In this final rule, DOE adopts the requirement that the AEDM provisions adopted for currently regulated electric motors will also apply to the additional electric motors included in the scope of the test procedure, when a manufacturer of such motors would be required to use the DOE test procedure.

O. Certification, Sampling Plans and AEDM Provisions for Dedicated-Purpose Pool Pump Motors

In the December 2021 NOPR, DOE proposed to include certification, sampling plan, and AEDM provisions for DPPP motors subject to the requirements in subpart Z of 10 CFR part 431. Because DPPP motors are a subset of electric motors, DOE proposed to apply the same certification, sampling provisions and AEDM provisions for consistency. In addition, DOE proposed to allow the use of ''nominal full-load efficiency'' as an alternative represented value for DPPP motors. DOE proposed to add these provisions in a new section 10 CFR 429.65 [86] and 10 CFR 429.70(j), and to specifically reference DPPP motors in 10 CFR 429.73 and 10 CFR 429.74 as proposed. 86 FR 71710, 71757.

DOE did not receive comments specific to DPPP motors. In this final rule, DOE adopts the same certification, sampling provisions and AEDM provisions for DPPP motors as for electric motors as discussed in sections III.M and III.N of this document. DOE adopts these provisions in a §§ 429.65 and 429.70(k),[87] and specifically references DPPP motors in 10 CFR 429.73 and 429.74. In addition, DOE allows the use of ''nominal full-load efficiency'' as an alternative represented value for DPPP motors.

As discussed in the December 2021 NOPR, manufacturers would be required to test such motors once compliance is required with a labeling or energy conservation standard requirement should such a requirement be established. (42 U.S.C. 6315(b); 42 U.S.C. 6316(a); 42 U.S.C. 6295(s)). Any voluntary representations by manufacturers, distributors, retailers, or private labelers about the energy consumption or cost of energy for these motors must be based on the use of this test procedure and sampling requirements beginning 180 days following publication of this final rule. DOE's final rule does not require manufacturers who do not currently make voluntary representations to begin making public representations of efficiency. (42 U.S.C. 6314(d)(1)). 86 FR 71710, 71757.

P. Effective and Compliance Dates

The effective date for the adopted test procedure amendment will be 30 days after publication of this final rule in the **Federal Register**. EPCA prescribes that all representations of energy efficiency and energy use, including those made on marketing materials and product labels, must be made in accordance with an amended test procedure, beginning 180 days after publication of the final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1)). EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6314(d)(2). To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day

[84] The AEDM output is the average full-load efficiency. The represented value of nominal full-load efficiency as predicted by the AEDM is obtained by applying the provisions discussed in section III.N.1 of this document.

[85] The AEDM validation tolerance requirements for electric motors that DOE proposed for 10 CFR 429.70(i)(2(iv) in the December 2021 NOPR are being adopted at 10 CFR 429.70(j)(2)(iv) in this rule. After the December 2021 NOPR, a separate rule published on July 22, 2022, added provisions at 10 CFR 429(i). 87 FR 45195. Accordingly, the AEDM validation tolerance requirements are being renumbered in this final rule.

[86] In the December 2021 NOPR the proposed regulatory text pertaining to DPPP motor certification and sampling provisions is located in a newly proposed section 10 CFR 429.65 and not section 10 CFR 429.66 as incorrectly cited in the December 2021 NOPR, which included a typographical error. 86 FR 71710, 71757.

[87] The AEDM validation procedures for DPPP motors that DOE proposed for 10 CFR 429.70(j) in the December 2021 NOPR are being adopted at 10 CFR 429.70(k) in this rule. After the December 2021 NOPR, a separate rule published on July 22, 2022, added provisions at 10 CFR 429(i). 87 FR 45195. Accordingly, the electric motors and DPPP motors AEDM validation procedures provisions are being renumbered in this final rule.

period and must detail how the manufacturer will experience undue hardship. (*Id.*) To the extent the modified test procedure adopted in this final rule is required only for the evaluation and issuance of updated efficiency standards, compliance with the amended test procedure does not require use of such modified test procedure provisions until the compliance date of updated standards.

Franklin Electric stated that a 6-month period after publication of a final rule to comply with a submersible motor test procedure is too short, particularly when there is no defined certification body yet. (Franklin Electric, No. 22 at p. 5) As discussed in section III.A.8 of this document, DOE is no longer considering a submersible electric motor test method in this test procedure.

Specific to DOE's proposal to expand coverage to special and definite-purpose SNEMs, AHAM and AHRI commented that 180 days to comply with the proposed procedure if finalized is an unrealistic timeline. AHAM and AHRI commented that component motors that were once available for a product may no longer be available and OEMs will not have the information about market availability of new component motors until well after the motor has been tested and certified. (AHAM and AHRI, No. 36 at p. 7) AHAM and AHRI commented that OEMs may have to redesign and test equipment to accommodate for a different motor size, which takes years to complete. *Id.* As discussed previously, DOE notes that manufacturers of electric motors for which DOE is including within the scope of the test procedure, but that are not currently subject to an energy conservation standard, would not be required to use the test procedure, for Federal certification or labeling purposes, until such time as amended or new energy conservation standards are established for such electric motors. As such, only voluntary representations by manufacturers, distributors, retailers, or private labelers about the energy consumption or cost of energy for these motors must be based on the use of the test procedure beginning 180 days following publication of the final rule. Comments and costs associated with these voluntary representations are discussed in section III.Q of this document.

Q. Test Procedure Costs

1. Test Procedure Costs and Impacts

In this final rule, DOE revises the current scope of the test procedures to add additional electric motors and subsequent updates needed for supporting definitions and metric requirements as a result of this expanded scope; incorporates by reference the most recent versions of the referenced industry standards; incorporates by reference additional industry standards used to test newly covered electric motors; clarifies the scope and test instructions by adding definitions for specific terms; revises the current vertical motor testing instructions to reduce manufacturer test burden; revises the provisions pertaining to certification testing and determination of represented values; and adds provisions pertaining to certification testing and determination of represented values for DPPP motors.

Regarding several of the amendments to the provisions pertaining to certification testing and determination of represented values, DOE notes that the updates that are effective 180 days after the publication of this final rule, include moving and largely retaining the provisions related to AEDMs (see section III.N.4 of this document), as well as moving and largely retaining the procedures for recognition and withdrawal of recognition of accreditation bodies and certification programs (*see* sections III.L and III.N.3 of this document) from 10 CFR part 431 to 10 CFR part 429. DOE does not anticipate any added test burden from these changes. Regarding other aspects of this rule (*i.e.,* requiring to certify using three options as discussed in section III.M.2, revising the provisions pertaining to the determination of the represented value as discussed in sections III.N.1 and III.N.2 of this document) whose compliance date would occur once the compliance date is reached for any final rule that DOE may adopt to set for electric motors, DOE will discuss the associated costs in the energy conservation standards rulemaking. The same would apply to the new provisions pertaining to the certification testing and AEDM of dedicated-purpose pool pump motors as discussed in section III.O of this document, whose compliance date would be on or after the compliance date of a final rule adopting new or amended energy conservation standards for dedicated-purpose pool pump motors. DOE will discuss the associated costs in the energy conservation standards rulemaking.

Of the remaining amendments, DOE has determined that the following would impact testing costs: (1) the updates expanding scope to include other motor categories, and provisions pertaining to determination of represented values for DPPP motors; and (2) the update to vertical motor testing. These amendments are discussed in the following paragraphs.

a. Voluntary Representations

DOE is adding certain categories of electric motors to the scope of the test procedure. Specifically (1) air-over electric motors; (2) certain electric motors greater than 500 hp; (3) electric motors considered small; (3) inverter-only electric motors; and (4) certain synchronous motor technologies. In addition, DOE is incorporating by reference additional test methods. Finally, DOE is adding provisions pertaining to determination of represented values for DPPP motors.

Manufacturers of those additional electric motors that DOE is including within the expanded scope of the test procedure that this final rule is adopting would not be required to test those motors in accordance with the DOE test procedure until the compliance date of a final rule adopting new or amended energy conservation standards for such electric motors is reached. If manufacturers voluntarily make representations regarding the energy consumption or cost of energy of such electric motors, they would be required to test according to the DOE test procedure. (42 U.S.C. 6314(d)(1)). DOE has determined that the inclusion of additional motors within the scope of the test procedure and the update pertaining to determination of represented values for DPPP motors would result in added costs to motor manufacturers if manufacturers choose to make efficiency representations. These cost are estimated in the following paragraphs.

In the December 2021 NOPR, DOE determined that approximately 50 percent of the basic models that are covered under the new test procedure currently make voluntary representations based on a market review of product catalogs. 86 FR 71710, 71757. Regarding representations, NEMA disagreed with DOE's estimate that 50 percent of the current market of the proposed expanded scope EM and DPPP motors make voluntary representations, and instead stated that currently only industrial-rated motors tend to make representations while commercial-rated motors or SNEMs rarely do, and that these subgroups should be analyzed separately. (NEMA, No. 26 at p. 30) Grundfos stated that it already makes voluntary representations for their SNEMs, submersible, and inverter-only products. (Grundfos, No. 29 at p. 9) Trane commented that none of the air-over, inverter-only, or synchronous motors it purchases from

suppliers currently have representations of efficiency. Trane stated that its only concern is system-level efficiency. (Trane, No. 31 at p. 7) DOE appreciates the comments. However, the analysis conducted in this section is based on a per-unit cost, not industry-wide cost, so this value does not directly impact DOE's per unit test cost analysis in this final rule. In the following paragraphs, DOE estimates the associated per-unit costs for making voluntary representations regarding the energy consumption or cost of energy of expanded scope electric motors.

DOE estimates that 10 percent of the motors that include voluntary representations from their manufacturers would be physically tested, consistent with the conclusions considered in the December 2021 NOPR that only a fraction of basic models are physically tested (the remainder have efficiency determined through an alternative efficiency determination method (''AEDM'')). 86 FR 71710, 71757. Further, this final rule would require at least five units be tested per basic model. 10 CFR 431.17(b)(2). However, considering DOE is harmonizing with current industry standards, DOE assumes that manufacturers have already tested at least one unit for all the expanded scope electric motor basic models. Therefore, DOE estimates that manufacturers may need to conduct up to four additional tests per expanded scope electric motor basic model.

DOE identified that the testing requirements can be summarized broadly with the following three groups: (1) motors tested according to CSA C747–09, (2) motors tested according to IEC 61800–9–2:2017, and (3) motors tested according to Section 34.4 of the NEMA Air-Over Motor Efficiency Test Method. Consistent with the December 2021 NOPR, DOE estimated that 90 percent of the physical tests for these electric motors would be conducted at in-house test facilities, and the remaining 10 percent of the physical tests would be conducted at third-party test facilities. 86 FR 71710, 71758. DOE assumed that the per-unit test costs differ between conducting testing at in-house test facilities versus testing at third-party test facilities. Table III.23 lists the estimated in-house and third-party single unit test cost incurred by the manufacturer for each industry standard.

TABLE III.23—ELECTRIC MOTOR PER UNIT TEST COST ESTIMATES

Industry standard	Tested at in-house facility	Tested at third-party facility
	(per unit test cost)	(per unit test cost)
CSA C747–09	$587	$2,210
IEC 61800–9–2:2017	750	3,210
Section 34.4 of NEMA Air-over Motor Efficiency Test Method	631	2,210

To estimate in-house testing costs, DOE assumed testing a single electric motor unit to CSA C747–09 requires approximately nine hours of a mechanical engineer technician time and three hours from a mechanical engineer. DOE assumed testing a single electric motor-drive combination unit to IEC 61800–9–2:2017 requires approximately twelve hours of a mechanical engineer technician time and three and a half hours of time from a mechanical engineer. DOE assumed testing a single electric motor unit according to Section 34.4 of NEMA Air-Over Motor Efficiency Test Method requires ten hours of mechanical engineer technician time and three hours of time from a mechanical engineer. Based on data from the Bureau of Labor Statistics' (''BLS's'') Occupational Employment and Wage Statistics, the mean hourly wage for a mechanical engineer technician is $30.47 and the mean hourly wage for a mechanical engineer is $46.64.[88] Additionally, DOE used data from BLS's Employer Costs for Employee Compensation to estimate the percent that wages comprise the total compensation for an employee. DOE estimates that wages make up 70.5 percent of the total compensation for an employee.[89] Therefore, DOE estimated that the total hourly compensation (including all fringe benefits) of an employee is $43.22 for a mechanical engineering technician and $66.16 for a mechanical engineer.[90]

Using these labor rates and time estimates, DOE estimates that it would cost electric motor manufacturers approximately $587 to conduct a single test for motors tested according to CSA C747–09; approximately $750 to conduct a single test for motors tested according to IEC 61800–9–2:2017; and approximately $631 to conduct a single test for motors tested according to Section 34.4 of the NEMA Air-over Motor Efficiency Test Method, if these test were conducted by the electric motor manufacturers in-house.

To estimate third-party lab costs, DOE received quotes from test labs on the price of conducting each industry standard. DOE then averaged these prices to arrive at an estimate of what the manufacturers would have to spend to test their product using a third-party test lab. Using these quotes, DOE estimates that it would cost electric motor manufacturers approximately $2,000 to conduct a single test for motors tested according to CSA C747–09; approximately $3,000 to conduct a single test for motors tested according to IEC 61800–9–2:2017; and approximately $2,000 to conduct a single test for motors tested according to Section 34.4 of the NEMA Air-Over Motor Efficiency Test Method, if these tests were conducted by a third-party test facility. Depending on the size and weight of the electric motor being tested, manufacturers would also incur a cost to ship the product to the third-party lab, based on shipping costs associated with DOE's testing, DOE expects this cost to be approximately $210 per unit to and from the lab.

Regarding testing costs, AI Group stated that a typical motor test conducted in an Australian third-party lab will cost $3,000 to $5,000 depending on motor size and that in-house testing costs would be much lower. In providing these costs, AI Group did not specify how much lower these in-housing testing costs would be compared to third-party labs and it did

[88] DOE used the May 2021 Occupation Profiles of ''17–3027 Mechanical Engineering Technologists and Technicians'' to estimate the hourly wage rate of a mechanical technician (*See www.bls.gov/oes/current/oes173027.htm*) and ''17–2141 Mechanical Engineers'' to estimate the hourly wage rate of a mechanical engineer (*See www.bls.gov/oes/current/oes172141.htm*).

[89] DOE used the December 2021 ''Employer Costs for Employee Compensation'' to estimate that for ''Private Industry'' ''Wages and Salaries'' are 70.5 percent of total employee compensation (*See www.bls.gov/news.release/pdf/ecec.pdf*).

[90] Mechanical Engineering Technician: $30.47/0.705 = $43.22. Mechanical Engineer: $46.64/0.705 = $66.16.

not note any differences in costs based on the specific industry testing standard being conducted. (AI Group, No. 25 at p. 8) CEMEP stated that a small motor efficiency test (<10 hp) by a third-party lab would cost €4000 to €5000 euros per test, and that a comparable in-house test would be approximately a third of that cost—€1333 to €1666 per test. (CEMEP, No. 19 at p.11) Additionally, Grundfos noted a disagreement with DOE's estimated in-house and third-party test costs. It stated that DOE did not account for sample motor costs, shipping products to test labs, and third-party certification costs. It also noted a higher estimate of in-house test time and labor: 20 hours of a technician's time and 4 hours of an engineer's time per test. Grundfos did not specify the industry standard being used for that time estimate. (Grundfos, No. 29 at p. 10) For this final rule, DOE gathered its quotes from domestic third-party labs and acknowledges that third-party tests conducted in overseas labs may differ somewhat in cost. DOE also recognizes that in-house testing costs will vary across manufacturers. Since the values provided in the comments do not provide an industry standard that the motors are being tested to, DOE did not incorporate the values into its average estimated test cost. Per the remainder of Grundfos's comment, DOE has adjusted its analysis to include an estimate of shipping costs, expects that the sample motors will be recoverable, and notes that third-party certification costs do not affect voluntary representations and will be addressed in any future energy conservation standards.

Regarding cumulative regulatory burden, Lennox stated that DOE needs to consider the cumulative regulatory burden imposed on HVACR manufacturers that are having multiple energy conservation standards changing in the near future. Among these, they highlighted new standards for: Central Air Conditioners (''ACs''), Commercial ACs, Commercial Warm Air Furnaces and variable refrigerant flow systems. (Lennox, No. 24 at p. 9) JCI commented that the updated scope would exacerbate the cumulative test burden the HVAC industry is already facing with other DOE regulations. (JCI, No. 34 at p. 2). AHAM and AHRI emphasized that DOE needs to consider the additional burden in the context of the many updated standards affecting the HVAC industry and they described the new standards to which they will be subject from DOE, UL, EPA, and requirements under the American Innovation and Manufacturing Act, which will require the reduction of high-global warming potential (''GWP'') hydrofluorocarbons (''HFCs'') in stationary air conditioning (AC) equipment (in turn requiring the development of a second product line for all equipment using low-GWP refrigerants). (AHAM and AHRI, No. 36 at pp. 11–12). DOE recognizes the potential manufacturer burden of multiple simultaneous rulemakings and will evaluate the cumulative regulatory burden in future energy conservation standards rulemakings relating to electric motors as provided by its established processes.[91]

b. Updating Vertical Motor Testing Requirements

DOE is updating the testing requirements for vertical motors with hollow shafts to not require welding of a solid shaft to the drive end, and instead permit connection of electric motors to a dynamometer without restriction on the motor end and using a coupling of torsional rigidity greater than or equal to that of the motor shaft.

DOE has determined that its adopted amendments will not require changes to the designs of electric motors and will not impact the utility of such electric motors or impact the availability of electric motor options. DOE has also determined that the amendments will not impact the representations of electric motor energy efficiency/energy use based on the determination that manufacturers would be able to continue rely on data generated under the preceding test procedure. As such, retesting of electric motors will not be required solely as a result of DOE's adoption of this amendment.

Although DOE has determined that the amendments related to vertical motors will not add to manufacturer costs, under specific circumstances they may reduce testing costs. NEMA commented that the existing requirement to weld may prevent a motor from being used in its intended application (NEMA, No. 6 at p. 3). In such instances, the testing cost could include the cost of scrapping an otherwise useable motor. This scrap cost may be avoided if welding is not required by appendix B, in which case the test cost savings could equal the value of the motor.

To estimate these cost savings, DOE determined approximately how many tests of these motors are conducted annually. To do this, DOE reviewed product catalogs from 2006 and compared these to catalogs from 2018 to determine how many new vertical hollow shaft models have been produced in that time. DOE annualized this count to estimate how many new vertical hollow shaft motors are listed per year and would need to be certified as compliant with 10 CFR 431.25. Using the 2018 catalog, DOE found the average price of a vertical hollow shaft motor and assumed a markup of 100 percent to estimate the manufacturer's production cost. Next, DOE requires at least five units to be tested per basic model. 10 CFR 431.17(b)(2) Consistent with the final rule for test procedures for small electric motors and electric motors published January 4, 2021, DOE estimated that 10 percent of these new vertical hollow shaft motors are certified via physical testing, based on the observation that most manufacturers use an AEDM to certify an electric motor as required under 10 CFR 431.36. 86 FR 4, 17 (January 4, 2021) (applying a general 10 percent estimate regarding the number of electric motors that would be physically tested). Using this methodology, DOE estimates that annual cost savings to industry due to the amendments may approach $9,410 per year.

2. Harmonization With Industry Standards

DOE's established practice is to adopt relevant industry standards for a regulated product or equipment unless such methodology would be unduly burdensome to conduct or would not produce test results that reflect the energy efficiency, energy use, water use (as specified in EPCA) or estimated operating costs of that product during a representative average use cycle. 10 CFR 431.4; Section 8(c) of appendix A of 10 CFR part 430 subpart C. In cases where the industry standard does not meet EPCA's statutory criteria for test procedures, DOE will make modifications through the rulemaking process to these standards as the DOE test procedure. With regard to electric motors subject to standards, EPCA requires the test procedures to be the test procedures specified in NEMA Standards Publication MG1–1987 and IEEE Standard 112 Test Method B for motor efficiency, or the successor standards, unless DOE determines by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the statutory requirements for test procedures to produce results that are representative of an average use cycle and not be unduly burdensome to conduct. (42 U.S.C. 6314(a)(5)(A) and (B)). DOE established the prior test procedures for electric motors at appendix B based on the provisions of

[91] *See* 10 CFR part 430 subpart C appendix A section 13(g).

NEMA MG 1–2009, CSA C390–10, IEC 60034–2–1:2014, IEEE 112–2017, which are incorporated by reference and all of which contain methods for measuring the energy efficiency and losses of electric motors. These referenced standards specify test methods for polyphase induction electric motors above 1 horsepower that can operate directly connected to a power supply. DOE reviewed each of the industry standards and is updating its incorporation by reference to IEC 60034–12:2016, CSA C390–10, and NEMA MG 1–2016 to align with the latest revised and reaffirmed versions of these standards.

In addition, certain additional motors incorporated into the scope of the test procedure cannot be tested using the industry standards incorporated by reference for currently regulated electric motors because they require modifications to the test procedure to account for: requiring to be connected to an inverter to be able to operate (*i.e.,* inverter-only motors); and differences in electrical design (*i.e.,* single-phase induction electric motors included as SNEMs, and synchronous electric motors). For these additional motors newly included in scope, DOE incorporates by reference the following additional industry standards: IEEE 114–2010, CSA C747–09, IEC 60034–2–1:2014, and IEC 61800–9–2:2017. IEEE 114–2010, CSA C747–09, and IEC 60034–2–1:2014 specify methods for measuring the efficiency and losses of single-phase induction electric motors. IEC 61800–9–2:2017 specifies methods for measuring the efficiency and losses of induction and synchronous inverter-only electric motors.

The test procedures established for air-over electric motors and for SNEMs are included in NEMA MG 1–2016. *See* Section IV, Part 34: Air-Over Motor Efficiency Test Method and Section 12.30. Section 12.30 specifies the use of IEEE 112 and IEEE 114 for all single-phase and polyphase motors.[92] As further discussed in section III.D.2 of this document, DOE is requiring testing of SNEMs—other than inverter-only electric motors—according to IEEE 112–2017, (or CSA C390–10 or IEC 60034–2–1:2014, which are both equivalent to IEEE 112–2017; see discussion in section III.D.2) and IEEE 114–2010 (or CSA C747–09 or IEC 60034–2–1:2014, which are equivalent to IEEE 114–2010; see discussion in III.D.2). This amendment would satisfy the test procedure requirements under 42 U.S.C. 6314(a)(5).

The methods listed in Section 12.30 of NEMA MG 1–2016 for testing AC motors apply only to AC induction motors that can be operated directly connected to the power supply (direct-on-line) and do not apply to electric motors that are inverter-only or to synchronous electric motors that are not AC induction motors. Therefore, for these additional electric motors, DOE specifies the use of different industry test procedures, as previously noted.

DOE notes that, with regard to the industry standards currently incorporated into the DOE test procedure, DOE is only updating the versions referenced to the latest version of the industry standards.

R. Compliance Date

EPCA prescribes that, if DOE amends a test procedure, all representations of energy efficiency and energy use of an electric motor subject to the test procedure, including those made on marketing materials and product labels, must be made in accordance with that amended test procedure, beginning 180 days after publication of such a test procedure final rule in the **Federal Register**. (42 U.S.C. 6314(d)(1). To the extent DOE were to establish test procedures for electric motors not currently subject to an energy conservation standard, manufacturers would only need to use the testing set-up instructions, testing procedures, and rating procedures if a manufacturer elected to make voluntary representations of energy-efficiency or energy costs of his or her basic models beginning 180 days following publication of a final rule. DOE's final rule would not require manufacturers who do not currently make voluntary representations to then begin making public representations of efficiency. (42 U.S.C. 6314(d)(1)). Manufacturers would be required to test such motors at such time as compliance is required with a labeling or energy conservation standard requirement should such a requirement be established. (42 U.S.C. 6315(b); 42 U.S.C. 6316(a); 42 U.S.C. 6295(s)).

EPCA provides an allowance for individual manufacturers to petition DOE for an extension of the 180-day period if the manufacturer may experience undue hardship in meeting the deadline. (42 U.S.C. 6314(d)(2). To receive such an extension, petitions must be filed with DOE no later than 60 days before the end of the 180-day period and must detail how the manufacturer will experience undue hardship. (*Id.*)

IV. Procedural Issues and Regulatory Review

A. Review Under Executive Orders 12866 and 13563

Executive Order (''E.O.'') 12866, ''Regulatory Planning and Review,'' as supplemented and reaffirmed by E.O. 13563, ''Improving Regulation and Regulatory Review, 76 FR 3821 (Jan. 21, 2011), requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as user fees or marketable permits, or providing information upon which choices can be made by the public. DOE emphasizes as well that E.O. 13563 requires agencies to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible. In its guidance, the Office of Information and Regulatory Affairs (''OIRA'') in the Office of Management and Budget (''OMB'') has emphasized that such techniques may include identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes. For the reasons stated in the preamble, this final regulatory action is consistent with these principles.

Section 6(a) of E.O. 12866 also requires agencies to submit ''significant regulatory actions'' to OIRA for review. OIRA has determined that this final regulatory action does not constitute a ''significant regulatory action'' under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

ABB requested that DOE have OMB conduct a study of the economic impact of this rulemaking. They stated that based on the information provided it

[92] As previously mentioned, NEMA MG 1–2016 does not specify the publication year of the referenced test standards and instead specifies that the most recent version should be used.

appears that the small gain in efficiency the rule is intended to capture would result in inordinate expense and economic disruption to all affected motor manufacturers and OEMs in terms of product redesign. (ABB, No. 18 at p. 2) As previously stated, this final rule only establishes test procedures and does not establish energy conservation standards. Therefore, this rule would not necessitate any redesign of any of the equipment addressed by this final rule.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) requires preparation of an initial regulatory flexibility analysis (''IRFA'') for any rule that by law must be proposed for public comment, and a final regulatory flexibility analysis (FRFA) for any such rule that an agency adopts as a final rule, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by Executive Order 13272, ''Proper Consideration of Small Entities in Agency Rulemaking,'' 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the DOE rulemaking process. 68 FR 7990. DOE has made its procedures and policies available on the Office of the General Counsel's website: *www.energy.gov/gc/office-general-counsel.*

The following sections detail DOE's FRFA for this test procedure final rule.

1. Description of Reasons Why Action Is Being Considered

DOE is amending the existing DOE test procedures for electric motors. EPCA, pursuant to amendments made by the Energy Policy Act of 1992, Public Law 102–486 (Oct. 24, 1992), specifies that the test procedures for electric motors subject to standards are those specified in National Electrical Manufacturers Association (''NEMA'') Standards Publication MG1–1987 and Institute of Electrical and Electronics Engineers (''IEEE'') Standard 112 Test Method B, as in effect on October 24, 1992. (42 U.S.C. 6314(a)(5)(A)). DOE must amend its test procedures to conform to such amended test procedure requirements, unless DOE determines by rule, published in the **Federal Register** and supported by clear and convincing evidence, that to do so would not meet the statutory requirements related to the test procedure representativeness and burden. (42 U.S.C. 6314(a)(5)(B))

EPCA also requires that, at least once every 7 years, DOE evaluate test procedures for each type of covered equipment, including electric motors, to determine whether amended test procedures would more accurately or fully comply with the requirements for the test procedures to not be unduly burdensome to conduct and be reasonably designed to produce test results that reflect energy efficiency, energy use, and estimated operating costs during a representative average use cycle. (42 U.S.C. 6314(a)(1)).

DOE is publishing this final rule in satisfaction of the requirements specified in EPCA.

2. Objective of, and Legal Basis for, Rule

As noted previously, DOE is publishing this final rule in satisfaction of the requirements specified in EPCA that DOE amend the test procedure for electric motors whenever the relevant industry standards are amended, but at minimum every 7 years, to ensure that the DOE test procedure produces test results which reflect energy efficiency, energy use, and estimated operating costs of a type of industrial equipment (or class thereof) during a representative average use cycle. 42 U.S.C. 6314(a).

3. Description and Estimate of Small Entities Regulated

For manufacturers of electric motors, the Small Business Administration (''SBA'') has set a size threshold, which defines those entities classified as ''small businesses'' for the purposes of the statute. DOE used the SBA's small business size standards to determine whether any small entities would be subject to the requirements of the rule. *See* 13 CFR part 121. The size standards are listed by North American Industry Classification System (''NAICS'') code and industry description available at: *www.sba.gov/document/support--table-size-standards.* Electric motor manufacturing is classified under NAICS code 335312, ''motor and generator manufacturing.'' The SBA sets a threshold of 1,250 employees or less for an entity to be considered as a small business for this category.

In this final rule, DOE revises the current scope of the test procedures to add additional electric motors and subsequent updates needed for supporting definitions and metric requirements as a result of this expanded scope; incorporates by reference the most recent versions of the referenced industry standards; incorporates by reference additional industry standards used to test newly covered electric motors; clarifies the scope and test instructions by adding definitions for specific terms; revises the current vertical motor testing instructions to reduce manufacturer test burden; revises the provisions pertaining to certification testing and determination of represented values; and adds provisions pertaining to certification testing and determination of represented values for DPPP motors.

As previously stated in section III.Q.1 of this document, DOE estimates that some electric motor manufacturers would experience a cost savings from the test procedure amendment regarding the update to the testing requirements for vertical motors with hollow shafts. Additionally, this test procedure expands the scope of covered electric motors and establishes certification, sampling plan, and AEDM provisions for DPPP motors.

While manufacturers making these expanded scope electric motors and DPPP motors would not be required to test according to the DOE test procedure until energy efficiency standards were established, if manufacturers voluntarily make representations regarding the energy consumption or cost of energy of such electric motors, they would be required to test according to the DOE test procedure. DOE identified up to 12 potential small businesses manufacturing these expanded scope electric motors or DPPP motors. DOE estimates that all other test procedure amendments would not result in any electric motor manufacturer, large or small, to incur any additional costs due to the test procedure amendments in this final rule.

4. Description and Estimate of Compliance Requirements

DOE estimated the per unit testing cost for these expanded scope electric motors and DPPP motors in section III.Q.1. of this document. These estimated per unit testing costs are presented in Table IV.1.

TABLE IV.1—ELECTRIC MOTOR PER UNIT TEST COST ESTIMATES

Industry standard	Tested at in-house facility	Tested at third-party facility
	(per unit test cost)	(per unit test cost)
CSA C747–09	$587	$2,210
IEC 61800–9–2:2017	750	3,210
Section 34.4 of NEMA Air-over Motor Efficiency Test Method	631	2,210

DOE is unable to estimate the number of electric motor models that small business manufacturers would decide to make voluntary representations about the efficiency of their electric motors. Therefore, DOE is unable to estimate the total cost each small business would incur to test their electric motors in accordance with the DOE test procedure.

Due to the uncertainty of the potential costs to small businesses, DOE is not able to conclude that the impacts of the test procedure amendments included in this final rule would not have a ''significant economic impact on a substantial number of small entities.''

5. Duplication, Overlap, and Conflict With Other Rules and Regulations

DOE is not aware of any rules or regulations that duplicate, overlap, or conflict with the rule being considered today.

6. Significant Alternatives to the Rule

As previously stated in this section, DOE is required to review existing DOE test procedures for all covered equipment every 7 years. Additionally, DOE shall amend test procedures with respect to any covered equipment, if the Secretary determines that amended test procedures would more accurately produce test results which measure energy efficiency, energy use, or estimated annual operating cost of a covered equipment during a representative average use cycle or period of use. (42 U.S.C. 6314(a)(1)) DOE has determined that the test procedure would more accurately produce test results to measure the energy efficiency of electric motors.

DOE has determined that there are no better alternatives than the amended test procedures in terms of meeting the agency's objectives to more accurately measure energy efficiency and reducing burden on manufacturers. Therefore, DOE is amending the existing DOE test procedure for electric motors in this final rule.

Additional compliance flexibilities may be available through other means. EPCA provides that a manufacturer whose annual gross revenue from all of its operations does not exceed $8 million may apply for an exemption from all or part of an energy conservation standard for a period not longer than 24 months after the effective date of a final rule establishing the standard. (42 U.S.C. 6295(t)) Additionally, section 504 of the Department of Energy Organization Act, 42 U.S.C. 7194, provides authority for the Secretary to adjust a rule issued under EPCA in order to prevent ''special hardship, inequity, or unfair distribution of burdens'' that may be imposed on that manufacturer as a result of such rule. Manufacturers should refer to 10 CFR part 430, subpart E, and 10 CFR part 1003 for additional details.

C. Review Under the Paperwork Reduction Act of 1995

Manufacturers of electric motors must certify to DOE that their products comply with any applicable energy conservation standards. To certify compliance, manufacturers must first obtain test data for their products according to the DOE test procedures, including any amendments adopted for those test procedures. DOE has established regulations for the certification and recordkeeping requirements for all covered consumer products and commercial equipment, including electric motors. (*See generally* 10 CFR part 429.) The collection-of-information requirement for the certification and recordkeeping is subject to review and approval by OMB under the Paperwork Reduction Act (''PRA''). DOE's current reporting requirements have been approved by OMB under OMB control number 1910–1400. Public reporting burden for the certification is estimated to average 35 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, certifying compliance, and completing and reviewing the collection of information.

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

1. Description of the Requirements

In this final rule, DOE is requiring that within one year of publication of any final rule updating or amending DOE's electric motors regulations, all nationally recognized certification programs must reassess the evaluation criteria necessary for a certification program to be classified by DOE as nationally recognized and either submit a letter to DOE certifying that no change to their program is needed, or submit a letter describing the measures implemented to ensure the evaluation criteria in amended 10 CFR 429.73(b) are met. DOE is revising the collection of information approval under OMB Control Number 1910–1400 to account for the paperwork burden associated with submitting this letter, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

2. Method of Collection

DOE is requiring that nationally recognized certification programs must submit a letter within one year after any final rule is published updating or amending DOE's electric motor regulations.

3. Data

There are three nationally recognized certification programs for electric motors. DOE estimated that drafting and submitting a letter to DOE certifying that no change to their program is needed or drafting and submitting a letter describing the measures implemented to ensure the criteria in amended 10 CFR 429.73(b) are met would require approximately 10 hours for each nationally recognized certification program. Therefore, DOE estimated that the three nationally recognized certification programs would spend approximately 30 hours to draft and submit these letters to DOE. DOE's February 2021 ''Supporting Statement for Certification Reports, Compliance Statements, Application for a Test Procedure Waiver, and Recording

keeping for Consumer Products and Commercial Equipment Subject to Energy or Water Conservation Standards'' estimated a fully loaded (burdened) average wage rate of $67 per hour for manufacturer reporting and recordkeeping.[93] (86 FR 9916). DOE used this wage rate to estimate the burden on the certification programs. Therefore, DOE estimates that the total burden to the industry is approximately $2,010.[94]

OMB Control Number: 1910–1400.

Form Number: DOE F 220.7.

Type of Review: Regular submission.

Affected Public: Nationally recognized certification programs.

Estimated Number of Respondents: 3.

Estimated Time per Response: 10 hours.

Estimated Total Annual Burden Hours: 30 hours.

Estimated Total Annual Cost to the Manufacturers: $2,010 in recordkeeping/reporting costs.

4. Conclusion

DOE has determined that the cost of these amendments would not impose a material burden on nationally recognized certification programs. It is the responsibility of nationally recognized certification programs to have a complete understanding of applicable regulations for electric motors given their role as a certification body, and accordingly, DOE has concluded that the anticipated cost of $670 per program to submit a letter upon finalization of any updated or amended electric motors regulations is a reasonable burden for such a program.

D. Review Under the National Environmental Policy Act of 1969

In this final rule, DOE establishes test procedure amendments that it expects will be used to develop and implement future energy conservation standards for electric motors. DOE has determined that this rule falls into a class of actions that are categorically excluded from review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and DOE's implementing regulations at 10 CFR part 1021. Specifically, DOE has determined that adopting test procedures for measuring energy efficiency of consumer products and industrial equipment is consistent with activities identified in 10 CFR part 1021, appendix A to subpart D, A5 and A6. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

AHAM and AHRI stated that the compliance deadlines proposed in the NOPR will produce significant environmental impact and warrant review under NEPA. They stated that manufacturers that make voluntary representations about motor efficiency will be required to certify 180 days after the final rule, and there will not be capacity at third-party test labs to do this certification in time, so manufacturers will be forced to remove this efficiency information from marketing materials. They stated that this removal of efficiency information will cause purchasers to gravitate towards cheaper, and likely less efficient, products, which will lead to increased energy consumption and the environmental impacts associated with such. (AHAM and AHRI, No. 36 at pp. 14–15). In this final rule, DOE is adopting the industry standards similar to what was proposed in the NOPR. In addition, as discussed in section III.M.1 of this document, DOE does not adopt the proposal to replace the requirement to test at an accredited laboratory by testing in an independent testing program. Instead, DOE retains the use of accredited laboratory as currently described at 10 CFR 431.17(5).

E. Review Under Executive Order 13132

Executive Order 13132, ''Federalism,'' 64 FR 43255 (August 4, 1999), imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. The Executive order requires agencies to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and to carefully assess the necessity for such actions. The Executive order also requires agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. On March 14, 2000, DOE published a statement of policy describing the intergovernmental consultation process it will follow in the development of such regulations. 65 FR 13735. DOE examined this final rule and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. EPCA governs and prescribes Federal preemption of State regulations as to energy conservation for the products that are the subject of this final rule. States can petition DOE for exemption from such preemption to the extent, and based on criteria, set forth in EPCA. (42 U.S.C. 6297(d)). No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

Regarding the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, ''Civil Justice Reform,'' 61 FR 4729 (Feb. 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; (3) provide a clear legal standard for affected conduct rather than a general standard; and (4) promote simplification and burden reduction. Section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in sections 3(a) and 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this final rule meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (''UMRA'') requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104–4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action resulting in a rule that may cause the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy. (2 U.S.C. 1532(a), (b)) The

[93] *www.reginfo.gov/public/do/PRAViewDocument?ref_nbr=202102-1910-002.*

[94] 3 certification programs × 10 hours × $67 = $2,010.

UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a proposed ''significant intergovernmental mandate,'' and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820; also available at *www.energy.gov/gc/office-general-counsel.* DOE examined this final rule according to UMRA and its statement of policy and determined that the rule contains neither an intergovernmental mandate, nor a mandate that may result in the expenditure of $100 million or more in any year, so these requirements do not apply.

H. Review Under the Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any rule that may affect family well-being. This final rule will not have any impact on the autonomy or integrity of the family as an institution. Accordingly, DOE has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 12630

DOE has determined, under Executive Order 12630, ''Governmental Actions and Interference with Constitutionally Protected Property Rights'' 53 FR 8859 (March 18, 1988), that this regulation will not result in any takings that might require compensation under the Fifth Amendment to the U.S. Constitution.

J. Review Under Treasury and General Government Appropriations Act, 2001

Section 515 of the Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB. OMB's guidelines were published at 67 FR 8452 (Feb. 22, 2002), and DOE's guidelines were published at 67 FR 62446 (Oct. 7, 2002). Pursuant to OMB Memorandum M–19–15, Improving Implementation of the Information Quality Act (April 24, 2019), DOE published updated guidelines which are available at *www.energy.gov/sites/prod/files/2019/12/f70/DOE%20Final%20Updated%20IQA%20Guidelines%20Dec%202019.pdf.* DOE has reviewed this final rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

K. Review Under Executive Order 13211

Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use,'' 66 FR 28355 (May 22, 2001), requires Federal agencies to prepare and submit to OMB, a Statement of Energy Effects for any significant energy action. A ''significant energy action'' is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (3) is designated by the Administrator of OIRA as a significant energy action. For any significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use if the regulation is implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use.

This regulatory action is not a significant regulatory action under Executive Order 12866. Moreover, it would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA. Therefore, it is not a significant energy action, and, accordingly, DOE has not prepared a Statement of Energy Effects.

L. Review Under Section 32 of the Federal Energy Administration Act of 1974

Under section 301 of the Department of Energy Organization Act (Pub. L. 95–91; 42 U.S.C. 7101), DOE must comply with section 32 of the Federal Energy Administration Act of 1974, as amended by the Federal Energy Administration Authorization Act of 1977. (15 U.S.C. 788; ''FEAA'') Section 32 essentially provides in relevant part that, where a proposed rule authorizes or requires use of commercial standards, the notice of proposed rulemaking must inform the public of the use and background of such standards. In addition, section 32(c) requires DOE to consult with the Attorney General and the Chairman of the Federal Trade Commission (''FTC'') concerning the impact of the commercial or industry standards on competition.

The modifications to the test procedure for electric motors adopted in this final rule incorporates testing methods contained in certain sections of the following commercial standards: CSA C390–10; IEC 60034–12:2016; IEC 60079–7:2015; IEC 61800–9–2:2017; NEMA MG 1–2016; and NFPA 20–2022. DOE has evaluated these standards and is unable to conclude whether it fully complies with the requirements of section 32(b) of the FEAA (*i.e.,* whether it was developed in a manner that fully provides for public participation, comment, and review.) DOE has consulted with both the Attorney General and the Chairman of the FTC about the impact on competition of using the methods contained in these standards and has received no comments objecting to their use.

M. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of this rule before its effective date. The report will state that it has been determined that the rule is not a ''major rule'' as defined by 5 U.S.C. 804(2).

N. Description of Materials Incorporated by Reference

The following standards were previously approved for incorporation by reference in the section where they appear and no changes are required: IEC 60034–1 (select provisions in section 4), IEC 60034–1:2010, IEC 60034–2–1:2014, IEC 60050–411, IEC 60051–1:2016, IEEE 112–2017, and NEMA MG1–1967.

In this final rule, DOE incorporates by reference the test standards published by CSA, IEC, IEEE, NEMA and NFPA.

CSA C390–10 specifies test methods, marking requirements, and energy efficiency levels for three-phase induction motors.

CSA C747–09 specifies test methods for single-phase electric motors and polyphase electric motors below 1 hp.

IEC 60034–12:2016 specifies the parameters for eight designs (IEC Design N, Design NE, Design NY, Design NEY, IEC Design H, Design HE, Design HY, Design HEY) of starting performance of single-speed three-phase 50 Hz or 60 Hz cage induction motors.

IEC 60072–1 (clauses 2, 3, 4.1, 6.1, 7, and 10, and Tables 1, 2 and 4) specifies the IEC-metric equivalent frame size.

IEC 60079–7:2015 is referenced within IEC 60034–12:2016 and specifies the requirements for the design, construction, testing and marking of electrical equipment and Ex Components with type of protection

increased safety ''e'' intended for use in explosive gas atmospheres.

IEC 61800–9–2:2017 specifies test methods for inverter-fed electric motors that include an inverter.

IEEE 114–2010 specifies test methods for single-phase electric motors.

NEMA MG 1–2016 provides test methods to determine motor efficiency and losses, including for air-over electric motors, and establishes several industry definitions.

NFPA 20–2022 provides specifications for fire-pump motors.

Copies of these standards can be obtained from the organizations directly at the following addresses:

- Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada, 1–800–463–6727, or by visiting *www.shopcsa.ca/onlinestore/welcome.asp.*
- International Electrotechnical Commission, 3 rue de Varembé, 1st Floor, P.O. Box 131, CH–1211 Geneva 20–Switzerland, +41 22 919 02 11, or by visiting *https://webstore.iec.ch/home.*
- Institute of Electrical and Electronics Engineers, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331, (732) 981–0060, or by visiting *www.ieee.org.*
- NEMA, 1300 North 17th Street, Suite 900, Arlington, Virginia 22209, +1 (703) 841 3200, or by visiting *www.nema.org.*
- National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169, +1 800 344 3555, or by visiting *www.nfpa.org.*

V. Approval of the Office of the Secretary

The Secretary of Energy has approved publication of this final rule.

List of Subjects

10 CFR Part 429

Administrative practice and procedure, Confidential business information, Energy conservation, Household appliances, Imports, Intergovernmental relations, Reporting and recordkeeping requirements, Small businesses.

10 CFR Part 431

Administrative practice and procedure, Confidential business information, Energy conservation test procedures, Incorporation by reference, and Reporting and recordkeeping requirements.

Signing Authority

This document of the Department of Energy was signed on October 3, 2022, by Francisco Alejandro Moreno, Acting Assistant Secretary for Energy Efficiency and Renewable Energy, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on October 4, 2022.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

For the reasons stated in the preamble, DOE amends parts 429 and 431 of chapter II of title 10, Code of Federal Regulations as set forth below:

PART 429—CERTIFICATION, COMPLIANCE, AND ENFORCEMENT FOR CONSUMER PRODUCTS AND COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 1. The authority citation for part 429 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 2. Revise § 429.1 to read as follows:

§ 429.1 Purpose and scope.

This part sets forth the procedures for certification, determination and enforcement of compliance of covered products and covered equipment with the applicable energy conservation standards set forth in parts 430 and 431 of this subchapter.

■ 3. Amend § 429.2 by revising paragraph (a) and adding in alphabetical order to paragraph (b) a definition for ''Independent'' to read as follows:

§ 429.2 Definitions.

(a) The definitions found in 10 CFR parts 430 and 431 apply for purposes of this part.

(b) * * *

Independent means, in the context of a nationally recognized certification program, or accreditation program for electric motors, an entity that is not controlled by, or under common control with, electric motor manufacturers, importers, private labelers, or vendors, and that has no affiliation, financial ties, or contractual agreements, apparently or otherwise, with such entities that would:

(i) Hinder the ability of the program to evaluate fully or report the measured or calculated energy efficiency of any electric motor, or

(ii) Create any potential or actual conflict of interest that would undermine the validity of said evaluation. For purposes of this definition, financial ties or contractual agreements between an electric motor manufacturer, importer, private labeler or vendor and a nationally recognized certification program, or accreditation program exclusively for certification or accreditation services does not negate an otherwise independent relationship.

* * * * *

■ 4. Add § 429.3 to read as follows:

§ 429.3 Sources for information and guidance.

(a) *General.* The standards listed in this paragraph are referred to in §§ 429.73 and 429.74 and are not incorporated by reference. These sources are provided here for information and guidance only.

(b) *ISO/IEC.* International Organization for Standardization (ISO), 1, ch. de la Voie-Creuse, CP 56, CH–1211 Geneva 20, Switzerland/ International Electrotechnical Commission, 3, rue de Varembé, P.O. Box 131, CH–1211 Geneva 20, Switzerland.

(1) International Organization for Standardization (ISO)/International Electrotechnical Commission (IEC), (''ISO/IEC'') 17025, ''General requirements for the competence of calibration and testing laboratories,'' November 2017.

(2) [Reserved]

(c) *NVLAP.* National Voluntary Laboratory Accreditation Program, National Institute of Standards and Technology, 100 Bureau Drive, M/S 2140, Gaithersburg, MD 20899–2140, 301–975–4016, or go to *www.nist.gov/nvlap/.* Also see *http://www.nist.gov/nvlap/nvlap-handbooks.cfm.*

(1) National Institute of Standards and Technology (NIST) Handbook 150, ''NVLAP Procedures and General Requirements,'' 2000 edition, August 2020.

(2) National Institute of Standards and Technology (NIST) Handbook 150–10, ''Efficiency of Electric Motors,'' 2020 edition, April 2020.

■ 5. Revise § 429.11 to read as follows:

§ 429.11 General sampling requirements for selecting units to be tested.

(a) When testing of covered products or covered equipment is required to comply with section 323(c) of the Act, or to comply with rules prescribed under sections 324, 325, 342, 344, 345

or 346 of the Act, a sample comprised of production units (or units representative of production units) of the basic model being tested must be selected at random and tested and must meet the criteria found in §§ 429.14 through 429.65. Components of similar design may be substituted without additional testing if the substitution does not affect energy or water consumption. Any represented values of measures of energy efficiency, water efficiency, energy consumption, or water consumption for all individual models represented by a given basic model must be the same, except for central air conditioners and central air conditioning heat pumps, as specified in § 429.16; and

(b) The minimum number of units tested shall be no less than two, except where:

(1) A different minimum limit is specified in §§ 429.14 through 429.65; or

(2) Only one unit of the basic model is produced, in which case, that unit must be tested and the test results must demonstrate that the basic model performs at or better than the applicable standard(s). If one or more units of the basic model are manufactured subsequently, compliance with the default sampling and representations provisions is required.

■ 6. Add § 429.64 to read as follows:

§ 429.64 Electric motors.

(a) *Applicability.* When a party determines the energy efficiency of an electric motor in order to comply with an obligation imposed on it by or pursuant to Part C of Title III of EPCA, 42 U.S.C. 6311–6316, this section applies. This section does not apply to enforcement testing conducted pursuant to § 431.383 of this subchapter. This section applies to electric motors that are subject to requirements in subpart B of part 431 of this subchapter and does not apply to dedicated-purpose pool pump motors subject to requirements in subpart Z of part 431.

(1) Prior to the date described in paragraph (a)(2) of this section, manufacturers of electric motors subject to energy conservation standards in subpart B of part 431 must make representations of energy efficiency, including representations for certification of compliance, in accordance with paragraphs (b) and (c) of this section.

(2) On and after the compliance date for any new or amended standards for electric motors published after January 1, 2021, manufacturers of electric motors subject to energy conservation standards in subpart B of part 431 of this subchapter must make representations of energy efficiency, including representations for certification of compliance, in accordance with paragraphs (d) through (f) of this section.

(3) On or after April 17, 2023, manufacturers of electric motors subject to the test procedures in appendix B of subpart B of part 431 but are subject to the energy conservation standards in subpart B of part 431 of this subchapter, must, if they chose to voluntarily make representations of energy efficiency, follow the provisions in paragraph (e) of this section.

(b) *Compliance certification*—(1) *General requirements.* The represented value of nominal full-load efficiency of each basic model of electric motor must be determined either by testing in accordance with § 431.16 of this subchapter, or by application of an alternative efficiency determination method (AEDM) that meets the requirements of paragraph (b)(2) of this section.

(2) *Alternative efficiency determination method.* In lieu of testing, the represented value of nominal full-load efficiency for a basic model of electric motor must be determined through the application of an AEDM pursuant to the requirements of § 429.70(j) and the provisions of this paragraph (b) and paragraph (c) of this section, where:

(i) The average full-load efficiency of any basic model used to validate an AEDM must be calculated under paragraph (c) of this section.

(ii) The represented value is the nominal full-load efficiency of a basic model of electric motor and is to be used in marketing materials and all public representations, as the certified value of efficiency, and on the nameplate. (*See* § 431.31(a) of this subchapter.) Determine the nominal full-load efficiency by selecting a value from the ''Nominal Full-Load Efficiency'' table in appendix B to subpart B of this part that is no greater than the simulated full-load efficiency predicted by the AEDM for the basic model.

(3) *Use of a certification program or accredited laboratory.* (i) A manufacturer may have a certification program, that DOE has classified as nationally recognized under § 429.73, certify the nominal full-load efficiency of a basic model of electric motor, and issue a certificate of conformity for the motor.

(ii) For each basic model for which a certification program is not used as described in paragraph (b)(3)(i) of this section, any testing of the motor pursuant to paragraph (b)(1) or (2) of this section to determine its energy efficiency must be carried out in an accredited laboratory that meets the requirements of § 431.18 of this subchapter;

(c) *Additional testing requirements applicable when a certification program is not used*—(1) *Selection of units for testing.* For each basic model selected for testing, a sample of units shall be selected at random and tested. Components of similar design may be substituted without requiring additional testing if the represented measures of energy consumption continue to satisfy the applicable sampling provision.

(2) *Sampling requirements.* The sample shall be comprised of production units of the basic model, or units that are representative of such production units. The sample size shall be not fewer than five units, except that when fewer than five units of a basic model would be produced over a reasonable period of time (approximately 180 days), then each unit shall be tested. In a test of compliance with a represented average or nominal efficiency:

(i) The average full-load efficiency of the sample, which is defined by:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

where x_i is the measured full-load efficiency of unit *i* and n is the number of units tested, shall satisfy the condition:

$$\bar{x} \geq \frac{100}{1 + 1.05(\frac{100}{RE} - 1)}$$

where RE is the represented nominal full-load efficiency, and

(ii) The lowest full-load efficiency in the sample x_{min}, which is defined by:

$x_{min} = \min(x_i)$

shall satisfy the condition:

$$x_{min} \geq \frac{100}{1 + 1.15(\frac{100}{RE} - 1)}$$

(d) *Compliance certification.* A manufacturer may not certify the compliance of an electric motor pursuant to § 429.12 unless:

(1) Testing of the electric motor basic model was conducted using an accredited laboratory that meets the requirements of paragraph (f) of this section;

(2) Testing was conducted using a laboratory other than an accredited laboratory that meets the requirements of paragraph (f) of this section, or the

nominal full-load efficiency of the electric motor basic model was determined through the application of an AEDM pursuant to the requirements of § 429.70(j), and a third-party certification organization that is nationally recognized in the United States under § 429.73 has certified the nominal full-load efficiency of the electric motor basic model through issuance of a certificate of conformity for the basic model.

(e) *Determination of represented value.* A manufacturer must determine the represented value of nominal full-load efficiency (inclusive of the inverter for inverter-only electric motors) for each basic model of electric motor either by testing in conjunction with the applicable sampling provisions or by applying an AEDM as set forth in this section and in § 429.70(j).

(1) *Testing*—(i) *Units to be tested.* If the represented value for a given basic model is determined through testing, the requirements of § 429.11 apply except that, for electric motors, the minimum sample size is five units. If fewer units than the minimum sample size are produced, each unit produced must be tested and the test results must demonstrate that the basic model performs at or better than the applicable standard(s). If one or more units of the basic model are manufactured subsequently, compliance with the default sampling and representations provisions is required.

(ii) *Average Full-load Efficiency:* Determine the average full-load efficiency for the basic model $\bar{x}$, for the units in the sample as follows:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where x_i is the measured full-load efficiency of unit i and n is the number of units tested.

(iii) *Represented value.* The represented value is the nominal full-load efficiency of a basic model of electric motor and is to be used in marketing materials and all public representations, as the certified value of efficiency, and on the nameplate. (*See* § 431.31(a) of this subchapter.) Determine the nominal full-load efficiency by selecting an efficiency from the ''Nominal Full-load Efficiency'' table in appendix B that is no greater than the average full-load efficiency of the basic model as calculated in § 429.64(e)(1)(ii).

(iv) *Minimum full-load efficiency:* To ensure a high level of quality control and consistency of performance within the basic model, the lowest full-load efficiency in the sample X_{min}, must satisfy the condition:

$$x_{min} \geq \frac{100}{1 + 1.15(\frac{100}{Std} - 1)}$$

where *Std* is the value of the applicable energy conservation standard. If the lowest measured full-load efficiency of a unit in the tested sample does not satisfy the condition in this section, then the basic model cannot be certified as compliant with the applicable standard.

(2) *Alternative efficiency determination methods.* In lieu of testing, the represented value of nominal full-load efficiency for a basic model of electric motor must be determined through the application of an AEDM pursuant to the requirements of § 429.70(j) and the provisions of this section, where:

(i) The average full-load efficiency of any basic model used to validate an AEDM must be calculated under paragraph (e)(1)(ii) of this section; and

(ii) The represented value is the nominal full-load efficiency of a basic model of electric motor and is to be used in marketing materials and all public representations, as the certified value of efficiency, and on the nameplate. (See § 431.31(a) of this subchapter) Determine the nominal full-load efficiency by selecting a value from the ''Nominal Full-Load Efficiency'' table in appendix B to subpart B of this part, that is no greater than the simulated full-load efficiency predicted by the AEDM for the basic model.

(f) *Accredited laboratory.* (1) Testing pursuant to paragraphs (b)(3)(ii) and (d)(1) of this section must be conducted in an accredited laboratory for which the accreditation body was:

(i) The National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP); or

(ii) A laboratory accreditation body having a mutual recognition arrangement with NIST/NVLAP; or

(iii) An organization classified by the Department, pursuant to § 429.74, as an accreditation body.

(2) NIST/NVLAP is under the auspices of the National Institute of Standards and Technology (NIST)/ National Voluntary Laboratory Accreditation Program (NVLAP), which is part of the U.S. Department of Commerce. NIST/NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR part 285. The National Voluntary Laboratory Accreditation Program, ''Procedures and General Requirements,'' NIST Handbook 150–10, April 2020 (referenced for guidance only, *see* § 429.3) present the technical requirements of NVLAP for the Efficiency of Electric Motors field of accreditation. This handbook supplements NIST Handbook 150, National Voluntary Laboratory Accreditation Program ''Procedures and General Requirements,'' which contains 15 CFR part 285 plus all general NIST/ NVLAP procedures, criteria, and policies. Information regarding NIST/ NVLAP and its Efficiency of Electric Motors Program (EEM) can be obtained from NIST/NVLAP, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD 20899–2140, (301) 975–4016 (telephone), or (301) 926–2884 (fax).

■ 7. Add § 429.65 to read as follows:

§ 429.65 Dedicated-purpose pool pump motors.

(a) *Applicability.* This section applies to dedicated purpose motors that are subject to requirements in subpart Z of part 431 of this subchapter. Starting on the compliance date for any standards for dedicated-purpose pool pump motors published after January 1, 2021, manufacturers of dedicated-purpose pool pump motors subject to such standards must make representations of energy efficiency, including representations for certification of compliance, in accordance with this section. Prior to the compliance date for any standards for dedicated-purpose pool pump motors published after January 1, 2021, and on or after April 17, 2023, manufacturers of dedicated-purpose pool pump motors subject to test procedures in subpart Z of part 431 of this subchapter choosing to make representations of energy efficiency must follow the provisions in paragraph (c) of this section.

(b) *Compliance certification.* A manufacturer may not certify the compliance of a dedicated-purpose pool pump motor pursuant to 10 CFR 429.12 unless:

(1) Testing of the dedicated-purpose pool pump motor basic model was conducted using an accredited laboratory that meets the requirements of paragraph (d) of this section;

(2) Testing was conducted using a laboratory other than an accredited laboratory that meets the requirements of paragraph (d) of this section, or the full-load efficiency of the dedicated-purpose pool pump motor basic model was determined through the application of an AEDM pursuant to the requirements of § 429.70(k), and a third-party certification organization that is nationally recognized in the United States under § 429.73 has certified the full-load efficiency of the dedicated-

purpose pool pump motor basic model through issuance of a certificate of conformity for the basic model.

(c) *Determination of represented value.* A manufacturer must determine the represented value of full-load efficiency (inclusive of the drive, if the dedicated-purpose pool pump motor basic model is placed into commerce with a drive, or is unable to operate without the presence of a drive) for each basic model of dedicated-purpose pool pump motor either by testing in conjunction with the applicable sampling provisions or by applying an AEDM as set forth in this section and in § 429.70(k).

(1) *Testing*—(i) *Units to be tested.* If the represented value for a given basic model is determined through testing, the requirements of § 429.11 apply except that, for dedicated-purpose pool pump motors, the minimum sample size is five units. If fewer units than the minimum sample size are produced, each unit produced must be tested and the test results must demonstrate that the basic model performs at or better than the applicable standard(s). If one or more units of the basic model are manufactured subsequently, compliance with the default sampling and representations provisions is required.

(ii) *Full-load efficiency.* Any value of full-load efficiency must be lower than or equal to the average of the sample $\bar{x}$, calculated as follows:

$$\bar{x} = \frac{1}{n}\sum_{i=1}^{n} x_i$$

Where x_i is the measured full-load efficiency of unit i and n is the number of units tested in the sample.

(iii) *Represented value.* The represented value is the full-load efficiency of a basic model of dedicated-purpose pool pump motor and is to be used in marketing materials and all public representations, as the certified value of efficiency, and on the nameplate. (*See* § 431.486 of this subchapter). Alternatively, a manufacturer may make representations using the nominal full-load efficiency of a basic model of dedicated-purpose pool pump motor provided that the manufacturer uses the nominal full-load efficiency consistently on all marketing materials, and as the value on the nameplate. Determine the nominal full-load efficiency by selecting an efficiency from the ''Nominal Full-load Efficiency'' table in appendix B to subpart B of this part, that is no greater than the full-load efficiency of the basic model as calculated in § 429.65(c)(1)(ii).

(iv) *Minimum full-load efficiency:* To ensure quality control and consistency of performance within the basic model, the lowest full-load efficiency in the sample X_{min}, must satisfy the condition:

$$x_{min} \geq \frac{100}{1 + 1.15(\frac{100}{Std} - 1)}$$

where *Std* is the value of any applicable energy conservation standard. If the lowest measured full-load efficiency of a motor in the tested sample does not satisfy the condition in this section, then the basic model cannot be certified as compliant with the applicable standard.

(v) *Dedicated-purpose pool pump motor total horsepower.* The represented value of the total horsepower of a basic model of dedicated-purpose pool pump motor must be the mean of the dedicated-purpose pool pump motor total horsepower for each tested unit in the sample.

(2) *Alternative efficiency determination methods.* In lieu of testing, the represented value of full-load efficiency for a basic model of dedicated-purpose pool pump motor must be determined through the application of an AEDM pursuant to the requirements of § 429.70(k) and the provisions of this section, where:

(i) The full-load efficiency of any basic model used to validate an AEDM must be calculated under paragraph (c)(1)(ii) of this section; and

(ii) The represented value is the full-load efficiency of a basic model of dedicated-purpose pool pump motor and is to be used in marketing materials and all public representations, as the certified value of efficiency, and on the nameplate. (*See* § 431.485 of this subchapter). Alternatively, a manufacturer may make representations using the nominal full-load efficiency of a basic model of dedicated-purpose pool pump motor provided that the manufacturer uses the nominal full-load efficiency consistently on all marketing materials, and as the value on the nameplate. Determine the nominal full-load efficiency by selecting an efficiency from the ''Nominal Full-load Efficiency'' table in appendix B to subpart B of this part, that is no greater than the full-load efficiency of the basic model as calculated in § 429.65(c)(1)(ii).

(d) *Accredited laboratory.* (1) Testing pursuant to paragraph (b) of this section must be conducted in an accredited laboratory for which the accreditation body was:

(i) The National Institute of Standards and Technology/National Voluntary Laboratory Accreditation Program (NIST/NVLAP); or

(ii) A laboratory accreditation body having a mutual recognition arrangement with NIST/NVLAP; or

(iii) An organization classified by the Department, pursuant to § 429.74, as an accreditation body.

(2) NIST/NVLAP is under the auspices of the National Institute of Standards and Technology (NIST)/National Voluntary Laboratory Accreditation Program (NVLAP), which is part of the U.S. Department of Commerce. NIST/NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR part 285. The National Voluntary Laboratory Accreditation Program, ''Procedures and General Requirements,'' NIST Handbook 150–10, April 2020, (referenced for guidance only, *see* § 429.3) present the technical requirements of NVLAP for the Efficiency of Electric Motors field of accreditation. This handbook supplements NIST Handbook 150, National Voluntary Laboratory Accreditation Program ''Procedures and General Requirements,'' which contains 15 CFR part 285 plus all general NIST/NVLAP procedures, criteria, and policies. Information regarding NIST/NVLAP and its Efficiency of Electric Motors Program (EEM) can be obtained from NIST/NVLAP, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD 20899–2140, (301) 975–4016 (telephone), or (301) 926–2884 (fax).

■ 8. Amend § 429.70 by revising paragraph (a) and adding paragraphs (j) and (k) to read as follows:

§ 429.70 Alternative methods for determining energy efficiency and energy use.

(a) *General.* A manufacturer of covered products or covered equipment explicitly authorized to use an AEDM in §§ 429.14 through 429.65 may not distribute any basic model of such product or equipment in commerce unless the manufacturer has determined the energy consumption or energy efficiency of the basic model, either from testing the basic model in conjunction with DOE's certification sampling plans and statistics or from applying an alternative method for determining energy efficiency or energy use (*i.e.,* AEDM) to the basic model, in accordance with the requirements of this section. In instances where a manufacturer has tested a basic model to validate the AEDM, the represented value of energy consumption or efficiency of that basic model must be determined and certified according to results from actual testing in conjunction with 10 CFR part 429,

subpart B certification sampling plans and statistics. In addition, a manufacturer may not knowingly use an AEDM to overrate the efficiency of a basic model.

* * * * *

(j) *Alternative efficiency determination method (AEDM) for electric motors subject to requirements in subpart B of part 431 of this subchapter*—(1) *Criteria an AEDM must satisfy.* A manufacturer is not permitted to apply an AEDM to a basic model of electric motor to determine its efficiency pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency characteristics and losses of the basic model as measured by the applicable DOE test procedure and accurately represents the mechanical and electrical characteristics of that basic model; and

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of actual performance data.

(iii) The manufacturer has validated the AEDM in accordance with paragraph (i)(2) of this section with basic models that meet the current Federal energy conservation standards (if any).

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability by comparing the simulated full-load losses to tested average full-load losses as follows.

(i) *Select basic models.* A manufacturer must select at least five basic models compliant with the energy conservation standards at § 431.25 of this subchapter (if any), in accordance with the criteria paragraphs (i)(2)(i)(A) through (D) of this section. In any instance where it is impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, prioritize the criteria in the order in which they are listed. Within the limits imposed by the criteria, select basic models randomly. In addition, a basic model with a sample size of fewer than five units may not be selected to validate an AEDM.

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior 5 years;

(B) No two basic models may have the same horsepower rating;

(C) No two basic models may have the same frame number series; and

(D) Each basic model must have the lowest nominal full-load efficiency among the basic models within the same equipment class.

(ii) *Apply the AEDM to the selected basic models.* Using the AEDM, calculate the simulated full-load losses for each of the selected basic models as follows: hp × (1/simulated full-load efficiency − 1), where hp is the horsepower of the basic model.

(iii) *Test at least five units of each of the selected basic models in accordance with § 431.16 of this subchapter.* Use the measured full-load losses for each of the tested units to determine the average of the measured full-load losses for each of the selected basic models.

(iv) *Compare.* The simulated full-load losses for each basic model (as determined under paragraph (i)(2)(ii) of this section) must be greater than or equal to 90 percent of the average of the measured full-load losses (as determined under paragraph (i)(2)(iii) of this section) (*i.e.,* 0.90 × average of the measured full-load losses ≤ simulated full-load losses).

(3) *Verification of an AEDM.* (i) Each manufacturer must periodically select basic models representative of those to which it has applied an AEDM. The manufacturer must select a sufficient number of basic models to ensure the AEDM maintains its accuracy and reliability. For each basic model selected for verification:

(A) Subject at least one unit for each basic model to test in accordance with § 431.16 of this subchapter by an accredited laboratory that meets the requirements of § 429.65(f). If one unit per basic model is selected, the simulated full-load losses for each basic model must be greater than or equal to 90 percent of the measured full-load losses (*i.e.,* 0.90 × the measured full-load losses ≤ simulated full-load losses). If more than one unit per basic model is selected, the simulated full-load losses for each basic model must be greater than or equal to 90 percent of the average of the measured full-load losses (*i.e.,* 0.90 × average of the measured full-load losses ≤ simulated full-load losses); or

(B) Have a certification body recognized under § 429.73 certify the results of the AEDM as accurately representing the basic model's average full-load efficiency. The simulated full-load efficiency for each basic model must be greater than or equal to 90 percent of the certified full-load losses (*i.e.,* 0.90 × certified full-load losses ≤ simulated full-load losses).

(ii) Each manufacturer that has used an AEDM under this section must have available for inspection by the Department of Energy records showing:

(A) The method or methods used to develop the AEDM;

(B) The mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based;

(C) Complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraphs (i)(2) and (3) of this section; and

(D) The calculations used to determine the simulated full-load efficiency of each basic model to which the AEDM was applied.

(iii) If requested by the Department, the manufacturer must:

(A) Conduct simulations to predict the performance of particular basic models of electric motors specified by the Department;

(B) Provide analyses of previous simulations conducted by the manufacturer; and/or

(C) Conduct testing of basic models selected by the Department.

(k) *Alternative efficiency determination method (AEDM) for dedicated-purpose pool pump motors subject to requirements in subpart Z of part 431 of this subchapter*—(1) *Criteria an AEDM must satisfy.* A manufacturer is not permitted to apply an AEDM to a basic model of dedicated-purpose pool pump motors, to determine its efficiency pursuant to this section unless:

(i) The AEDM is derived from a mathematical model that estimates the energy efficiency characteristics and losses of the basic model as measured by the applicable DOE test procedure and accurately represents the mechanical and electrical characteristics of that basic model;

(ii) The AEDM is based on engineering or statistical analysis, computer simulation or modeling, or other analytic evaluation of actual performance data; and

(iii) The manufacturer has validated the AEDM in accordance with paragraph (i)(2) of this section with basic models that meet the current Federal energy conservation standards (if any).

(2) *Validation of an AEDM.* Before using an AEDM, the manufacturer must validate the AEDM's accuracy and reliability by comparing the simulated full-load losses to tested full-load losses as follows:

(i) *Select basic models.* A manufacturer must select at least five basic models compliant with any relevant energy conservation standards at § 431.485 of this subchapter (if any), in accordance with the criteria paragraphs (j)(2)(i)(A) through (D) of this section. In any instance where it is

impossible for a manufacturer to select basic models for testing in accordance with all of these criteria, prioritize the criteria in the order in which they are listed. Within the limits imposed by the criteria, select basic models randomly. In addition, a basic model with a sample size of fewer than five units may not be selected to validate an AEDM.

(A) Two of the basic models must be among the five basic models with the highest unit volumes of production by the manufacturer in the prior 5 years.

(B) No two basic models may have the same total horsepower rating;

(C) No two basic models may have the same speed configuration; and

(D) Each basic model must have the lowest full-load efficiency among the basic models within the same equipment class.

(ii) *Apply the AEDM* to the selected basic models. Using the AEDM, calculate the simulated full-load losses for each of the selected basic models as follows: THP × (1/simulated full-load efficiency − 1), where THP is the total horsepower of the basic model.

(iii) *Test at least five units of each of the selected basic models in accordance with § 431.483 of this subchapter.* Use the measured full-load losses for each of the tested units to determine the average of the measured full-load losses for each of the selected basic models.

(iv) *Compare.* The simulated full-load losses for each basic model (paragraph (i)(2)(ii) of this section) must be greater than or equal to 90 percent of the average of the measured full-load losses (paragraph (i)(2)(iii) of this section) (*i.e.,* 0.90 × average of the measured full-load losses ≤ simulated full-load losses).

(3) *Verification of an AEDM.* (i) Each manufacturer must periodically select basic models representative of those to which it has applied an AEDM. The manufacturer must select a sufficient number of basic models to ensure the AEDM maintains its accuracy and reliability. For each basic model selected for verification:

(A) Subject at least one unit to testing in accordance with § 431.483 of this subchapter by an accredited laboratory that meets the requirements of § 429.65(d). If one unit per basic model is selected, the simulated full-load losses for each basic model must be greater than or equal to 90 percent of the measured full-load losses (*i.e.,* 0.90 × the measured full-load losses ≤ simulated full-load losses). If more than one unit per basic model is selected, the simulated full-load losses for each basic model must be greater than or equal to 90 percent of the average measured full-load losses (*i.e.,* 0.90 × average of the measured full-load losses ≤ simulated full-load losses); or

(B) Have a certification body recognized under § 429.73 certify the results of the AEDM accurately represent the basic model's full-load efficiency. The simulated full-load efficiency for each basic model must be greater than or equal to 90 percent of the certified full-load losses (*i.e.,* 0.90 × certified full-load losses ≤ simulated full-load losses).

(ii) Each manufacturer that has used an AEDM under this section must have available for inspection by the Department of Energy records showing:

(A) The method or methods used to develop the AEDM;

(B) The mathematical model, the engineering or statistical analysis, computer simulation or modeling, and other analytic evaluation of performance data on which the AEDM is based;

(C) Complete test data, product information, and related information that the manufacturer has generated or acquired pursuant to paragraphs (i)(2) and (3) of this section; and

(D) The calculations used to determine the simulated full-load efficiency of each basic model to which the AEDM was applied.

(iii) If requested by the Department, the manufacturer must:

(A) Conduct simulations to predict the performance of particular basic models of dedicated-purpose pool pump motors specified by the Department;

(B) Provide analyses of previous simulations conducted by the manufacturer;

(C) Conduct testing of basic models selected by the Department; or

(D) A combination of the foregoing.

■ 9. Add § 429.73 to subpart B to read as follows:

§ 429.73 Department of Energy recognition of nationally recognized certification programs for electric motors, including dedicated-purpose pool pump motors.

(a) *Petition.* For a certification program to be classified by the Department of Energy as being nationally recognized in the United States for the purposes of §§ 429.64 and 429.65, the organization operating the program must submit a petition to the Department requesting such classification, in accordance with paragraph (c) of this section and § 429.75. The petition must demonstrate that the program meets the criteria in paragraph (b) of this section.

(b) *Evaluation criteria.* For a certification program to be classified by the Department as nationally recognized, it must meet the following criteria:

(1) It must have satisfactory standards and procedures for conducting and administering a certification system, including periodic follow up activities to assure that basic models of electric motors continue to conform to the efficiency levels for which they were certified, and for granting a certificate of conformity;

(2) For certification of electric motors, including dedicated-purpose pool pump motors, it must be independent (as defined at § 429.2) of electric motor (including dedicated-purpose pool pump motor) manufacturers, importers, distributors, private labelers or vendors for which it is providing certification;

(3) It must be qualified to operate a certification system in a highly competent manner; and

(4) In the case of electric motors subject to requirements in subpart B of part 431 of this subchapter, the certification program must have expertise in the content and application of the test procedures at § 431.16 of this subchapter and must apply the provisions at §§ 429.64 and 429.70(j); or

(5) In the case of dedicated-purpose pool pump motors subject to requirements in subpart Z of part 431 of this subchapter, the certification program must have expertise in the content and application of the test procedures at § 431.484 of this subchapter and must apply the provisions at §§ 429.65 and 429.70(k).

(c) *Petition format.* Each petition requesting classification as a nationally recognized certification program must contain a narrative statement as to why the program meets the criteria listed in paragraph (b) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance as to the specific criteria:

(1) *Standards and procedures.* A copy of the standards and procedures for operating a certification system and for granting a certificate of conformity should accompany the petition.

(2) *Independent status.* The petitioning organization must describe how it is independent (as defined at § 429.2) from electric motor, including dedicated-purpose pool pump motor manufacturers, importers, distributors, private labelers, vendors, and trade associations.

(3) *Qualifications to operate a certification system.* Experience in operating a certification system should be described and substantiated by supporting documents within the petition. Of particular relevance would

be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 65, ''General requirements for bodies operating product certification systems'' (referenced for guidance only, *see* § 429.3), ISO/IEC Guide 27, ''Guidelines for corrective action to be taken by a certification body in the event of either misapplication of its mark of conformity to a product, or products which bear the mark of the certification body being found to subject persons or property to risk'' (referenced for guidance only, *see* § 429.3), and ISO/IEC Guide 28, ''General rules for a model third-party certification system for products'' (referenced for guidance only, *see* § 429.3), as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, ''General requirements for the competence of calibration and testing laboratories'' (referenced for guidance only, *see* § 429.3).

(4) *Expertise in test procedures*—(i) *General.* This part of the petition should include items such as, but not limited to, a description of prior projects and qualifications of staff members. Of particular relevance would be documentary evidence that establishes experience in applying guidelines contained in the ISO/IEC Guide 25, ''General Requirements for the Competence of Calibration and Testing Laboratories'' (referenced for guidance only, *see* § 429.3), and with energy efficiency testing of the equipment to be certified.

(ii) *Electric motors subject to requirements in subpart B of part 431 of this subchapter.* The petition should set forth the program's experience with the test procedures detailed in § 431.16 of this subchapter and the provisions in §§ 429.64 and 429.70(j).

(iii) *Dedicated-purpose pool pump motors subject to requirements in subpart Z of part 431 of this subchapter.* The petition should set forth the program's experience with the test procedures detailed in § 431.484 of this subchapter and the provisions in §§ 429.65 and 429.70(k).

(d) *Disposition.* The Department will evaluate the petition in accordance with § 429.75, and will determine whether the applicant meets the criteria in paragraph (b) of this section for classification as a nationally recognized certification program.

(e) *Periodic evaluation.* Within one year after publication of any final rule regarding electric motors, a nationally recognized certification program must evaluate whether they meet the criteria in paragraph (b) of this section and must either submit a letter to DOE certifying that no change to its program is needed to continue to meet the criteria in paragraph (b) or submit a letter describing the measures implemented to ensure the criteria in paragraph (b) are met. A certification program will continue to be classified by the Department of Energy as being nationally recognized in the United States until DOE concludes otherwise.

■ 10. Add § 429.74 to subpart B to read as follows:

§ 429.74 Department of Energy recognition of accreditation bodies for electric motors, including dedicated-purpose pool pump motors.

(a) *Petition.* To be classified by the Department of Energy as an accreditation body, an organization must submit a petition to the Department requesting such classification, in accordance with paragraph (c) of this section and § 429.75. The petition must demonstrate that the organization meets the criteria in paragraph (b) of this section.

(b) *Evaluation criteria.* To be classified as an accreditation body by the Department, the organization must meet the following criteria:

(1) It must have satisfactory standards and procedures for conducting and administering an accreditation system and for granting accreditation. This must include provisions for periodic audits to verify that the laboratories receiving its accreditation continue to conform to the criteria by which they were initially accredited, and for withdrawal of accreditation where such conformance does not occur, including failure to provide accurate test results.

(2) It must be independent (as defined at § 429.2) of electric motor manufacturers, importers, distributors, private labelers or vendors for which it is providing accreditation.

(3) It must be qualified to perform the accrediting function in a highly competent manner.

(4)(i) In the case of electric motors subject to requirements in subpart B of part 431 of this subchapter, the organization must be an expert in the content and application of the test procedures and methodologies at § 431.16 of this subchapter and § 429.64.

(ii) In the case of dedicated-purpose pool pump motors subject to requirements in subpart Z of part 431 of this subchapter, the organization must be an expert in the content and application of the test procedures and methodologies at § 431.484 of this subchapter and § 429.65.

(c) *Petition format.* Each petition requesting classification as an accreditation body must contain a narrative statement as to why the program meets the criteria set forth in paragraph (b) of this section, must be signed on behalf of the organization operating the program by an authorized representative, and must be accompanied by documentation that supports the narrative statement. The following provides additional guidance:

(1) *Standards and procedures.* A copy of the organization's standards and procedures for operating an accreditation system and for granting accreditation should accompany the petition.

(2) *Independent status.* The petitioning organization must describe how it is independent (as defined at § 429.2) from electric motor manufacturers, importers, distributors, private labelers, vendors, and trade associations.

(3) *Qualifications to do accrediting.* Experience in accrediting should be discussed and substantiated by supporting documents. Of particular relevance would be documentary evidence that establishes experience in the application of guidelines contained in the ISO/IEC Guide 58, ''Calibration and testing laboratory accreditation systems—General requirements for operation and recognition'' (referenced for guidance only, *see* § 429.3), as well as experience in overseeing compliance with the guidelines contained in the ISO/IEC Guide 25, ''General Requirements for the Competence of Calibration and Testing Laboratories'' (referenced for guidance only, *see* § 429.3).

(4) *Expertise in test procedures.* The petition should set forth the organization's experience with the test procedures and methodologies test procedures and methodologies at § 431.16 of this subchapter and § 429.64. This part of the petition should include items such as, but not limited to, a description of prior projects and qualifications of staff members. Of particular relevance would be documentary evidence that establishes experience in applying the guidelines contained in the ISO/IEC Guide 25, ''General Requirements for the Competence of Calibration and Testing Laboratories,'' (referenced for guidance only, *see* § 429.3) to energy efficiency testing for electric motors.

(d) *Disposition.* The Department will evaluate the petition in accordance with § 429.75, and will determine whether the applicant meets the criteria in paragraph (b) of this section for classification as an accrediting body.

■ 11. Add § 429.75 to subpart B to read as follows:

§ 429.75 Procedures for recognition and withdrawal of recognition of accreditation bodies or certification programs.

(a) *Filing of petition.* Any petition submitted to the Department pursuant to § 429.73(a) or § 429.74(a), shall be entitled ''Petition for Recognition'' (''Petition'') and must be submitted to the Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Office, Appliance and Equipment Standards Program, EE–5B, 1000 Independence Avenue SW, Washington, DC 20585–0121, or via email (preferred submittal method) to *AS_Motor_Petitions@ee.doe.gov.* In accordance with the provisions set forth in 10 CFR 1004.11, any request for confidential treatment of any information contained in such a Petition or in supporting documentation must be accompanied by a copy of the Petition or supporting documentation from which the information claimed to be confidential has been deleted.

(b) *Public notice and solicitation of comments.* DOE shall publish in the **Federal Register** the Petition from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11 and shall solicit comments, data and information on whether the Petition should be granted. The Department shall also make available for inspection and copying the Petition's supporting documentation from which confidential information, as determined by DOE, has been deleted in accordance with 10 CFR 1004.11. Any person submitting written comments to DOE with respect to a Petition shall also send a copy of such comments to the petitioner.

(c) *Responsive statement by the petitioner.* A petitioner may, within 10 working days of receipt of a copy of any comments submitted in accordance with paragraph (b) of this section, respond to such comments in a written statement submitted to the Assistant Secretary for Energy Efficiency and Renewable Energy. A petitioner may address more than one set of comments in a single responsive statement.

(d) *Public announcement of interim determination and solicitation of comments.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall issue an interim determination on the Petition as soon as is practicable following receipt and review of the Petition and other applicable documents, including, but not limited to, comments and responses to comments. The petitioner shall be notified in writing of the interim determination. DOE shall also publish in the **Federal Register** the interim determination and shall solicit comments, data, and information with respect to that interim determination. Written comments and responsive statements may be submitted as provided in paragraphs (b) and (c) of this section.

(e) *Public announcement of final determination.* The Assistant Secretary for Energy Efficiency and Renewable Energy shall as soon as practicable, following receipt and review of comments and responsive statements on the interim determination, publish in the **Federal Register** notification of final determination on the Petition.

(f) *Additional information.* The Department may, at any time during the recognition process, request additional relevant information or conduct an investigation concerning the Petition. The Department's determination on a Petition may be based solely on the Petition and supporting documents, or may also be based on such additional information as the Department deems appropriate.

(g) *Withdrawal of recognition*—(1) *Withdrawal by the Department.* If DOE believes that an accreditation body or certification program that has been recognized under § 429.73 or § 429.74, respectively, is failing to meet the criteria of paragraph (b) of the section under which it is recognized, or if the certification program fails to meet the provisions at § 429.73(e), the Department will issue a Notice of Withdrawal (''Notice'') to inform such entity and request that it take appropriate corrective action(s) specified in the Notice. The Department will give the entity an opportunity to respond. In no case shall the time allowed for corrective action exceed 180 days from the date of the notice (inclusive of the 30 days allowed for disputing the bases for DOE's notification of withdrawal). If the entity wishes to dispute any bases identified in the Notice, the entity must respond to DOE within 30 days of receipt of the Notice. If after receiving such response, or no response, the Department believes satisfactory correction has not been made, the Department will withdraw its recognition from that entity.

(2) *Voluntary withdrawal.* An accreditation body or certification program may withdraw itself from recognition by the Department by advising the Department in writing of such withdrawal. It must also advise those that use it (for an accreditation body, the testing laboratories, and for a certification organization, the manufacturers) of such withdrawal.

(3) *Notice of withdrawal of recognition.* The Department will publish in the **Federal Register** notification of any withdrawal of recognition that occurs pursuant to this paragraph.

■ 12. Add appendix B to subpart B of part 429 to read as follows:

Appendix B to Subpart B of Part 429—Nominal Full-Load Efficiency Table for Electric Motors

99.0	96.5	88.5	68	36.5
98.9	96.2	87.5	66	34.5
98.8	95.8	86.5	64	
98.7	95.4	85.5	62	
98.6	95	84	59.5	
98.5	94.5	82.5	57.5	
98.4	94.1	81.5	55	
98.2	93.6	80	52.5	
98	93	78.5	50.5	
97.8	92.4	77	48	
97.6	91.7	75.5	46	
97.4	91	74	43.5	
97.1	90.2	72	41	
96.8	89.5	70	38.5	

PART 431—ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT

■ 13. The authority citation for part 431 continues to read as follows:

Authority: 42 U.S.C. 6291–6317; 28 U.S.C. 2461 note.

■ 14. Section 431.12 is amended by:
■ a. Revising the definitions of ''Air-over electric motor'', ''Basic model'', ''Definite purpose electric motor'', ''Definite purpose motor'', ''Electric motor with encapsulated windings'', ''Electric motor with moisture resistant windings'', and ''Electric motor with sealed windings'';
■ b. Adding in alphabetical order a definition for ''Equipment class'';
■ c. Revising the definitions of ''General purpose electric motor'', ''General purpose electric motor (subtype I)'', ''General purpose electric motor (subtype II)'', and ''IEC Design H motor'';
■ d. Adding in alphabetical order definitions for ''IEC Design HE'', ''IEC Design HEY'', and ''IEC Design HY'';
■ e. Revising the definition of ''IEC Design N motor'';
■ f. Adding in alphabetical order definitions for ''IEC Design NE'', ''IEC Design NEY'', and ''IEC Design NY'';
■ g. Adding in alphabetical order a definition for ''Inverter'';
■ h. Revising the definitions of ''Inverter-capable electric motor'', ''Inverter-only electric motor'', ''Liquid-cooled electric motor'', ''NEMA Design A motor'', ''NEMA Design B motor'', ''NEMA Design C motor'', and ''Nominal full-load efficiency''; and
■ i. Adding in alphabetical order definitions for ''Rated frequency'', ''Rated load'', and ''Rated voltage.''

The revisions and additions read as follows:

§ 431.12 Definitions.

* * * * *

Air-over electric motor means an electric motor that does not reach thermal equilibrium (*i.e.,* thermal stability), during a rated load temperature test according to section 2 of appendix B, without the application of forced cooling by a free flow of air from an external device not mechanically connected to the motor within the motor enclosure.

* * * * *

Basic model means all units of electric motors manufactured by a single manufacturer, that are within the same equipment class, have electrical characteristics that are essentially identical, and do not have any differing physical or functional characteristics that affect energy consumption or efficiency.

* * * * *

Definite purpose electric motor means any electric motor that cannot be used in most general purpose applications and is designed either:

(1) To standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, such as those specified in NEMA MG 1–2016, Paragraph 14.3, ''Unusual Service Conditions,'' (incorporated by reference, *see* § 431.15); or

(2) For use on a particular type of application.

Definite purpose motor means any electric motor that cannot be used in most general purpose applications and is designed either:

(1) To standard ratings with standard operating characteristics or standard mechanical construction for use under service conditions other than usual, such as those specified in NEMA MG 1–2016, Paragraph 14.3, ''Unusual Service Conditions,'' (incorporated by reference, *see* § 431.15); or

(2) For use on a particular type of application.

* * * * *

Electric motor with encapsulated windings means an electric motor capable of passing the conformance test for water resistance described in NEMA MG 1–2016, Paragraph 12.62 (incorporated by reference, *see* § 431.15).

Electric motor with moisture resistant windings means an electric motor that is capable of passing the conformance test for moisture resistance generally described in NEMA MG 1–2016, paragraph 12.63 (incorporated by reference, *see* § 431.15).

Electric motor with sealed windings means an electric motor capable of passing the conformance test for water resistance described in NEMA MG 1–2016, paragraph 12.62 (incorporated by reference, *see* § 431.15).

* * * * *

Equipment class means one of the combinations of an electric motor's horsepower (or standard kilowatt equivalent), number of poles, and open or enclosed construction, with respect to a category of electric motor for which § 431.25 prescribes nominal full-load efficiency standards.

* * * * *

General purpose electric motor means any electric motor that is designed in standard ratings with either:

(1) Standard operating characteristics and mechanical construction for use under usual service conditions, such as those specified in NEMA MG 1–2016, paragraph 14.2, ''Usual Service Conditions,'' (incorporated by reference, *see* § 431.15) and without restriction to a particular application or type of application; or

(2) Standard operating characteristics or standard mechanical construction for use under unusual service conditions, such as those specified in NEMA MG 1–2016, paragraph 14.3, ''Unusual Service Conditions,'' (incorporated by reference, *see* § 431.15) or for a particular type of application, and which can be used in most general purpose applications.

General purpose electric motor (subtype I) means a general purpose electric motor that:

(1) Is a single-speed, induction motor;

(2) Is rated for continuous duty (MG1) operation or for duty type S1 (IEC);

(3) Contains a squirrel-cage (MG1) or cage (IEC) rotor;

(4) Has foot-mounting that may include foot-mounting with flanges or detachable feet;

(5) Is built in accordance with NEMA T-frame dimensions or their IEC metric equivalents, including a frame size that is between two consecutive NEMA frame sizes or their IEC metric equivalents;

(6) Has performance in accordance with NEMA Design A (MG1) or B (MG1) characteristics or equivalent designs such as IEC Design N (IEC);

(7) Operates on polyphase alternating current 60-hertz sinusoidal power, and:

(i) Is rated at 230 or 460 volts (or both) including motors rated at multiple voltages that include 230 or 460 volts (or both), or

(ii) Can be operated on 230 or 460 volts (or both); and

(8) Includes, but is not limited to, explosion-proof construction.

Note 1 to definition of ''General purpose electric motor (subtype I)'': References to ''MG1'' above refer to NEMA Standards Publication MG 1–2016 (incorporated by reference in § 431.15). References to ''IEC'' above refer to IEC 60034–1, 60034–12:2016, 60050–411, and 60072–1 (incorporated by reference in § 431.15), as applicable.

General purpose electric motor (subtype II) means any general purpose electric motor that incorporates design elements of a general purpose electric motor (subtype I) but, unlike a general purpose electric motor (subtype I), is configured in one or more of the following ways:

(1) Is built in accordance with NEMA U-frame dimensions as described in NEMA MG 1–1967 (incorporated by reference, *see* § 431.15) or in accordance with the IEC metric equivalents,

including a frame size that is between two consecutive NEMA frame sizes or their IEC metric equivalents;

(2) Has performance in accordance with NEMA Design C characteristics as described in MG1 or an equivalent IEC design(s) such as IEC Design H;

(3) Is a close-coupled pump motor;

(4) Is a footless motor;

(5) Is a vertical solid shaft normal thrust motor (as tested in a horizontal configuration) built and designed in a manner consistent with MG1;

(6) Is an eight-pole motor (900 rpm); or

(7) Is a polyphase motor with a voltage rating of not more than 600 volts, is not rated at 230 or 460 volts (or both), and cannot be operated on 230 or 460 volts (or both).

Note 2 to definition of ''General purpose electric motor (subtype II)'': With the exception of the NEMA Motor Standards MG1–1967 (incorporated by reference in § 431.15), references to ''MG1'' above refer to NEMA MG 1–2016 (incorporated by reference in § 431.15). References to ''IEC'' above refer to IEC 60034–1, 60034–12, 60050–411, and 60072–1 (incorporated by reference in § 431.15), as applicable.

* * * * *

IEC Design H motor means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of direct-on-line starting

(4) Has 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 160 kW at a frequency of 60 Hz; and

(6) Conforms to Sections 9.1, 9.2, and 9.3 of the IEC 60034–12:2016 (incorporated by reference, *see* § 431.15) specifications for starting torque, locked rotor apparent power, and starting requirements, respectively.

IEC Design HE means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of direct-on-line starting;

(4) Has 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 160 kW at a frequency of 60 Hz; and

(6) Conforms to section 9.1, Table 3, and Section 9.3 of the IEC 60034–12:2016 (incorporated by reference, *see* § 431.15) specifications for starting torque, locked rotor apparent power, and starting requirements, respectively.

IEC Design HEY means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of star-delta starting;

(4) Has 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 160 kW at a frequency of 60 Hz; and

(6) Conforms to section 5.7, Table 3 and Section 9.3 of the IEC 60034–12:2016 (incorporated by reference, *see* § 431.15) specifications for starting torque, locked rotor apparent power, and starting requirements, respectively.

IEC Design HY means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of star-delta starting;

(4) Has 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 160 kW at a frequency of 60 Hz; and

(6) Conforms to section 5.7, Table 3 and Section 9.3 of the IEC 60034–12;2016 (incorporated by reference , *see* § 431.15) specification for starting torque, locked rotor apparent power, and starting requirements, respectively.

IEC Design HY means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of star-delta starting;

(4) Has 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 160 kW at a frequency of 60 Hz; and

(6) Conforms to Section 5.7, Section 9.2 and Section 9.3 of the IEC 60034–12:2016 (incorporated by reference, *see* § 431.15) specifications for starting torque, locked rotor apparent power, and starting requirements, respectively.

IEC Design N motor means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of direct-on-line starting;

(4) Has 2, 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 1600 kW at a frequency of 60 Hz; and

(6) Conforms to Sections 6.1, 6.2, and 6.3 of the IEC 60034–12:2016 (incorporated by reference, *see* § 431.15) specifications for torque characteristics, locked rotor apparent power, and starting requirements, respectively. If a motor has an increased safety designation of type ''e,'', the locked rotor apparent power shall be in accordance with the appropriate values specified in IEC 60079–7:2015 (incorporated by reference, *see* § 431.15).

IEC Design NE means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of direct-on-line starting;

(4) Has 2, 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 1600 kW at a frequency of 60 Hz; and

(6) Conforms to section 6.1, Table 3 and Section 6.3 of the IEC 60034–12:2016 (incorporated by reference, *see* § 431.15) specifications for starting torque, locked rotor apparent power, and starting requirements, respectively.

IEC Design NEY means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of star-delta starting;

(4) Has 2, 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 1600 kW at a frequency of 60 Hz; and

(6) Conforms to section 5.4, Table 3 and Section 6.3 of the IEC 60034–12:2016 (incorporated by reference, *see* § 431.15) specifications for starting torque, locked rotor apparent power, and starting requirements, respectively.

IEC Design NY means an electric motor that:

(1) Is an induction motor designed for use with three-phase power;

(2) Contains a cage rotor;

(3) Is capable of star-delta starting;

(4) Has 2, 4, 6, or 8 poles;

(5) Is rated from 0.12 kW to 1600 kW at a frequency of 60 Hz; and

(6) Conforms to Section 5.4, Section 6.2 and Section 6.3 of the IEC 60034–12:2016 (incorporated by reference, *see* § 431.15) specifications for starting torque, locked rotor apparent power, and starting requirements, respectively.

* * * * *

Inverter means an electronic device that converts an input AC or DC power into a controlled output AC or DC voltage or current. An inverter may also be called a converter.

Inverter-capable electric motor means an electric motor designed for direct online starting and is suitable for operation on an inverter without special filtering.

Inverter-only electric motor means an electric motor designed specifically for operation fed by an inverter with a temperature rise within the specified insulation thermal class or thermal limits.

* * * * *

Liquid-cooled electric motor means a motor that is cooled by liquid circulated using a designated cooling apparatus such that the liquid or liquid-filled conductors come into direct contact with the parts of the motor but is not submerged in a liquid during operation.

* * * * *

NEMA Design A motor means a squirrel-cage motor that:

(1) Is designed to withstand full-voltage starting and developing locked-

rotor torque as shown in NEMA MG 1–2016, paragraph 12.38.1 (incorporated by reference, *see* § 431.15);

(2) Has pull-up torque not less than the values shown in NEMA MG 1–2016, paragraph 12.40.1;

(3) Has breakdown torque not less than the values shown in NEMA MG 1–2016, paragraph 12.39.1;

(4) Has a locked-rotor current higher than the values shown in NEMA MG 1–2016, Paragraph 12.35.2 for 60 hertz and NEMA MG 1–2016, Paragraph 12.35.4 for 50 hertz; and

(5) Has a slip at rated load of less than 5 percent for motors with fewer than 10 poles.

NEMA Design B motor means a squirrel-cage motor that is:

(1) Designed to withstand full-voltage starting;

(2) Develops locked-rotor, breakdown, and pull-up torques adequate for general application as specified in Sections 12.38, 12.39 and 12.40 of NEMA MG 1–2016 (incorporated by reference, *see* § 431.15);

(3) Draws locked-rotor current not to exceed the values shown in Section 12.35.2 for 60 hertz and 12.35.4 for 50 hertz of NEMA MG 1–2016; and

(4) Has a slip at rated load of less than 5 percent for motors with fewer than 10 poles.

NEMA Design C motor means a squirrel-cage motor that:

(1) Is designed to withstand full-voltage starting and developing locked-rotor torque for high-torque applications up to the values shown in NEMA MG 1–2016, paragraph 12.38.2 (incorporated by reference, *see* § 431.15);

(2) Has pull-up torque not less than the values shown in NEMA MG 1–2016, paragraph 12.40.2;

(3) Has breakdown torque not less than the values shown in NEMA MG 1–2016, paragraph 12.39.2;

(4) Has a locked-rotor current not to exceed the values shown in NEMA MG 1–2016, paragraphs 12.35.2 for 60 hertz and 12.35.4 for 50 hertz; and

(5) Has a slip at rated load of less than 5 percent.

Nominal full-load efficiency means, with respect to an electric motor, a representative value of efficiency selected from the ''nominal efficiency'' column of Table 12–10, NEMA MG 1–2016, (incorporated by reference, *see* § 431.15), that is not greater than the average full-load efficiency of a population of motors of the same design.

* * * * *

Rated frequency means 60 Hz and corresponds to the frequency of the electricity supplied either:

(1) Directly to the motor, in the case of electric motors capable of operating without an inverter; or

(2) To the inverter in the case on inverter-only electric motors.

Rated load (or *full-load, full rated load,* or *rated full-load*) means the rated output power of an electric motor.

Rated voltage means the input voltage of a motor or inverter used when making representations of the performance characteristics of a given electric motor and selected by the motor's manufacturer to be used for testing the motor's efficiency.

* * * * *

§ 431.14 [Removed and Reserved]

■ 15. Remove and reserve § 431.14.

■ 16. Section 431.15 is amended by:

■ a. Revising paragraphs (a) and (b);

■ b. Removing the text '', + 41 22 919 02 11, or go to *http://webstore.iec.ch*'' and adding in its place the text ''; + 41 22 919 02 11; *webstore.iec.ch*'' in paragraph (c) introductory text;

■ c. Revising paragraphs (c)(3), (4), and (7);

■ d. Adding paragraphs (c)(8) and (9); and

■ e. Revising paragraphs (d) through (f).

The revisions and additions read as follows:

§ 431.15 Materials incorporated by reference.

(a) Certain material is incorporated by reference into this subpart with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in this section, the U.S. Department of Energy (DOE) must publish a document in the **Federal Register** and the material must be available to the public. All approved incorporation by reference (IBR) material is available for inspection at DOE and at the National Archives and Records Administration (NARA). Contact DOE at: the U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Building Technologies Program, Sixth Floor, 950 L'Enfant Plaza SW, Washington, DC 20024, (202) 586–9127, *Buildings@ee.doe.gov, https://www.energy.gov/eere/buildings/building-technologies-office.* 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.* The material may be obtained from the sources in the following paragraphs:

(b) *CSA.* Canadian Standards Association, Sales Department, 5060 Spectrum Way, Suite 100, Mississauga, Ontario, L4W 5N6, Canada; (800) 463–6727; *www.shopcsa.ca/onlinestore/welcome.asp.*

(1) CSA C390–10 (reaffirmed 2019), (''CSA C390–10''), *Test methods, marking requirements, and energy efficiency levels for three-phase induction motors,* including Updates No. 1 through 3, Revised January 2020; IBR approved for § 431.12 and appendix B to this subpart.

(2) CSA C747–09 (reaffirmed 2019) (''CSA C747–09''), *Energy efficiency test methods for small motors,* including Update No. 1 (August 2016), October 2009; IBR approved for appendix B to this subpart.

(c) * * *

(3) IEC 60034–2–1:2014, *Rotating electrical machines—Part 2–1: Standard methods for determining losses and efficiency from tests (excluding machines for traction vehicles),* Edition 2.0, 2014–06; IBR approved for § 431.12 and appendix B to this subpart.

(4) IEC 60034–12:2016, *Rotating electrical machines, Part 12: Starting performance of single-speed three-phase cage induction motors,* Edition 3.0, 2016–11; IBR approved for § 431.12.

* * * * *

(7) IEC 60072–1, *Dimensions and Output Series for Rotating Electrical Machines—Part 1: Frame numbers 56 to 400 and flange numbers 55 to 1080,* Sixth edition, 1991–02; IBR approved as follows: clauses 2, 3, 4.1, 6.1, 7, and 10, and Tables 1, 2 and 4; IBR approved for § 431.12 and appendix B to this subpart.

(8) IEC 60079–7:2015, *Explosive atmospheres—Part 7: Equipment protection by increased safety ''e'',* Edition 5.0, 2015–06; IBR approved for § 431.12.

(9) IEC 61800–9–2:2017, *Adjustable speed electrical power drive systems—Part 9–2: Ecodesign for power drive systems, motor starters, power electronics and their driven applications—Energy efficiency indicators for power drive systems and motor starters,* Edition 1.0, 2017–03; IBR approved for appendix B to this subpart.

(d) *IEEE.* Institute of Electrical and Electronics Engineers, Inc., 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855–1331; (800) 678–IEEE (4333); *www.ieee.org/web/publications/home/index.html.*

(1) IEEE Std 112–2017 (''IEEE 112–2017''), *IEEE Standard Test Procedure for Polyphase Induction Motors and Generators,* approved December 6, 2017; IBR approved for § 431.12 and appendix B to this subpart.

(2) IEEE Std 114–2010 (''IEEE 114–2010''), *Test Procedure for Single-Phase Induction Motors,* December 23, 2010; IBR approved for appendix B to this subpart.

(e) *NEMA.* National Electrical Manufacturers Association, 1300 North 17th Street, Suite 1752, Rosslyn, Virginia 22209; (703) 841–3200; *www.nema.org/.*

(1) ANSI/NEMA MG 1–2016 (Revision 1, 2018) (''NEMA MG 1–2016''), *Motors and Generators,* ANSI-approved June 15, 2021; IBR approved for § 431.12 and appendix B to this subpart.

(2) NEMA Standards Publication MG1–1967 (''NEMA MG1–1967''), *Motors and Generators,* January 1968; as follows:

(i) *Part 11, Dimension;* IBR approved for § 431.12.

(ii) *Part 13, Frame Assignments—A–C Integral-Horsepower Motors;* IBR approved for § 431.12.

(f) *NFPA.* National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169–7471; (617) 770–3000; *www.nfpa.org/.*

(1) NFPA 20, *Standard for the Installation of Stationary Pumps for Fire Protection,* 2022 Edition, ANSI-approved April 8, 2021. IBR approved for § 431.12.

(2) [Reserved]

§ 431.17 [Removed and Reserved]

■ 17. Remove and reserve § 431.17.

■ 18. Section 431.18 is amended by revising paragraph (b) to read as follows:

§ 431.18 Testing laboratories.

* * * * *

(b) NIST/NVLAP is under the auspices of the National Institute of Standards and Technology (NIST)/National Voluntary Laboratory Accreditation Program (NVLAP), which is part of the U.S. Department of Commerce. NIST/NVLAP accreditation is granted on the basis of conformance with criteria published in 15 CFR part 285. The National Voluntary Laboratory Accreditation Program, ''Procedures and General Requirements,'' NIST Handbook 150–10, April 2020, (referenced for guidance only, *see* § 429.3 of this subchapter) present the technical requirements of NVLAP for the Efficiency of Electric Motors field of accreditation. This handbook supplements NIST Handbook 150, National Voluntary Laboratory Accreditation Program ''Procedures and General Requirements,'' which contains 15 CFR part 285 plus all general NIST/NVLAP procedures, criteria, and policies. Information regarding NIST/NVLAP and its Efficiency of Electric Motors Program (EEM) can be obtained from NIST/NVLAP, 100 Bureau Drive, Mail Stop 2140, Gaithersburg, MD 20899–2140, (301) 975–4016 (telephone), or (301) 926–2884 (fax).

§§ 431.19 through 431.21 [Removed]

■ 19. Remove §§ 431.19 through 431.21.

■ 20. Section 431.25 is amended by:

■ a. Revising paragraph (g)(9);

■ b. Revising paragraph (h) introductory text and the table 5 heading; and

■ c. Revising paragraph (i) introductory text and the table 6 heading.

The revisions read as follows:

§ 431.25 Energy conservation standards and compliance dates.

* * * * *

(g) * * *

(9) Meet all of the performance requirements of one of the following motor types: A NEMA Design A, B, or C motor or an IEC Design N, NE, NEY, NY or H, HE, HEY, HY motor.

* * * * *

(h) Starting on June 1, 2016, each NEMA Design A motor, NEMA Design B motor, and IEC Design N (including NE, NEY, or NY variants) motor that is an electric motor meeting the criteria in paragraph (g) of this section and with a power rating from 1 horsepower through 500 horsepower, but excluding fire pump electric motors, manufactured (alone or as a component of another piece of equipment) shall have a nominal full-load efficiency of not less than the following:

Table 5 to Paragraph (h)—Nominal Full-Load Efficiencies of NEMA Design A, NEMA Design B and IEC Design N, NE, NEY or NY Motors (Excluding Fire Pump Electric Motors) at 60 Hz

* * * * *

(i) Starting on June 1, 2016, each NEMA Design C motor and IEC Design H (including HE, HEY, or HY variants) motor that is an electric motor meeting the criteria in paragraph (g) of this section and with a power rating from 1 horsepower through 200 horsepower manufactured (alone or as a component of another piece of equipment) shall have a nominal full-load efficiency that is not less than the following:

Table 6 to Paragraph (i)—Nominal Full-Load Efficiencies of NEMA Design C and IEC Design H, HE, HEY or HY Motors at 60 Hz

* * * * *

■ 20. Appendix B to subpart B of part 431 is revised to read as follows:

Appendix B to Subpart B of Part 431—Uniform Test Method for Measuring the Efficiency of Electric Motors

Note: Manufacturers of electric motors subject to energy conservation standards in § 431.25 must test in accordance with this appendix.

For any other electric motor that is not currently covered by the energy conservation standards at § 431.25, manufacturers of this equipment must test in accordance with this appendix 180 days after the effective date of the final rule adopting energy conservation standards for such motor. For any other electric motor that is not currently covered by the energy conservation standards at § 431.25, manufacturers choosing to make any representations respecting of energy efficiency for such motors must test in accordance with this appendix.

0. Incorporation by Reference

In § 431.15, DOE incorporated by reference the entire standard for CSA C390–10, CSA C747–09, IEC 60034–1:2010, IEC 60034–2–1:2014, IEC 60051–1:2016, IEC 61800–9–2:2017, IEEE 112–2017, IEEE 114–2010, and NEMA MG 1–2016; however, only enumerated provisions of those documents are applicable as follows. In cases where there is a conflict, the language of this appendix takes precedence over those documents. Any subsequent amendment to a referenced document by the standard-setting organization will not affect the test procedure in this appendix, unless and until the test procedure is amended by DOE.

0.1. CSA C390–10

(a) Section 1.3 ''Scope,'' as specified in sections 2.1.1 and 2.3.3.2 of this appendix;

(b) Section 3.1 ''Definitions,'' as specified in sections 2.1.1 and 2.3.3.2 of this appendix;

(c) Section 5 ''General test requirements—Measurements,'' as specified in sections 2.1.1 and 2.3.3.2 of this appendix;

(d) Section 7 ''Test method,'' as specified in sections 2.1.1 and 2.3.3.2 of this appendix;

(e) Table 1 ''Resistance measurement time delay,'' as specified in sections 2.1.1 and 2.3.3.2 of this appendix;

(f) Annex B ''Linear regression analysis,'' as specified in sections 2.1.1 and 2.3.3.2 of this appendix; and

(g) Annex C ''Procedure for correction of dynamometer torque readings'' as specified in sections 2.1.1 and 2.3.3.2 of this appendix.

0.2. CSA C747–09

(a) Section 1.6 ''Scope'' as specified in sections 2.3.1.2 and 2.3.2.2 of this appendix;

(b) Section 3 ''Definitions'' as specified in sections 2.3.1.2 and 2.3.2.2 of this appendix;

(c) Section 5 ''General test requirements'' as specified in sections 2.3.1.2 and 2.3.2.2 of this appendix; and

(d) Section 6 ''Test method'' as specified in sections 2.3.1.2 and 2.3.2.2 of this appendix.

0.3. IEC 60034–1:2010

(a) Section 4.2.1 as specified in section 1.2 of this appendix;

(b) Section 7.2 as specified in sections 2.1.2, 2.3.1.3, 2.3.2.3, and 2.3.3.3 of this appendix;

(c) Section 8.6.2.3.3 as specified in sections 2.1.2, 2.3.1.3, 2.3.2.3, and 2.3.3.3 of this appendix; and

(d) Table 5 as specified in sections 2.1.2, 2.3.1.3, 2.3.2.3, and 2.3.3.3 of this appendix.

0.4. IEC 60034–2–1:2014

(a) Method 2–1–1A (which also includes paragraphs (b) through (f) of this section) as specified in sections 2.3.1.3 and 2.3.2.3 of this appendix;

(b) Method 2–1–1B (which also includes paragraphs (b) through (e), (g), and (i) of this section) as specified in sections 2.1.2 and 2.3.3.3 of this appendix;

(c) Section 3 ''Terms and definitions'' as specified in sections 2.1.2, 2.3.1.3, 2.3.2.3, 2.3.3.3, and 2.4.1 of this appendix;

(d) Section 4 ''Symbols and abbreviations'' as specified in sections 2.1.2, 2.3.1.3, 2.3.2.3, 2.3.3.3 and 2.4.1 of this appendix;

(e) Section 5 ''Basic requirements'' as specified in sections 2.1.2, 2.3.1.3, 2.3.2.3, 2.3.3.3, and 2.4.1 of this appendix;

(f) Section 6.1.2 ''Method 2–1–1A—Direct measurement of input and output'' (except Section 6.1.2.2, ''Test Procedure'') as specified in sections 2.3.1.3 and 2.3.2.3 of this appendix;

(g) Section 6.1.3 ''Method 2–1–1B—Summations of losses, additional load losses according to the method of residual losses'' as specified in sections 2.1.2 and 2.3.3.3 of this appendix; and

(h) Section 7.1. ''Preferred Testing Methods'' as specified in section 2.4.1 of this appendix;

(i) Annex D, ''Test report template for 2–1–1B'' as specified in sections 2.1.2 and 2.3.3.3 of this appendix.

0.5. IEC 60051–1:2016

(a) Section 5.2 as specified in sections 2.1.2, 2.3.1.3, 2.3.2.3, and 2.3.3.3 of this appendix; and

(b) [Reserved].

0.6. IEC 61800–9–2:2017

(a) Section 3 ''Terms, definitions, symbols, and abbreviated terms'' as specified in sections 2.4.2 and 2.4.3 of this appendix;

(b) Section 7.7.2, ''Input-output measurement of PDS losses'' as specified in sections 2.4.2 and 2.4.3 of this appendix;

(c) Section 7.7.3.1, ''General'' as specified in sections 2.4.2 and 2.4.3 of this appendix;

(d) Section 7.7.3.2. ''Power analyser and transducers'' as specified in sections 2.4.2 and 2.4.3 of this appendix;

(e) Section 7.7.3.3, ''Mechanical Output of the motor'' as specified in sections 2.4.2 and 2.4.3 of this appendix;

(f) Section 7.7.3.5, ''PDS loss determination according to input-output method'' as specified in sections 2.4.2 and 2.4.3 of this appendix;

(g) Section 7.10 ''Testing Conditions for PDS testing'' as specified in sections 2.4.2 and 2.4.3 of this appendix.

0.7. IEEE 112–2017

(a) Test Method A (which also includes paragraphs (c) through (g), (i), and (j) of this section) as specified in section 2.3.2.1 of this appendix;

(b) Test Method B (which also includes paragraphs (c) through (f), (h), (k) and (l) of this section) as specified in sections 2.1.3 and 2.3.3.1 of this appendix;

(c) Section 3, ''General'' as specified in sections 2.1.3, 2.3.2.1, and 2.3.3.1 of this appendix;

(d) Section 4, ''Measurements'' as specified in sections 2.1.3, 2.3.2.1, and 2.3.3.1 of this appendix;

(e) Section 5, ''Machine losses and tests for losses'' as specified in sections 2.1.3, 2.3.2.1, and 2.3.3.1 of this appendix;

(f) Section 6.1, ''General'' as specified in sections 2.1.3, 2.3.2.1, and 2.3.3.1 of this appendix;

(g) Section 6.3, ''Efficiency test method A—Input-output'' as specified in section 2.3.2.1 of this appendix;

(h) Section 6.4, ''Efficiency test method B—Input-output'' as specified in sections 2.1.3 and 2.3.3.1 of this appendix;

(i) Section 9.2, ''Form A—Method A'' as specified in section 2.3.2.1 of this appendix;

(j) Section 9.3, ''Form A2—Method A calculations'' as specified in section 2.3.2.1 of this appendix;

(k) Section 9.4, ''Form B—Method B'' as specified in sections 2.1.3, and 2.3.3.1 of this appendix; and

(l) Section 9.5, ''Form B2—Method B calculations'' as specified in sections 2.1.3 and 2.3.3.1 of this appendix.

0.8. IEEE 114–2010

(a) Section 3.2, ''Test with load'' as specified in section 2.3.1.1 of this appendix;

(b) Section 4, ''Testing Facilities as specified in section 2.3.1.1 of this appendix;

(c) Section 5, ''Measurements'' as specified in section 2.3.1.1 of this appendix;

(d) Section 6, ''General'' as specified in section 2.3.1.1 of this appendix;

(e) Section 7, ''Type of loss'' as specified in section 2.3.1.1 of this appendix;

(f) Section 8, ''Efficiency and Power Factor'' as specified in section 2.3.1.1 of this appendix;

(g) Section 10 ''Temperature Tests'' as specified in section 2.4.1.1 of this appendix;

(h) Annex A, Section A.3 ''Determination of Motor Efficiency'' as specified in section 2.4.1.1 of this appendix; and

(i) Annex A, Section A.4 ''Explanatory notes for form 3, test data'' as specified in section 2.4.1.1 of this appendix.

0.9. NEMA MG 1–2016

(a) Paragraph 1.40.1, ''Continuous Rating'' as specified in section 1.2 of this appendix;

(b) Paragraph 12.58.1, ''Determination of Motor Efficiency and Losses'' as specified in the introductory paragraph to section 2.1 of this appendix, and

(c) Paragraph 34.1, ''Applicable Motor Efficiency Test Methods'' as specified in section 2.2 of this appendix;

(d) Paragraph 34.2.2 ''AO Temperature Test Procedure 2—Target Temperature with Airflow'' as specified in section 2.2 of this appendix;

(e) Paragraph 34.4, ''AO Temperature Test Procedure 2—Target Temperature with Airflow'' as specified in section 2.2 of this appendix.

1. Scope and Definitions

1.1 *Scope.* The test procedure applies to the following categories of electric motors: Electric motors that meet the criteria listed at § 431.25(g); Electric motors above 500 horsepower; Small, non-small-electric-motor electric motor; and Electric motors that are synchronous motors; and excludes the following categories of motors: inverter-only electric motors that are air-over electric motors, component sets of an electric motor, liquid-cooled electric motors, and submersible electric motors.

1.2 *Definitions.* Definitions contained in §§ 431.2 and 431.12 are applicable to this appendix, in addition to the following terms (''MG1'' refers to NEMA MG 1–2016 and IEC refers to IEC 60034–1:2010 and IEC 60072–1):

Electric motors above 500 horsepower is defined as an electric motor having a rated horsepower above 500 and up to 750 hp that meets the criteria listed at § 431.25(g), with the exception of criteria § 431.25(g)(8).

Small, non-small-electric-motor electric motor (''SNEM'') means an electric motor that:

(a) Is not a small electric motor, as defined § 431.442 and is not a dedicated-purpose pool pump motor as defined at § 431.483;

(b) Is rated for continuous duty (MG 1) operation or for duty type S1 (IEC);

(c) Operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power; or is used with an inverter that operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power;

(d) Is rated for 600 volts or less;

(e) Is a single-speed induction motor capable of operating without an inverter or is an inverter-only electric motor;

(f) Produces a rated motor horsepower greater than or equal to 0.25 horsepower (0.18 kW); and

(g) Is built in the following frame sizes: any two-, or three-digit NEMA frame size (or IEC metric equivalent) if the motor operates on single-phase power; any two-, or three-digit NEMA frame size (or IEC metric equivalent) if the motor operates on polyphase power, and has a rated motor horsepower less than 1 horsepower (0.75 kW); or a two-digit NEMA frame size (or IEC metric equivalent), if the motor operates on polyphase power, has a rated motor horsepower equal to or greater than 1 horsepower (0.75 kW), and is not an enclosed 56 NEMA frame size (or IEC metric equivalent).

Synchronous Electric Motor means an electric motor that:

(a) Is not a dedicated-purpose pool pump motor as defined at § 431.483 or is not an air-over electric motor;

(b) Is a synchronous electric motor;

(c) Is rated for continuous duty (MG 1) operation or for duty type S1 (IEC);

(d) Operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power; or is used with an inverter that operates on polyphase or single-phase alternating current 60-hertz (Hz) sinusoidal line power;

(e) Is rated 600 volts or less;

(f) Produces at least 0.25 hp (0.18 kW) but not greater than 750 hp (559 kW).

2. Test Procedures

2.1. Test Procedures for Electric Motors that meet the criteria listed at § 431.25(g), and electric motors above 500 horsepower that are capable of operating without an inverter. Air-over electric motors must be tested in accordance with Section 2.2. Inverter-only electric motors must be tested in accordance with 2.4.

Efficiency and losses must be determined in accordance with NEMA MG 1–2016, Paragraph 12.58.1, ''Determination of Motor

Efficiency and Losses,'' or one of the following testing methods:

2.1.1. CSA C390–10 (see section 0.1 of this appendix)

2.1.2. IEC 60034–2–1:2014, Method 2–1–1B (see section 0.4(b) of this appendix). The supply voltage shall be in accordance with Section 7.2 of IEC 60034–1:2010. The measured resistance at the end of the thermal test shall be determined in a similar way to the extrapolation procedure described in Section 8.6.2.3.3 of IEC 60034–1:2010, using the shortest possible time instead of the time interval specified in Table 5 to IEC 60034–1:2010, and extrapolating to zero. The measuring instruments for electrical quantities shall have the equivalent of an accuracy class of 0,2 in case of a direct test and 0,5 in case of an indirect test in accordance with Section 5.2 of IEC 60051–1:2016, or

2.1.3. IEEE 112–2017, Test Method B (see section 0.7(b) of this appendix).

2.2. Test Procedures for Air-Over Electric Motors

Except noted otherwise in section 2.2.1 and 2.2.2 of this appendix, efficiency and losses of air-over electric motors must be determined in accordance with NEMA MG 1–2016 (excluding Paragraph 12.58.1).

2.2.1. The provisions in Paragraph 34.4.1.a.1 of NEMA MG 1–2016 related to the determination of the target temperature for polyphase motors must be replaced by a single target temperature of 75 °C for all insulation classes.

2.2.2. The industry standards listed in Paragraph 34.1 of NEMA MG 1–2016, ''Applicable Motor Efficiency Test Methods'' must correspond to the versions identified in section 0 of this appendix, specifically IEEE 112–2017, IEEE 114–2010, CSA C390–10, CSA C747–09, and IEC 60034–2–1:2014. In addition, when testing in accordance with IEC 60034–2–1:2014, the additional testing instructions in section 2.1.2 of this appendix apply.

2.3. Test Procedures for SNEMs capable of operating without an inverter. Air-over SNEMs must be tested in accordance with section 2.2. of this appendix. Inverter-only SNEMs must be tested in accordance with section 2.4. of this appendix.

2.3.1. The efficiencies and losses of single-phase SNEMs that are not air-over electric motors and are capable of operating without an inverter, are determined using one of the following methods:

2.3.1.1. IEEE 114–2010 (see section 0.8 of this appendix);

2.3.1.2. CSA C747–09 (see section 0.2 of this appendix), or

2.3.1.3. IEC 60034–2–1:2014 Method 2–1–1A (see section 0.4(a) of this appendix),. The supply voltage shall be in accordance with Section 7.2 of IEC 60034–1:2010. The measured resistance at the end of the thermal test shall be determined in a similar way to the extrapolation procedure described in Section 8.6.2.3.3 of IEC 60034–1:2010, using the shortest possible time instead of the time interval specified in Table 5 of IEC 60034–1:2010, and extrapolating to zero. The measuring instruments for electrical quantities shall have the equivalent of an accuracy class of 0,2 in case of a direct test and 0,5 in case of an indirect test in accordance with Section 5.2 of IEC 60051–1:2016.

2.3.1.3.1. *Additional IEC 60034–2–1:2014 Method 2–1–1A Torque Measurement Instructions.* If using IEC 60034–2–1:2014 Method 2–1–1A to measure motor performance, follow the instructions in section 2.3.1.3.2. of this appendix, instead of Section 6.1.2.2 of IEC 60034–2–1:2014;

2.3.1.3.2. Couple the machine under test to a load machine. Measure torque using an in-line, shaft-coupled, rotating torque transducer or stationary, stator reaction torque transducer. Operate the machine under test at the rated load until thermal equilibrium is achieved (rate of change 1 K or less per half hour). Record U, I, Pel, n, T, θc.

2.3.2. The efficiencies and losses of polyphase electric motors considered with rated horsepower less than 1 that are not air-over electric motors, and are capable of operating without an inverter, are determined using one of the following methods:

2.3.2.1. IEEE 112–2017 Test Method A (see section 0.7(a) of this appendix);

2.3.2.2. CSA C747–09 (see section 0.2 of this appendix); or

2.3.2.3. IEC 60034–2–1:2014 Method 2–1–1A (see section 0.4(a) of this appendix). The supply voltage shall be in accordance with Section 7.2 of IEC 60034–1:2010. The measured resistance at the end of the thermal test shall be determined in a similar way to the extrapolation procedure described in Section 8.6.2.3.3 of IEC 60034–1:2010 using the shortest possible time instead of the time interval specified in Table 5 of IEC 60034–1:2010, and extrapolating to zero. The measuring instruments for electrical quantities shall have the equivalent of an accuracy class of 0,2 in case of a direct test and 0,5 in case of an indirect test in accordance with Section 5.2 of IEC 60051–1:2016.

2.3.2.3.1. *Additional IEC 60034–2–1:2014 Method 2–1–1A Torque Measurement Instructions.* If using IEC 60034–2–1:2014 Method 2–1–1A to measure motor performance, follow the instructions in section 2.3.2.3.2. of this appendix, instead of Section 6.1.2.2 of IEC 60034–2–1:2014;

2.3.2.3.2. Couple the machine under test to load machine. Measure torque using an in-line shaft-coupled, rotating torque transducer or stationary, stator reaction torque transducer. Operate the machine under test at the rated load until thermal equilibrium is achieved (rate of change 1 K or less per half hour). Record U, I, Pel, n, T, θc.

2.3.3. The efficiencies and losses of polyphase SNEMs with rated horsepower equal to or greater than 1 that are not air-over electric motors, and are capable of operating without an inverter, are determined using one of the following methods:

2.3.3.1. IEEE 112–2017 Test Method B (see section 0.7(b) of this appendix);

2.3.3.2. CSA C390–10 (see section 0.1 of this appendix); or

2.3.3.3. IEC 60034–2–1:2014 Method 2–1–1B (see section 0.4(b) of this appendix). The supply voltage shall be in accordance with Section 7.2 of IEC 60034–1:2010. The measured resistance at the end of the thermal test shall be determined in a similar way to the extrapolation procedure described in Section 8.6.2.3.3 of IEC 60034–1:2010 using the shortest possible time instead of the time interval specified in Table 5 of IEC 60034–1:2010, and extrapolating to zero. The measuring instruments for electrical quantities shall have the equivalent of an accuracy class of 0,2 in case of a direct test and 0,5 in case of an indirect test in accordance with Section 5.2 of IEC 60051–1:2016.

2.4. Test Procedures for Electric Motors that are Synchronous Motors and Inverter-only Electric Motors

Section 2.4.1 of this appendix applies to electric motors that are synchronous motors that do not require an inverter to operate. Sections 2.4.2. and 2.4.3. of this appendix apply to electric motors that are synchronous motors and are inverter-only; and to induction electric motors that are inverter-only electric motors.

2.4.1. The efficiencies and losses of electric motors that are synchronous motors that do not require an inverter to operate, are determined in accordance with IEC 60034–2–1:2014, Section 3 ''Terms and definitions,'' Section 4 ''Symbols and abbreviations,'' Section 5 ''Basic requirements,'' and Section 7.1. ''Preferred Testing Methods.''

2.4.2. The efficiencies and losses of electric motors (inclusive of the inverter) that are that are inverter-only and do not include an inverter, are determined in accordance with IEC 61800–9–2:2017. Test must be conducted using an inverter that is listed as recommended in the manufacturer's catalog or that is offered for sale with the electric motor. If more than one inverter is available in manufacturer's catalogs or if more than one inverter is offered for sale with the electric motor, test using the least efficient inverter. Record the manufacturer, brand and model number of the inverter used for the test. If there are no inverters specified in the manufacturer catalogs or offered for sale with the electric motor, testing must be conducted using an inverter that meets the criteria described in section 2.4.2.2. of this appendix.

2.4.2.1. The inverter shall be set up according to the manufacturer's instructional and operational manual included with the product. Manufacturers shall also record switching frequency in Hz, max frequency in Hz, Max output voltage in V, motor control method (*i.e.,* V/f ratio, sensor less vector, etc.), load profile setting (constant torque, variable torque, etc.), and saving energy mode (if used). Deviation from the resulting settings, such as switching frequency or load torque curves for the purpose of optimizing test results shall not be permitted.

2.4.2.2. If there are no inverters specified in the manufacturer catalogs or offered for sale with the electric motor, test with a two-level voltage source inverter. No additional components influencing output voltage or output current shall be installed between the inverter and the motor, except those required for the measuring instruments. For motors with a rated speed up to 3 600 min–1, the switching frequency shall not be higher than 5 kHz. For motors with a rated speed above 3 600 min–1, the switching frequency shall not be higher than 10 kHz. Record the

manufacturer, brand and model number of the inverter used for the test.

2.4.3. The efficiencies and losses of electric motors (inclusive of the inverter) that are inverter-only and include an inverter are determined in accordance with IEC 61800–9–2:2017.

2.4.3.1. The inverter shall be set up according to the manufacturer's instructional and operational manual included with the product. Manufacturers shall also record switching frequency in Hz, max frequency in Hz, Max output voltage in V, motor control method (*i.e.,* V/f ratio, sensor less vector, etc.), load profile setting (constant torque, variable torque, etc.), and saving energy mode (if used). Deviation from the resulting settings, such as switching frequency or load torque curves for the purpose of optimizing test results shall not be permitted.

3. Procedures for the Testing of Certain Electric Motor Categories

Prior to testing according to section 2 of this appendix, each basic model of the electric motor categories listed below must be set up in accordance with the instructions of this section to ensure consistent test results. These steps are designed to enable a motor to be attached to a dynamometer and run continuously for testing purposes. For the purposes of this appendix, a ''standard bearing'' is a 600- or 6000-series, either open or grease-lubricated double-shielded, single-row, deep groove, radial ball bearing.

3.1. Brake Electric Motors:

Brake electric motors shall be tested with the brake component powered separately from the motor such that it does not activate during testing. Additionally, for any 10-minute period during the test and while the brake is being powered such that it remains disengaged from the motor shaft, record the power consumed (*i.e.,* watts). Only power used to drive the motor is to be included in the efficiency calculation; power supplied to prevent the brake from engaging is not included in this calculation. In lieu of powering the brake separately, the brake may be disengaged mechanically, if such a mechanism exists and if the use of this mechanism does not yield a different efficiency value than separately powering the brake electrically.

3.2. Close-Coupled Pump Electric Motors and Electric Motors with Single or Double Shaft Extensions of Non-Standard Dimensions or Design:

To attach the unit under test to a dynamometer, close-coupled pump electric motors and electric motors with single or double shaft extensions of non-standard dimensions or design must be tested using a special coupling adapter.

3.3. Electric Motors with Non-Standard Endshields or Flanges:

If it is not possible to connect the electric motor to a dynamometer with the non-standard endshield or flange in place, the testing laboratory shall replace the non-standard endshield or flange with an endshield or flange meeting NEMA or IEC specifications. The replacement component should be obtained from the manufacturer or, if the manufacturer chooses, machined by the testing laboratory after consulting with the manufacturer regarding the critical characteristics of the endshield.

3.4. Electric Motors with Non-Standard Bases, Feet or Mounting Configurations:

An electric motor with a non-standard base, feet, or mounting configuration may be mounted on the test equipment using adaptive fixtures for testing as long as the mounting or use of adaptive mounting fixtures does not have an adverse impact on the performance of the electric motor, particularly on the cooling of the motor.

3.5. Electric Motors with a Separately-Powered Blower:

For electric motors furnished with a separately-powered blower, the losses from the blower's motor should not be included in any efficiency calculation. This can be done either by powering the blower's motor by a source separate from the source powering the electric motor under test or by connecting leads such that they only measure the power of the motor under test.

3.6. Immersible Electric Motors:

Immersible electric motors shall be tested with all contact seals removed but be otherwise unmodified.

3.7. Partial Electric Motors:

Partial electric motors shall be disconnected from their mated piece of equipment. After disconnection from the equipment, standard bearings and/or endshields shall be added to the motor, such that it is capable of operation. If an endshield is necessary, an endshield meeting NEMA or IEC specifications should be obtained from the manufacturer or, if the manufacturer chooses, machined by the testing laboratory after consulting with the manufacturer regarding the critical characteristics of the endshield.

3.8. Vertical Electric Motors and Electric Motors with Bearings Incapable of Horizontal Operation:

Vertical electric motors and electric motors with thrust bearings shall be tested in a horizontal or vertical configuration in accordance with the applicable test procedure under section 2 through section 2.4.3. of this appendix, depending on the testing facility's capabilities and construction of the motor, except if the motor is a vertical solid shaft normal thrust general purpose electric motor (subtype II), in which case it shall be tested in a horizontal configuration in accordance with the applicable test procedure under section 2 through section 2.4.3. of this appendix. Preference shall be given to testing a motor in its native orientation. If the unit under test cannot be reoriented horizontally due to its bearing construction, the electric motor's bearing(s) shall be removed and replaced with standard bearings. If the unit under test contains oil-lubricated bearings, its bearings shall be removed and replaced with standard bearings. If necessary, the unit under test may be connected to the dynamometer using a coupling of torsional rigidity greater than or equal to that of the motor shaft.

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S. 958/P.L. 117–204

Maximizing Outcomes through Better Investments in Lifesaving Equipment for (MOBILE) Health Care Act (Oct. 17, 2022; 136 Stat. 2231)

S. 1198/P.L. 117–205

Solid Start Act of 2022 (Oct. 17, 2022; 136 Stat. 2232)

S. 2490/P.L. 117–206

Blackwell School National Historic Site Act (Oct. 17, 2022; 136 Stat. 2235)

S. 2551/P.L. 117–207

Artificial Intelligence Training for the Acquisition Workforce Act (Oct. 17, 2022; 136 Stat. 2238)

S. 2771/P.L. 117–208

To designate the community-based outpatient clinic of the Department of Veterans Affairs in San Angelo, Texas, as the ''Colonel Charles and JoAnne Powell Department of Veterans Affairs Clinic''. (Oct. 17, 2022; 136 Stat. 2241)

S. 2794/P.L. 117–209

Supporting Families of the Fallen Act (Oct. 17, 2022; 136 Stat. 2243)

S. 3157/P.L. 117–210

Bridging the Gap for New Americans Act (Oct. 17, 2022; 136 Stat. 2245)

S. 3470/P.L. 117–211

End Human Trafficking in Government Contracts Act of 2022 (Oct. 17, 2022; 136 Stat. 2248)

S. 4205/P.L. 117–212

Planning for Animal Wellness Act (Oct. 17, 2022; 136 Stat. 2249)

S. 4791/P.L. 117–213

To amend section 301 of title 44, United States Code, to establish a term for the appointment of the Director of the Government Publishing Office. (Oct. 17, 2022; 136 Stat. 2251)

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